

(1990) 09 MAD CK 0041

In the Madras High Court

Case No : W.A.Nos. 414 and 415 of 1990

S. Ramabadran another

APPELLANT

Vs

State of Tamil Nadu and another

RESPONDENT

Date of Decision : 19-09-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 31(2)
Evidence Act, 1872 — Section 115

Citation : AIR 1991 Mad 371

Hon'ble Judges : Dr. Adarsh Sein Anand, C.J;Raju, J

Bench : Division Bench

Advocate : K. Parasaran and Mrs. Malini Ganesh, for the Appellant; V. Sridevan, Special Govt. Pleader, N.Muthuswami, Advocate General, for the Respondent

Judgement

Raju, J.—The above appeals have been filed against the common order of the learned single Judge dated 8-12-1989 made in W.P. Nos.

12493 and 12494 of 1984 whereunder the learned Judge dismissed the writ petitions filed for the issue of writs of declaration declaring that the

respondents are authorised to levy and collect from the appellant-Company electricity charge under the Tamil Nadu Revision of Tariff Rates on

Supply of Electrical Energy Act, 1978 (Tamil Nadu Act 1 of 1979) only on the basis of the assurance given by the first respondent in the writ

petitions in their communication No. 138115/U2/75-9 dated 29-6-1976 and not on the basis of the Notification in G.O.Ms. No. 861 P.VV.

(Electricity) dated 30-4-1982 and consequently direct the respondents in both the petitions to refund to the appellants the amounts collected in

excess thereof from May 1982.

2. W.A. No. 415 of 1990 has been filed against W.P. No. 12493 of 1984 by the

Company and W.A. No. 414 of 1990 was filed against W.P.

No. 12494 of 1984 by the shareholder of the said Company both raising common and identical issues praying for one and the same relief. The

appellant, a Public Limited Company, is carrying on business in the manufacture/sale of textiles, fertilizers and basic chemicals. The appellant-

Company made an application on 18-9-1972 under the Industries (D & R) Act, 1951 to the Government of India and obtained a licence for

setting up a new Unit for the manufacture of caustic soda for a capacity of 33000 tonnes per annum on 20-11-1973. On 24-1-1974 the appellant

Company addressed the Government requesting for the fixation of ""a special power tariff"" for the project instead of the normal tariff charged for

other industries which are not power intensive. The appellant-Company emphasised about the prospect of large scale consumption of power which

is a major raw material for the industry and the possible benefits that the project may bring to the State in terms of easy availability of the basic

chemical as well as bye-products,

3. On 18-12-1974, the first respondent wrote to the appellant-Company of its decision to supply power to the appellant-Company generally in

respect of their unit ""on the same terms and conditions as for other caustic soda units, subject to the policies of the Government and Electricity

Board, as may be decided from time to time"". At that point of time, the ruling tariff rates chargeable and conditions of supply were in terms of G.O.

Ms. No. 362, P.W. (Elec.) dated 11-3-1975 which was introduced by way of amendment to the then existing order for the levy of general tariffs

and conditions of supply of electricity energy by Tamil Nadu Electricity Board which in turn was published on 9-10-1974. In the communication

dated 19-3-1975 the first respondent also informed the appellant-Company of the rates of supply per KVA and of the right of revision by

Government at any time and that it will continue to be subject to surcharges as may be in force from time to time and other State levies, present or

future. The appellant-Company was also informed therein that besides the rates referred to in the said communication, the appellant will also be

subject to the metropolitan surcharge of 2 paise per unit and the surcharge of 50%. The appellant-Company on 16-4-1975 wrote to the

Government requesting for the fixation of the same rates to the appellant-

Company as are chargeable to the other caustic soda units in the State without the metropolitan levy and the surcharge on the same. This was followed up by another letter dated 23-4-1975 with a request to waive the metropolitan levy. A similar request emanated from the appellant-Company on 2-6-1975, 8-7-1975 and 7-7-1975. Once again on 23-12-1975, the appellant-Company made representations to the Government requesting to consider the issue of waiver of the metropolitan levy. It was stated therein that substantial progress of the project has been made and the appellant-Company wished to commence civil works.... in the course of next couple of months. Once again, on 14-1-1976, further representations were made raising a legal issue about the non-applicability of the metropolitan levy to them and at the same time expressing a hope that the Government will not impose the metropolitan levy for the appellant Company's project and impressing upon the Government of the progress already made with regard to the implementation of the project.

4. On 24-12-1975, the appellant-Company was admittedly granted an Industrial Licence for putting up a Caustic/Ammonium Chloride Plant in Madras by the Government of India and a representation was once again sent on 24-2-1976 by the appellant-Company to the Government explaining the progress of the works made and once again to reconsider the question of imposition of metropolitan levy and expressing their hope that the Government may waive the metropolitan levy. On 18-3-1976, once again representations were sent emphasising the need for waiving the metropolitan levy and also informing the first respondent that the appellant-Company cannot go ahead with the project if their power cost is to be increased beyond what is being permitted to other Caustic Soda units in the State. On 29-6-1976, the first respondent by its Communication to the appellant-Company indicated the decision of the Government to charge the supply of Electricity energy as hereunder

- (1) The new industries concession in respect of HT consumers under the Standard HT-I Tariff will be made applicable on the special rate for Caustic Soda industry during the first five years after commencement of production.
- (ii) Metropolitan levy will be charged during the three years of production in full,
- (iii) Thereafter the rate applicable to your unit will be kept on a par with other

Caustic Soda Units outside Madras Metropolitan area.

2. Under the above arrangement, you will be paying a rate less than the rate applicable to the two established Caustic Soda Units in the State

during the first three years and thereafter, the rates applicable to your Caustic Soda Unit will be on par with that applicable to the establishment

units in the State,

(Underlining by us).

