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(2011) 01 SC CK 0125

In the Supreme Court Of India

Case No : Writ Petition (C) No. 537 of 2000

Shree Sidhbali Steels Ltd. and Others — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:
Central Sales Tax Act, 1956 — Section 8(5)
Constitution of India, 1950 — Article 14, 19(1), 32
Electricity (Supply) Act, 1948 — Section 49, 49(3)
Electricity Regulatory Commission Act, 1998 — Section 29<

Citation : AIR 2011 SC 1175 : (2011) AIRSCW 4292 : (2011) 5 AWC 4986 : (2011) ELR 1122 : (2012) 1 RCR(Civil) 663 : (2011) 1 SCALE 676 : (2011) 3 SCC 193 : (2011) 3 SCR 134

Hon'ble Judges : J. M. Panchal, J;Gyan Sudha Mishra, J;B. S. Chauhan, J

Bench : Full Bench

Advocate : Shanti Bhushan, Sudhir Kumar Gupta, M.L. Lohaty, R.K. Gupta, P.K. Sharma and Gargi, for the Appellant; Shail Kr. Dwivedi, AAG, Pramod Swarup Anuvrat Sharma, Alka Sinha, Ameet Singh, R.K. Verma, A.P. Sahay, Rachana Srivastava, Pradeep Misra and Suraj Singh, for the Respondent

Final Decision : Allowed

Judgement

J.M. Panchal, J.—By filing this petition under Article 32 of the Constitution, the ten Petitioners which are Private Limited Companies have prayed to issue a writ in the nature of mandamus or any other appropriate writ or order declaring notification No. 1208/ HC/UPPCL-V-1974/1204/2000 dated 07.08.2000 issued by the UP Power Corporation Limited, which was formerly known as U.P. State Electricity Board as illegal, arbitrary and violative of Articles 14, 19(1)(g) and 21 of the Constitution in so far as it denies the Petitioners, the Hill Development Rebate of 33.33% on the total amount of electricity bills issued by the Respondents for the remaining unexpired period of five years from the date of commencement of supply of electricity to the industrial units of the Petitioners. The Petitioners have also prayed to issue an appropriate writ in the nature of mandamus or any other appropriate writ, order or direction commanding the

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Respondents to restore/give Hill Development Rebate of 33.33% to the industrial units of the Petitioners on the total amount of the electricity bills for the remaining unexpired period of five years.

2. The facts giving rise to the filing of this petition are as under:

The Petitioners are industrial units carrying on business of manufacturing iron rods, ingots, strips in furnaces/re-rolling mills in hill area known as Kotdwar, State of Uttar Pradesh, now State of Uttarakhand. The industrial units of the Petitioners were connected with power loads in the year 1996-97 by U.P. State Electricity Board which is now known as U.P. Power Corporation Limited. The claim made by the Petitioners is that from the year 1986, the State Government, in order to develop hill areas and particularly Zero Industrial Zones of hill areas as well as for inducing, encouraging and alluring new entrepreneurs declared various exhaustive industrial policies with the consent of UP State Electricity Board, Sales lax Department and Industrial Department granting various incentives including rebate of 33.33% on total amount of electricity bills to industrial units to be established in hill areas of U.P. The Petitioners have averred that a new industrial policy dated April 30, 1990 was declared by the State Government assuring grant of 33.33% rebate on total amount of electricity bills to new entrepreneurs for a period of five years. The case of the Petitioners is that the Government of UP, pursuant to the aforesaid policy issued an order dated 16-10-1990 to UPSEB to implement all the instructions contained in the said industrial policy. The said policy, according to the Petitioners was to remain in operation till March 31, 19912:09 PM 4/30/2011The record shows that the UPSEB by Notification dated June 28, 1996 modified the earlier notifications and extended the Hill Development Rebate which was to expire on March 31, 1995 for a further period of next five years to be made available to the new industrial units which would be set up till 31-3-1997. The Petitioners have claimed that the five years period for which the Petitioners were entitled to the Hill Development Rebate of 33.33% on the total amount of electricity bills was to be over in the year 2001-02, What is asserted by the Petitioners is that in view of the promises, assurances and guarantees given by the Government of UP through various industrial policies declared from time to time and accepted, operated as well as implemented by UPSEB through different gazette notifications, the industrial units of the Petitioners were established in Kotdwar, Distirct Pauri in the year 1996-97. According to the Petitioners on January 3, 1997 the Respondent No. 2 Corporation, brought out its electricity tariff to be levied on the consumers and it was inter-alia stipulated that the promises made in the industrial policy declared by the UP Government on April 30, 1990 and gazette notification dated June 28, 1996 would continue to be available to the new entrepreneurs as before. The Petitioners have mentioned that 33.33% rebate promised to industrial units established in the hill areas was accordingly granted to the Petitioners who had established their industrial units in the year 1996-97. Explaining as to why the Respondents had promised to grant rebate of 33.33%, it is stated that, the rebate was meant to meet out extra expenditure incurred by the industrial units

