

**(1977) 01 P&H CK 0007**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : L.P.A. No. 368 of 1975**

|                                      |    |            |
|--------------------------------------|----|------------|
| State of Punjab and Others           | Vs | APPELLANT  |
| Amrit Banaspati Co., Ltd. and Others |    | RESPONDENT |

**Date of Decision :** 25-01-1977

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Evidence Act, 1872 — Section 115

**Citation :** AIR 1977 P&H 268

**Hon'ble Judges :** O. Chinnappa Reddy, C.J.; Kulwant Singh Tiwana, J

**Bench :** Division Bench

**Advocate :** D.S. Nehra and Arun Nehra, for the Appellant; H.L. Sibal L.M. Suri, S.C. Sibal, N.R. Khaitan, U.K. Khaitan and P.V. Kapur, for the Respondent

## Judgement

O. Chinnappa Reddy, C.J.—The appeal under Clause 10 of the Letters Patent and the Civil Writ Petition may be disposed of by a common judgment. We proceed to do so.

2. In 1966, the Government of Punjab announced its "New Policy" in regard to Industrial Development and issued a brochure containing the details of the "New Policy". It was stated in the brochure that though Punjab had made considerable progress in "Small Scale Industry", the State was lagging behind in "Large Scale Industry." As it was felt that "Large Scale Industries" were necessary for the survival of "Small Scale Industries", the Government announced that "a package of incentives" would be given to those setting up selected industries at any of the three "focal points" of Dhandari Kalan, Rajpura and Mohali. The concessions and incentives offered, according to the brochure, were:

(1) Land to be acquired at focal points and price to be paid in easy instalments, interest being calculated at 4 per cent; the facility to be extended, in exceptional cases, to places within a radius of five miles from the focal point;

(2) Capital participation by the Government or the Punjab Financial Corporation

upto 20 per cent of the paid up capital of new ventures;

(3) Loans equal to the cost of a generating set, 20 per cent of which to be treated as a subsidy and the balance to be repaid in 20 annual instalments;

(4) Refund of purchase and sales tax including inter-State Sales Tax for a period of five years to new and expanding units;

(5) 50 per cent of the cost of feasibility report to be met by Government If project was established.

(6) Price preference of 2 1/2 per cent over the existing rate of 5 per cent for large industries to be allowed for a period of ten years on purchases made by the Government.

(7) No electricity duty to be charged for a period of five years.

3. Amrit Banaspati Co. Ltd. (Respondent in the Letters Patent Appeal and the petitioner in the Civil Writ Petition) who was already engaged in the business of manufacture of Vanaspati at Ghaziabad was attracted by the concessions and incentives offered by the Government of Punjab and started negotiations for the setting up of a factory for the manufacture of Vanaspati in Punjab. They wrote a letter dated 1-6-1968 to the Chief Minister of Punjab with copies to the Secretary, Industries Department, Director of Industries etc. requesting information regarding the concessions and facilities which would be made available if they set up a Vanaspati Unit in Punjab. In reply to this letter, the Director of Industries sent them a copy of the booklet mentioned by us, and briefly summarised in his letter dated 2-7-1968 the important concessions, which were available, as follows:--

"1. Exemption from sales tax, purchase tax and Inter-State Sales Tax for five years.

2. Participation by the State Government directly or through the Punjab Financial Corporation up to a maximum of 20 per cent of the equity subject to the State contribution not exceeding the contribution of promoters of the project.

3. 2 1/2 per cent additional marginal preference raising the total to 17 1/2 per cent for Small Scale Industries and 7 1/2 per cent for Large Scale and medium industries;

4. Exemption from Electricity Duty for five years;

5. Preference in electricity connection."

The Director of Industries also stated that in case the Company required some additional concessions, the Government would be prepared to consider them favourably. The Director also expressed the readiness of the Government to recommend to the Government of India the Company's application for a licence for establishing a new Vanaspati Unit.

