

(2008) 07 AHC CK 0150

In the Allahabad High Court

Case No : Writ Petition Nos. 1567, 3588, 3727, 2223, 57, 989, 1083, 2452, 2947, 1572, 883 (M/B) of 1999, 3425, 2541, 3061, 3370 (M/B) of 1998, 2655, 2016 (M/B) of 2000 and 5021 (M/B) of 2001

Shivangi Steels (Pvt) Ltd , Etc

APPELLANT

Vs

State of U.P. and others Etc.

RESPONDENT

Date of Decision : 18-07-2008

Acts Referred:

Electricity (Supply) Act, 1948 — Section 49
Evidence Act, 1872 — Section 115

Citation : (2008) 07 AHC CK 0150

Hon'ble Judges : H.L.Gokhale, CJ and V.K.Shukla, J

Final Decision : Disposed Of

Judgement

H.L. Gokhale, C.J.—All these writ petitions seek to challenge the notifications dated 18.6.1998 and 25.1.1999, issued by the Respondent No. 3 U.P. State Electricity Board, which have reduced the rebate on consumption of power for Iron and Steel Industries in Bundelkhand Region of Uttar Pradesh from 50% on consumption to 25% on demand. The petitioners are industrial units situated in Bundelkhand area of Uttar Pradesh, whereas the respondents to the writ petitions are State of Uttar Pradesh and U.P. State Electricity Board and their officers.

2. The short case of the petitioners is that they are small scale industries which have set up Steel and Iron Units in backward region of Bundelkhand in view of the promises contained in the earlier notifications of U.P. State Electricity Board dated 18.1.1992, 15.7.1994 and particularly 3.1.1997, which gave them the rebate of 50% on consumption of power for a period of five years from commencement of supply. They set up industrial units on that footing and now by virtue of the notification dated 18.6.1998 and 25.1.1999, the rebate which was earlier available on consumption at the rate of 50% was sought to be reduced to 25% of the demand of power. They contend that this has adversely affected them and many of them have closed down. They are submitting that the

respondents are estopped from resiling from the concessions, which were granted under the earlier notifications. These notifications granting concessions as well as reducing them are for Hilly areas (now in Uttarakhand) and Bundelkhand areas. For Hilly areas the concession was reduced from 33% on consumption to 17% on demand of power.

3. The defence of the respondents has been that the action taken by them is protected under Section 49 of the Electricity (Supply) Act, 1948. It is submitted that the respondents have suffered losses while making supply to those industrial units almost in the range over Rs. 15 to 20 crores and these losses are attributable to theft of electricity by these units. One who wants to take benefits of a scheme, must not abuse the provisions thereof and the principle of promissory estoppel cannot be invoked against public interest. The questions of law in all these petitions are by and large similar, namely, as to whether the petitioners can invoke the principle of promissory estoppel against the respondents to insist on the rebate for the period for which the benefit was curtailed. There is slight variation of facts from matter to matter. However, since the question of law is identical in all these petitions, they are heard and decided together. The respondents have filed their counter affidavits to the petition and the petitioners have filed rejoinder affidavit. Further affidavits, charts and orders are also placed on record.

4. Mr. Vishal Dixit, Mr. V.B. Upadhyay, learned Senior Advocate and Mr. R. Santanam have appeared for the petitioners. Mr. S.M.K. Chaudhary has appeared for the U.P. Power Corporation Ltd.

5. Before we deal with the submission of the learned counsels, it will be desirable to refer to the relevant provisions of the notifications with which we are concerned. The relevant provisions of the notifications are as follows:

"The first in point of time is the tariff vide notification dated 18.1.1992. Relevant provisions of clauses reads as under:

"(4) Rate of Charge (Energy Charges):

All KWH consumed in the month 200 paise per KWH

(5) Extra Charge or Rebate:

(i) In case of supply given at 400 volts, the consumer shall be required to pay an extra charge of 10 per cent on the amount calculated at the rate of charge under item (4).

(ii) If supply is given at voltage more than 11 KV, rebate mentioned below will be admissible on the amount calculated at the rate of charge under item (4).

(a) Above 11 KV upto 66 KV 5%

(b) Above 66 KV upto 132 KV 7.5%

(c) Above 132 KV 10%.

XX XX XX

(8) Concessions:

In respect of connections as may be located in any of the eight hill districts in U.P. whose names are given below but excluding those existing at a height of less than 610mts (2,000 feet) above M.S.L. in Dehradun and Nainital districts, a development rebate of 33 1/3% on the amount of the bill as computed under item 4 and 5 above will be given to new connections for a period of five years from the date of commencement of supply. This rebate will also be admissible for the unexpired period of five years to those existing connections which have not completed five years from the date of commencement of supply. This development rebate shall not be admissible to the Departments/Corporations/Undertakings of State/Central Government and Local Bodies."

Name of eight Hill Districts :

1. Almora district
2. Chamoli district
3. Pauri Garhwal district
4. Pithoragarh district
5. Nainital district
6. Tehri Garhwal district
7. Uttarkashi district
8. Dehradun district

In respect of connections as may be located in Bundelkhand region, comprising Jhansi, Lalitpur, Hamirpur, Jalaun and Banda districts a development rebate of 50% on the amount of the bill as computed under item 4 and 5 above will be given to new industrial units for a period of five years from the date of commencement of supply. This rebate will also be admissible for the unexpired period of five years to those existing Industrial units of the above district of Bundelkhand region who have not completed five years from the date of commencement of supply. This development rebate shall however not be allowed to the Department/Corporations/Undertakings of the State/Central Government and Local Bodies."