5. After all these representations and correspondence between the parties, the second respondent Board in B.P. No. 394 dated 20-3-1978

sanctioned the appellant-Company the High Tension supply load of 22.250 KVA and consequently an agreement dated 6-10-1978 was

executed between the appellant-Company and the Electricity Board agreeing to the terms and conditions of supply and subjecting the supply to the

terms and conditions stipulated thereunder. Clause 6 of the said agreement while stipulating the obligation of the consumer to pay the charges set

out therein, further provided that the appellant-Company shall be bound by and shall pay the Board maximum demand charges, energy charges,

surcharges, meter rents and other charges in accordance with the tariffs as set out in the agreement and the terms and conditions of supply notified

by the Board from time to time for the appropriate class of consumers to which it belongs. It was also stipulated therein that the tariff stipulated is

subject to the metropolitan levy of 2 aise per unit consumed and that the same will not be taken into account for the purpose of Annual Minimum

and that such rates of supply are subject to the right of revision by the Board at any time and will continue to be subject to surcharge as may be in

force from time to time and other State/Central levies present or future. Clause 7 of the said agreement further stated that the appellant-Company

agrees that the Board shall have the right to vary, from time to time, tariffs, general and miscellaneous charges and the terms and conditions of

supply under the said agreement by special or general proceedings and that the appellant Company in particular agrees that the Board shall have

the right to enhance the rates etc. chargeable for supply of electricity according to exigencies and that it was also open to the Board to restrict or

impose power cuts totally or partially as the Board deems fit. The agreement also provided for other details relating to special annual minimum

guarantee, payment of security deposit and other required details. Clause 11 of the said agreement stipulated that the agreement shall remain in

force for a period of ten years from the date of its commencement as defined in Clause 2, viz. the date of commencement of supply of energy to

date of expiry of three months" notice by the Board that the supply of energy is available. It is a matter of record that the supply was effected on 6-

10-1978 for a maximum demand of 22,250 KVA and further additional loads of 2750 KVA and 30,000 KVA were sanctioned on 24-11-1981

and 9-9-1983 respectively.

6. While the matters stood thus, there had been periodical revision of tariff rates from time to time in respect of the high tension supply of energy to

industries in metropolitan area and non-metropolitan area and as early as on 2-6-1982 the Government in view of the changed circumstances and

subsequent developments also informed the appellant-Company to withdraw the exemption from metropolitan levy made available. The decision

taken earlier by the Government regarding the revised tariff notification was published on 30-4-1982 to come into force with effect from 1-5-

1982. Consequent upon the revision of tariff with effect from 1-5-1982, the appellant-Company made representations on 5-5-1982 and 2-2-

1983 renewing their request and basing their claim for exemption on the communication of the Government dated 29-6-1976 and also request ing

for a reduction in the basic rate structure to achieve economic viability. The Government, by its communication dated 22-11-1983 turned down

the request for reducing the metropolitan levy from the rate of 42 paise per unit on power supply to the appellant-Company. Once again on 9-12-

1983, the appellant-Company moved for reconsideration of the decision by the Government and as a matter of fact it is claimed in the counter

affidavit of the respondents that the decision regarding the classification and pattern of rates was taken by the Government after consideration of

the report of the Tariff Review Committee. While matters stood thus, W.P. Nos. 12493 and 12494 of 1984 were filed before this Court for the

relief as referred to already. The respondents disputed the various claims made by the appellants and opposed the reliefs prayed for by filing a

detailed counter affidavit in reply to the submissions made in the affidavits filed in support of the writ petitions.

7. The learned single Judge, by his common order dated 8-12-1989, while dismissing the writ petitions, held as follows :-- (a) with the execution of the agreement dated 6-10-1978 between the appellant-Company and the Electricity Board, no reliance could be placed by the appellant-Company on the communication of the Government dated 29-6-1976 any longer; (b) no estoppel can be made out against the State in exercise of its legislative or statutory functions and the promise made by the Executive, which did not even amount to an exemption or a waiver, has fallen to the ground after the new enactment, viz. Tamil Nadu Act 1 of 1979 came into force; (c) the decision of the Government taken in compliance with and under the provisions of the Act and the statutory Notifications is not arbitrary and the letter dated 29-6-1976 shows that the fixation of special rate is not on negotiation; and (d) the appellant-Company who has entered into an agreement and whose rights are governed by the agreement is not entitled to plead arbitrariness or violation of Art. 14 of the Constitution of India, since the clause in the agreement providing for revision of tariffs is perfectly valid. Hence the above two writ appeals.

8. Mr. K. Parasaran, learned senior counsel appearing for the appellants contended as follows : (a) the letter of the Government dated 29-6-1976 constitutes a promise and assurance of parity of tariff rates as applicable to the two other caustic soda units located outside the Madras Metropolitan area and consequently the respondents are estopped from revising the rates or withdrawing the concession or exemption assured to them; (b) even assuming that the principles of promissory estoppel had no application, the action of the respondents in withdrawing the exemption or concession constitutes an arbitrary and unreasonable exercise of power violative of Art. 14 of the Constitution of India; (e) the Government having assured the appellant to treat the appellant-Company in respect of rates applicable to them on par with the other establishment units in the State, it is not open to the Government or the Tamil nadu Electricity Board to treat them separately. The action of the respondents constitutes hostile discrimination and amounts to treating of equals unequally. In support of the said submissions, learned counsel relied upon the decisions reported in *Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI)*, .

9. The learned Advocate General appearing for the respondents submitted that

(a) there was no assurance or promise to the appellants on which they could claim to have acted upon to their detriment and consequently the principle of promissory estoppel cannot be applied against the respondents; (b) that not only there was absence of promise by the Government but the Government was also acting in discharge of their functions under the law, viz. Tamil Nadu Act 1 of 1979 in the matter of revision of rates and therefore the doctrine of promissory estoppel would not be available to the appellants against the State in exercise of its legislative or statutory functions; (c) that since subsequent to and notwithstanding the letter of the Government dated 29-6-1976, the appellant Company and the Tamil Nadu Electricity Board entered into an agreement on 6-10-1978 containing the terms and conditions of supply of energy under which there was not only specific stipulation regarding the rates of tariff but also a provision for payment of metropolitan levy, future revision and enhancement of rates and revision modification and addition of terms and conditions of supply and consequently no reliance could be placed and no rights could be claimed by the appellants on the basis of the letter dated 29-6-1976; (d) that the provisions of Tamil Nadu Act 1 of 1979 as well as the power conferred therein upon the Government to issue the statutory notifications governing all including the appellant-Company cannot be challenged either on the ground of promissory estoppel or on the ground of arbitrariness or unreasonableness invoking Art. 14 of the Constitution of India; (c) that the appellant's unit located in the metropolitan area and other two companies engaged in the manufacture of the same product in their units located in non-metropolitan areas could not be claimed to be equals for purposes of claiming parity of tariff in all respects for the supply and that in any event though metropolitan levy is to be paid by the appellant-Company, they were not subjected to the levy of tax at the rate of 3.75 per cent. which the Chemical Industries in non-metropolitan area were subjected to pay originally and that the plea of discrimination therefore has no basis or justification. In support of the said submissions, some of the decisions referred to by the learned counsel for the appellants as well as the decisions reported in 1985 WLR 150 and 1985 WLR 601 , were relied upon by the learned Advocate General.