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set up in hill areas in comparison to the industrial units established on plain and developed areas on account of various factors such as labour charges, maintenance cost, transportation of raw material, transportation of finished goods, availability of water, establishment charges etc. The Petitioners have averred that vide Notification dated 18-06-1998 & 25-01-1999, issued by the Respondent Corporation, uniform tariffs were introduced, which were seemingly innocuous but in fact had reduced the rebate from 33.33% to 17% and the result was that hill area units became less competitive and unviable in comparison to the units situated in developed areas. The Petitioners have mentioned that the two Notifications dated June 18, 1998/25-01-1999 levying the tariffs, were challenged by the Petitioners before High Court of Allahabad by way of filing C.W.P. Nos. 15292 and 15293 of 1999. The High Court vide judgment dated 25-05-2000 had allowed the writ petitions and struck down Clause 9(a) of the Notification dated 25-01-1999 and Clause 8(a) of the Notification dated 18-06-1998 holding that the Petitioners were entitled to get H.D.R. of 33.33% on the total bill till the period of five years from the date of commencement of supply of electricity to them was to come to an end. The record shows that the final judgment dated 25.05.2000 rendered by the High Court of Allahabad was challenged by U.P. Power Corporation Limited before this Court by way of filing SLP No. 10665-10666 of 2000 and this Court had initially passed an Interim Order dated July 28, 2000 directing the present industrial units of the Petitioners to make payments of electricity bills as per tariff notification dated 25.01.1999. The claim made by the Petitioners is that after passing of the above mentioned interim order dated 28.07.2000 the Respondent had issued a new tariff by notification dated 07.08.2000 and had increased exorbitantly the rate of charges and had completely withdrawn the Hill Development Rebate which was made admissible under the industrial policy declared by the then Chief Minister in the year 1996 and continuously allowed by the Respondent No. 2 till 18-06-98/25.01.99. It is relevant to notice that the notification granting rebate was issued u/s 49 of the Electricity Supply Act, 1948, whereas the notification dated 07.08.2000 whereby the rebate was completely withdrawn was issued u/s 24 of the Uttar Pradesh Electricity Reforms Act, 1999 which came into force with effect from 14.01.2000. The grievance made by the Petitioners was that because of the interim order dated 28.07.2000 passed in SLP Nos. 10665-10666 of 2000, the Respondents were not entitled to issue and or introduce a new tariff by a notification dated 07.08.2000 increasing the rate of charges and completely withdrawing the Hill Development Rebate but were entitled to levy tariff according to the notification dated 25.01.99. Therefore, they filed IA No. NIL of 2000 in SLP Nos. 10665-66 of 2000 seeking appropriate directions from the Court. The claim advanced by the Petitioners is that the said IA was listed before the Court on 29.09.2000 and after hearing the parties, While adjourning the said IA for a period of two weeks the Bench hearing the I.A. had opined that the Petitioners, if so advised, should file writ petition challenging the new tariff/ revised rates of power made applicable with effect from 09.08.2000 by the notification dated 07.08.2000. The Petitioners have claimed that taking hint from

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the opinion expressed by this Court on 29.09.2000, the instant petition was filed. The Petitioners have mentioned that by new tariff notification dated 07.08.2000, the Respondents have completely withdrawn the assured, promised and guaranteed Hill Development Rebate which has made it impossible for the Petitioners to run their industrial units located in the hill areas and therefore the notification dated 07.08.2000 should be regarded as illegal, arbitrary, discriminatory and violative of provisions of Article 14, 19(1)(g) and 21 of the Constitution as well as contrary to the principles of promissory estoppel. The assertion made by the Petitioners is that the Respondents are bound to act as per their promise, solemnly made to the Petitioners while inviting them to establish the industrial units in completely remote and underdeveloped areas of U.P. The Petitioners have further claimed that because of the tariff introduced by notifications dated 18.06.98/ 25.01.99 out of 28 industrial units which were established on assurances given by the Respondents, 15 industrial units were closed down and now only 13 industrial units of the Petitioners are operating at present. It is mentioned that the new tariff introduced by notification dated 07.08.2000 is contrary to the suggestions/recommendations made by Uttar Pradesh Regulatory Commission established under the provisions of Electricity Regulatory Commission Act, 1998. Under the circumstances, the Petitioners have filed the instant petition and claimed the reliefs to which reference is made earlier.

3. On service of notice Mr. N.N. Srivastava, Deputy General Manager (Com.), U.P. Power Corporation Limited, i.e., the Respondent No. 2 herein, has filed affidavit in opposition on behalf of Respondent Nos. 2 & 3 taking preliminary objections that the petition is not maintainable as no fundamental right of the Petitioners, which are the companies, is violated. The Respondent No. 2 has stated that since tariff was framed in exercise of statutory powers by a statutory body, the petition is not maintainable against exercise of this statutory power. In the reply it is mentioned that there is a provision of filing review before the Commission in case the Petitioners feel aggrieved but they are not justified in making grievance directly before this Court regarding introduction of new tariff rates and/or withdrawal of rebate by filing a writ petition under Article 32 of the Constitution. After mentioning that the agreement entered into by the Petitioners with the Respondent No. 2 Corporation contains a clause that the rates/ tariff fixed/ revised by the supplier i.e. the replying Respondent, from time to time, would also be applicable to the Petitioners, it is asserted that in view of the said clause, the Petitioners are estopped from challenging the revision of the tariff made under statutory exercise of powers for greater public interest. In the reply, clause seven of the agreement has been reproduced and it is claimed that the petition which is mainly based on the principle of promissory estoppel being thoroughly misconceived, should be dismissed at once. So far as, merits of the matter is concerned, it is stated that the notification dated 07.08.2000 is neither illegal nor arbitrary nor discriminatory nor hit by the principle of promissory estoppel and the reliance placed upon the decision dated 25.05.2000 rendered by the High Court in Writ Petition No. 15292-93 of 1999 is misconceived as the same is

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subject matter of challenge in the pending SLP's. According to the reply, during the pendency of SLP filed by the Respondent UP Power Corporation Limited, the UP Electricity Regulatory Commission framed a new tariff in exercise of statutory powers and directed the Respondents to enforce the same and therefore the Respondents who are bound to enforce the tariff, have enforced the same vide notification dated 07.08.2000. It is claimed that tariff revision made under the statutory powers has nothing to do with the interim order dated 28.07.2000 passed by this Court in the SL Ps filed by the U.P. Power Corporation Limited and the High Court is wrong in allowing the Writ Petitions and directed that 33.33% rebate should be given to the Petitioners, when the entire tariff is changed and total financial burden on the Petitioners is less than 5% of tariff. After asserting that the Kotdwar is practically situated in plain area and very near to Najibabad, it is stated that the claim of high cost advanced by the Petitioners is not genuine. In the reply it is emphasized that the tariff was revised to minimize the theft of electricity which was prevalent amongst large and heavy consumers like Petitioners and in fact rates enforced with effect from 18.06.1998 were more favourable to the Petitioners but they were not satisfied with the said tariff and therefore had filed writ petition in the High Court from which the SLP No. 10665-66 of 2000 have arisen. Another affidavit dated 26.12.2000 is also filed by Mr. N.N. Srivastava clarifying certain aspects of the matter. In the additional reply, different provisions of U.P. Electricity Regulatory Commission Act and U.P. Electricity Reforms Act, 1999 are adverted to and it is claimed that in view of Section 7(a) of the Act, the tariff as framed by the U.P. State Electricity Board is applicable to the Petitioners and they having undertaken to pay the electricity charges as per the rules/tariff determined by UP State Electricity Board from time to time, the petition is not maintainable. It is also asserted in the reply that when the Regulatory Commission has held that no development rebate is to be given to a consumer, the Corporation has no authority at all to grant any development rebate and, therefore, the Petitioners are not entitled to the reliefs claimed in the petition.