4. After the Company received the letter of the Director of industries, there was some telephonic conversation with Shrimati Sarla Grewal Secretary to Government of Punjab, Industries Department, resulting in the Secretary inviting the Company's representatives to meet her on 16-10-1968 and discuss with her the question of setting up a Vanaspati Unit in Punjab. On 9-10-1968, the Company wrote to Shrimati Sarla Grewal requesting her to arrange the presence of officials of the Electricity Board and the Sales Tax Department at the meeting to be held on 16-10-1968.

5. There was a meeting between Shrimati Sarla Grewal and Shri Khaitan representing the Company, as arranged, on 16-10-1968. There was much controversy as to what took place at the meeting. According to the averments in the writ petitions Shrimati Grewal assured the Company that the concessions and incentives referred to in the Policy Statement would be available to the Company. She persuaded the Company to set up the Vanaspati plant at Rajpura where the Government was encountering difficulties in attracting entrepreneurs to set up industries. It was slated that Shrimati Grewal told the Company that since a plot of the extent of 12 to 15 acres which was required by the Company was not available in the area already acquired by the Government, the Company itself might purchase the land within the focal point at Rajpura. If necessary, it was stated, she assured the Company that the plot purchased by the Company would be included in the focal point at Rajpura. On these assurances, the Company agreed to set up a factory for the manufacture of Vanaspati of the capacity of 100 tonnes per day at Rajpura within the focal point.

The averments of the petitioner were not admitted in the returns filed by Shri Khosla on behalf of the Government of Punjab. Shri Khosla stated that with reference to the meeting held on 16-10-1968, the only note by the Secretary was "Meeting held. pi. Put up. Sd/- Sarla Grewal 17-10-1968." Though there was no contemporaneous note by Shrimati Sarla Grewal as to what took place on 16-10-1968, we have now on record the note put up by her to the Industries and Finance Ministers on 1-4-1969 in which she referred to the meeting that took place with the Company's representative in October, 1968. She stated :--

"In October, 1968, Shri Khaitan of Amrit Vanaspati Factory of Ghaziabad approached me and the D. I. for location of their Vanaspati plant of 100 tonnes capacity per day in Punjab. These people since they were already very much in the business and since their vegetable ghee was meeting 20 to 25% of Punjab's needs of Vanaspati, it was felt that if we encourage these people to come to Punjab it will give great boost to industrial growth. These people were attracted mainly to Punjab on account of the availability of raw material, i. e., groundnut which are in plenty roundabout. They consequently asked for a plot in Dhandari Kalan. At that stage, we had 2/3 applications for setting up of Vanaspati plants at Ludhiana and since our Rajpura Estate was very much neglected it was decided that we persuade this party to locate its factory at Rajpura as by their coming there, it was felt, that several small and ancillary units would also get located

and our plots would be sold. In fact Shri Khaitan, during the course of his discussion with me mentioned that this project which would be costing nearly Rs. 1.5 crores would necessitate setting up of other small Units tin makers who would come over from U. P. and settle at Rajpura. Taking all these factors into consideration I mentioned this matter to Mr....and also informally to FS also at that stage and it was decided that we get this party located at Rajpura. Unfortunately, the demand by this party was in one place to the tune of 15 to 20 acres and since our plots were only of 1-1.5 acres of size it was decided that they may be allowed to locate their plot near about our focal point so that it could be integrated finally in our future expansion of the Industrial Estate at Rajpura which yet shows no sign of life and consequently it was felt that by bringing this party more industries of allied nature Would come here. In plan for 1969-70 the F.D. was aware that we have very little money set aside for further acquisition of land. Realizing this, we therefore, suggested to this party to go in for purchase of land themselves as we were not sure whether we would be able to have enough funds to acquire more land at Rajpura particularly when our earlier plots had not been sold out."

