

(1991) 05 DEL CK 0038

In the Delhi High Court

Case No : C.W.P. No's. 1064 and 3378 of 1987

R.K. Kawatra, etc.

APPELLANT

Vs

D.S.I.D.C., etc.

RESPONDENT

Date of Decision : 02-05-1991

Acts Referred:

Citation : AIR 1992 Delhi 28

Hon'ble Judges : Milap Chand Jain, C.J.; Arun Kumar, J

Bench : Division Bench

Advocate : Mr. Satpal and Mr. Pawan Behl, for the Appellant; Mr. Swatantra Kumar and Ms. Gita Mittal, for the Respondent

Judgement

Arun Kumar, J.—This judgment will dispose of C.W.P. Nos. 1064 and :3378/87. Both the petitions are being disposed of by this judgment as they raise common questions of law and fact. In C.W. 1064 / 87 there are 12 petitioners while in C.W. 3378/87 there are two petitioners who are jointly carrying on business in the firm name M/s. Kwatra Industries, 275. Kalyan Vihar, Delhi.

2. The relevant facts as stated in the writ petition are that the respondent Delhi State Industrial Development Corporation Limited (hereinafter referred to as the DSIDC) is a company incorporated under the Companies Act and all its shares are owned by the Government of India. The main object of the DSIDC is development of industries in the Union Territory of Delhi. In pursuance of the said object the DSIDC has also taken up development of land to be ultimately made available to entrepreneurs for setting up industry.

3. The appropriate authority acquired land in the Narela township within the Union Territory of Delhi. The Narela Township has been identified as one of the ring towns in the Master Plan of Delhi. The land was acquired for construction of an industrial complex covering an area of about 202.34 hectares. The DSIDC was entrusted with the task of developing the acquired land and allotting the same after development to various eligible entrepreneur's .This was to be called the

Narela Industrial Complex. For this purpose the DSIDC got published an advertisement in the daily Hindustan Times dated 23rd December, 1976 inviting applications from the general public for allotment of plots for setting up industries in the said Industrial Complex. In the said advertisement it was also stated that the application forms were available at the office of the DSIDC up to 15-1-1977 and the applicants could make offers for purchase of plots as per their eligible category out of the various categories mentioned in the advertisement. It was also stated that the registration was to be strictly on first-cum-first served basis, The petitioners in these cases have stated that they obtained the application forms after paying the requisite fee of Rs. 10/- in each case. The application forms were accompanied with a brochure containing the relevant information regarding the allotment of plots. The brochure contains the following material which is relevant for the purpose of disposal of this case.

"The applicants are classified into 7 categories as per following schedule:- S. Category Size of the plot handed Rate of plot No. over for allotment per sq. mt. _____

i. Entrepreneurs belonging to families of tradi- 200/400 sq.mt Rs. 45/- tional craftsmen, artisans, weavers, Sche- duled Castes & Scheduled Tribes, Ex-Service- man (JCO'S and other ranks; Freedom Fight- ers. (Should be residents of Delhi.) ii Youth from villages Tikri, Kurani Shahpur, --do-- --do-- Bhergarh which forms a part of Narela Township. iii Young Educated unemployed. a) 200 /400 / 600 Rs.75/- b) 800/1000 Rs.65/- iv. Rural Youth staying in the villages of Delhi --do-- --do-- where education is no bar. V. Ex-Army Officers (Commissioned) --do-- --do-- vi. Small industries in non-conforming area in --do-- --do-- Delhi. vii. New Industrial Units up to 1000 sq. mt. Rs. 90/- above 1000 sq. mt. Rs. 80/- 2. The applicant of Category i in the above schedule shall have to furnish necessary certificate from the competent authority in this behalf.

3. The applicant of Category ii should be the original resident of villages and furnish certificate from AIM (R) or AIM (North), Tis Hazari Courts, Delhi in support thereof.

4. The applicants of Category iii of the above schedule shall have to furnish a certificate of registration with an Employment Exchange of Delhi.

5. The applicant of Category iv of the above schedule should furnish a certificate to the effect from AIM (R) Tis Hazari Courts, Delhi.

6. The applicants of Category v should furnish the Discharge Certificate.

7. The applicants belonging to Category vi should furnish necessary evidence in this behalf."

4. The petitioners have stated that they applied to the DSIDC in terms of the advertisement and the brochure. The Mode of payment contemplated in the application forms was that 20 percent of the premium of the plot was to be deposited with the application form and another 20 percent was to be deposited at the time of allotment and 10 percent was to be deposited at the time of handing over possession to the applicants on the petitioners executing a deed of agreement with the DSIDC. Remaining 50 percent of the premium was to be recovered by Respondent No.1 in two equal Installments during the years on 1978-79 or within a period of three years on the possession of the plot whichever was to be earlier.

5. It is the case of the petitioners that the DSIDC made a promise to the petitioners which they expected that the latter would fulfill. It was on the basis of the said promise that the petitioners made applications to the DSIDC and deposited the premium of 20 per cent as per the requirement of the DSIDC. It is further stated that the petitioners altered their position by acting on the said representation of the DSIDC and the DSIDC should be held bound by this promise which it made by accepting the applications and the deposits made by the petitioners. Apart from basing their claim in the writ petitions" on the doctrine of promissory estoppel, the petitioners have also stated that on acceptance of their applications and the accompanying deposits by the DSIDC, an enforceable contract between the parties came into being and the DSIDC should be held bound by its said contract. We may mention here that the plea of contract has been taken in both the petitions. However, the same was not pressed at the time of hearing of the petitions by the counsel appearing for the petitioners in either case. Therefore, we need not examine the question of relationship between the parties being governed by contract.

6. The petitioners were thus duly registered with the DSIDC and were assigned their respective registration numbers with the area of plot to which each applicant was entitled to and the category which each applicant was placed. The petitioners submit that the DSIDC thereafter kept on assuring them that immediate steps were being taken to develop the land and as soon as the land was developed, possession of plots would be handed over to the respective entrepreneurs, i.e. the applicants/ petitioners. While categorizing different applicants, the DSIDC kept in view the interest of the entrepreneurs belonging to different sections of the society deserving preferential allotment. Though the land was to be allotted in the same complex, the price of the land to be allotted to different categories was fixed at different rates and it varied between Rs. 45 / - per sq. mtr. to Rs. 90 / - per sq. mtr. The petitioners "in this connection have referred to their various representations made to the DSIDC for allotment of the plots to them. It is further stated that in response to the said representations, the DSIDC kept on informing the petitioners that the policy for allotment of plots in the Narela Industrial complex was being finalised by the Delhi Admn. and as

soon as it would be finalised, the petitioners would be informed accordingly. Copies of some of the representations of the petitioners and the replies thereto by the DSIDC have been placed on record.