6. Then on 15.7.1997 another notification was issued. Relevant provisions of Clauses 4, 5 and 8 read as under:

"(4) Rate of Charge (Energy Charges):

All KWH consumed in the month 280 paise per KWH

(5) Extra Charge or Rebate:

(iii) In case of supply given at 400 volts, the consumer shall be required to pay an extra charge of 10 per cent on the amount calculated at the rate of charge under item (4).

(ii) If supply is given at voltage more than 11 KV, rebate mentioned below will be admissible on the amount calculated at the rate of charge under item (4).

(a) Above 11 KV upto 66 KV 5%

(b) Above 66 KV upto 132 KV 7.5%

(c) Above 132 KV 10%

xx xx xx

(8) Concessions:

(a) In respect of connections as may be located in under mentioned areas of hill districts in U.P., a development rebate of 33 1/3 percent on the amount of the bill as computed under item 4 and 5 above will be given to new connections for a period of five years from the date of commencement of supply. This rebate will also be admissible for the unexpired period of five years to those existing connections, which have not completed five years from the date of commencement of supply:

Provided that the above development rebate shall not be admissible to the Departments/Corporations/Undertakings of State/Central Government and Local Bodies.

Description of Area of Hill Districts:

1. Almora district

2. Pithoragarh district

3. Chamoli district

4. Uttarkashi district

5. Pauri Garhwal district excluding Nagarpalika area of Kotdwara.

6. Tehri Garhwal district excluding Muni Ki Reti and Dhalwala Blocks.

7. Nainital district excluding Haldwani, Rudrapur, Gadarpur, Kashipur, Bajpur, Ram Nagar, Jaspur, Khatima and Sitarganj Block.

8. Dehradun district excluding Doiwala, Rampur, Sahaspur and Vikas Nagar Blocks.

(b) In respect of connections as may be located in Bundelkhand region, comprising Jhansi, Lalitpur, Hamirpur, Jalaun and Banda districts a development rebate of 50% on the amount of the bill as computed under item 4 and

5 above will be given to new Industrial units for a period of five years from the

date of commencement of supply. This rebate will also be admissible for the unexpired period of five years to those existing Industrial units of the above district of Bundelkhand region who have not completed five years from the date of commencement of supply. This development rebate of 50% in Bundelkhand region shall, however, not be allowed to the Railways and Departments/Corporations/Undertakings of the State/Central Government and Local Bodies.

This development rebates under this clause shall be allowed subject to the condition that the net amount payable after allowing these rebates would not be less than the amount of minimum consumption guarantee under item

6 above."

7. Thus, by this notification of 15.7.1994, the energy charges were increased from 200 paise to 280 paise and the concession granted to the hill areas and Bundelkhand continued. Thereafter, in supersession of earlier notifications another notification dated 3.1.1997 was issued in which energy charges were increased from 280 paise to 308 paise per KW. But the concession granted earlier continued. Relevant provisions thereof read as under:

"(4) Rate of Charge (Energy Charges):

All KWH consumed in one month 308 paise per KWH

(5) Extra Charge or Rebate:

(i) In case of supply given at 400 volts, the consumer shall be required to pay an extra charge of 10 per cent on the amount calculated at the rate of charge under item (4).

(ii) If supply is given at voltage more than 11 KV, rebate mentioned below will be admissible on the amount calculated at the rate of charge under item (4).

(iii) Above 11 KV upto 66 KV 5%

(iv) Above 66 KV upto 132 KV 7.5%

(v) Above 132 KV 10%

XX XX XX

(8) Concessions:

The concessions mentioned hereunder shall be applicable to consumers connected upto 31.3.1997.

(a) In respect of connections as may be located in under mentioned areas of hill districts in U.P., a development rebate of 33 1/3% on the amount of the bill as computed under item 4 and 5 above will be given to new connections for a period of five years from the date of commencement of supply. This rebate will also be admissible for the unexpired period of five years to those existing connections, which have not completed five years from the date of commencement of supply:

Provided that the above development rebate shall not be admissible to the Departments/Corporations/Undertakings of State/Central Government and local bodies.

Description of Area of Hill Districts :

1. Almora district
2. Pithoragarh district
3. Chamoli district
4. Uttarkashi district
5. Pauri Garhwal district excluding Nagarpalika area of Kotdwara.
6. Tehri Garhwal district excluding Muni Ki Reti town area and Dhalwala village under Narendra Nagar Block.
7. Nainital district excluding Haldwani, Rudrapur, Gadarpur, Kashipur, Bajpur, Ram Nagar, Jaspur, Khatima and Sitarganj Blocks.
8. Dehradun district excluding Doiwala, Rampur, Sahaspur and Vikas Nagar Blocks.

(b) In respect of connections as may be located in Bundelkhand region, comprising Jhansi, Lalitpur, Hamirpur, Jalaun and Banda districts a development rebate of 50% on the amount of the bill as computed under item 4 and 5 above will be given to new industrial units for a period of five years from the date of commencement of supply. This rebate will also be admissible for the unexpired period of five years to those existing industrial units of the above district of Bundelkhand region, who have not completed five years from the date of commencement of supply. This development rebate of 50% in Bundelkhand region, shall, however, not be allowed to the Departments/Corporations/Undertakings of the State/Central Government and Local Bodies.