6. On 25-10-1968, the Company wrote to the Secretary of Industries undertaking to set up the factory for the manufacture of Vanaspati at Rajpura, one of the focal points mentioned in the Policy Statement. It was mentioned in the letter that a site had been shown to them by the representatives of the Industries and Town planning Departments and that they were assured that it would be included within the focal point at Rajpura. The Company wanted it to be made clear whether the concessions relating to refund of purchase and sales tax including Inter-State Sales Tax and the exemption from electricity duty would be available for a period of five years from the date of commencement of production. The Company suggested that instead of refunding the amount of purchase and sales tax including Inter-State Sales Tax, the Government might consider the desirability of making a capital grant every quarter for a period of five years of an amount equivalent to the amount of purchase and sales tax including Inter-State Sales Tax. The Company requested the Government to send their "confirmation" without further delay.

7. Thereafter, the Company purchased about 22 acres of land in Rajpura and also placed orders for the purchase of plant and machinery of the value of about Rs. 35 lacs. On 11-1-1969, the Company sent a telegram to Shrimati Sarla Grewal, Secretary, Industries Department, in the following terms:--

"Please refer our earlier letters (.) Have already purchased land in Rajpura for over two lacs near focal point as suggested and approved by you and town planner (.) Placed orders for machinery over forty five lacs (.) However confirmation of points mentioned our letter of twenty fifth October 1968 not forthcoming which hinders further progress hence request confirm concessions granted immediately enable complete project (.) Also requested personally by our manager during interview."

This was followed up by two letters dated 13-1-1969 and 23-1-1969, in both of which the attention of the Secretary, Industries Department was invited to the letter dated 25-10-1968. In the letter dated 13-1-1969 the Company referred to the various concessions mentioned in the Policy Statement of the Punjab Government issued in December 1966 and wanted confirmation that the land chosen by the Company would fall within the focal point and the concessions would be granted to them in the manner requested in the letter dated 25-10-1968. In the letter dated 23-1-1969, it was pointed out that the land purchased by the Company was adjacent to the focal point area of Rajpura. Confirmation of the concessions mentioned in the letter dated 25-10-1968 was requested. A reference was made to assurances said to have been given at earlier interviews that the location of the factory at the present site would not lead to discrimination against the Company in any way and that the concessions asked for in the letter dated 25-10-1968 would be given to them.

8. On 13-2-1969, after obtaining the sanction of the President of the Union of India, the Government of Punjab made rules which were to take effect from 1-4-1969 regarding grant of incentives to industries. Rule 3, para, (a) prescribes the procedure for registration of new industries in focal points. It is provided that an application for the approval of an industrial undertaking to be set up in a focal point shall be made to the Director of Industries, Punjab, Chandigarh, in the form prescribed. It is further provided that after such investigation as may be considered necessary, a certificate of approval would be issued by the Director of Industries to the applicants in the prescribed form. Rule 4, para. III deals with "Refund of Sales/Purchase Tax and Inter-State Sales Tax". An industrial concern desiring to obtain refund of sales/purchase tax is to get itself registered with the Director of Industries by making an application in the prescribed form. An application for refund is required to be made to the Director of Industries every financial year through the District Excise and Taxation Officer in the prescribed form accompanied by various documents. The District Excise & Taxation Officer is required to verify the particulars given in the application and thereafter forward the same to the Director of Industries. The Director of Industries is then authorised to sanction payment of refund.

9. On 25-1-1969, the Director of Industries wrote to the Secretary, Industries Department that the Company which had established the Vanaspati Industry in the Rajpura focal point, was eligible for the various facilities and concessions under the scheme and that they would be entitled to refund of sales/purchase tax and Inter-State Sales Tax for a period of five years. The Director observed that provision for refund of these payments had already been made under the "Expenditure Head" of the Industries Department. He, therefore, recommended the acceptance of the proposal of the Company that instead of refunding the taxes paid by them, an amount equal to the taxes paid by them might be given in the form of capital grant. The Director requested formal clearance of the Finance Department to be communicated at an early date.