7. The petitioners have referred to an advertisement issued in the daily Hindustan Times dated 8th February 1987 inviting applications from the general public for the allotment of plots in the Narela Industrial Complex. The petitioners are aggrieved by the said advertisement on the ground that without allotting the plots to the petitioners, i.e. the applicants in the earlier scheme of 1977, no plots could be offered to general public in the new scheme. It is stated by the petitioners that on seeing the said advertisement, they contacted the DSIDC and sought clarification in this regard. In the last week of February the DSIDC wrote letters to the registrants under the 1977 scheme regarding the plots in Narela Industrial Complex making reference to the 1987 brochure. The petitioners are aggrieved by this new scheme of the DSIDC. It is urged on behalf of the petitioners that the DSIDC being an instrumentality of the Government is a State within Art. 12 of the Constitution of India, and it cannot act arbitrarily. Its action has to be in conformity with the constitutional norms. According to the petitioners the DSIDC made a categorical representation in the advertisement dated 23rd December 1976 and the petitioners acting on that representation, altered their position and the DSIDC is, Therefore, stopped from going back on this representation. Further the grievance of the petitioners is that not only the sizes of the plots for which they initially registered themselves were reduced, they were equated with new applicants ignoring the terms on which the petitioners had registered themselves in 1977. Under the new scheme the petitioners were asked to give their consent as to whether they were ready to apply again for allotment of plots on absolutely new and fresh terms and conditions which included a highly escalated rate of premium. It is also stated by the petitioners that had they known that they would not be allotted the plots on the basis of the promises made by the DSIDC they would have purchased plots in the adjoining areas at much cheaper rate which was prevailing at that time.

8. The petitioners have mainly placed reliance on the doctrine of promissory estoppel in support of their case, though the grounds have been taken regarding violation of principles of natural justice and arbitrariness qua the impugned action of the DSIDC. However, these grounds were not urged at the hearing.

9. Counter-affidavit has been filed on behalf of the DSIDC by Shri Shiv Kumar Gupta, its Secretary. It has been stated by way of preliminary objections in the said counter affidavit that the writ petition raised disputed questions of fact which cannot be determined in the present proceedings. It has also been urged that the matter in controversy lies completely in the realm of contract and, Therefore, the jurisdiction of this Court cannot be invoked. In the alternative it has been urged that there is no concluded contract between the parties and as such the petitioners have no enforceable right. On merits the case of the respondent is that the DSIDC was incorporated under the provisions of the

Companies Act in the year 1972 with the main object of development of small industries in Delhi. The development of the Narela Industrial Complex has handed over to the DSIDC by the Directorate of Industries in August, 1973. Huge area was acquired by the Government. However, the entire land could not be made available to the DSIDC because there were stay orders by various Courts with regard to the taking possession of the lands belonging to various private parties. Besides this, there were various other difficulties in the way of the respondent for developing the area which included financial, legal and other problems of infrastructure. Serious problems were faced during the commencement of the development programme of the Complex, Therefore, a meeting was held between the representatives of the Delhi Admn., and the Govt. of India, Ministry of Works and Housing etc. Vide letter dated 23rd March, 1978 it was communicated to the DSIDC that the President of India was pleased to declare it as the developing agency for the Narela Township Industrial Complex on the terms stated in the said letter. The price of land was to be fixed by the Delhi Admn. and the Municipal Corporation of Delhi and the DSIDC was given the right to dispose of the land on the basis of a policy approved and laid down by the Delhi Admn.

10. It is further stated that in order to explore the demand and to accelerate the development, the DSIDC issued tentative offers inviting applications from interested entrepreneurs to apply for the plots to be ultimately developed by it. This was in the year 1977. In response to the said invitation the petitioners and various other persons applied to the respondent on the prescribed application forms which were available at a cost of Rs. 10/- each. The application forms contain certain terms which are heavily relied upon by the counsel for the respondent. One of the terms is reproduced as under:

"The Chairman reserves the right to close the registration before the due date and incomplete application or defective in any respect whatsoever may not be considered and is liable to be rejected summarily. Please note that the mere calling of application does not contain any legal or other commitment on the part of DSIDC."

11. It is stated further that to see the response from the public the said brochure was issued by the DSIDC, the same was tentative in order to see the scope and possibility of the extent to which the industrial complex could be developed. The said applications and brochures conveyed no promise in any respect whatsoever to any person. It was a mere tentative offer which was made subject to acceptance as per terms and conditions of the brochure issued by the DSIDC and mere deposit of earnest money and submission of applications was not to be construed, as a contract or a promise.

12. The entire Narela Industrial Complex was consisting of about 600 acres of land. However, several acres of land were handed over to the DSIDC after stay orders had been vacated and possession had been given by the individuals who were the owners of the lands. In 1978 nearly 142 acres of additional land was

given to the DSIDC for development. In June, 1979 additional 200 acres were given, in December, 1979, 74 acres while in March, 1980, 28 acres and in April, 1980, 14 acres of land were given. Thus it was only in the year 1980 that the entire land envisaged for development was made available to the DSIDC. The Executive Council of Delhi in its memorandum circulated in pursuance of the meeting of the Executive Council held on 14th May, 1986 laid down the entire policy with regard to the allotment and sale of the plots to the allottees. In accordance with the said policy the DSIDC prepared and issued the brochure in the year 1987. The said 1987 brochure is entirely based upon the price fixed, by the Delhi Administration and instructions given by it with regard to various facilities, environmental protection, sizes of the plots, method of recovery of other incidental matters. The Delhi Admn. vide its letters dated 19th December, 1986 and 16th February, 1987 confirmed that the price of the land would be Rs. 406/- per sq. mtr. Therefore, the price and offer of allotment as contemplated in the scheme of 1987, is based on the decisions taken by the Delhi Admn. and is reasonable. The scheme is more beneficial to the entrepreneurs. It is further stated that the entire purchase cost which is based on various surveys and data collected from time to time was estimated at Rs. 5232 lacs. The Lt. Governor of Delhi visited the site on 3rd May, 1976 and had directed that special care be taken with regard to environmental protection, sewage disposal, storm water drainage and electrical facilities to be provided to the allottees. The price of the land at Rs. 406 /-per sq. mtr. was fixed by the Delhi Administration as per Executive Council's decision of 15th May, 1986 under the orders of the Lt. Governor of Delhi.

13. The respondents have also stated that after issuance of the forms in the year 1977, the Delhi Admn. and the development authorities like the Delhi Development Authority and the M.C.D. had issued a new policy with regard to the development of industrial complexes in Delhi. It was laid down as a requirement that the development was to be done in accordance with the Master Plan of Delhi. The policy decided by the Delhi Admn. with regard to allotment specifically provided as under:

"In order to improve the quality of life of Metropolis, it is necessary to keep heavy, obnoxious and hazardous industries out of Delhi. Consequently, only such industries are to be set up in the union territory of Delhi which are skill oriented, employ advanced technology, have low land-man ratio, are non-obnoxious, need less power and produce high value added items."

14. The DSIDC had to function and comply with all the requirements as directed by the Delhi Admn., G.D.I. and the development authorities like the DDA etc. Further under the Water Prevention and Control of Pollution Act, serious view was taken by the Central Board as well as by the Delhi Admn. with regard to implementation of the provisions of the Act. The standards which provided for permissible limit of pollution material in industrial effluents and wastes were also declared by the Board nearing to the time when the applications were invited.

This further raised serious controversies as the development of industrial project was not merely the development of land but included the entire development in all spheres and providing of all facilities. The scheme of 1987, Therefore, was to fully provide for better -environment, better facilities and more hygienic working conditions in the area. The basic and essential improvements provided in the scheme of 1987 are reproduced as under:

"The scheme of 1987 Therefore, was to fully provide for better environment better facilities and more hygienic working conditions in the area. The basic and essential improvements provided in the scheme of 1987 on the basis of which the DSIDC has already carried out the development programme and have made available, with great difficulty 800 plots for being allotted to the various entrepreneurs. I submit that the scheme of 1987 provides for better facilities amongst other in the following manner:

(i) The 1987 scheme provides for wider roads which will regulate traffic without any difficulty or blockage of roads inside the complex.