4. The Petitioners have filed rejoinder to the counter affidavits dated 03.11.2000 and 26.12.2000 filed on behalf of Respondents No. 2 and 3. In the rejoinder, they have reiterated their stand taken in the petition.

5. It may be mentioned that Civil Appeal Nos. 1215-1216 of 2001 arising out of SLP Nos. 10665-10666 of 2000 with the instant Writ Petition No. 537 of 2000 were notified for final disposal before the Court on 20-09-2007. On the said date the appeals and the writ petition were called out for hearing and after hearing the parties at length following order was passed by the Court on 20.09.2007:

Heard the parties at length.

Hearing concluded.

Judgment reserved.

Mr. A.M. Singhvi, learned senior counsel appearing on behalf of the Appellants

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shall file a detailed affidavit showing the consumption of the units in hill areas getting this incentive up to 1997 and after that when the new tariff was introduced in 1998. He may file the affidavit to this effect within two weeks from today. It will be open for the Respondents to file their reply within two weeks thereafter.

WRIT PETITION (C) No. 537 OF 2000

Let this matter be listed after the disposal of Civil Appeal No. 1215-1216 of 2001.

Thus the instant writ petition was detagged and directed to be listed after the disposal of civil appeal Nos. 1215-1216 of 2001.

6. The decision in Civil Appeal No. 1215-1216 of 2001 was pronounced on December 10, 2007 and it is reported in U.P. Power Corporation Ltd. and Anr. v. Sant Steels and Alloys (P) Ltd. and Ors. (2008) 2 S.S.C. 777. This Court by the said decision held that notifications dated 28.06.1996 and 03.01.1997 wherein rebate was given were issued u/s 49 of the Electricity (Supply) Act, 1948 and they were in the nature of delegated legislation. It was further held that on the basis of principle of promissory estoppel, the Respondent No. 2 i.e. UP Power Corporation Limited was not entitled to take away benefit given to the industries. However, the Court made reference to Uttar Pradesh Electricity Reforms Act, 1999 wherein no such benefit of rebate is recognized and held that the benefit of rebate cannot be extended after coming into force of Uttar Pradesh Regulatory Reforms Act, 1999, i.e., after 14.01.2000 because estoppel cannot be claimed against the statute. The findings recorded by this Court while disposing of Civil Appeals No. 1215-1216 of 2001 made in Paragraph 34 and 36 of the decision, read as under:

34. 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. the 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 the statute. Since such benefits have not been recognized by the Act of 1999. therefore, up to the date of coming into force of the Act of 1999, all the benefits which were being given to the Respondent 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 Sate Legislature the benefits from the date the Act has come into force, cannot be made available to the Respondents.

xxx xxx xxx 36. Therefore, as a result of our above discussion, we hold that the view taken by the Allahabad High Court on revoking (sic invoking) the principle of Promissory Estoppel is correct and the Respondent units will be entitled to such benefits till the UP Electricity Reforms Act, 1999 came into force. Since after

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coming into force of the Act of 1999 no such concession has been granted, therefore, the concession shall survive till the Act of 1999 came into force. The appeals are accordingly disposed of with no order as to cost.

7. On 20.01.2009 Division Bench of this Court heard W.P. No. 537 of 2000, and referred the matter to larger Bench on the question as to whether the rebate/ concession granted to the Petitioners from 1997 to 2002 should continue till 2002 or will cease to have effect after 14.01.2000, as was directed by the, Division Bench in C.A. No. 1215-1216 of 2001 decided on 10.12.2007. Pursuant to the said direction the petition is placed before the present larger Bench.

The proceedings of the case indicate that the writ petition was listed, for hearing on 03.02.2010, when the Court directed the learned Counsel for the State of Uttarakhand to seek instructions from the Government whether the State Government was inclined to extend the benefit of Hill Development Rebate of 33.33% on total amount of electricity bills to the industrial units as was done by the erstwhile State Government of U.P. In response to the same, Mr. Nitish Kumar Jha, Additional Secretary to the Government of Uttarakhand, has filed affidavit dated April 19, 2010 mentioning that the concession/rebate by way of incentive was part of the policy framed by the then State Government of UP and the same was enforceable till the year 1997, but consequent upon enforcement of the UP Reorganization Act, 2000, the hill areas of the erstwhile State of UP were carved out which now form part of the new State known as State of Uttarakhand. According to the affidavit, to accelerate the pace of industrial development in remote and backward hill region and to remove economic backwardness of the hill region, by generating the employment opportunities with the possibility to check the brain drain from these areas and keeping in view the uneven geographic situation, environmental and social conditions, the Government of Uttarakhand has framed '"Special Integration Industrial Development Policy" for hills and remote areas of Uttarakhand. The affidavit proceeds to state that the policy formulated by the State of Uttarakhand is an attempt to help and promote the establishment of industries based on the locally available resources with the coordinated and integrated industrial growth but so far as the power concession to new industrial units is concerned, the aforesaid policy does not provide for any concession to the steel industries established in the State as it is not considered necessary by the State to grant subsidy to the steel industries in the larger public interest. Along with the affidavit, the relevant extract of the aforesaid policy is produced as Annexure R-1 and it is mentioned that in view of lack of provision in the industrial development policy, the concession of Hill Development Rebate of 33.33% granted earlier by UP Government cannot be extended to the steel industries located in the State of Uttarakhand.