10. On 6-3-1969, the Governor of Punjab laid the foundation stone of the factory of Amrit Banaspati Co. at Rajpura. In his speech, the Governor made a reference to the various incentives and concessions offered by the Government of Punjab, including refund of sales/purchase tax and Inter-State Sales Tax for a period of five years. According to the Company, by that date, they had invested and committed themselves to an expenditure of over Rs. 60,00,000/- and had obtained a medium term loan of Rs. 50,00,000/- and a deferred payment guarantee for Rupees 27,00,000/- from the Punjab National Bank.

11. On 1-4-1969, Shrimati Sarla Grewal put up a note to the Industries and Finance Ministers tracing the history of the case and seeking an immediate decision about making the Vanaspati Unit eligible for the grant of concessions either by inclusion of the area within the focal point or specially declaring the industry as entitled to the incentives given under the focal growth point scheme. We have already extracted a part of the note made by Shrimati Sarla Grewal. Shrimati Grewal went on to say in her note that the party had purchased the land with the approval of the Town and Country Planning Department. Construction of buildings had also commenced. She mentioned that the Vanaspati plant was going to give a great boost to the development of Rajpura and that the area purchased by the factory should not be neglected "for purposes of giving concessions to the Vanaspati Unit". On 17-4-1969, the Industries Minister approved the note of Shrimati Grewal and sought early approval of the Finance Department. On 21-4-1969, the Finance Minister directed his department to examine the proposal by 1-5-1969 on a top-priority basis and discuss the matter with him.

12. On 2-5-1969, there was a meeting between the Joint Secretary, Finance Department, Secretary, Industries Department and the State Town Planner and it was decided that the concessions and incentives applicable to a focal point would be given to M/s. Amrit Banaspati Co. Ltd. only in respect of 12 acres of land to be utilised by them for setting up Vanaspati Industry and not in respect of the remaining land purchased by them. It was noted that there would be no harm in giving concessions applicable to focal points- to Amrit Banaspati Co. Ltd. since the Company would have been entitled to the concessions as a matter of right if they had been accommodated in the focal point. It was because they could not be accommodated in the already-acquired area of 70 acres that they had to go out and purchase the land on their own account. It was decided that the Company should be asked to agree formally to the development plans. The Finance Minister also gave his approval to the decision so taken. This appears from the note made by the Under-Secretary, Finance Department on 27-5-1969. On 29-5-1969, the Finance Department wrote to the Director of Industries conveying the sanction of the Government to the grant of "concessions and incentives" applicable to a unit in a focal point of industrial growth to M/s. Amrit Banaspati Co. Rajpura in respect of 12 acres of land to be utilized. by them for setting up a Vanaspati industry.

It was made clear that if any other industry was set up in the remaining area purchased by them, the concessions would not be available to the other industry. The Director was asked to request the Amrit Banaspati Factory to agree to the development plans which were to be got signed by them. Thereafter, the Director of Industries conveyed the order of the Government to M/s. Amrit Banaspati Co. on 16-6-1969. The communication which may be extracted here was as follows :--

"I have to inform you that the State Government have agreed to give the concession and incentives admissible to a unit in the focal point of industrial growth to the Unit proposed to be set up by you for the manufacture of vanaspati ghee on the following conditions:--

1. That you agree formally to the development plans which should be signed by you.
2. That the Unit is set up on 12 acres of land of the 22 acres of land purchased by you which should be utilized exclusively for the establishment of vegetable ghee industry.
3. That these concessions will not be admissible to any other unit that might be set up on the remaining 10 acres of land.

The State Town Planner has been requested to prepare the necessary development plans which will be sent to you for signature as soon as these are received. Thereafter the Government will be requested to issue necessary notification declaring 12 acres of land to be utilized by you exclusively for setting up Vanaspati Ghee manufacturing factory as a focal point for growth of industries."