(ii) The 1977 scheme had provided for open storm drains which get blocked any time and would cause health hazards in addition to the inconvenience that would be caused to the occupiers of the plots, in the 1987 scheme the closed storm drains have been provided.

(iii) The 1987 scheme had provided for underground dual electric supply system. This has been done with the specific objects in mind that even if one main supply line fails, the industries would continue to function irrespective of such failures. For this DESU had demanded and for to be paid a sum of Rs. 11.4 crores out of which some payments have been made.

(iv) The 1987 scheme provides for complete anti-pollution methods. The industries for discharging their trade affluent would have to keep to the standards prescribed by the Central Board which are very hard to be maintained. The 1987 scheme permits the applicants to discharge their trade effluent of higher parameters. This for which their benefit as the D. S. I. D. C. is putting a common treatment plan for collecting and treating the effluents and discharging the same into the Municipal sewer as per the standards prescribed by the Board. This will give a great benefit to the applicants inasmuch as if they would have to install individual treatment plans for bringing the trade affluent into the permissible limits as prescribed by the pollution Board, it will be a great expenditure to them.

As further would be evident from the brochure itself the said scheme is more equitable, in discriminatory and not arbitrary as the applicants would have to go through a proper scrutiny of their technical know-how and project reports to prevent misuse and proper implementation of the purpose of the scheme. It is further submitted that the scheme of 1987 as would be evident from the brochures is not for the benefit of a particular person or group of persons but is in the interest of the public at large. If the proper measure and other steps with

regard to electricity, transportation etc. are not taken, the general public at large, irrespective of the fact whether they are occupants or not, would suffer in terms of health and environments. It is also submitted that the respondent will have to suffer irreparable loss and damage and it will be most inequitable to enforce the scheme of 1977 which has been completely given up by the respondent/ Corporation, as per the decision taken by Delhi Administration and the Government of India.

(v) That Delhi Administration has taken a very favorable attitude towards "public at large" while formulating and approving the scheme of 1987. DSIDC had proposed a cost of Rs. 530/- per sq. meter while Delhi Administration has allowed the cost of the rate of Rs. 406/- per sq. mtr. This is based upon the facts and figures in relation to complete data prepared by the respondent Corporation in consultation with Delhi Administration and the demand of DESU and Municipal Corporation and other authorities. Many expenditure which the Corporation has to incur has not been allowed by the Committee in the proposed expenditures. The actual cost of the Corporation in development per sq. meter with service charges, will come down to Rs. 406/- and the Corporation is giving it to the public at large at the same price on no profit no loss basis. All the petitioners have got a preferential treatment in comparison to the other applicants inasmuch as they were given brochures free of cost and their deposits were to be adjusted against the deposits to be made."

15. The respondents have put on record that the cost of the land was proposed by the DSIDC at Rs. 530/- per sq. mtr. However, the Delhi Admn. reduced the same and fixed only @ Rs. 406/- per sq. mtr. The actual cost of the Corporation in development per sq. mtr. with service charges has been kept low. According to the DSIDC the petitioners have got a preferential treatment in comparison to other applicants inasmuch as they were given brochure free of cost and their initial deposits were to be adjusted against the deposits to be made, The Corporation received more than five thousand applications. It is urged on behalf of the respondent-Corporation that the petitioners have intentionally waited for so long and they were informed from time to time that the tentative scheme was pending finalisation with the Delhi Admn. and all the relevant facts were within their knowledge for all this period.

16. In a nutshell the case of the DSIDC is that the 1977 scheme was only a tentative measure. Thereafter the circumstances and the entire basis of developments went through a sea change and the 1977 scheme had to be totally abandoned. The scheme to be enforced is really the 1987 scheme which is the one having concrete proposals and workouts. It is further the case of the respondent that at no point of time any assurance was given to the petitioners or other applicants for giving allotment and or possession of the plots in question and, Therefore, the question of applicability of principles of promissory estoppel does not apply. No rights have "Dear Sir, accrued in favor of the petitioners. The petitioners had failed to comply with the requirements of the 1977 brochure

inasmuch as the certificates required to be furnished therein were not furnished in most of the cases. The new scheme itself being based on a no profit no loss basis and being envisaged as a more beneficial measure being in the larger public interest is to be followed and enforced. The respondent-Corporation submits that it cannot be expected to make offer of land to the petitioners in the industrial complex in question at a price lower than its cost. On the basis of these facts, the respondent submits that the writ petitions have no merit and are liable to be dismissed.

17. We have heard learned counsel for the parties and have perused the record. It is not disputed that the petitioners applied in pursuance of the advertisement issued on 23rd December, 1976, Annexure P-1 and made the requisite deposits along with their applications. The petitioners have drawn our attention to the brochure, Annexure P/2 in which amongst other things the rates of the plots offered to the entrepreneurs have been given along with sizes of the plots, The brochure gives various categories of entrepreneurs who were eligible for allotment of plots. Depending upon the category, the sizes of the plots vary from 200 to 1000 sq. mtrs. and the rates per sq. mtr. varies from Rs. 45 / to Rs. 80/- per sq. mtr. It is submitted on behalf of the petitioners that in pursuance of the said advertisement and brochure they had made their respective applications and the required deposits and as such they are entitled to the respective plots for which they had made the applications. The petitioners further submit that they had been waiting for allotment of the plots in pursuance of their applications for all these years and had been also writing to the respondent-Corporation in this behalf. Certain letters alleged to have been written by the petitioners to the DSIDC have been placed on record. Letter dated 24th December, 1986 from the petitioners in C.W. 3378/87 (Annexure P-8) is significant in this behalf. We reproduce its contents herein:

"Dear Sir,

With reference to your letter No. DSIDC/ L&E/111-23/77-78/653, dated 21st August, 1986 on the above subject, we have not been informed the latest position about the finalised policy of allotment of plot so far. The same may please be informed to us at the earliest to enable us to take further action in the matter.

Thanking you."

18. This letter clearly shows that the petitioners were aware that the policy regarding allotment of plots in the Narela Industrial Complex was yet to be finalised and that is why they were seeking to know as to whether the policy had been finalised till then or not. The petitioners have also placed on record some of the letters written to them by the respondent-Corporation from time to time in response to their letters. Again these replies are significant inasmuch as it has been repeatedly stated therein that the policy of allotment of plots is being finalised by the Delhi Admn., Delhi and as soon as it would be finalised, they

would be informed. These replies from the DSIDC make it clear that the policy of allotment of plots was yet to be finalised and the petitioners were being informed accordingly. Annexure P-11 is a letter dated 29th March, 1987 from the petitioners in C.W. 3378/87 to the respondent-Corporation. The petitioners have thankfully acknowledged the circular of the DSIDC dated 26th February, 1987 regarding the final policy for allotment of plots in the Narela Industrial Complex. The petitioners have demanded a copy of the brochure issued regarding the final policy. The petitioners had known by then that they would be required to furnish a fresh project report as per the final policy and, Therefore, they wanted to see the brochure before submitting the fresh project report. Annexure P-12 is a copy of letter dated 26-2-1987 issued by the DSIDC to the petitioners in which reference has been made to their original Application No. 1108 dated 13th January, 1977. The petitioners were informed through the said letter that a fresh project report is to be submitted for examination by the DSIDC. In this letter it has been clearly stated that-

"in view of higher cost of acquisition of land, providing proper sewage disposal system, storm water drainage and other modern infrastructure facilities, the tentative cost of the plot has been determined at Rs. 406/- per sq. meter, subject to final adjustment."