This development rebate under this clause shall be allowed subject to the condition that the net amount payable after allowing these rebates would not be less than the amount of minimum consumption guarantee under item

6 above."

8. Thereafter, on 18.6.1998, the impugned notification came to be issued, which is relevant for our purpose. But this notification, the bills were divided into two parts,/. e., demand charge plus energy charge. Relevant provisions of Clauses 4, 5 and 8 read as under:

"(4) RATE OF CHARGE:

(A) Demand Charge:

1. Induction Furnaces Rs. 700/ per KVA/month

2. ARC Furnances Rs. 615/ per KVA/month

3. Roling/Rerolling Mills Rs. 440/ per KVA/month

(B) Plus Energy Charge:

All KWH consumed in the month Rs. 100 Raise per month. Notes:

(i) Any consumer availing the supply for more than one process of Induction Furnace, ARC Furnace or Rolling/Rerolling Mill, will be charged at the applicable rate of demand charge whichever is higher.

(ii) The recording of demand and energy shall be done through static Trivector Meters.

(5) EXTRA CHARGE OR REBATE:

(i) In case of supply given at 400 volts, the consumer shall be required to pay an extra charge of 10 per cent on the amount calculated at the rate of charge under item (4).

(ii) If supply is given at voltage more than 11 KV, rebate mentioned below will be admissible on the amount calculated at the rate of charge under item (4).

(a) Above 11 KV upto 66 KV 5%

(b) Above 66 KV upto 132 KV 7.5%

(c) Above 132 KV 10%

XX XX XX

(8) Concessions:

The concessions mentioned hereunder shall be applicable to consumers connected upto 31.3.1997.

(a) In respect of connections as may be located in under mentioned areas of hill districts in U.P., a development rebate of 17% on the demand charges only as computed under item 4 above will be given during the unexpired period of five years to those existing connections which have not completed five years from the date of commencement of supply:

Provided that the above development rebate shall not be available to the Departments/Corporations/Undertakings of State/Central Government and Local Bodies.

Description of Area of Hill Districts:

1. Almora district

2. Pithoragarh district

3. Chamoli district

4. Pauri Garhwal district excluding Nagarpalika area of Kotdwara.
5. Uttar Kashi district
6. Tehri Garhwal district excluding Muni Ki Reti town area and Dhalwala village under Narendra Nagar Block.
7. Nainital district excluding Haldwani, Rudrapur, Gadarpur, Kashipur, Bajpur, Ram Nagar, Jaspur, Khatima and Sitarganj Blocks.
8. Dehradun district excluding Doiwala, Rampur, Sahaspur and Vikas Nagar Blocks.

(b) In respect of connections as may be located in Bundelkhand region, comprising Jhansi, Lalitpur, Hamirpur, Jalaun and Banda districts a development rebate of 25% on the demand charges only as computed under item 4 will be given during the unexpired period of five years to those existing industrial units of the above districts of Bundelkhand who have not completed five years from the date of commencement of supply. This development rebate shall, however, not be allowed to the Departments/Corporations/Undertakings of the State/Central Government and Local Bodies."

9. The notification of 25.1.1999 is identical to the notification of 18.6.1998 except that in this notification the concessions are in Clause No. 9, which is identical to earlier Clause No. 8. As a result of these two notifications i.e. notifications dated 18.6.1998 and 25.1.1999 two significant things happened firstly that the tariff was divided into two parts i.e. demand charge plus energy charge. The energy charge, which was charged earlier at 308 paise per KV, was reduced to 100 paise KVA per month but fixed demand charge was levelled industrywise at flat rate. Thus, for (1) induction furnace @ Rs. 700/ per KVA/ month, (2) ARC furnace @ Rs. 615/ per KVA/month and (3) Rolling/Rerolling Mills @ Rs. 440/per KVA/month. Secondly, the concession was available at 17% in Hill areas and at 25% in Bundelkhand only on the demand charges.

10. According to petitioners, the benefits, which were in the earlier three notifications upto 3.1.1997 were sought to be curtailed by the subsequent notifications of 18.6.1998 and 25.1.1999. The industrial units of the Hilly Region as well as those from Bundelkhand challenged the curtailment of the concession by filing various writ petitions in this Court. The petition from the Hilly Region filed by Sant Steel & Alloys (P) Ltd. and another, being Writ Petition No. 15292 and 15293 of 1999 came to be allowed by a Division Bench of this Court, vide judgment and order dated 25.5.2000, which struck down Clause 8 (a) of the notification dated 18.6.1998 and Clause 9 (a) of the notification dated 25.1.1999. Being aggrieved by that judgment and order, the respondents U.P. Power Corporation Ltd. filed Civil Appeal No. 1215 and 1216 of 2001 before the Apex Court. Those appeals filed by the U.P. Power Corporation Ltd. were disposed of by the Apex Court vide judgment and order dated 10.12.2007, in U.P. Power Corporation Ltd. and another v. Sant Steels & Alloys (P) Ltd. and others, AIR

2008 SC 693. The Apex Court accepted that the industrial units were entitled to invoke the principle of promissory estoppel against the U.P. Power Corporation Ltd., but that could be done only until 9.8.2000, when the first tariff order under the U.P. Electricity Reforms Act, 1999 came into force. This is because as held by the Apex Court, the principle of promissory estoppel could not be invoked against a statutory provision. The Apex Court made a distinction between the primary legislation and delegated legislation and held that there cannot be any estoppel against primary legislation, but if the people have acted to their prejudice on the basis of representation contained in a delegated legislation, the principle of promissory estoppel will apply. The Apex Court, therefore, held that the particular industrial unit, namely, Sant Steel & Alloys (P) Ltd. set up in the Hilly area of Uttar Pradesh was entitled to the benefit of the earlier notification until 9.8.2000.