13. On 21-11-1969, the Government of Punjab published a notification under Rule 2 of the Rules relating to the grant of Incentives to industries specifying the focal point at Rajpura as comprising an area of 81.87 acres. The land of 12 acres on which the Company proposed to set up the industry was included in the focal point.

14. On 26-11-1969, the Company submitted an application for registration as a new industry in the focal point under Rule 3 of the Rules relating to the grant of incentives. Registration was granted on 3-4-1970 by the Director of Industries. The Company was also registered on 21-8-1970 "for the grant of refund of sales/purchase tax under the focal point scheme". The Company went into production in December 1969. During the period January to March. 1969, the Company sold its Vanaspati products in the State of Punjab and was assessed to sales tax of Rs. 8,85,139/-under the provisions of the Punjab General Sales Tax Act. The whole of the tax was paid by the Company. During the same period, the Company also paid an amount of Rs. 35,141.32 by way of Inter-State Sales Tax under the Central Sales Tax Act. Claiming to be entitled for refund of the two amounts of Rs. 8,85,139/-and Rs. 35,141.32, the Company applied for refund of the

amounts on 16-7-1971 and 6-4-1972. As prescribed by the rules, the applications were submitted to the District Excise and Taxation Officer, Patiala. Thereafter, the Company addressed several reminders to the authorities concerned to grant the refund but all to no purpose. Finally, the Company filed C.W.P. No. 1558 of 1972, for a declaration that the Government of Punjab and the Director of Industries were bound to comply with and carry out the representations and assurances contained In the Policy Statement issued in 1966 and the rules for the grant of incentives to industries under the focal point scheme and to grant to the Company the incentives and concessions therein referred. The Company also sought a mandamus for refund of the amounts of Rs. 8,85,139 and Rs. 35,141.32.

15. The stand taken by the Government in the return was that until the letter dated 16-6-1969 was issued to the Company, no assurances were given to the Company that they would be entitled to any of the concessions and incentives available to industrial units in the focal point of industrial growth. It was only on 16-6-1969 that the Company was informed that the Government was prepared to grant the concessions and incentives as were available to industrial units in the focal point of industrial growth. By that time, the policy of the Government had been revised and the Company was entitled only to such concessions and incentives as were available under the revised policy of 14-5-1969. It was stated that under the revised policy refund of sales tax on finished products and on purchase of raw materials would be granted for a period of five years from the date of licence or registration of the unit in respect of (i) direct sales to consumers and (ii) inter-State sales only. It was also stated that immediately after the reorganisation of States, the Government of Punjab constituted a cabinet sub-committee which considered the memorandum on "the Industrial Development-New Policy of Punjab" at its meeting held on 15-12-1966 and decided that no refund of sales tax on indirect sales should be given. It was further stated that the Secretary, industries Department, and the Director of Industries also took part in the meeting of the Sub-Committee and copies of the decisions taken by the Cabinet Sub-Committee were sent to all concerned officers. It was, therefore, said that it was incomprehensible that any one could give any assurance to the petitioner contrary to the decision of the Cabinet Sub-Committee. The Government reiterated its position that they were willing to refund sales tax on sales made direct to consumers.

16. The learned Single Judge who heard C.W. No. 1588 of 1972 was of the view that the Industrial Policy announced in 1966, the assurance contained in the letter dated 2-7-68, the suggestion made to the Company to purchase land at Rajpura, the enormous expenditure incurred by the Company in purchasing land and ordering machinery from January 1969 onwards, the speech of the Governor of Punjab on the occasion of the laying of the Foundation Stone of the factory and the letter dated 16-6-1969 from the Government to the Company created an equitable estoppel against the Government from denying to the petitioner the refund of sales/purchase tax and Inter-State Sales Tax. The learned Single Judge

also held that the assurances had been made by the Government and investments had been made and expenditure incurred by the Company prior to 14-5-1969, the date of the revised policy. On those findings, the learned single Judge issued a writ of mandamus directing the Director of Industries to decide the applications of the Company for refund of sales tax and Inter-State Sales Tax in the light of the observations made in the judgment. The Government was further directed to refund the amount of sales tax and Inter-State Sales Tax declared by the Director of Industries as refundable. The Government of Punjab has preferred L.P.A. No. 368 of 1975 against the judgment of the learned Single Judge .