8. This Court has heard the learned Counsel for the parties at length and in great detail. This Court has also considered the documents forming part of the petition and the authorities cited at the bar for the guidance of the Court. Though several

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authorities have been cited at the bar on both the sides, this Court proposes to refer to only those decisions which in fact helped the Court in resolving the dispute raised in the petition.

The Respondents have contended that the Petitioners are companies incorporated under the Companies Act, 1956 and as companies do not have Fundamental Right under Article 19, the petitions filed under Article 32 should not be entertained by the Court. Therefore, the question which needs to be answered is whether the instant petition filed under Article 32 of the Constitution is maintainable. A company not being a citizen has no Fundamental Right under Article 19. When a law infringes the Fundamental Right of a company, a shareholder cannot normally apply under Article 32 for enforcement of company's Fundamental Right as in the eye of law two are distinct entities. A corporation in law is equal to a natural person and has legal entity of its own. The entity of a corporation is entirely separate from that of its shareholder applying the doctrine of piercing or lifting of veil and it cannot be said that the petition by corporation is a petition by the shareholder. It is important to mention that the Petitioners are the companies registered under the provisions of the Companies Act, 1956. It is well settled that a company cannot maintain a petition under Article 32 of the Constitution for enforcement of Fundamental Rights guaranteed under Article 19 of the Constitution. A company, being not a citizen, has no Fundamental Rights under Article 19 of the Constitution. Nonetheless the companies would be entitled to claim right under Article 14 of the Constitution and, therefore, it would be relevant to examine whether the Respondents have committed breach of Article 14 by withdrawing the concession in electricity rates given/granted earlier.

9. The short question which now falls for decision of this Court is whether the Hill Development Rebate of 33.33% on total amount of electricity bills under industrial policy of the erstwhile State Government of U.P. granted to the writ Petitioners will cease to have effect after 14.01.2000 when U.P. Electricity Reforms Act, 1999 came into force or should continue thereafter, as can be seen from the decision in U.P. Power Corporation Limited and Anr. v. Sant Steels and Alloys (P) Ltd. and Ors. (Supra).

10. Mr, Shanti Bhushan, learned Senior Counsel for the writ Petitioners submitted that the concessions in the bills for power supply were given to the industries set up in the hill areas in view of the direction given by the State Government in exercise of power u/s 78-A of the Act of 1948, pursuant to which necessary notifications granting concessions were issued and as acting upon the promises contained in those notifications, the private entrepreneurs had made huge investments and acted to their detriment and, therefore, now the Respondents cannot wriggle out from those promises and are estopped from withdrawing those concessions. Placing reliance on the observations made in para 30 of the reported decision in U.P. Power Corporation Ltd. and Anr. v. Sant Steel and Alloys (P) Ltd. (Supra) it was emphasized that therein the Court took the notice of the

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fact that in the UP Electricity Reforms Act, 1999 which came into force with effect from January 14, 2000 the benefit granted under the previous Act was neither specifically withdrawn nor it was stipulated that the said benefit would not be available after coming into force of the said Act with effect from 14.01.2000. Based on these observations, it was argued that in such a situation the principle of promissory estoppel which has been evolved by the Courts which is based on public policy would not permit the State to revoke/withdraw the benefits already granted to the Petitioners. As noticed earlier, the Civil Appeals arising out of SLP's filed by UP State Power Corporation were notified for hearing with the instant writ petition. It is difficult to fathom the reason, which prompted de-tagging of the writ petition when Civil Appeals were heard on merits. The Petitioners could neither offer any plausible explanation nor could they point out the relevant circumstances which resulted into the de-tagging of the instant writ petition from the civil appeals. There is no manner of doubt that certain observations made in paragraphs 34 and 36 quoted above from the reported decision are against the present Petitioners but the Court also held that all the benefits which were being given to entrepreneurs shall stand protected before coming into force of the Act of 1999 on the principle of promissory estoppel. Therefore, this Court will have to consider the question whether the reasoning adopted by the Division Bench for coming to the said conclusion is legal, though it was made clear to all the learned Counsel for the parties that the instant Writ Petition cannot be treated as an appeal against the decision dated December 10, 2007 rendered by the two learned Judges of this Court in Civil Appeal Nos. 1215-1216 of 2001.

11. In view of the observations made by the Division Bench of this Court in the reported decisions, the questions that fall for consideration of this larger Bench are whether a benefit given by a statutory notification can be withdrawn by the Government by another statutory notification and whether the principles of promissory estoppel would be applicable in a case where concessions/ rebates given by a statutory notification are subsequently withdrawn by another statutory notification. It is an admitted position that the notification dated June 28, 1996, granting rebate to the industries set up in hill areas, was issued in exercise of powers conferred by Section 49 of Electricity (Supply) Act, 1948. By the said notification rebate in electricity charges to the extent of 33.33% was given to the industries, which were set up in the hill areas during the specified period. It is also an admitted position that thereafter, by notifications dated June 18, 1998 and January 25, 1999, issued in exercise of the powers conferred by Section 49 of the Act of 1948, the percentage of rebate granted by the earlier notification was reduced to 17%. However, by notification dated August 7, 2000 the benefit, which was granted to the industries set up in the hill areas regarding rebate in the electricity charges, was completely withdrawn. What is relevant to notice is that it is not in dispute that the notification dated August 7, 2000 withdrawing the benefits granted earlier, was issued in exercise of powers conferred by Section 24 of the Uttar Pradesh Electricity Reforms Act, 1999. The