19. It is in response to this letter of the DSIDC that the petitioner's letter dated 29th March, 1987 (Annexure P-I 1) was written. It may be worthwhile to reproduce the contents of this letter of the petitioner :

"Dear Sir,

We are thankful to your circular letter No. DSIDC/ Pe(N)/ PRA/47(1)/ 86 dated 26-2-1987 on the subject cited above and are to inform you that the DSIDC's brochure for allotment of industrial plots at Narela stated to have been enclosed with this letter has not been received. This may please be arranged to send now as in the absence of that fresh project report said to be sent cannot be submitted. I also contacted your office in this behalf but was told that the same would be sent by dak.

You are requested to send a copy of the DSIDC brochure to enable us to furnish the required information."

20. This letter of the petitioners does not suggest any reservation from their side to abide by the new policy. In fact the petitioners have welcomed the fact that at least the policy had been finalised and they offered to submit fresh project report. In the additional affidavit filed in support of the writ petition, the petitioners have admitted that the tentative cost of Rs. 406/- per sq. mtr. mentioned in the DSIDC circular dated 26-2-1987 (Annexure P-12) was later on raised to Rs. 650/- per sq. mtr. The petitioners have also stated that they had been allotted a plot measuring 350 sq. mtr. bearing No. 0976 and the petitioners had made the required deposit of 50% of the premium amounting to Rs.99,773.45 after adjusting the amount of Rs. 13,976.55 already deposited by

the petitioners as earnest money in January, 1977.

21. The petitioners in the other writ petitions have also complied with similar circulars received by them from the DSIDC after the policy for allotment of plots in Narela Industrial Complex was finalised in the year 1986-87. Of course the case of the petitioners is that these payments under the policy finalised in the year 1986-87 were made under protest and without prejudice to their rights in the present writ petitions which were already pending at that stage.

22. The petitioners have rested their entire case on the doctrine of promissory estoppel. They claim that in response to the, advertisement issued on 23rd December, 1976 and the brochure issued by the DSIDC, they had made the applications to the DSIDC and deposited the requisite amounts. According to the petitioners, the advertisement and the brochure were representations/ promises held out to them by the DSIDC and they acted upon the same and changed their positions by filing applications and making deposits. This brings into play the doctrine of promissory estoppel and the DSIDC is estopped from going back on its representation/ promise. The same is liable to be enforced and they are entitled to have the plots of the same sizes for which they made their initial applications in 1977 as well as which were stated in the brochure issued at that time. It is further stated on behalf of the petitioners that under the 1986-87 policy there is total change. The mode of allotment of plots has been changed. The categories mentioned in the original brochure have been reorganized, the criterion for allotment have been changed from initial, first-cum-first basis to interviews and the cost of land has been increased manifold; the mode of payment has been altered etc. etc. It is submitted that the new scheme was a purely commercial venture contrary to a scheme meant for upliftment of economically weaker sections of the society the object was envisaged initially. It has also been remarked that some of the petitioners did not apply elsewhere for a plot in the hope of getting a plot under this scheme and had they applied elsewhere at that time, they could have got the land at a much cheaper rate as compared to 1987 when the final scheme was announced by the DSIDC. By that time the prices of the land had escalated manifold.

23. The petitioners have also made reference to certain judgments of this Court and the Hon'ble Supreme Court and certain other High Courts in support of their submissions which we shall deal with hereinafter. At this stage we feel that first we should find out whether there was actually a representation/ promise which could give rise to principles of promissory estoppel so as to compel enforcement thereof.

24. Mr. Swatantra Kumar, learned counsel for the respondent-Corporation has taken us through the various documents and material on record in a bid to establish that there was no promise held out in 1977 and there was no such scheme in existence at that time as could be legally enforced. Therefore, according to him, there could be no occasion to apply the doctrine of promissory estoppel in the facts and circumstances of the case or to enforce the 1977 offer.

As a matter of fact, according to the respondent in the year 1977 there was no clear or definite policy and, Therefore, the question of its enforcement in any case does not arise. In support of his submissions the counsel for the respondent has referred to the brochure, Annexure P-2 itself to show that the whole thing was totally tentative at that stage. At the top of the brochure it is stated "subject to clearance under the Land Ceiling Act and other statutory provisions." Then reference has been made to the application form (Annexure P-3) under the 1977 policy which contains a note at the end in the following terms :- "please note that the mere calling of the application does not contain any legal or other commitment on part of the DSIDC". According to the respondents the advertisement issued in December, 1976 was by way of ascertaining the response from the public and it was only after watching the response that steps could be taken to finalise the allotment policy. The entire policy was in a state of flux at that time. Clearance under the Urban Land Ceiling Act had to be obtained. Certain new legislation was coming up regarding pollution of the environment for which adequate arrangements had to be made and Therefore, neither the price of land could be correctly assessed nor the sizes of plots which would finally be available could be stated with precision. When such was the situation, no assurance could be held out and none was actually held out. There were so many imponderables and nothing definite could be worked out or stated at that stage.

25. Counsel for the respondent has invited our attention to letter dated 18th March, 1987 (Annexure-I) to the counter-affidavit written by the Ministry of Works and Housing, Govt. of India to the Lt. Governor of Delhi, whereby the development of Narela Township Industrial Complex had been entrusted to the DSIDC on the following terms and conditions:

"(1) The acquisition of land for DSIDC will not mean any augmentation of the Revolving Fund placed at the disposal of Lt. Governor for planned development of Delhi;

(2) Separate accounts in the Revolving Fund will be maintained for the lands Placed at the disposal of the Corporation;

(3) The Corporation will undertake development of the lands placed at their disposal. This development will be done by the Corporation from the Plan funds budgeted for this purpose by Delhi Administration;

(4) The price of the developed land for disposal will be fixed by the Delhi Administration;

(5) The Corporation will credit back to the Revolving Fund the sale proceeds of the land, after deducting the cost of development; and

(6) The policy of sale/rental will be laid down by the Delhi Administration."

26. Therefore, the price of the developed land had to be ultimately fixed by the Delhi Administration. In this connection reference has also been made to various portions of the counter-affidavit wherein various difficulties faced by the

development agencies in developing the Narela Industrial Complex are detailed and how the price of Rs. 406/- per sq. mtr. was worked out in spite of higher cost of land, has been stated. As noticed earlier, in the development of the land in question, attention has been paid to various amenities to be made available at site and the arrangements made to meet the requirements under the Water Prevention and Control of Pollution Act. We have already made reference to various difficulties faced while noting the case of the respondent.