10. Before we consider the respective submissions of the parties and particularly

the question as to whether the appellants have laid the required foundation for invoking the doctrine of promissory estoppel, we consider it desirable to point out as to what the said doctrine is and what is its real ambit, scope and amplitude. The doctrine of promissory estoppel or equitable estoppel is now well established in the administrative law of the country and has been evolved through successive decisions of the Supreme Court of India starting with the judgment in *Union of India v. Anglo Afghan Agencies*, AIR 1968 SC 718 and various High Courts for the past about two decades. It is a principle evolved by equity to avoid injustice.

The fundamental basis of the doctrine is that where any party has by his word or conduct made to the other party an unequivocal promise or representation by word or conduct, which is intended to create legal relations or effect legal relationship to arise in the future knowing full as well as intending that the representation, assurance or the promise would be acted upon by the other party to whom it has been made and has in fact been so acted upon by the other party, the promise, assurance or representation should be binding on the party making it and that the said party should not be permitted to go back upon it, if it would be inequitable to allow it to do so. Having regard to the dealings which have taken place or are intended to take place between the parties. It has been often held to be a principle evolved by the Courts for doing justice and considered to be applicable against the Government also in exercise of its governmental, public or executive functions where it is necessary to prevent fraud or manifest injustice. The doctrine of promissory estoppel since has its roots in equity the consensus of judicial opinion is that for invoking the doctrine clear, sound and positive foundations must be laid in the petition seeking its applicability and that general assertions and claims that the doctrine is attracted because the party invoking the doctrine has altered its position relying upon the promise of the other party would not provide sufficient basis or justification to press into aid the doctrine where it could be inapplicable or to apply it would be otherwise inequitable or unjust.

11. While declaring the sum and substance of the doctrine of promissory estoppel, the apex Court in the country often made it more than clear that there can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can the Government or Public Authority be

debarred by promissory estoppel from enforcing a statutory provision or that the principle of promissory estoppel could be used to compel the

Government or Public Authority to carry out a promise or representation which is contrary to law or which is outside their authority or power.

12. One another basic principle underlying the doctrine of promissory estoppel is that the plea of estoppel against the other party could be

sustained only on specific proof of the vital and most important element, viz. promise made to the party, knowing or intending that it would be

acted upon by some one to whom the promise was made and that it was in fact so acted upon. It cannot also be disputed that the promise or

representation must be clear, unambiguous and not tentative or uncertain. That apart, it is equally important and vital for the party asserting

estoppel to substantiate that the said party acted upon the assurance given to him and relied upon the representation made to him. That is so to say

the party claiming has changed or altered his position by relying on the assurance or the representation and thus the factum of alteration of the

position by the party has been declared to be an equally indispensable requirement of the doctrine of promissory estoppel.

13. The doctrine of promissory estoppel, it has been again held, can never be invoked in the abstract and the Courts are bound to consider all

aspects including the result sought to be achieved and the public good at large. The Courts, while considering the applicability of the doctrine have

to do equity and basic principles of equity must forever be present in the mind of the Court. Further, being an equitable doctrine, it must yield when

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 favour

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 the Public Authority should be held bound by the promise or representation made by it. These aspects have been not only dealt

with in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, , but have been restated and affirmed unanimously by the

learned Judges of the Apex Court in the decision reported in *Union of India v. Godfrey Philips India Ltd.* AIR 1985 SC 806. The entire gamut of

law on the subject is found put in a nut-shell in a most effective and lucid manner in its Division Bench Judgment of Jammu and Kashmir High Court

reported in *Kashmir Vanaspathi Pvt. Ltd. v. State of J. & K.*, (1989) 19 TG 65 : 1989 KLJ 316 wherein one of us Dr. A. S. Anand, Chief Justice

speaking for the Bench stated thus :

8. The doctrine of promissory estoppel or equitable estoppel is now well established in the administrative law of the country and has been evolved

through successive decisions of various High Courts and the Supreme Court for the last about two decades. It is a principle evolved by equity to

avoid injustice. The basis of the doctrine is that where any party has by his word or conduct made to the other party an unequivocal promise or

representation by word or conduct, which is intended to create legal relation or affect legal relationship to arise in the future, knowing as well as

intending that the representation, assurance or the promise would be acted upon by the other party to whom it has been made and has, in fact,

been so acted upon by the other party, the promise, assurance or representation should be binding on the party making it and that party should not

be permitted to go back upon it, if it would be inequitable to allow it to do so, having regard to the dealings, which have taken place or intended to

take place between the parties. It is a principle evolved by the Courts for doing justice and is applicable against the Government also in exercise

of its governmental, public or executive functions where it is necessary to prevent fraud or manifest injustice. Since, the doctrine has its roots in

equity there is a consensus of judicial opinion that for invoking the doctrine clear, sound and positive foundation must be laid in the petition seeking

its applicability and that bald expression that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the

promise of the party would not be sufficient to press into aid the doctrine where to apply it would, otherwise, be inequitable. The doctrine can

never be invoked in the abstract and as observed by a Division Bench of this Court in *Ali Mohd. Sheikh v. State of J. & K.* AIR 1987 11;

..... The Courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while

considering the applicability of the doctrine, the Courts have to do equity and the basic principles of equity must for ever be present in the mind of the Court.....