17. Subsequent to the decision of the learned Single Judge in C.W. No, 1588 of 1972, the Company filed C.W. No. 5653 of 1975 claiming similar reliefs in respect of refund of sales tax/purchase tax and Inter-State Sales Tax for the years 1969-70, 1970-71, 1971-72 and 1972-73 amounting to Rs. 1,74,80,524. This writ petition has been heard by us along with the Letters patent Appeal. Arguments covering a wide ground were advanced before us and we will deal with them one by one.

18. At the outset, Shri D.S. Nehra, the learned counsel for the Government of Punjab, argued that no Mandamus could in law be issued for refund of tax. He relied on the decision of the Supreme Court in *Suganmal Vs. State of Madhya Pradesh and Others*, and a decision of a Full Bench of this Court in *Daulat Ram Trilok Nath and Others Vs. The State of Punjab and Others*, . There can be no dispute that a relief for refund of tax simpliciter will not be granted by the High Court in the exercise of its discretion under Article 226 of the Constitution. But a High Court may order refund of tax as a consequential relief in a proceeding under the Article 226 of the Constitution in which the validity of the assessment itself is challenged. *Sugan Mal's* case itself recognises this position. Again, where the statute provides for grant of refund of tax under certain circumstances and subject to certain conditions, but the taxing authority evades dealing with the application for refund, we do not see any legal impediment in the way of the High Court issuing a direction to the authority to consider the application for refund and to grant the refund to which the applicant may be found to be entitled. Similarly, we see no bar to the grant of such a relief if the petitioner establishes successfully the plea of "Equitable Estoppel" raised by him. Rights based on the doctrine of "Equitable Estoppel" have been enforced or have been held to be enforceable by Courts under Article 226 of the Constitution, (vide *Union of India v. Indo-Afghan Agencies*, AIR 1968 SC 718. *Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another*, ). Nor is it correct to say that administrative orders cannot confer rights enforceable by a Mandamus, (vide *Union of India (UOI) Vs. K.P. Joseph and Others*, ). We do not think that we will be justified in dealing with the present case on such preliminary and technical grounds.

19. A more forceful submission of Shri Nehra was that the entire legal basis of

the learned Single Judge's judgment was wrong. He said that there could be no estoppel against Government and that the doctrine of Equitable Estoppel in its applicability to bind the Government had been abandoned by the Supreme Court since it was first enunciated in *Union of India v. Indo-Afghan Agencies Ltd.* AIR 1968 SC 718 . He relied primarily on certain observations of the Supreme Court in *Excise Commissioner, Uttar Pradesh, Allahabad and Others Vs. Ram Kumar and Others*, , to which we shall refer presently.

20. First, we may know how the principle of Equitable Estoppel is applied against Government and other Public Authority in the countries from where the doctrine has been borrowed. The position in the United States of America can be gathered from the statements of the law in *American Jurisprudence and Corpus Jurig Secundum*. In *American Jurisprudence*, 1st Edition, Vol. 19, page 818, para 166, it is stated,

"A sovereign State is not subject to an estoppel to the same extent as an individual or a private corporation. Otherwise, it might be rendered helpless to assert its powers in government. The doctrine of estoppel is not applied to the extent of impairing sovereign powers of a State such as it exercises, for example, in the enactment and enforcement of police measures. A State cannot be estopped by the unauthorised acts or representations of its officers..... On the other hand, a contract or deed lawfully made by a State may create an estoppel against it if the effect of the estoppel will not be to impair the exercise of the powers of government Moreover, an estoppel may arise against the State out of a transaction in which it acted in a governmental capacity if an estoppel is necessary to prevent loss to another and the perpetration of a fraud and if such estoppel will not impair the exercise of the sovereign powers of the State."