27. Letter dated 19th December, 1986 from the Special Secretary and Director in the Directorate of Industries, Delhi Admn. to the Chairman, DSIDC (Annexure-III to the counter) will show that the price of Rs. 406/ per sq. mtr. was fixed at that stage by the Delhi Admn. as per the Govt. of India letter dated 18th March, 1987 referred to hereinbefore. Thus the DSIDC had nothing to do in fixation of the price and according to the stand of the respondent the prices have been fixed rather below the actual cost incurred by the Govt. in developing the land. This is how the respondent has justified the increase in the price and readjustment of the sizes of the plots in the final scheme announced in 1987. It is further submitted that the respondent has acted bona fide and the new scheme announced in 1987 was most fair, equitable and just for all concerned. To the plea of promissory estoppel, the answer of the respondent is that neither there was any definite scheme at that stage nor any definite promise or assurance was held out, Therefore, the doctrine of promissory estoppel is not at all attracted. In the alternative it is submitted that even if the doctrine of promissory estoppel was to be attracted, the 1977 scheme was in such a state of flux that it could not be enforced at all. So, according to the counsel for the respondent in any case the petitioners have no case and the petitions are liable to be dismissed.

28. Counsel for the respondent has submitted that there are three basic requirements for upholding the plea of promissory estoppel (a) there must be a definite representation; (b) it should be open; and (c) it should be capable of being enforced. According to the counsel none of these requirements are satisfied in the present case. There was no unambiguous representation. The 1977 scheme itself was vague and subject to many imponderables. For instance, clearance under the Urban Land Ceiling Act had to be obtained, provision to meet various statutory requirements had to be made, even the total area of the land which was available for development was not definite at that stage, Therefore, no specific assurance could be given or representation could be made regarding the sizes of the plots or the price. In the absence of these basic components there could be no representation at all. To show his bona fides the respondent's Counsel has stated that the 1977 scheme was practically abandoned in view of the various decisions of the Govt, of India, the Delhi Development Authority and the Municipal Corporation of Delhi which were taken in public interest and in order to meet the various legislative requirements. It is the case of the respondent that when the 1977 scheme itself was tentative in nature and had to be abandoned, there could be no occasion for its implementation or enforcement.

29. Counsel for the respondent has referred to various statements made in the counter-affidavit in this behalf and has highlighted the fact that there is no rejoinder to the same. Therefore, according to the counsel, these statements of the respondent have gone un rebutted and have to be accepted as correct. Apart from this, counsel for the respondent states that the petitioners have accepted the final scheme announced in 1987 and have applied there under utilising their money initially deposited with the DSIDC and have got allotments of plots. They have taken benefits under the new policy, it does not lie in their mouth to seek enforcement of the 1977 policy. The offers made under the 1987 policy were totally fresh and there is no reference to the 1977 policy." Therefore, the 1977 policy is dead and gone for all practical purposes.

30. It has further been submitted on behalf of the respondent that by their conduct the petitioners have waived their right, if at all they had any, under the 1977 policy. In support of this they rely on (a) deposit made under the 1977 policy have been got adjusted and taken advantage of by the petitioners for purposes of deposits under the 1987 policy with interest; (b) the applications of the petitioners have been entertained under the 1987 policy without asking for fresh deposits; (c) while the allotment for the applicants in the 1987 scheme is on the basis of draw of lots, in the case of petitioners they have all been accommodated and allotted plots without they being subjected to draw of lots or other formalities.

31. Having considered all the above submissions we are of the firm view that the 1977 policy was purely tentative and no promises or assurances were held out therein. The petitioners were fully aware of this fact and were waiting for the final policy to emerge. This fact is clear from their own letters to the DSIDC. When the final policy was announced in 1987 they subscribed to the same and have taken benefits under it by getting allotments of plots. Further they have had the benefit of their past deposits inasmuch as the same have been allowed to be adjusted along with interest and the petitioners have been saved the risk of non-allotment if they had been subjected to draw of lots under the 1987 scheme. It is only on the basis of their past applications that they have got firm allotments.

32. Though, in view of our finding that there was no specific representation or promise in the 1977 policy, we need not go into the question of sizes of plots and pricing in the 1987 policy being fair, yet we consider it worthwhile to state that the re-adjustment of plot sizes and increase in price of land in the 1987 policy is fully justified and the same is in public interest. The facts and circumstances do not show that the doctrine of promissory estoppel can at all be attracted. The brochure issued in the year 1977 and the application forms on which the applications were made at that time made it abundantly clear that the whole thing was tentative and no legal" commitment was made and no specific promise was being held out. Apart from this is the, other important fact noticed by us earlier that the petitioners were themselves quite clear about this as is apparent

from their letters to the DSIDC and the response of the DSIDC to the same. So on facts the doctrine of promissory estoppel is not at all attracted. Therefore, there is no question of its enforcement. This also answers the petitioners " argument regarding not acquiring land (where in view of the alleged promises by the DSIDC.

33. The respondent has placed enough material on record justifying the abandonment of the 1977 scheme and the introduction of the 1987 scheme as well as the sizes of plots and pricing of land therein. The doctrine of promissory estoppel is an equitable doctrine, and the petitioners cannot ask us to apply the same to compel something which is inequitable. One who seeks equity must do equity. In our egalitarian society larger public interest must get precedence over individual interest or interest of comparatively smaller section of the society. Moreover, the Govt. cannot be compelled to sell the land much below even its cost of acquisition and development.

34. Now coming to the legal aspect of the doctrine of promissory estoppel and how far the same can be applied in the facts and circumstances of the present case, we find that the modern doctrine of promissory estoppel is of comparatively recent origin in the field of public law. The provisions regarding estoppel contained in Ss. 115 to 117 of the Indian Evidence Act, 1872 are a mere shadow of what the modern principles of promissory estoppel have come to be. The greatest development in this area is that an independent action can now be found on the principle of promissory estoppel and it is no longer a principle available only as a shield. It can be used as weapon of offence. Gradually the modern doctrine of promissory estoppel has developed to an extent that it is no longer necessary that the party seeking to enforce the said principle must have suffered a detriment. It is enough if the promisee has altered his position on the faith of the representation.

35. In this country this doctrine came into prominence with the decision of the Supreme Court in *Union of India v. Anglo Afghan Agencies*, AIR 1968 SC 718. That case involved the consideration of an export scheme under which the respondents were entitled to get an import entitlement certificate equal to 100% of the f.o.b. value of their exports. Without deciding the question whether the import policy; was legislative or executive in character, the Court held that even if it were executive in character, the Courts had the power in appropriate cases to compel the performance of the obligations imposed by the scheme upon the authorities. It was further observed by the Supreme Court "that even though the case did not fall within the terms of S. 115 of the Evidence Act, it was still open to a party who had acted on a representation made by the Government to claim that the Government shall be bound to carry out the promise made by it, even though the promise was not recorded in the form of a formal contract as required by Art. 299 of the Constitution. "

36. Further the Court observed:

"It is not the form of the order, the method of its publication or the source of its authority, but in substance, which determines its true character. Granting that it was executive in character, the Courts have the power in appropriate cases to compel performance of the obligations imposed by the Schemes upon the departmental authorities. It could not be said that the executive necessity releases the Government from honouring its solemn (sic) relying on which citizens have acted to their detriment. Under the Constitution set up, no person may be deprived of his right or liberty except in due course of and by authority of law; if a member of the executive seeks to deprive a citizen of his right or liberty otherwise than in exercise of power derived from the law - common or statute -- the Courts will be competent to, and indeed would be bound to protect the rights of the aggrieved citizen. Case law discussed.