14. That apart, even assuming for purposes of consideration without accepting that the Government or a Public Authority made a representation or gave an assurance, Courts have to further consider the question as to what extent and up to what time the so called representation or assurance stand in the way of the Government or the Public Authority having a reconsideration or rethinking of the matter thereafter. We have an answer to the question in the decision reported in *Malhotra & Sons v. Union of India*, AIR 1976 J &K 41 wherein one of us Dr. A. S. Anand, J., as he then was, held thus (at page 47 of AIR):--

15. Coming now to the facts of the present case and the application of the doctrine of equitable or promissory estoppel, I find it difficult to hold that the Government is bound by the assurance given by it in the scheme published in February, 1973 for all times to come. There is no allegation of any fraud practised by the State nor do I find any manifest injustice to have been done to the petitioner and I do not see how the Government can be made a prisoner of its own policy statement for all times. If the Government after a review of its policy decision finds that modification or alteration is required in the earlier policy in the interest of public at large the Government cannot be debarred from reviewing the policy.

The said decision had the approval of the highest Court of the country in the hands of a Bench of that Court consisting of four learned Judges in a decision reported in *Excise Commissioner, Uttar Pradesh, Allahabad and Others Vs. Ram Kumar and Others*, . A Division Bench of this Court in a decision reported in *M. Rama Company v. Union of India*, 1985 WLR 150 also held that where in a notification issued there was any indication of the duration of the effect of the notification and if such notification was withdrawn before the expiry of the duration there may be an occasion for a complaint about such withdrawn on the basis of promissory estoppel and that at any rate no justifiable prejudice could be claimed to have been caused to anyone in the absence of any specific promise by the Government to keep the total exemption alive all the time. Even in the decision reported in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh* and

Others, it has been held that for the Government to resist the liability it will have to disclose to the Court as to what are the subsequent events on account of which the Government claims to exempt from the liability and that promissory estoppel cannot be applied in the teeth of an obligation or liability imposed by law. Therefore, the subsequent developments, viz., the statutory agreement entered into between the appellant-company on 6-10-1978 and the Board as well as mandate of the legislature contained in the Tamil Nadu Act 1 of 1979 become very much relevant and their inevitable impact upon the so called assurance also requires to be considered in analysing the claim of the appellants.

15. We shall now consider the question as to whether the appellants have laid the required foundation for invoking the doctrine of promissory

estoppel in the light of the above discussion and statement of law and the peculiar facts and circumstances of the case on hand. A prior promise or

representation which is clear, unambiguous and not tentative or uncertain and the further proof that the party claiming the application of the

principal of promissory estoppel really relied and has acted upon such promise or representation and changed or altered his position having been

held to be the prerequisites for invoking the doctrine of promissory estoppel, it becomes vitally necessary to consider the relevant facts placed

before us for our consideration on this aspect. The appellant-Company claims in the affidavit filed in support of the writ petitions before this Court

that they have set up a factory at Manali near Madras for the manufacture of caustic soda, that in the manufacture of caustic soda chlorine is also a

resultant bye product which requires to be properly disposed of, that proper disposal of the said bye-product being a condition precedent for

getting licence for the manufacture of caustic soda, that to utilise the said bye-product they had to also engage themselves in the manufacture of

Ammonium Chloride for which ammonia is the raw material, that the appellant-Company decided to locate the factory at Manali where the

Madras Fertilizers from whom Ammonia could be obtained is located, that Ammonia being a hazardous chemical, it is to be transported from a

nearby place which was one of the factors which made them to locate the plant of the appellant-Company at Manali next to Madras Fertilizer and

hence the petitioners established their plant at Manali taking into consideration

the location advantage in the working of this project, one of the primary features being effective utilisation of Chlorine, a resultant, bye-product of the caustic soda to manufacture ammonium chloride, a fertilizer with the assured supply of Ammonia from M/s. Madras Fertilizers Ltd. Madras which also contributed for the location of our plant at Manali close to the Madras Fertilizers Ltd. The Company commenced its production from January, 1979.

16. The appellant-Company thereafter proceed to submit that the major raw material required by them is power, that even at the time of locating their plant and before starting manufacture they requested the Government to fix a special power tariff for their project, that it was indicated by the Government that the rates that will be charged for their plant would be the same as that of the rates to other caustic soda units in the State, that on that basis that the appellant-Company proceeded further in the matter of implementing their project, that while the existing two other caustic soda units were located outside the metropolitan area of Madras, "had to necessarily locate their unit in Madras," for the reasons explained as above and, therefore, they made a further request to the Government to fix for their unit the same rates that are chargeable to other caustic soda units in the State without the metropolitan levy and surcharge on the same "and, therefore, the Government in its communication dated 29-6-1976 informed the appellant-Company of the manner in which their unit will be charged, the details of which we have already extracted supra while narrating the factual details which led to the filing of the above writ appeals.

17. The appellant-Company on the said facts averred to proceed further to claim that on the assurance of the Government as per their letter dated 29-6-1976 which according to the appellant granted exemption from metropolitan levy in full from the fourth year, that the Government has subsequently on account of certain notifications withdraw the concession, that though initially the location of the plant at Manali seemed to be advantageous in view of the availability of Ammonia nearby and that would be easy to locate the unit at Manali near M/s. Madras Fertilizers Ltd., later it also resulted in higher cost to them due to other factors", that in the procurement and transport of required salt they had to incur expenditure at rates higher than the other two units and having regard to all

these factors, the unit of the appellant-Company should be kept on par with the other two caustic soda units in the State as far as electricity rates are concerned. The appellant-Company further claims that the parity in the power rate was initially maintained as per the communication dated 29-6-1976 but by virtue of the amendments to the schedule to the Tamil Nadu Act I of 1979, and the differential rates of tariff to the appellants unit vis-a-vis the other two caustic soda units located in the State "the assurance and promise given to our unit by the Government have been ignored, seriously affecting the viability of our project. "It is also claimed that in spite of repeated representations made from May 1982 onwards, the appellant-Company could not obtain relief and, therefore, they were obliged to file the writ petitions before this Court. The appellant-Company in paragraph 10(0 of the affidavit filed in support of the writ petitions contended as follows :--

Having assured the petitioners, vide their letter dated 29-6-1976 that the rate applicable to them would be on par with other caustic soda units in the State, and on the basis of which, the petitioners have made huge investments, it is submitted that the respondents have no authority in law or equity to resile from the assurance and revise the tariff to the disadvantage of the petitioners.