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above mentioned fact makes it evident that the benefits, which were granted and/ or curtailed in exercise of statutory powers, were subsequently withdrawn in exercise of another statutory power conferred by another statute, namely, Uttar Pradesh Electricity Reforms Act, 1999. In the light of above mentioned facts, the question whether principle of promissory estoppel would apply to exercise of statutory powers will have to be considered. The doctrine of promissory estoppel is by now well recognized and well defined by catena of decisions of this Court. Where the Government makes a promise knowing or intending that it would be acted on by the promise and, in fact, the promise, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promise notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 229 of the Constitution. The rule of promissory estoppel being an equitable doctrine has to be molded to suit the particular situation. It is not a hard and fast rule but an elastic one, the objective of which is to do justice between the parties and to extend an equitable treatment to them. This doctrine is a principle evolved by equity, to avoid injustice and though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. For application of doctrine of promissory estoppel the promise must establish that he suffered in detriment or altered his position by reliance on the promise. Normally, the doctrine of promissory estoppel is being applied against the Government and defense based on executive necessity would not be accepted by the Court. However, if it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promise and enforce the promise against the Government. Where public interest warrants, the principles of promissory estoppel cannot be invoked. Government can change the policy in public interest. However, it is well settled that taking cue from this doctrine, the authority cannot be compelled to do something which is not allowed by law or prohibited by law. There is no promissory estoppel against the settled proposition of law. Doctrine of promissory estoppel cannot be invoked for enforcement of a promise made contrary to law, because none can be compelled to act against the statute. Thus, the Government or public authority cannot be compelled to make a provision which is contrary to law. Having noticed salient features of the principle of promissory estoppel it would be relevant to refer to certain observations made by the two Judge Bench of this Court in U.P. Power Corporation Ltd. and Anr. v. Sant Steel and Alloys (P) Ltd. (supra). In the said decision the Court has observed in paragraph 33 of the reported decision as under:

33... But, after survey of all these 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 estopped from withdrawing such

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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 u/s 49 of the Act of 1948 and the same was revoked u/s 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 (sic case of) such delegated legislation such withdrawal could only be permitted if larger public interest is invoked or if the Act is passed by the legislature.

A critical analysis of the above quoted passage makes it evident that the two Judge Bench was of the view that notification issued u/s 49 of the Act of 1948 can be revoked/modified only if express provision was made for the revocation/ modification of the said notification u/s 49 itself and the Court found that as there was no such provision contained in Section 49, it was not open to the Corporation to revoke the same. Further, though the Court made reference to General Clauses Act, it added that the provisions of General Clauses Act would be applicable in case of delegated legislation if withdrawal/curtailment of benefit was in larger public interest or if the legislation was enacted by the Legislature authorizing the Government to withdraw/curtail the benefit granted by a notification. Under the circumstances the two notifications curtailing the benefit to 17% were treated as contrary to Section 49 of the Act of 1948. On review of the law on the subject and the relevant statutory provisions, this Court finds that, for the reasons mentioned hereinafter, the above statement of law is not an accurate proposition of law.

12. It may be mentioned that the Electricity (Supply) Act, 1948 was enacted by the Parliament to provide for the rationalization of the production and supply of electricity and generally for taking measures conducive to electrical development. The Electricity (Supply) Act, 1948 being a Central Act, the provisions of Sections 14 and 21 of the General Clauses Act, 1897 would be applicable. Section 14 of the General Clauses Act, 1897 reads as under:

14. Powers conferred to be exercisable from time to time. -(1) Where, by any Central Act or Regulation made after the commencement of this Act, any power is conferred, then unless a different intention appears that power may be exercised from time to time as occasion requires.

(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.

Whereas Section 21 of the General Clauses Act, 1897 reads as under:

21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws. - Where, by any Central Act or Regulations a power to issue notifications, orders, rules or bye-laws is conferred,

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then the power includes a power, exercisable in the like manner and subject to the like sanction and conditions, if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.

Section 14 deals with the exercise of a power successively and has no relevance to the question whether the power claimed can at all be conferred. By Section 14 of the General Clauses Act, 1897, any power conferred by any central enactment may be exercised from time to time as occasion arises, unless a different intention appears in the Act. There is no different intention in the Electricity (Supply) Act, 1948. Therefore, the power to issue a notification u/s 49 of the Act of 1948, can be exercised from time to time if circumstances so require. Section 21 is based on the principle that power to create includes the power to destroy and also the power to alter what is created. Section 21, amongst other things, specifically deals with power to add to, amend, vary or rescind notifications. The power to rescind a notification is inherent in the power to issue the notification without any limitations or conditions. Section 21 embodies a rule of construction. The nature and extent of its application must be governed by the relevant statue which confers the power to issue the notification, etc. However, there is no manner of doubt that the exercise of power to make subordinate legislation includes the power to rescind the same. This is made clear by Section 21. On that analogy an administrative decision is revocable while a judicial decision is not revocable except in special circumstances. Exercise of power of a subordinate legislation will be prospective and cannot be retrospective unless the statute authorizes such an exercise expressly or by necessary implication. The principle laid down in Section 21 is of general application. The power to rescind mentioned in Section 21 is without limitations or conditions. It is not a power so limited as to be exercised only once. The power can be exercised from time to time having regard to the exigency of time. When by a Central Act power is given to the State Government to give some relief by way of concession and/or rebate to newly established industrial units by a notification, the same can be curtailed and/or withdrawn by issuing another notification under the same provision and such exercise of power cannot be faulted on the ground of promissory estoppel. It would be profitable to remember that the purpose of the General Clauses Act is to place in one single statute different provisions as regards interpretations of words and legal principles which would otherwise have to be specified separately in many different Acts and Regulations. Whatever the General Clauses Act says whether as regards the meaning of words or as regards legal principles, has to be read into every statute to which it applies. Further, power to curtail and/or withdraw the notification issued u/s 49 of the Electricity (Supply) Act, 1948 giving rebate is implied u/s 49 itself on proper interpretation of Section 21 of the General Clauses Act. Therefore, this Court is of the firm opinion that, power to curtail and/or withdraw the notification issued u/s 49 of the Electricity (Supply) Act, 1948, granting certain benefits, was available to the Respondents.