Even assuming that the provisions relating to the issue of Trade Notices offering inducement to the prospective exporters were in character executive, the Union Government "and its officers were not entitled at their mere whim to ignore the promises made by the Government. It could not be said that the Textile Commissioner was the sole Judge of the quantum of import license to be granted to an exporter, and that the Courts were powerless to grant relief, if the promised import license was not given to an exporter who had acted to his prejudice relying upon the representations. Hence, the persons aggrieved because of the failure to carry out the terms of the scheme were entitled to seek resort to the Court and claim that the obligation imposed upon the Textile Commissioner by the Scheme be ordered to be carried out.

Where a person has acted upon representations made in an Export Promotion Scheme that import licenses up to the value of the goods exported will be issued, and had exported goods his claim for import license for the maximum value permissible by the Scheme could not be arbitrarily rejected. Reduction in the amount of import certificate may be justified on the ground of misconduct of the exporter in relation to the goods exported, or on special considerations such as difficult foreign exchange position or other matters which have a bearing on the general interests of the State. The Scheme provided for grant of import entitlement of the value and not up to the value of the goods exported. The Textile Commissioner was, Therefore, in the ordinary course required to grant him port certificate for the full value of the goods exported; he could only reduce that amount after enquiry contemplated by Cl. 10 of the Scheme. The authority vested in the Textile Commissioner by the rules even though executive in character was from its nature an authority to deal with the matter in a manner consonant with the basic concept of justice and fairplay, if he made an order which was not consonant with the basic concepts of justice and fairplay his proceeding was open to scrutiny and rectification by the Courts."

37. From the Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., case we proceed to the second landmark decision in this area which is reported as Century Spinning and Manufacturing Company Ltd. and Another Vs. The

Ulhasnagar Municipal Council and Another, . This case related to the concessions offered by the Municipal Council to entrepreneurs setting up its factories in its area which were sought to be withdrawn subsequently. It was held that the public bodies are as much bound as private individuals to carry out representations of facts and promise made by them relying on which other persons have altered their position to their prejudice. The judgment quotes with approval the following observations made by Lord Denning, J. in *Robertson v. Minister of Pensions* (1949) 1 KB 227 (para I I of AIR):-

"The Crown cannot escape by saying that estoppels do not bind the Crown for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so as to better its future executive action." We are in this case not concerned to "deal with the question whether Denning, L.J., was right in extending the rule to a different class of cases as in *Falmouth Boat Construction Co. Ltd. v. Howell* (1950) 1 All ER 538, where he observed at page 542:

"When our Government officers in their dealings with a subject take on themselves to assume authority in a matter Which the subject is concerned, he is entitled to rely on their having the authority which they assume. He does not know, and cannot be expected to know, the limits of their authority, and he ought not suffer, if they exceed it."

It may be sufficient to observe in appeal from that judgment *Howell v. Falmouth Boat Construction Co Ltd.*, Lord Simonds observed after referring to the observations of the Denning L.J.:

"The illegality of an act is the same whether the action has been misled by an assumption of authority on the part of a Government officer, however, high or low in the hierarchy.....The question is whether the character of an act done in force of a statutory prohibition is affected by the fact that it had been induced by a misleading assumption of authority. In my opinion the answer is clearly: No."

38. We may note here that the concept of promise altering his position or suffering a detriment noticed in this judgment has been totally diluted in subsequent decisions of the Supreme Court and, Therefore, as noticed by us earlier it is no longer necessary that the promise should suffer a detriment before he is allowed to enforce the principles of promissory estoppel in his favor.

39. This leads us to the landmark decision of the Supreme Court in this field reported as *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, . With this case the doctrine of promissory estoppel achieved full blossom, if we may say so, in India. The case relates to announcement by the State Govt. of its decision to give exemption from sales tax for a period of three years under S. 4A of the U. P. Sales Tax Act to all new industrial units in the State with a view to enabling them "to come on firm footing"This was based upon a statement made by Shri M.P. Chatterjee, the then Secretary in the Industries Deptt. of the State Govt. The appellant, on the basis of this announcement

addressed a letter dated 11 October, 1968 to the Director of Industries that in view of Sales tax holiday announced by the Government, the appellant intended to set up a hydrogenation plant for vanaspati and sought for confirmation that this industrial unit, which they proposed to set up, would be entitled to sales tax holiday for a period of three years from the date it commenced its production. In its reply, the Director of Industries confirmed that "there will be no sales tax for three years on the finished products of the proposed vanaspati factory from the date it gets power connected for commencing production. On the basis of this reply the appellant proceeded with its plans to set up the vanaspati factory. There were subsequent meetings with the State Government officials and the decision regarding sales tax holiday remained as promised earlier and the appellant went ahead with its plans to set up its factory. Subsequently the State Govt. took a stand that "the State Government will be willing to consider your request for grant of exemption from U.P. Sales Tax for a period of three years from the date of production" and asked the appellant to obtain the requisite application form and submit a formal application to the Secretary to the Government in the Industries Deptt. and in the meanwhile to go ahead with the arrangements for the setting up of the factory. The appellant submitted an application for a formal order granting exemption from sales tax under S. 4A of the Act on 21st December, 1968. The aforesaid letter of the State Government was not felt satisfactory enough by the financial institutions which were to finance the unit of the appellant and, Therefore, the appellant sought a categorical commitment from the State Government in this behalf. The commitment came in the shape of a reply dated 23rd January, 1969 expressing surprise that the Chief Secretary's assurance which was in clear and unambiguous words should not carry conviction with the Financial Institutions. Thus the State Govt. had unequivocally assured the appellant about the grant of sales tax holiday for a period of three years from the date of the commencement of production. The appellant made considerable progress in setting up of the vanaspati factory but it seems that by the middle of May, 1969 the State Govt. started having second thoughts about the question of exemptions and a letter dated 16th May, 1969 was addressed by the Deputy Secretary to the Govt. in the Industries Deptt. intimating that a meeting had been called on 23rd May, 1969 to discuss the question of giving concessions in sales tax on vanaspati products and requesting the appellants to attend the meeting. The appellant expressed surprise at this. However, it showed its willingness to send its representatives to attend the meeting. The appellant's representatives attended the meeting which was held on an adjourned date and reiterated that so far as the appellant is concerned, it had already granted exemption from sales tax. the State Govt. however, went back upon this assurance and a letter dated 20th January, 1970 was addressed by it to the appellant intimating that the Govt. had taken a policy decision that new vanaspati units in the State which go into commercial production by 30th September, 1970 would be given only partial concession in a sales tax, for a period of three years. The appellant intimated to the State Govt. its willingness

to act upon the said letter. The State Govt., however once again changed its decision and on 12th August, 1970, a news item appeared in the North India Patrika stating that the Government had decided to rescind the earlier decision, i.e. decision set out in the letter dated 20-1-1970 to allow concession in the rate of sales tax to new vanaspati units. The appellant thereupon filed a writ petition in the Allahabad High Court seeking a writ directing the State Govt. to exempt the sales of vanaspati manufactured by the appellant from sales tax for a period of three years commencing from 2nd July, 1970. The Division Bench of the Allahabad High Court rejected the case of the appellant based on the doctrine of promissory estoppel mainly on the ground that the appellant had waived the exemption, if any, by accepting the concessional rates set out in the letter of the Deputy Secretary dated 20-11-1970. It is in this background that the matter went to the Supreme Court.