18. While rebutting the said factual averments, claims and contentions of the appellant-Company, the respondents in their counter affidavit

contended that the supply of electrical energy to the appellant-Company is governed by the agreement dated 6-10-1978 entered into by them with

the Tamil Nadu Electricity Board which specifically provided that the rates for supply are subject to revision from time to time, that the difference

of 5 paise in respect of the appellant-unit on account of the location of the appellant's unit in Madras which is made applicable uniformly in respect

of all H.T. consumers in metropolitan area, that when supply was effected to the appellant-Company, there were other two similar H.T.

Consumers manufacturing caustic soda who were charged at the rate of 4 paise per unit plus special surcharge of Rs. 15/- KVA besides 50%

surcharge and 1 paise special surcharge, that those industries were located in Hydro areas whereas the appellant-concern is located in Thermal

area on account of which metropolitan levy of 2 paise was recovered, that it was

indicated to them that they are liable to pay metropolitan levy of 2 paise/unit applicable to an industry located in metropolitan area and that this difference was reconciled to by the appellant-Company and then only they entered into the agreement dated 6-10-1978 for the supply of electrical energy. The respondents also point out that as per the Taxation Act, the H.T. Chemical Industries in non-metropolitan area were subject to levy of tax at 3.75% and this tax was not levied for Industries in metropolitan area and that as a matter of fact no tax was levied for the supply given to the appellant-Company when the same was in force up to 30-4-1982.

19. The respondents further contended in the counter affidavit that though it was indicated in the letter dated 29-6-1976 that metropolitan levy will be charged during the first three years of production in full, the Government examined the specific question of exemption and in the communication dated 2-6-1982 they informed the appellant-Company that the first respondent decided to withdraw the concession in respect of exemption from metropolitan levy from the fourth year of commercial production and the same has been given effect to in the revised tariff notification published in the Tamil Nadu Government Gazette Extraordinary dated 30-4-1982, that in exercise of the powers under Tamil Nadu Act I of 1979, the tariff rates were revised from time to time, that metropolitan levy of 5 paise per unit was being uniformly applied to all H.T. consumers and that it was only after consideration of the report of the Tariff Review Committee that the Government examined the question and also negated the request of the appellant-Company. The respondents further denied the claim that the factors referred to by the appellant-Company in their affidavit are in any way relevant for fixing the tariff rates under the Act, that the appellant-Company located the factory at Manali admittedly on account of the various advantages available to them and on account of the additional advantages as compared to similar industries outside metropolitan areas who do not have the same advantage.

20. The respondents also contended that with the execution of the agreement dated 6-10-1978 which subjected the supply of energy to the terms and conditions set out in the agreement more particularly clause 6 which among other things provided for levy and collection of metropolitan levy of

2. paise and clause 7 which provided for the right of the Board to vary from time to time tariffs, general and miscellaneous charges as well as the terms and conditions of supply, the rights of the parties are governed by the said agreement so expressly made and that the appellant-Company was liable to pay the amounts due in accordance with the periodical revisions commencing from the issue of G.O. Ms. No. 787 P.W.D. dated 30-4-1979 in exercise of the powers u/s 4 of the Tamil Nadu Revision of Tariff Rates on supply of Electrical Energy Act I of 1979. The respondents also contended that the appellant-Company, who executed the agreement and as such are governed by the terms and conditions stipulated therein, cannot question the subsequent revision of rates when they have entered into an agreement with full knowledge of the letter dated 29-6-1976, that the cost of production in a particular trade is not only a varying factor but always peculiar to the very particular trade in question and that the respondent cannot be expected to subsidise the consumer to enable him to compete in the market, that the appellant-Company cannot also rely upon the so called assurance of the first respondent made in June, 1976 as against the statutory notifications, that the difference in rules complained of by the appellant-Company is not peculiar to caustic soda industry alone, that as a matter of fact, fertilizer industry is also a power intensive chemical industry and this disparity existed on account of its location and that the representations of the appellant-Company to the first respondent were rejected by the communication dated 23-11-1983 and consequently the writ petitions could not be maintained either in law or on facts.

21. The appellant-Company filed a reply affidavit wherein it has been contended that the execution of the agreement is a mere formality, that the respondents cannot ignore the assurance contained in the communication dated 29-6-1976, that the communication dated 2-6-1982 was sent by the first respondent to the appellant-Company only as a consequence of the notification under the Act; that the metropolitan levy was not in vogue when the project of the appellant-Company was approved by the Government of India and that the appellant-Company is entitled to be treated separately and to be given special tariff concession which is claimed to have been done by the respondent at the time of the location of the unit by the appellant-Company.

22. After a careful consideration of all the materials placed before us, the pleadings as well as the submissions made by the learned counsel appearing on either side, we are of the view that neither on facts nor in equity the doctrine of promissory estoppel is available to the appellants. The decision to start the unit in question was taken and the required licences and permits have been secured by the appellant-Company very much earlier to the so called representation contained in the communication dated 29-6-1976. The relevant portions of the very representations and letters submitted by the appellant-Company on 24-1-1974, 16-4-1975, 2-6-1975, 3-7-1975, 23-12-1975, 14-1-1976 and 18-3-1976 go to show that neither the appellant-Company undertook to establish the industry in this State or at Manali on account of any representation having been made or assurance having been given to them by the respondent to give any exemption from or waiver of the metropolitan levy or relying upon any specific assurance or representation not to saddle the appellant-Company with any liability in respect of metropolitan levy or surcharge thereon or from such category component going into the price-structure of the rate or tariff that may be fixed from time to time in respect of any consumer of H.T. energy. On the other hand, the factual statements in the letters and communication-referred to above will go to show that the appellant-Company arrived at a decision to locate the industrial unit at Manali near Madras for its own business advantages, balance of convenience as well as easy availability of the required raw materials including power, viz. electrical energy and not on account of any assurance of non-levy or waiver of metropolitan levy and surcharge thereon. Even the pleadings of the appellant-Company before this Court do not give a different picture except regarding a stray and strong assertion of plea of estoppel which, in our view, has really no basis on facts or in law.