11. As far as the present petitioners are concerned, they are contending that they are situated similarly to M/s. Sant Steel & Alloys (P) Ltd. and they are relying upon the judgment of the Apex Court in the matter of U.P. Power Corporation Ltd. v. M/s. Sant Steel (P) Ltd. It is submitted on their behalf that the judgment is very clear and it does not permit the U.P. Power Corporation Ltd. to invoke the doctrine of public interest as an exception to the principle of promissory estoppel. It is submitted that if the Power Corporation has suffered losses, that cannot be a ground to deny the benefit of the promises contained in the earlier notifications. It is submitted that the judgment of the Apex Court clearly lays down that the Power Corporation will have to give the proof that the losses are actually attributable to the supply made to these industrial units and they have indulged into theft of electricity as alleged by the Power Corporation. In the absence thereof, the Power Corporation cannot deny the benefit contained in the earlier notifications. It is submitted that the industrial units have acted to their prejudice by making investment in the backward region of Bundelkhand. In the absence of any specific proof, the benefit cannot be withdrawn. Thus, shortly stated, according to the petitioners, the question is no longer *res Integra*, and is fully covered by the judgment in the case of Sant Steel & Alloys (P) Ltd. in favour of the petitioners.

12. As against these submissions of the petitioners, it is contended by U.P. Power Corporation Ltd. that the judgment in the case of Sant Steel (P) Ltd. is clearly in the facts of that case. That was a unit in the Hilly area of Uttar Pradesh and because the Power Corporation could not produce any data showing as to how theft was committed by that unit, the Apex Court could not accept the submission of the Power Corporation on the facts of the case= It is, however, submitted by them that the proposition laid down by the Apex Court clearly permits the Power Corporation to curtail the benefits of these concessions, if the data in that behalf was placed before the Court. It is submitted that such data has been placed and, therefore, the writ petitions ought to be dismissed.

13. Inasmuch as both the parties are referring to the observations of the Apex

Court in the above matter, it would be necessary to refer to them in extenso, which are as follows:

"17. In this background, in view of various decisions noticed above, it will appear that the Court's approach in the matter of invoking the principle of promissory estoppel depends on the facts of each case. But the general principle that emerges is that once a representation has been made by one party and the other party acts on that representation and makes investment and thereafter the other party resiles, such act cannot be stated to be fair and reasonable. When the State Government makes a representation and invites the entrepreneurs by showing various benefits for encouraging to make investment by way of industrial development of the backward areas or the hill areas, and thereafter the entrepreneurs on the representation so made bonafidely make investment and thereafter if the State Government resile from such benefits, then it certainly is an act of unfairness and arbitrariness.. Consideration of public interest and the fact that there cannot be any estoppel against a Statute are exceptions.

18. Learned senior counsel for the appellant has cited nine instances which can be loosely categorised into two, i.e., (i) that there cannot be any estoppel against the statute and (ii) overriding public interest. So far as the first part is concerned, i.e., the revocation has the statute flavour i.e., the benefit which was extended under Section 49 of the Act of 1948 and the notification had been issued revoking the same benefit under Section 49 of the Act of 1948 by invoking the provisions of the General Clauses Act that an authority granting exemption has a right to revoke the same also. It is true that it has a right to revoke the same but if the other party has suffered on that account then such representation will be against the public policy and the morality. Notification issued under Section 49 of the Act of 1948 for giving the benefit of exemption for the hill areas was in the nature of delegated legislation and not an Act framed by the State Legislature. Therefore, a distinction has to be made between the delegated legislation and the primary legislation framed by the Legislature. In Section 49 there is no specific stipulation that the notification issued under Section 49 of the Act of 1948 can be revoked at any time as was in the case of Shree Durga Oil Mills and another (supra) where Section 6 of the Orissa Sales Tax Act itself provided that the notification is capable of being revoked at any time. Therefore, a distinction has to be made between the delegated legislation and the primary legislation. So far as the primary legislation is concerned, if the Act is passed by State Legislature and denies the benefit by the primary legislation then no estoppel can be applied against that Act but so far as the case of delegated legislation is concerned, where delegated authorities passes certain notifications in exercise of his delegated authority there is no contemplation mentioned in the Act itself that it is capable of being revoked at any time. Then such Acts cannot be treated at par with the primary Act passed by the State Legislature. The State is fully competent to pass an Act prospectively as well as retrospectively, but retrospectivity to the extent of aforesaid nature cannot stand. Therefore, this distinction has to be born in mind. In the present case, the