40. The Supreme Court observed :

"The true principles of promissory estoppel seems to be that when one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to owe him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not, the doctrine of promissory estoppel need not be inhibited by the same limitation as estoppel in the strict sense of the term. It is an equitable principle evolved by the Courts for doing justice and there is no reason why it should be given only a limited application by way of defense. There is no reason in logic or principle why promissory estoppel should also not be available as a cause of action, if necessary to satisfy the equity. It is not necessary, in order to attract the applicability of the doctrine of promissory estoppel, that the promisee, acting in reliance on the promise should have altered his position in reliance on the promise."

41. However, it is equally important to note the observations of the Supreme Court which are relevant to the facts of the present case:

"But since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favor of the promise and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts which have transpired since the making of the promise,

public interest would be prejudiced "if the Government were required to carry out the promise, the Court would have to balance ,the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot claim to be exempt from the liability to carry out the promise on some indefinite and undisclosed ground of necessity or expediency nor can the Government claim to be the sole judge of its disability and repudiate it on an exparte appraisalment of the circumstances. If, the Government wants to resist the liability, it will have to disclose to the Court what are the subsequent events on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those events are such as to render it inequitable to enforce the liability against the Government."

42. With these observations the Supreme Court allowed the appeal and issued a writ, order or direction to the State Govt. enforcing the promise made to the appellant.

43. In *Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others*, , the doctrine of promissory estoppel again came up for consideration, though the correctness of the *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd.*, could not be doubted, yet the decision in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, met with a cold welcome. This case also takes the view that the application of promissory estoppel would not disable the Govt. to assert its powers for the public good. However, the correctness of the view taken in this case has been doubted in a subsequent decision of the Supreme Court reported as *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*, .

44. However, the law on the subject has advanced further on the basis of the *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, . Reliance has also been placed by the petitioner on certain subsequent decisions of the Supreme Court in this behalf particularly the *Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.*, ; *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*, : and *Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI)*, .

45. The *Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.*, is a case in which the State financial Corporation agreed to advance a loan to the respondent to enable it to set up a 4 Star Hotel. The respondent incurred huge expenses and suffered liabilities to set up the Hotel. The financial corporation backed out from its agreement. It was held (Paras 8 and 9):

"By its letter of offer and the subsequent agreement the appellant Corporation entered into a solemn agreement in performance of its statutory duty to advance the loan of Rs. 30 lakhs to the respondent Company. Acting on the solemn undertaking, the respondent proceeded to undertake and execute the project of setting up a 4 Star Hotel. The agreement to advance the loan was entered into performance of the statutory duty cast on the Corporation by the statute under which it was created and set up. On its solemn promise evidenced by the aforementioned two documents, the respondent incurred expenses, suffered liabilities to set up a hotel. Presumably, if the loan was not forthcoming, the respondent may not have undertaken such a huge project. Acting on the promise of the appellant evidenced by documents, the respondent proceeded to suffer further liabilities to implement and execute the project. In the back drop of this incontrovertible fact situation, the principle of promissory estoppel would come into play.

Thus the principle of promissory estoppel would certainly estop the Corporation from backing out of its obligation arising from a solemn promise made by it to the respondent."

46. In Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., , the doctrine of promissory estoppel again came up for consideration before the Supreme Court. Doubts were expressed in clear terms about the correctness of the view taken by the said court earlier in Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, in so far as it was held in that case that the doctrine of promissory estoppel is not available against the exercise of executive functions of the State and the State cannot be prevented from exercising its functions under the law. The doubt expressed in Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, about the ratio in M. P. Sugar Mills decision AIR 1979 SC 627 to the effect that the doctrine of promissory estoppel cannot be defeated by invoking the defense of executive necessity, was also held to be uncalled for and untenable. The law on the subject was summarised as under:

"The doctrine of promissory estoppel is applicable against the Government in the exercise of its governmental, public or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel. Of course, there can be no promissory estoppel against the legislative functions nor can the, government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. The doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires, if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or

representation made by it, the Court would not raise an equity in favor of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held* bound by the promise or representation made by it."

47. In the Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI), , the Supreme Court made the following observations (Para 18):

"In the formative period, it was generally said that the doctrine of promissory estoppel cannot be invoked by the promisee unless he has suffered "detriment" or "prejudice". It was often said simply that the party asserting the estoppel must have been induced to act to this detriment. All that is now required is that the party asserting the estoppel must have acted upon the assurance given to him; must have relied upon the representation made to him. It means the party has changed or altered its position by relying on the assurance or representation. The alteration of position by the party is the only indispensable requirement of the doctrine. It is not necessary to prove further any damage, detriment or prejudice to the party asserting the estoppel. The court, however, would compel the opposite party to adhere to the representation acted upon or abstained from acting. The entire doctrine proceeds on the promise that it is reliance based and nothing more."

48. Further the following paras occurring in the said judgment need to be quoted in the context of the present case (Paras 24 and 25 of AIR):-

"The concept of detriment as it now stands is whether it appears unjust, unreasonable or inequitable that the promisor should be allowed to resile from his assurance or representation, having regard to what the promisee has done or refrained from doing in reliance on the assurance or representation.

It is, however, quite fundamental that the doctrine of promissory estoppel cannot be used to compel the public bodies or the Government to carry out the representation or promise which is contrary to law or which is outside their authority or power. Secondly, the estoppel stems from equitable doctrine. It, Therefore, requires that he who seeks equity must do equity. The doctrine, Therefore, cannot also be invoked if it is found to be inequitable or unjust in its enforcement."

48A. We also notice here the decision of the Supreme Court in the Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, . This case mainly proceeds on the basis that the burden is on the Govt. to place relevant material justifying change in policy before the plea of the Govt. to justify a change in the policy can be entertained. An incentive scheme of the Govt. granting sales tax concessions to new industries, was sought to be withdrawn on the ground of mis-use etc. However, the court found that there was no material placed on the record justifying the

change in policy and the doctrine of promissory estoppel was applied and enforced.

49. Reference has also been made to a Full Bench decision of this Court reported as *Bansal Export (P) Ltd. and another Vs. Union of India and others*, . Justice Avadh Behari Rohatgi, a learned Judge of this Court, who wrote the judgment on behalf of the Full Bench, fully analyzed the law relating to the doctrine of promissory estoppel as applied in India and abroad. The law on the subject was summarised as under:

"A citizen can say that he has acted in the faith of the representation of the announced policy to his detriment and Therefore the government is bound by the promissory estoppel to allow him to export certain commodities under the pre-amendment policy. But if the overriding public interest requires the government to act differently the doctrine of estoppel may not be applied. The reason is that the doctrine may advance the interest of private contractors, but on the whole it will injure the public interest. It is for acting in public interest that the power under S. 3 of the Act is conferred on the Central Government. The needs of the community cannot be allowed to be overridden by the rights of the private contractor. If the common weal demands the policy can be changed. In a word promissory estoppel will always be subservient to public interest. If its application is detrimental to public interest and produces results deleterious to the public good, the court would refuse to give effect to a plea based on it. Protection to the individual litigant cannot be given at the expense of the public interest."