23. The factual position emanating from the materials produced does not establish any clear, unambiguous, specific and positive assurance or representation that the appellant-Company will not be saddled with any metropolitan levy or surcharge thereon and that too for an indefinite or unlimited period of time even in future. Further, we find lack of such positive foundation of facts and absence in all or any of the materials produced before us of not only any such assurance or representation but also that the appellant-Company had altered their position acting upon and such

representation or assurance. Further, we find that some of the claims made in the communications referred to above as well as the pleadings and submissions made before us seem to assume and seek to proceed upon a hypothesis as though that the so called assurance is to virtually make up the deficiencies and financial set-backs involved for the appellant-Company in their cost of production and otherwise to offset the alleged business advantages which the other two manufacturers of caustic soda in the State are said to possess. In our view the appellant-Company instead of establishing the relevant and vital facts and laying any positive foundation necessary for the application of the doctrine of promissory estoppel to the case on hand proceed upon ever so many surmises and allegations of facts which we consider to be not only a contradiction in terms but completely irrelevant and totally lack the required basis for either attracting or applying the doctrine of promissory estoppel to the case of the appellant-Company. In our view, the appellant-Company has not been successful both in establishing the required and vital element of promise and also the other equally important and vital element viz., that the appellant company relied and acted upon such assurance or representation made to them and thereby changed or altered their position. Consequently in our view the plea of promise as well as the claim of having acted upon the so called promise as claimed miserably fails and as such deserves to be rejected.

24. We are also equally at a loss to understand as to whether there was any promise or assurance to the appellant-Company by the respondents not to saddle with the liability in respect of metropolitan levy or surcharge due thereon, and that too for all time to come in future. The communications and the representations of the appellant-Company dated 19-3-1975, 2-6-1975, 3-7-1975, 14-1-1976 and 18-3-1976 far from making out any case in favour of the appellant-Company in respect of the so called representation or assurance only disclosed that time and again the appellant company was only pleading and trying to impress upon the Government with reference to the need and desirability for grant of exemption or waiver of the metropolitan levy and the surcharge due thereon. The representations and claims made by the appellant-company appear to indicate more their untiring and relentless endeavour in the normal course to secure an exemption or waiver of the metropolitan levy and

the surcharge due thereon in respect of their unit after the decision do not only establish the industry but also to establish it at a particular place as well

as making all necessary preparations to commence the project. But, that by itself is not sufficient either on facts or in law to constitute any prior

promise of reliance upon such promise or alteration or change of cause of action on the basis of such promise to attract the principles of

promissory estoppel. We further find that the claim of the appellant in the communication dated 24-2-1976 that the question of waiver may be

favourably considered to enable them to progress the project further and that made in the letter dated 18-3-1976 to the Government that "we

cannot go ahead with his project if our power cost is to be increased beyond what is being permitted to every caustic soda unit in the State

highlights the reason which should weigh with the Government in granting relief and not to put it as a condition precedent or to construe it to mean

that unless the relief sought for it agreed to be given the project will be shelved or abandoned. Further, this claim can really be of no assistance and

help them plead that but for the so-called assurance to show concession or grant waiver of the metropolitan levy and the surcharge due thereon,

the appellant-Company would not have proceeded further with the project and that only acting upon the assurance or representation the project

has been executed. No materials were also placed before us to show as to what was the extent to which the project has actually progressed at that

point of time and what remained left to be done. On the other hand, we find that the facts placed before us go to inevitably prove that even prior to

this, the appellant-Company entered into firm commitments and made arrangements to establish the industrial unit at the particular place in question

and proceeded with the project and that throughout their endeavour had been merely to secure as much concession as possible from the

Government to help them run the industry profitably and no question of any promissory estoppel therefore arises from the facts averred.

25. Further according to us, it is one thing to state that the Government had on representations and request made by the appellant-Company

expressed its content, willingness or decision to accord exemption or waiver sought for and it is totally a different thing to contend that the decision,

representation or offer or assurance of the Government constituted a promise which promise made the appellant-Company to rely and act upon

such promise and alter and change their course so as to give room or cause for a claim based upon the principle of promissory estoppel. A

decision to accord exemption or grant waiver unless expressed in terms of a particular period or duration so as to at least warrant a claim for such

benefit during the issued period cannot be claimed to endure for an indefinite period and for all times to come in future. We are further of the view

that it is very difficult to come to a conclusion that the Government will be bound even by the so called assurance given for all times to come and

that the exemption or waiver given or offered to be given cannot be withdrawn due to the subsequent change in the policy or view of the

Government. In the absence of any clear, specific and positive assurance to grant exemption or waiver or to keep intact the assurance to grant

such exemption or waiver for particular period of time or for an indefinite period the Government was at liberty to withdraw the exemption or

revoke the decision to grant waiver and no justifiable prejudice could be said to have been caused to the appellant-Company by their decision not

to continue the privilege of exemption or waiver any longer. We consider that the letter dated 29-6-1976 could not be said to be one in exercise

of any statutory power and that it does not constitute any statutory order of exemption passed under any specific provision of any enactment. In

any event, when the proceedings dated 29-6-1976 were passed, it was in respect of an exercise of power under the statutory orders made under

the provisions of the Essential Articles (Control and Requisitioning of Powers) Act 1949 (Tamil Nadu Act 29 of 1948). The Tamil Nadu Act I of

1979 repeals the earlier orders" on the subject and conferred power upon the State Government to amend the Schedule to the said Act, after

taking into account the cost of production of energy and amend the rates of tariff stipulated in the schedule with the advent of Tamil Nadu Act 1 of

1979 as well as the subsequent revision of rates, no rights could be claimed on the letter dated 29-6-1976 in spite of the provisions contained to

the contrary in the Schedule to Act 1 of 1979 and subsequent amendments made to the said Schedule. The power to amend or modify the rates

claimed in the Schedule cannot be sought to be curtailed by placing reliance upon the letter dated 29-6-1976.