U.P. Electricity Reforms Act, 1999 came into force with effect from 2000. Therefore, if such benefit has not been extended then a different stand will follow but so far as the delegated legislation is concerned, this kind of revocation cannot be sustained. It is highly against the public morality that the incumbent who have felt persuaded on account of the representation made by the State Government that they will be given certain benefits and they acted on that representation, it does not behave on the part of the applicant Corporation to withdraw the benefit before expiry of the stipulated period by issuing the notification revoking the same which the respondents were legitimately entitled to avail. We fail to understand why the appellant Corporation which made a representation and allowed the other party to act upon such representation could resile and leave the citizens in a lurch. In such a situation the principle of promissory estoppel which has been evolved by the Courts which is based on public morality cannot the State to act in such an arbitrary fashion. Other grounds for the purpose of public interest which have been pleaded; namely, that there are two methods of tariff provided by the amendment and the actual consumption has been reduced based on the calculation of energy charged per KV from 308 paisa to 100 paisa and there was large theft or that units were closing down and there was no mala fide intention in the matter of revocation of the notification and the cost of production of power has gone up to Rs. 2.50 per unit, are considerations which hardly involve any public interest. They were more of a nature of losses which has been suffered by the Corporation and in order to make these losses, these methods were evolved to reduce and to make good of the losses. Restructuring benefits to 17% of the tariff 4(A) (demand charges) are the factors which are aimed at to make the losses good for the Corporation. This is not case in which serious public repercussion was involved. These are not the factors which put together can constitute a public interest. Theft of the energy if it was proved by cogent datas that as a result of giving this benefit to the entrepreneurs in the hill areas, they were misusing it or there was theft of the energy at a large scale by these persons to whom the concession had been given then of course such factors, if all the datas were brought on record of course could have persuaded the Court to take a different view of the matter. But simply because there was theft of energy allow the State cannot persuade us to hold that the revocation of such concession can be said to be in public interest. Since the benefit was given to these units in the hill areas, there should have been overwhelming evidence to show some mala fide on the part of these consumers which have persuaded the Corporation to revoke it. If there was no misuse of the energy by these units in the hill areas to whom the concession had been granted then in that case it cannot be taken that there was really public interest involved which persuaded the Corporation to revoke the same. No person can be permitted to misuse the concession or benefit and invoke promissory estoppel. Promissory estoppel is not onesided affairs, it is rather twosided affair. If one party abuses the concession then it is always open to the other party to revoke such concession but if one party avail the benefit and is acting on the same representation made by the other party then the other party who has granted

the said benefit cannot revoke the same under the garb of public interest. Therefore, the grounds that the revocation notification was issued in public interest and that same has the flavour of the statute, cannot persuade us to uphold it, sustained. It is true that a detailed statement was given in various paragraphs of the written statement filed by the appellant Corporation before the Allahabad High Court and unfortunately, the High Court did not advert to these details but we have examined all these details and found that all the nine points raised by Dr. Singhvi does not persuade us to take a contrary view from the view taken by the High Court. There is no gainsaying that the public interest is paramount and the private interest has to be sacrificed for the larger interest. But, after survey of all those cases on the subject, the judicial consensus that emerges is that whenever the State has made a representation to the public and the public has acted on that representation and suffered economically or otherwise, then in that case the State should be stopped from withdrawing such benefit to the detriment of such people except in public interest or against the Statute. So far as the public interest as involved in the present case is concerned, we have found that there was no overwhelming evidence to revoke the benefit granted to the industrial units in the hill areas. So far as the Statute is concerned, the notification was issued under Section 49 of the Act of 1948 and the same was revoked under Section 49 of the Act of 1948 though there was no such provision contained in Section 49 that it will be open to the Corporation to revoke the same but could be possible by invoking the principle of General Clauses Act. But in such delegated legislation such withdrawal could only be permitted if larger public interest is involved or if the Act is passed by legislature.

19. Dr. Singhvi, learned Senior Counsel for the appellant Corporation submitted that now the Act of 1999 has come into force and that Act does not recognize the concessions given to the hill areas and that this is a primary legislation i.e. Act passed by the State Legislature. Therefore, to this extent we can accept the submission of Dr. Singhvi that since the Act of 1999 does not recognize such hill developmental benefits, therefore, from the date of passing of the Act of 1999 the said benefit cannot be accepted. We have stated above that there cannot be estoppel against a statute. Since such benefits have not been recognised by the Act of 1999, therefore, upto the date of coming into force of the Act of 1999, all the benefits which were being given to the respondents entrepreneurs shall be protected by invoking the principle of promissory estoppel but after coming into force of the Act of 1999, which is a primary legislation enacted by the State Legislature the benefits from the gain the Act has come into force, cannot be made available to the respondents." (Emphasis supplied)

14. Now as can be seen from the aforesaid judgment of the Apex Court although it was in an appeal filed by U.P. Power Corporation qua a Steel and Alloys Industry from Hilly area, the notifications giving benefit to the Hilly area and to the Bundelkhand area were one of the same. The only difference as far as the two areas is concerned, that until 3.1.1997, the Bundelkhand area was given a development rebate of 50% on the amount of the bill as computed under item

No. 10 and 5 of the notifications, the rebate given to the Hilly areas was 33%. This rebate was sought to be curtailed by the subsequent notifications of 18.6.1998 and 25.1.1999 in the manner prescribed thereunder. The development rebate for the Hilly area was reduced to 17% on the demand charges only, whereas the same for the Bundelkhand area was reduced to 25% on the demand charges.