13. By virtue of Sections 14 and 21 of the General Clauses Act, when a power is conferred on an authority to do a particular act, such power can be exercised

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from time to time and carry with it power to withdraw, modify, amend or cancel the notifications earlier issued, to be exercised in the like manner and subject to like conditions, if any, attached with the exercise of the power. It would be too narrow a view to accept that chargeability once fixed cannot be altered. Since the charging provision in the Electricity (Supply) Act, 1948 is subject to the State Government's power to issue notification u/s 49 of the Act granting rebate, the State Government, in view of Section 21 of the General Clauses Act, can always withdraw, rescind, add to or modify an exemption notification. No industry can claim as of right that the Government should exercise its power u/s 49 and offer rebate and it is for the Government to decide whether the conditions are such that rebate should be granted or not.

14. There being nothing repugnant to raising of public revenue in exercise of sovereign power of State to impose and collect taxes including electricity duty, in any provision of the Act of 1948 or the policy statement made in the notification granting rebate, the raising of public revenue by withdrawing or reducing exemption, cannot be said to be against the provisions of any statute. It is relevant to notice that the new industrial units, which were being established in the hill areas, could not have compelled the Government to exercise power u/s 49 of the Act of 1948 in their favour, for grant of rebate/ concession in electricity tariff. Powers u/s 49 normally would be exercised by the State Government for industrial growth of an area and to generate employment opportunities for those who are residing in the area. However, on change in the circumstances, the Government can always reconsider the matter and can either curtail or withdraw the benefit granted earlier. This Court finds that the proposition of law laid down by the two Judge Bench in the decision mentioned above is too wide and has tendency to make Section 21 of the General Clauses Act, 1897, inoperative. The concept of the larger public interest introduced, before invocation of Section 21 of the General Clauses Act, in fact, amounts to amendment of the said provision, as notifications dated June 18, 1998 and January 25, 1999, issued u/s 49 of the Act of 1948, as well as notification dated August 7, 2000, issued u/s 24 of the Uttar Pradesh Electricity Reforms Act, 1999, are in the nature of legislations and, therefore, the principle of promissory estoppel would not apply to them.

15. At this Stage, it would be relevant to notice certain principles which have emerged from the reported decisions of this Court,

16. In State of Rajasthan and Another Vs. J.K. Udaipur Udyog Ltd. and Another, , pursuant to its Fourth New Industrial Policy, the State of Rajasthan had framed and notified the Rajasthan Sales Tax/ Central Sales Tax Exemption Scheme for Industries, 1998 u/s 15, Rajasthan Sales Tax Act, 1994 and Section 8(5) of the Central Sales Tax Act. The Scheme was brought into force w.e.f. 1.4.1998. The Scheme inter alia provided for grant of exemption to industrial units from payment of sales tax on intra-State and inter-State sale of goods and by-products manufactured within the State of Rajasthan. The cement plants and units were also entitled to exemption at the flat rate of 25% for eleven years.

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Sick units were also granted such benefits. The Respondents before this Court were the Companies manufacturing cement in different units in Rajasthan and were sick industrial companies. They had applied for exemption under the Scheme claiming benefits. On 20-2-1999, the Director of Industries had certified that the application of the Respondents was complete. During the pendency of the application of the Respondents for sanction, a corrigendum dated 30.9.1999 was issued by the Government replacing the words "new units at Sl. No. 1" in respect of the units covered by Sl. No. 4(a), with "new units at Sl. Nos. 1, 2 and 3 as the case may be". The result of the corrigendum was that sick cement units were placed under Sl. No. 4(a) on a par with new cement units under Sl. No. 3. The Respondents submitted a representation to the Screening Committee that the corrigendum should not affect their case. The Screening Committee permitted the Respondents to avail of the benefits available under the corrigendum. Consequently, no sanction and no eligibility certificate was ever issued to the Respondents. Since the Respondents had been availing of the higher rates of exemption against Sl. No. 1, provisional assessment orders and notices were issued to the Respondents over the differential sales tax. The Respondents then approached the Rajasthan High Court. Their grievance was that their rights under the Scheme had crystallized w.e.f. the date of certification of their applications and could not have been taken away by the corrigendum with retrospective effect. A learned Single Judge of the High Court held that the Respondents were right in contending that the impugned corrigendum amounted to amendment but further held that the Government was competent to modify the Scheme. However, it was held that the corrigendum would be applicable from 7.1.2000 i.e. the date of its publication in the Official Gazette. A Division Bench, while upholding the said decision, further held that the rights available to the Respondents under the original Scheme were substantive rights and could not be affected adversely unless the subsequent notification clearly manifested an intention to do so. The Division Bench held that no such intention was manifested by the corrigendum and that the amendment was arbitrary and violative of Article 14 being discriminatory vis-a-vis other sick industries. It was also held that the amendment could not discriminate against sick cement plants which had not availed of benefits of tax exemption earlier. It was concluded by the Division Bench that the benefits available to the Respondents under the original Scheme were not affected by the corrigendum. This Court while allowing the appeal has held as under in paragraph 25 of the reported decision:

An exemption is by definition a freedom from an obligation which the exempted is otherwise liable to discharge. It is a privilege granting an advantage not available to others. An exemption granted under a statutory provision in a fiscal statute has been held to be a concession granted by the State Government so that the beneficiaries of such concession are not required to pay the tax or duty they are otherwise liable to pay under such statute. The recipient of a concession has no legally enforceable right against the Government to grant of a concession except to enjoy the benefits of the concession during the period of its grant. This

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right to enjoy is a defensible one in the sense that it may be taken away in exercise of the very power under which the exemption was granted. (See Shri Bakul Oil Industries and Another Vs. State of Gujarat and Another, , Kasinka Trading and another, etc. etc. Vs. Union of India and another, and Shrijee Sales Corporation and Another Vs. Union of India (UOI),

From the principle enunciated in the above mentioned decision there is no manner of doubt that the rebate which was granted to the Petitioners, was, by definition, a freedom from an obligation which the Appellants otherwise were liable to discharge. The rebate was a privilege granting an advantage which was not made available to others. The rebate granted u/s 49 of the Electricity Supply Act of 1948 was, therefore, a concession granted by the State Government so that the beneficiaries of such concessions were not required to pay the electricity tariff, they were otherwise liable to pay under the said Act during the period of its grant. The Petitioners, as recipients of a concession, accepted to enjoy the benefits of the concession during the period of its grant. This right to enjoy was a defensible one in the sense that it was liable to be taken away or withdrawn in exercise of the very power under which the exemption was granted.