26. That apart, even if it is assumed for purposes of consideration that it has been so made in exercise of a statutory power of exemption there can

be no serious challenge to the axiomatic principle of law that the power that has been conferred upon an authority to do a particular thing can be exercised from time to time as and when occasion arises and that the power to do a particular thing will equally carry with it the necessary power to undo, modify vary as well as revoke the order of proceedings earlier made in exercise of such power. For all the above reasons we are of the view that even de hors the question as to whether the proceedings dated 29-6-1976 tantamount to an order of exemption or waiver there is nothing in law which prevents the Government from withdrawing such exemption or refusing to accord waiver any further. Merely because the State Government passed certain orders or communicated a particular decision to the appellant-Company the same cannot be raised to the status of a representation or promise so as to attract the doctrine of promissory estoppel. It is always a well-accepted principle of law that no one has a vested right in law for the grant of an exemption and there can be no claim that the exemption once granted cannot be withdrawn later and should be allowed to be enjoyed for ever by the grantee.

27. As stated already, the proceedings dated 29-6-1976 in our opinion constitutes no assurance or promise but only places on record the willingness to show certain concessions irrespective of the question as to what that so called concession agreed to be made was. In the above circumstances we are constrained to come to the conclusion that the principle of promissory estoppel has no application to the present case and that the appellants failed to substantiate the necessary ingredient which are sine qua non for the attraction and application of the doctrine of promissory estoppel to the present case.

28. Even assuming without accepting that the communication dated 29-6-1976 constituted an assurance or representation on the basis of which it was open to the appellants to make a claim relying upon the principle of promissory estoppel against the Government yet we consider to be not an appropriate case where the doctrine should be so applied to deny and deprive the respondents of the power to exercise their powers under the provisions of the Tamil Nadu Act 1 of 1979. The Tamil Nadu Act I of 1979 apart from not containing any specific provision to give any exemption exhaustively provides in the Schedule the nature of the exemption and

concessions that could be shown in respect of a class or category of consumer and the relief sought for if granted it would amount to this Court directing the Government to delete provisions in the Schedule and/or enact the law in a particular manner or refrain from enforcing a provision of law. We consider it to be not permissible in law for the appellants to contend that the State Legislature is rendered disentitled to enact a legislation like Tamil Nadu Act 1 of 1979 without honouring the so called assurances of the Government to the appellant-Company or that the statutory power to be exercised in the matter of fixation of rates in the light of the criteria, norms and guidelines laid down in the Act have to be so restricted as to make the exercise of that statutory power subject to the so called assurance. We cannot also ignore the mandate of the Legislature repealing the earlier orders made under Tamil Nadu Act 29 of 1949 but also the overriding effect given u/s 3 of Tamil Nadu Act 1 of 1979 to the rates specified in the Schedule thereto. The revised rates appear to have been fixed by the Government pursuant to the recommendations of the Tariff Review Committee and there is no serious dispute to the above claim made on behalf of the respondents in the counter affidavit. While so, the question is as to whether in spite of all these and the statement of law on the subject we should permit the principle of promissory estoppel being deployed against the Legislature or the Government or the Public Authority thereby preventing them from enforcing a statutory provision or that the principle of promissory estoppel could be permitted to be used in this case to compel the Government or the Public Authority to carry out a promise or representation which is contrary to law and which is also outside their power and authority. We consider it to be inequitable, on the facts and circumstances of the case, that the appellant should be allowed to enforce the so called promise or representation against the Government or the Public Authority concerned.

29. Even otherwise we consider that the so called promise or representation contained in the communication dated 29-6-1976 cannot be claimed to survive the statutory agreement entered into between the appellant-Company and the second respondent-Board which govern the mutual rights and obligations of parties. The agreement entered into on 6-10-1978 by mutual consent of parties and the terms stipulated therein contain specific

provision in respect of both the rates or tariff to be enforced in respect of the supply of electrical energy to the appellant-Company as well as the

rights and authority reserved, by mutual consensus to the Board to vary from time to time and revise not only the terms and conditions of supply

but also the rates or charges or tariff or any other levy to be made in respect of such supply in future. In view of the specific terms contained in a

solemn agreement entered into between the parties the benefit if any, that accrued to the appellant-Company under the Government letter dated

29-6-1976 automatically lapsed and cannot be claimed to survive the stipulation to the contra contained in the agreement dated 6-10-1978. No

further or any fresh assurance or promise is claimed to have been subsequent to 6-10-1978. We also see force in the submission of the learned

Advocate General that with the execution of the agreement dated 6-10-1978 the appellants are estopped from raising a plea of promissory

estoppel against the respondents on the basis of the communication dated 22-6-1976. In the reply affidavit filed by the appellant as well as in the

communication dated 2-6-1976, reliance is sought to be made on a so called assurance contained in the letter dated 18-12-1974. On going

through the said letter which only says that "the Government had decided that the supply of power to the proposed unit will be made generally on

the same terms and conditions as for other caustic soda units, subject to the policies of the Government and Electricity Board, as may be decided

from time to time. We are of the view that no plea of promissory estoppel can be based or raised on the said letters and that too after the agreement

dated 6-10-1978. Even in the subsequent letter dated 19-3-1975 it has been made more than clear by stating that the rate per KVA mentioned in

the said letter as well as the rate per KVA of maximum demand per month will be "subject to the right of revision by the Government at any time

and will continue to be subject to surcharges as may be in force from time to time and other State levies present or future". It was also stated that

with reference to the appellant's unit, besides the above it will also be subject to the metropolitan surcharge 2 p. per unit and the surcharge of

50%". In the light of these materials it is futile on the part of the appellants to place any reliance on the communication dated 18-12-1974 to lay a

claim of an alleged promise or assurance so as to attract the doctrine of promissory estoppel to the case on hand. The decision reported in State of

Madhya Pradesh and Others Vs. Orient Paper Mills Ltd., will be equally of no assistance to the appellants to get the relief sought for by them.

That was a case where factually there was no dispute before Court that the claim made squarely fell within the scope of assurance and the

assurance was not only specific but for a particular and definite period, unlike the present case. Further, in that case there was supervening

legislation and agreement mutually entered into between the parties which, in our view, will make all the difference in consideration.