15. The proposition of law, therefore, laid down in the above judgment by the Apex Court though in the context of Hilly area will equally apply to the Industries in the Bundelkhand area. As can be seen from the paragraphs quoted above, the Apex Court has accepted that where a party acts to its prejudice, on the basis of a representation made by the State, it can certainly invoke the principle of promissory estoppel to insist on continuation of the benefit under the promises. The Court has also accepted that there are two exceptions to this proposition, namely, that there cannot be any estoppel against the statute and against considerations of public interest. The Apex Court has also accepted that the U.P. Electricity Reforms Act, 1999 has come into force from 2000 (9.8.2000 to be precise) and that the Act does not recognise such concessions. The Court has also accepted that since this is a primary legislation, the said benefit cannot be continued thereafter. There was some controversy as to what should be this date and Mr. Chaudhary, learned Counsel appearing for the respondent U.P. Power Corporation Ltd. has drawn our attention to the sentence in paragraph 19 of the judgment, which states that "therefore, to this extent we can accept the submission of Dr. Singhvi that since the Act of 1999 does not recognize such hill development benefits, therefore, from the date of passing of the Act of 1999 the said benefit cannot be accepted." Learned Counsel for the petitioners, on the other hand, have drawn our attention to the following sentence in paragraph 18 of the judgment "in the present case, the U.P. Electricity Reforms Act, 1999 came into force with effect from 2000" (9.8.2000 to be precise). In this connection, we must note that although the Act received the assent of the President on 23.6.1999 and was published in U.P. Gazette on 7.7.1999, the tariff notification thereunder came into force only on 9.8.2000. The relevant date, therefore, for our purpose will have to be taken as 9.8.2000, whereafter the concession cannot be claimed. We may also add that the petitioners are also not claiming this concession after that date.

16. The Apex Court has also held as noted above that upto the date of coming into force of the Act of 1999, i.e. upto 9.8.2000, all the benefits, which were being given to the respondents entrepreneurs shall be protected by invoking the principle of promissory estoppel. The Court has held that there is a distinction between the primary and delegated legislation and as far as delegated legislation is concerned, the revocation cannot be sustained. This is on the footing that if the parties have acted to their prejudice, the State is bound to continue to make available the concession, which was promised. Then comes the question as to whether the respondent U.P. Power Corporation has made out any case on facts given cogent data that the entrepreneurs in Bundelkhand area were misusing the

concession or that there was a theft of energy at large scale. In this connection, again it ought to be noted that as far as the Hilly area is concerned, it is no longer being canvassed nor it can be canvassed by the respondents that they had such cogent data to deny such benefits to the entrepreneurs in that area.

17. Before we examine this aspect, we must note in this connection that the Power Corporation had brought into force a different method of tariff, which was specifically pleaded before the Apex Court in defence when the matter of Sant Steel and Alloys was decided and the submission that a different method of tariff was being applied should be considered as a ground of public interest was specifically turned down by the Apex Court. The Court has in terms said that these were more of methods to reduce the losses. The following sentence, which has been quoted earlier is very relevant in this behalf:

"Other grounds for the purpose of public interest which have been pleaded; namely, that there are two methods of tariff provided by the amendment and the actual consumption has been reduced based on the calculation of energy charged per KV from 308 paisa to 100 paisa and there was large theft or that units were closing down and there was no mala fide intention in the matter of revocation of the notification and the cost of production of power has gone up to Rs. 2.50 per unit, are considerations which hardly involve any public interest. They were more of a nature of losses which has been suffered by the Corporation and in order to make these losses, these methods were evolved to reduce and to make good of the losses."

It is, therefore, not possible to accept the submission of the Power Corporation that the notifications of 1998 and 1999 contained a different method and, that in fact, thereby there was no prejudice to the petitioners under the new notifications.

18. It is undoubtedly true that the Apex Court did not accept that the beneficiary of concession cannot abuse the same and, if there is any such cogent data that can disentitle such a party. Now what has happened in the instant case is that to defend the notifications issued in 1998 and 1999 in the matters of industries situated in Hilly area or in Bundelkhand area, by and large identical affidavits are filed on behalf of the Power Corporation. No data was given for any such losses of energy or theft in the Hilly area. The entire data that was given was concerning Bundelkhand area even in the affidavit to defend the petition filed by Sant Steels & Alloys and on this background, the following sentence in paragraph 18 of the judgment of the Apex Court becomes relevant:

"It is true that a detailed statement was given in various paragraphs of the written statement filed by the appellant Corporation before the Allahabad High Court and unfortunately, the High Court did not advert to these details but we have examined all these details and found that all the nine points raised by Dr. Singhvi does not persuade us to take a contrary view from the view taken by the High Court."

19. It was canvased on behalf of the respondents that the aforesaid sentence could not be read as governing the data concerning industries in Bundelkhand area. Now what is material to note is that although M/s. Sant Steel & Alloys was an industry from the Hilly area, the particulars given in the counteraffidavit of the U.P. Power Corporation were concerning the industries from Bundelkhand area. There was undoubtedly, therefore, no escape from concluding that no data was given with respect to the industries in Hilly area. However, when the Apex Court has observed that it has examined all these details and found that it could not persuade itself to take a contrary view from the High Court, we cannot but read it at least as a comment on the data, which was placed in defence of that petition.