50. The petitioners have also placed reliance on certain other cases which we may notice hereinafter.

51. *P.N. Verma and Others Vs. Union of India (UOI) and Others*, , was a case of refixation of the price of flats by the Delhi Development Authority on a criteria different from what was determined earlier. There were concluded contracts between the parties and price of flats had been worked out before hand on the basis of actual cost of construction. It was held that the action of the D. D. A. in refixing the price of flats on different criteria was liable to be struck down on the ground of the doctrine of promissory estoppel and the doctrine of arbitrariness. As we have already held the case in hand is neither one of a concluded contracts nor one in which any firm and specific representation capable of being enforced was made. Therefore, no help can be derived from this case.

52. Petitioners have also cited *Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, . This is a case more on Articles 12 and 14 of the Constitution of India. The Supreme Court observed in this case that the Bombay Port Trust being a public body had to act fairly and reasonably even in respect of its dealings with its tenants. It must act in public interest and infraction of their duty is amenable to examination either in civil suit or in writ jurisdiction. Whenever there is arbitrariness in State Action, Article 14 springs in and judicial

review strikes such an action down. Every action of the executive authority must be subject to rule of law and must be informed by reason.

53. Next is Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, . This was also a case of arbitrary exercise of power by the State. It was held that every action of the State executive authority must be subject to rule of law and must be informed by reason. So whatever be the activity of public authority, it should meet the test of Article 14 of, the Constitution. If a Governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable.

54. Certain portions of this judgment are worth quoting:

"It was pleaded that in private law field there was no scope for applying the doctrine of arbitrariness or mala fides. A plea of arbitrariness mala fides as being so gross cannot shift a matter falling in private law field to public law field. To permit otherwise would result in anomalous situation that whenever State is involved it would always be public law field, this would mean all redress against the State would fall in the writ jurisdiction and not in suits before Civil Courts. Whether public law or private law rights are involved, in a case, depends upon the facts and circumstances of the case. The dichotomy between rights and remedies cannot be obliterated by any strait jacket formula. It has to be examined in each particular case.

A firm had been carrying on the business of sale and distribution of all types of lubricants over a period of more than 18 years. There was however no letter from the Indian Oil Corporation (IOC) appointing the firm as tube distributor. But from the nature of the business carried on by the Firm, it was manifest that the supply of the lubricants of the type with which the I.O.C. had a monopoly, could be carried on by the Firm only as the supplier from the I.O.C. The supplies of lubricants to the firm was stopped suddenly. No intimation was given, no notice was given, no query or clarification sought for and there was no adjudication as such.

Held, that decision of the State public authority under Art. 298 of the Constitution, is an administrative decision and can be impeached on the ground that the decision is arbitrary or violative of Art. 14 of the Constitution of India on any of the grounds available in public law field. In respect of Corporation like IOC when without informing the parties concerned, as in the instant case, on alleged change of policy an action is taken to seek to bring to an end the course of transaction over 18 years involving large amounts of money it is not fair action, especially in view of the monopolistic nature of the power of the I. O. Corporation in this field. It is necessary that relevant persons concerned or to be affected, should be taken into confidence. Such transaction should continue as an administrative decision with the organ of the State. It may be contractual or statutory but in a situation or transaction between the parties for nearly two

decades, such procedure should be followed which will be reasonable, fair and just, that is, the process which normally be accepted to be followed by an organ of the State and that process must be conscious and all those affected should be taken into confidence. It may not be necessary to give reasons but, in the field of this nature fairness must be there to the parties concerned, and having regard to the large number or the long period and the nature of the dealings between the parties, the firm should have been taken into confidence. Equality and fairness at least demands this much from an instrumentality of the State dealing with a right of the State not to treat the contract as subsisting."

55. This decision really is not attracted in the facts and circumstances of the present case specially when the respondents have fully explained and justified the final policy announced in 1987.

56. Apart from the above cases, certain other decisions mainly regarding admissions to academic institutions drawing on the principles of promissory estoppel have been cited which need no discussion in view of the facts and circumstances of this case. These cases are Anant Kumar Vs. The Vice-Chancellor, Magadh University, Bodh Gaya and Others, .

57. Reliance has also been placed by the petitioners on a decision of a Division Bench of this Court in C.W.No. 2285 of 1986 decided on 10-7-1987 (reported in 1987 Rajdhani LR 514) (D.D.A. Flats Applicants Association v. D.D.A.). However, the said case has no relevance in the facts and circumstances of the case. The facts of this case were that the petitioners were registered with the Delhi Development Authority for allotment of flats. However, the D.D.A. decided to abandon the scheme of allotting flats on hire purchase basis and instead insisted upon cash down payments from the allottees. This court struck down the change of policy of the D.D.A. It should be seen that in this case there were firm registrations which is not so in the case in hand.

58. As against this Mr. Swatantra Kumar, learned Counsel for the respondent has cited the following judgments, apart from relying upon certain observations in his favor in the judgments on promissory estoppel, noticed by us already here in before and from which certain quotations have already been given.

59. One of the cases referred to by Mr. Swatantra Kumar in support of his submissions is State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others, . This is a case in which the Govt. decided to cancel the auction even after provisionally accepting the highest bid. There was good ground for doing so. Fabulous bids were given and other suspicious circumstances were there. Work was awarded to the Forest Corporation instead. It was held by the Supreme Court that the Govt. was entitled to change its policy from time to time according to the demands of the time and situation and in public interest. Another significant point in this case was that the condition of auction made it perfectly clear that the Govt. was under no obligation to accept the highest bid and that no rights accrued to the bidder merely because he happened to be the highest

bidder. In the case -in hand also there were such reservation in the 1977 brochure as well as the application form as noticed by us earlier.

60. On the aspect of price fixation Mr. Swatantra Kumar has relied upon M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, , wherein it was held that price fixation is a matter of policy and not within the province of the courts. Judicial function is exhausted when there is found to be a rational basis for the conclusions reached by the concerned authorities. We are in respectful agreement with the views expressed by the Supreme Court in this case and uphold the decision of the respondent Corporation in this behalf as being bona fide, rational and in public interest.

61. Mr. Swatantra Kumar has placed reliance on the judgment of the Supreme Court in Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, to say that the principle of estoppel does not operate at the level of Govt. policy. This he says in the alternative, i.e. if this court holds that there was a promise held out which was capable of being enforced. We have already decided that no such promise was held out or representation was made. Therefore, we need not go any further in this behalf.

62. Having discussed the factual as well as legal position of this case, we find that these writ petitions are totally without any merit and are liable to be dismissed. Neither on facts nor on law the petitioners have any case. The doctrine of promissory estoppel is not at all attracted in the facts and circumstances of the case. At this stage we may also mention that this very Bench has dismissed writ petition bearing C.W. No. 3897/ 90 (Arunkumar Jain v. DSIDC) after hearing both the sides, on 20-12-1990, with a speaking order. The said petition was based on some what similar facts. Another Division Bench of this court dismissed in limine C.W.P. No. 2075/90 (Nanak Enterprises v. DSIDC) on 17-7-1990 on similar facts.

63. These writ petitions are accordingly dismissed We, however, leave the parties to bear their respective costs.

64. Petitions dismissed.