30. Learned counsel for the appellant contended that even assuming that the principles of promissory estoppel had no application the action of the

respondents in withdrawing the exemption or concession constitutes an arbitrary and unreasonable exercise of power which is violative of Art. 14

of the Constitution of India. It has also been contended that the Government having assured the appellant to treat them on par with the tariff rates

applicable to the other similarly established units, it is not open to the Government or the Electricity Board to treat them later on separately and it

amounts to treating equals unequally. The said submission though appears to be attractive in our view, cannot be either appreciated or accepted on

the facts and circumstances of the case. Learned counsel appearing for the appellants placed reliance upon the decisions reported in and *Vij Resins*

Pvt. Ltd. and Others Vs. State of Jammu and Kashmir, in support of the said submissions. The principles laid down in those decisions, in our view,

will have no relevance or application to the case on hand having regard to the peculiar facts and circumstances of the case and the rights of parties.

The decision in *I.E. Newspapers (Bombay) P. Ltd. v. Union of India* dealt with the reasonableness and validity of the revocation or withdrawal of

an exemption granted in respect of levy of excise duty on newspapers. The question of reasonableness was considered in the context of violation

of Art. 19(1)(a) of the Constitution of India and the serious repercussions that the withdrawal of exemption would have on the exercise of the right

of freedom of speech and expression and the necessity to protect a free press.

31. As a matter of act in the very judgment of the Apex Court it has been clearly held that a statute passed by a competent Legislature enjoys

certain degree of immunity in respect of challenge on the ground of arbitrariness or unreasonableness that a distinction must also be made between

delegation of a Legislative function in the case of which the question of reasonableness can not be enquired into and the investment by statute to

exercise particular discretionary powers and that even in respect of a subordinate legislation the kind of unreasonableness which invalidates the

said provisions should be such arbitrariness that it could not be said to be in conformity with the statute or that it offends Art. 14 of the Constitution

of India. In the present case the Schedule to Act 1 of 1979 itself contained the necessary stipulation of rates etc. which was given also overriding

effect by the Legislature. The subsequent amendments also being matters pertaining to fixation or re-fixation of rates, the Courts cannot interfere

with such fixation as it could interfere with an administrative action.

32. So far as the decision reported in *Vij Resins Pvt. Ltd. and Others Vs. State of Jammu and Kashmir*, is concerned the reasonableness of

nullification of contractual rights involving transfer by revision of property and taking away the privilege or right to exploitation of a particular forest

produce was considered in the context of infringement of the property right secured under Art. 31(2) of the Constitution of India which was available

to a citizen in the State of Jammu and Kashmir. There can be no comparison of the same to the situation on hand. The decision in Supreme Court

Employees' Welfare Association v. Union of India will be equally of no assistance to the case on hand since there can be no quarrel with the

general proposition that whether made under the Constitution or a statute, the subordinate legislation must be intra vires the parent law under which

power has been delegated that they must also be in harmony with the provisions of the Constitution and other laws and that if they do not tend in

some degree to the accomplishment of the objects for which power has been delegated to the authority, Courts will declare them to be

unreasonable and therefore, void. The situation on hand has no such problems and does not envisage our interference with the rates fixed for

supply of electrical energy in accordance with the norms and guidelines fixed under the Act and in the light of the report of the Tariff Review

Committee. For our part we are unable to see any unreasonableness or arbitrariness in the rates or in the perpetuation of the metropolitan levy as a

component in the rates fixed under the Tamil Nadu Act 1 of 1979 and thus accounting for the difference in rates of supply for the industrial units

located in the metropolitan area on the one hand to which electrical energy is supplied from thermal projects in contrast to the supply made to industries outside metropolitan area from hydel projects.

33. Consequently, the plea of the appellants that the failure to give effect to the exemption and waiver of metropolitan levy while enacting Tamil

Nadu Act I of 1979 and subsequently revising the rates for supply in the Schedule to the Tamil Nadu Act I of 1979 from time to time invalidates

the rates fixed in the Schedule on grounds of unreasonableness or arbitrariness cannot be sustained at all. Equally untenable and liable to be

rejected is the plea of unequals being treated as equals. Except that, the appellant-company as well as the other two concerns in the other part of

the State which manufacture some products, there is nothing in common or equal about them. The power supplied to them is generated by different

process involving apparently different cost of production which is a relevant consideration in the matter of fixation of rates and that the geographical

classification having been held to be always a reasonable and valid basis of classification, the difference, if any, in the rates between such industries

located in the metropolitan area cannot be said to be either discriminatory or resulting in unequal application of law among equals. Consequently,

there is no rhyme or reason in the plea that equals are being treated as unequals on the facts of the present case and the same only merits rejection

in our hands.

34. Apart from all these aspects we find that for the purposes of the Acts in question and the orders made thereunder, a well drawn distinction

appears to be maintained in using the words such as ""Rate"", ""Tariff"", ""demand charges"" ""Metropolitan Levy"" ""State levies"" and ""surcharge"" Viewed

in that context and considering the scope of the letter dated 29-6-1976 we are also unable to accept the plea of the appellants that the parity of

rate"" assured either will help the appellants to avoid payment of metropolitan or other levy or charges or disable the respondents from claiming

anything in addition to the basic ""rates"" depending upon other considerations and circumstances. We are also in entire agreement with the reasoning

of the learned single Judge that the letter dated 29-6-1976 does not indicate any fixation of a special rate on negotiation. The Schedule to Tamil

Nadu Act 1 of 1979 makes a specific stipulation in respect of special Tariff for H. T. power supply and at any rate after the said Act, the rates as

stipulated in the Schedule subject to periodical revision, alone becomes chargeable.

35. Therefore, we are not only in entire agreement with the reasoning of the learned single Judge but for all such and further reasons and

conclusions indicated above in our judgment, we are not persuaded to interfere with the decision of the learned single Judge dismissing the writ

petitions. So far as the claim of the appellant in W. A. No. 414 of 1990 is concerned, we are of the view that he has no locus standi to raise the

plea of promissory estoppel on the basis of the so called promise given to the appellant in W. A. No. 415 of 1990. For all the above reasons, we

have no hesitation in rejecting the submissions of the learned counsel for the appellants and confirming the order of the learned single Judge. The

writ appeals therefore fail and are dismissed. But in the circumstances, there will be no order as to costs.

36. Appeals dismissed.