20. In any case, since that data is also placed in the counteraffidavit in the present group of writ petitions, we have looked into the same. Earlier an affidavit of one Sri N.N. Srivastava, Executive Engineer of the Electricity Board was filed in the year 1998. In paragraph 4 of that counteraffidavit, it was stated that there was rampant theft of energy in the State by mostly all bulk Consumers, especially HV1 category of Consumers, i.e., Iron and Steel Industries and, that the Hon"ble Supreme Court appointed a Committee to investigate the cause of the theft. Our attention is drawn to the judgment of the Apex Court in this behalf in Suresh Chandra Sharma v. Chairman, U.P.S.E.B. and others, AIR 1998 SC 705, wherein the Apex Court directed a High Power Committee to enquire into the allegation of theft of electricity. Paragraph 5 of the above affidavit stated that the Electricity Board, therefore, changed the meters and installed Secure Meters, which could detect each aspect of system of supply. Paragraph 9 of this affidavit stated that it was on this background that the Board introduced the different method of tariff on 18.6.1998. In paragraph 12 of the affidavit, it is stated that as a matter of fact, the incentive to the new industries is yet existing and that there is only curtailment in the unit charge. In paragraph 13 of this affidavit, it is stated that there could not be any rebate admissible on the demand charges. Thus, this is in defence of the tariff introduced on 18.6.1998.

21. Another counteraffidavit was filed by one Mr. Om Prakash, Executive Engineer, Electricity Distribution Division, Hamirpur, affirmed in March, 2008. The papers of the Special Leave Petition were produced before us by the petitioners and we have seen that the contents of this affidavit are identical to one, which was filed in M/s. Sant Steel & Alloys case by one Mr. Jauhari, Executive Engineer. Paragraphs 24 to 28 of the affidavit of Mr. Om Prakash contained the data in defence of the present group of writ petitions. Identical paragraphs appear in the affidavit of Mr. Jauhari and they are paragraphs 49 to 53. This is all the data, which was there in the case of M/s. Sant Steel and Alloys and the same data is there in the present group of cases. These paragraphs 24 to 28 read as follows:

"24. That the consumers who were found indulged in the theft of electrical energy in the checkings made in April/May and June, 1998 were as follows :

S. No. Name of Units District in which located Whether getting incentives

1. M/s. Rimjhim Ispat Hamirpur Yes
2. M/s. Vandana Steel do No (Old Unit)
3. M/s. Vaibhao Casting do do
4. M/s. Juhi Alloys do do
5. M/s. Hamirpur Alloys do do
6. M/s. U.P. Alloys do do
7. M/s. Aisharya Ispat do do
8. M/s. Hans Metal do do
9. M/s.Venus Loha Udyog do do
10. M/s. K.P. Jain Industries do do
11. M/s. Hans Castings do do
12. M/s. Jamini Electricals do do
13. M/s. Hindustan Ferro do do
14. M/s. Minakshi Casting Jhansi Yes
15. M/s. Shivangi Steel do do
16. M/s. InderSteel do do
17. M/s. Jai Jagdamba Malleable do do
18. M/s. Goodearth Steel Orai do
19. M/s. Shivangi Electro do do
20. M/s. V.V.S. Concost do do
21. M/s. Mahavir Iron Industries do do
22. M/s. Ramchand Casting do do
23. M/s. Raj Ratan Casting do do
24. M/s. Shatabdi Steels do do
25. M/s. Daksh Steels do do
26. M/s. Balbir Casting do do
27. M/s. Alfa Casting Ltd. do do (Old Unit)

25. That the figures of consumption and supply from the substations were collected and it revealed startling facts. For example in Oral, there were six HVI consumers connected through independent feeder, i.e., furnace feederII, originating from 132 KV Sub station, Orai. The said consumers were:

Name Connected Load

1. M/s. Vijay Ispat 420 KVA
2. M/s. Daksh Steel 1700 KVA
3. M/s. Bundelkhand Alloys 1900 KVA
4. M/s. Shivangi Ferroys 1600 KVA
5. M/s. Ramsaran Steel 1600 KVA
6. M/s. Raj Ratan Steel 4600 KVA

(a) That the total billing on the basis of meter reading at the consumers and the total quantity of units supplied according to the meter installed at the sub station to which the said six units were connected with the common feeder during the months of March to May, 1998 were as follows:

S. No. Month/Year Total Unit Billed Total Unit as per substation Difference

S. No.	Month/Year	Total Unit Billed	Total Unit as per substation	Difference		
1.	2. 3. March, 1998	April, 1998	May, 1998	5,89,941	10,56,909	16,59,855
	47,22,000	60,78,000	59,81,000	41,32,059	50,21,091	43,21,145

26. (a) That similarly four HVI category units were connected by independent feeder, i.e., Jalaun feeder T. The names of the said units are:

Name Connected load

1. M/s. Alfa Casting 1500KVA
2. M/s. Balbir Steel 2100 KVA
3. M/s. Good Earth 2500 KVA
4. M/s. Real Cements 1800 KVA

(b) That the total consumption as per meter reading of the said four units in the months of March and April and May, 1998 and according to the meter installed at the sub station and the difference of the units were as follows:

S. No. Month/Year" Total Unit Total Unit Difference

Billed as per substation

S. No.	Month/Year	Total Unit Billed	Total Unit as per substation	Difference
1.	March, 1998	5,17,424	46,61,000	41,44,000
2.	April, 1998	88,896	3,52,000	26,93,000
3.	" May, 1998	6,63,592	32,28,000	26,69,000

27. That again datas were collected from the another feeder, where following four units were connected through independent feeders:

Name Connected Load

1. M/s. Mahavir Iron Steel 1500 KVA
2. M/s. Ramshree Steel 3200 KVA
3. M/s. Satabdi Steel 3200 KVA
4. M/s. V.V.S. Concost (P) Ltd. 4200 KVA

Position in respect to the total units billed to those four units according to the meter installed at their premises and the units supplied from the sub station according to the meter installed thereat and difference of the units are as follows:

S. No. Month/Year Total Unit Billed Total Unit as per substation Difference

S. No.	Month/Year	Total Unit Billed	Total Unit as per substation	Difference
1.	2. March, 1998	47,12,000	62,89,000	15,77,000
2.	3. April, 1998	47,72,000	42,32,000	5,40,000
3.	May, 1998	42,32,000	53,95,000	11,63,000
				36,26,000

28. That on the basis of checking made against HVI category of consumers in April, May and June, 1998 assessment of about Rs. 15 to 20 crore were made against those consumers."