17. Again in Arvind Industries and others Vs. State of Gujarat and others, , Government had withdrawn a concession given to a new industry. The claim of the industry was that such a course was not open to the Government. It was claimed by the Government that notification giving concession did not contain any promise that the benefits given to new industry would not be altered from time to time. While rejecting the claim of the industry as not tenable, this Court has held that Government is entitled to grant exemption to industries having regard to the industrial policy of the Government, but it is equally free to modify its industrial policy and grant, modify or withdraw fiscal benefits from time to time. What is important to notice is that this Court has held that in such circumstances the principle of promissory estoppel would not be attracted. What this Court finds is that several reported decisions some of which are rendered by the larger Bench were not considered by Division Bench of this Court while delivering judgment dated 10.12.2007 in Civil Appeal No. 1215 to 1216 of 2001. The legal effect would be that the finding recorded by the Division Bench of this Court, in the above mentioned case that the notification dated 18.6.1998 and 25.1.1999 reducing the rate of rebate from 33.33% to 17% were bad in law will have to be regarded as not laying down correct proposition of law. Thus, the Petitioners in the present writ petition are not entitled to claim promissory estoppel against the Government and would not be entitled to any benefit on the basis of two Judge Bench judgment of this Court referred to earlier.

18. From the above discussion, it is clear that the Petitioners cannot raise plea of estoppel against the notification dated August 7, 2000 reducing Hill Development Rebate to 0% as there can be no estoppel against the statute.

19. The next question, which falls for determination of this Court is whether the term stipulated in the contract entered into between the Petitioners and the U.P.

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State Electricity Board (now the Corporation) stipulating that the Respondent No. 2 would give 33.33% rebate to the Petitioners, is legally enforceable and whether in view of the said term the Respondent No. 2 precluded from changing the tariff rates.

20. It is pertinent to notice that before starting the industrial units, the Petitioners had entered into agreement with the then U.P. State Electricity Board. Clause 7 of this agreement provided that the rates/tariff fixed/ revised by the supplier, i.e., the Respondent No. 2 from time to time, will be applicable to the Petitioners. Clause 7 of the agreement reads as under:

(7) a. The consumer shall pay for the supply of electric energy at the rates enforced by the supplier from time to time as may be applicable to the consumer.

b. The rate schedule applicable to the consumer at the time of execution of this agreement is annexed hereto as Annexure-2 H.v. -1.

c. The Rate Schedule above mentioned may, at the discretion of the supplier be revised by the supplier from time to time and in the case of revision the rate schedule so revised shall be applicable to the consumer.

d. Any levy such as sales tax, excise duty, electricity duty or any other charges by whatsoever name called by Central, State Government or other competent authority on the electricity, supplied to the consumer shall also be paid by the consumer." Sub-clause (a) of Clause 7 of the agreement in most clear terms provided that the consumer, i.e., the present Petitioner shall pay for the supply of electric energy at the rates enforced by the supplier, i.e., the Respondent No. 2 herein from time to time. Though the rate schedule applicable at the time of execution of the agreement between the Petitioners and the Respondent No. 2 was annexed to the agreement, it was provided specifically again in Sub-clause (c) of Clause 7 that the rate schedule above mentioned may, at the discretion of the supplier, be revised by the supplier from time to time and in case of revision the rates schedule so revised shall be applicable to the consumer. It was also provided in the agreement that any levy such as sales tax, excise duty, electricity duty or any other charges by whatsoever name called by Central or State Government or other competent authority on the electricity supplied to the consumer shall also be paid by the consumer. Therefore, in view of the terms and conditions stipulated in Clause 7 of the agreement, this Court is of the firm opinion that the Petitioners are precluded from challenging revision of the tariff in exercise of statutory powers conferred on the Respondent No. 2 in the larger public interest. This Court does not find any prohibition in the agreement by which the Respondent No. 2 was bound to give 33.33% rebate to the Petitioners in all the circumstances or was precluded from changing the tariff rates. The Petitioners being parties to the agreement now cannot turn around and argue that the Respondent No. 2 is bound to give 33.33% Hill Development Rebate and can never change the tariff rates to the detriment of the Petitioners. On the facts and in the circumstances of the case, therefore, this Court holds that the

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Respondent No. 2 is not bound to give 33.33% Hill Development Rebate to the Petitioners for the period specified in the notification irrespective of change in the tariff rates.

21. Another question, which needs to be answered, is whether the Court of law would be justified in interfering with the policy decision of the Government either to grant or not to grant rebate to certain industrial units. From the record of the case, it is evident that before August 8, 2000, the U.P. State Electricity Hoard had power to frame/fix tariff u/s 49 of the Electricity (Supply) Act, 1948. However, thereafter tariff was determined and is being determined by U.P. Electricity Regulatory Commission under the provisions of U.P. Electricity Reforms Act, 1999. What is relevant to notice is that earlier the U.P. State Electricity Board had power to make/fix a tariff other than the uniform tariff contemplated u/s 49(3) of the Act of 1948 for the electricity to be supplied to its consumers having regard to the geographical position of any area. However, this power was not conferred on U.P. Electricity Regulatory Commission under the Act of U.P. Electricity Reforms Act, 1999. As the power to fix/ prescribe the different rates of tariff in relation to geographical area is not provided and/or is not available u/s 24 of the Act of 1999, this Court is of the opinion that the Regulatory Commission could not have issued such differential tariff giving rebate to certain industries set up having particular geographical location.