It is seen that the data, which was placed in the case of Sant Steel & Alloys and one placed in the present matters is identical. The Apex Court has commented thereon that the High Court did not advert to these details, but the Apex Court examined all these details and was not persuaded to take a contrary view from that of the High Court.

22. Independently, looking at this data, it was canvassed on behalf of the petitioners that paragraph 24 only contains allegation that some 27 industries have indulged into the theft. What is the justification of this allegation? In paragraph 25, it is stated that six consumers in district Orai were connected through independent feeders. It is stated that a difference was noticed between the actual bill issued to these consumers and the total units as per the substation. Similar was the information with respect to 4 industrial units in district Jalaun. The petitioners submit that firstly there cannot be any such inference drawn on the basis of the difference between the supply made and supply bill. There could be variety of factors resulting into this situation including transmission losses. It has not been stated, with respect to any of these units, that their meters were found to be tampered. Reliance was placed by the respondents on paragraph 27 of the judgment of the Apex Court in M/s. Ashok Soap Factory and another v. Municipal Corporation of Delhi and others, (1993) 2 SCC 37, where in the facts of that case, the Apex Court has observed in paragraph 27 that there was a reasonable basis to assume theft by substantial number arc/induction furnaces consumers. In that matter also, the question with respect to minimum consumption guarantee charges and the commercial losses were attributed to pilferage and fraudulent abstraction of energy etc. It is, however, material to note that in that case there were many instances in which it was noticed that meters where bulk supply were made were found to be defective. In the instant case, there is no such averment in the affidavits.

23. We also note in this behalf that though the respondents are alleging that there was theft of electricity, they have not produced a single order showing that any of the consumers was convicted for theft of electricity. On the other hand, the petitioner in Writ Petition No. 3424 of 1998, M/s. U.P. Alloys (P) Ltd. v. State of U. P. and others placed on record an order of a Magistrate Court to the effect that final report had been submitted in their case and the prosecution had been dropped. Learned counsel for the respondents produced another order showing that some such cases were reopened though that order did not contain the specific order concerning U.P. Alloys (P) Ltd.

24. It is also material to note that although there are allegations of theft against as many as 27 industrial units, the particulars of losses of energy of some 14 industries have been shown. No particulars of any prosecution or the result thereof are placed before the Court. In the case of U.P. Alloys (P) Ltd., in fact, the petitioner has gone to the Electrical Inspector under the Electricity Supply Act contending that they have not tampered with the meter. Although ten years have gone after the issuance of the disputed notifications, no material is placed on record to show as to what was the enquiry conducted into all these allegations, as to what was the decision at the government level and as to what were the minutes of such discussions leading to the reduction in the concessions in the year 1998 and 1999. The Board can undoubtedly revise and raise the tariff as can be seen from these very notifications from 1994 to 1997. The question is as to whether it can curtail the benefit once promised leading to the industrialists to invest in the particular area. We may as well note in this connection that a Full Bench of Madras High Court in the case of M/s. Vairavikulam Lime Products Pvt. Ltd. v. Government of India and others, AIR 2006 Mad 353, has also recently held that withdrawal of a power tariff concession during the currency of a Scheme will be hit by promissory estoppel. The Court held that for the public interest to be pleaded to outweigh the interest of the petitioner promisee, the burden is upon the Government to place materials to show overriding public interest.

25. In the facts and circumstances of the present case, it is not possible for us to take a different view for the Industries situated in Bundelkhand area. The respondents have placed before us some data, as was placed in the case of M/s. Sant Steel & Alloys. The Apex Court had examined that very data and held that it was not persuaded to take a view contrary to the view taken by the High Court in the judgment leading to the appeal before the Apex Court. We have also examined that data since it is placed before us in defence of the present group of writ petitions and it is not possible for us to take a contrary view.

26. In the circumstances, in view of the law laid down by the Apex Court in M/s. Sant Steel & Alloys (P) Ltd. as well as on the facts, which have come on record, the principle of promissory estoppel will prevent the respondents from curtailing the benefit that has been given to the petitioners under the notifications upto 1997. In the circumstances, all these writ petitions are allowed, though there will not be any order as to costs. It is declared that the petitioners will be entitled to

50% Bundelkhand benefit for a period of five years under the notifications issued upto 3.1.1997 but only until 9.8.2000. There has been an interim order dated 8.9.2000 in all these writ petitions, which directed the petitioners to deposit difference between old and new tariff to avail of the power supply. Interim order had further directed that in the event, the petitioners succeed, the respondents will be required to refund the said amount within one month of that order. In the circumstances, we direct that the difference in the tariff collected by the respondents will be refunded to the petitioners within one month from the receipt of the certified copy of this order.