22. Mr. Shanti Bhushan, learned Counsel for the Petitioners, argued that u/s 12 of the Act of 1999 the State Government was entitled to issue policy directions to the Regulatory Commission just as it had earlier power to issue policy directions to the U.P. State Electricity Board u/s 78 of the Act of 1948. It is true that the State Government has power to issue policy directions to the Commission under the new Act. Therefore, the next question which arises for consideration is whether such a policy direction in fact was given by the State Government to the Regulatory Commission and the answer is obviously 'No'. There is no manner of doubt that the State Government could have issued direction regarding subsidy to be made available by the State Government to the licensee. However, on February 3, 2010, when the SLP was listed for hearing before this Court, the Court had directed the learned Counsel for the State of Uttarakhand to seek instructions from the Government whether the State Government was still willing to extend subsidy of development rebate of 33.33% to the industrial units set up in hill area, as was done by the erstwhile State Government of Uttar Pradesh. Accordingly, the learned Counsel for the State of Uttarakhand had taken appropriate instructions and as mentioned earlier, filed a short affidavit on April 19, 2010 for consideration of the Court. In the said affidavit it is specifically mentioned that with an objective to accelerate the pace of industrial development in remote and backward hill region and to remove economic backwardness of the hill region by generating the employment opportunities with the possibility to check the brain drain from this area and keeping in view the uneven geographical situation, the environmental and social conditions, the Government of Uttarakhand has framed "Special Integration Industrial

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Development Policy" for hills and remote areas of Uttarakhand, but as far as power concession to new industrial units is concerned, the aforesaid policy does not provide for any concession to the steel industries established in the State because it was not considered necessary in the larger public interest to grant such subsidy. In the said affidavit it is mentioned that in view of lack of provision in the industrial development policy, the concession of Hill Development Rebate of 33.33% earlier granted by the Uttar Pradesh Government cannot be extended to the steel industries in the State of Uttarakhand. Whether to grant rebate to certain industrial units located in an area is basically and essentially a policy decision. The policy decision as reflected in the affidavit dated April 19, 2010 filed by Nitesh Kumar Jha, Additional Secretary, Government of Uttarakhand, Department of Energy, is neither found to be unreasonable nor found to be arbitrary in any manner. The Special Integration Policy introduced by the State of Uttarakhand for hills and remote areas of Uttarakhand is not 5 subject-matter of challenge by the Petitioners in the present writ petition. Grant of power concession to new industrial units is not found by the State Government to be in larger public interest. This Court, while exercising powers under Article 32 of the Constitution cannot substitute the opinion and/or view of the Government and come to the conclusion that power, concession to new steel industries is in the larger public interest and, therefore, should be made available to the new steel industries. Such a course is not permissible at all. The policy having not been found either arbitrary, capricious or unreasonable, this Court cannot interfere with the policy decision of the State Government. As observed earlier, there is nothing on record to show that any policy direction was given by the State of Uttarakhand to the Electricity Regulatory Commission to provide for rebate to industrial units situated in the hill area. The policy of the State Government in not granting rebate to industrial units situated in a particular area is basically a fiscal decision and in absence of arbitrariness or unreasonableness in the said policy, it cannot be a subject-matter of judicial review of this Court while exercising powers under Article 32 of the Constitution Therefore, this Court holds that no case is made out by the Petitioners to interfere with the said policy.

23. It will not be out of place to mention that in view of Section 29 of the Electricity Regulatory Commission Act, 1998, the licensee, i.e., the Respondent No. 2 has no authority to enforce any tariff other than the approved by the Commission. In view of Section 24 of the U.P. Electricity Reforms Act, 1999 the licensee, i.e., the Respondent No. 2 lacks power/authority to modify the tariff determined by the Commission and in case of any violation, the licensee would be exposing itself to the punishment prescribed u/s 28 of the Act of 1999. This Court in Association of Industrial Electricity Users Vs. State of Andhra Pradesh and Others, as well as in West Bengal Electricity Regulatory Commission Vs. C.E.S.C. Ltd. etc. etc., and in BSES Ltd. Vs. Tata Power Co. Ltd. and Others, , has held that the licensee has no power to amend and/ or modify the tariff determined by the Regulatory Commission. Grant of reliefs claimed by the Petitioners would amount to compelling them to act against the statute. Such a

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course is not permissible while exercising powers under Article 32 of the Constitution. Thus the Respondent No. 2 Corporation cannot be directed to amend or modify the tariffs determined by the Commission nor the Petitioners would be entitled to seek any direction against the licensee to amend or modify the tariff determined by the Commission.

24. What is relevant to notice is that if the power to reduce the rebate to 17% is assumed to be available, then power to reduce the rebate to 0%, as is done by the notification dated August 7, 2000, is also available. The Petitioners have not challenged previous judgment of the High Court wherein this Court has held that the rebate would not be available/ cannot be given after coming into force of the U.P. Electricity Reforms Act, 1999. The Petitioners have also not challenged the tariff rates made applicable from September 16, 2001 to March 31, 2002 vide order dated September 1, 2000 by the U.P. Electricity Regulatory Commission, wherein no rebate based on geographical area has been provided. The discussion made above makes it very clear that the Petitioners have not been differently treated nor the tariff is sought to be recovered in any illegal or arbitrary manner. Under the circumstances, this Court does not find breach of the salutary provisions of Article 14 of the Constitution. As no right guaranteed to the Petitioners under Article 14 of the Constitution is found to have been breached, the present petition filed under Article 32 of the Constitution cannot be entertained and the Petitioners are not entitled to the reliefs claimed in the instant petition. Therefore, the Petitioners are precluded from challenging notification dated August 7, 2000 withdrawing the rebate in electricity rates.

25. For the foregoing reasons, the petition fails and is hereby dismissed. Rule is discharged. There shall be no order as to costs.

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