Again at page 822, (para 169) it is stated:--

"The United States is not subject to an estoppel which impedes the exercise of the powers of government. It is not estopped to deny the validity of a transaction or agreement which the law does not sanction, nor does an estoppel arise through an act or representation made by an officer or agent without authority to act for the government in the premises. So far, however, as the United States acts in a proprietary capacity or enters into contract relationships, an estoppel may be asserted against it provided the functions of the Government are not impaired thereby. In other words, the law of estoppel, in a proper case, applies to the government."

21. In *Corpus Juris Secundum*, Vol. 31, (para 138 onwards) it is explained that though broadly there can be no estoppel against the United States or a State, nevertheless, subject to limitations and exceptions, the doctrine of equitable estoppel may in a "proper case" apply as against the federal and State Governments. It is stated at page 412,

"When acting in its sovereign or governmental capacity, the United States or a State ordinarily is not estopped. The doctrine of estoppel will not be applied to

deprive the government of the due exercise of its police power, or to affect public revenues or property rights, or to frustrate the purpose of its laws or thwart its public policy.

"On the other hand, when functioning in a proprietary, as distinguished from a governmental capacity, the doctrine of estoppel may be applied to the United States or a State."

22. In England, in recent years, the extension of the doctrine of Equitable or Promissory Estoppel against Public Authority has been much asserted and applied by Lord Denning in *Robertson v. Minister of Pensions*: 1949 (1) KB 227 in *Falmouth Boat Construction Co. Ltd. v. Howell* 1950 (2) KB 16 in *Wells v. Minister of Housing and Local Government* 1987 (1) WLR 1000 in *Lever Finance Ltd. v. Westminster (City) London Borough Council* 1970 (3) WLR 732 and in *Re: Liverpool Taxi Owners' Association* 1972 (2) All ER 589. In *Robertson's* case, he said,

"The Crown cannot escape by saying that estoppels do not bind the Crown, for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so as to fetter its future executive action..... In my opinion, the defence of executive necessity is of limited scope. It only avails the Crown where there is an implied term to that effect or that is the true meaning of the contract . The War Office letter is clear and explicit and I see no room for implying a term that the Crown is to be at liberty to revoke the decision at its pleasure and without cause."

23. When Lord Denning said that the doctrine that estoppels do not bind the Crown had long been exploded, he was perhaps having in mind the observations of Atkin J. in *A.G. to the Prince of Wales v. Collom*: 1916 (2) KB 193, when he had said,

"A further point was raised that no estoppel binds the Crown and that this equity is based upon estoppel. There is authority for the general proposition so far as estoppel by deed is concerned. I know of no authority for the general proposition as applied to estoppel in pais. But I think that it is established that equitable defences are available against the Crown. See *A.G. for Trinidad and Tobago V. Bourne* 1895 AC 83 and this very principle laid down in *Ramsden v. Dyson* (1866) LR 1 HL 129 was applied against a claim of the Crown in a decision of the Judicial Committee in *Plimmer v. Mayor etc. of Wellington* 1884 AC 699".

24. In the case of *Robertson v. Minister of Pensions* (1949) 2 KB 227 there was not merely the question whether an estoppel could bind the Crown but also the further question whether the Minister of Pensions was bound by a representation made by the War Office in regard to a matter which was within the exclusive competence of the Minister of Pensions. Denning J. held that the Minister was bound. He said,

"In my opinion if a government department in its dealings with a subject takes it upon itself to assume authority upon a matter with which he is concerned, he is entitled to rely upon it having the authority which it assumed. He does not know, and cannot be expected to know, the limits of its authority."

25. These latter observations were repeated by Denning L. J. in *Falmouth Boat Construction Co. Ltd. v. Howell* (1950) 2 KB 16 and they attracted severe comment from the House of Lords in *Howell v. Falmouth Boat Construction Co. Ltd.* 1951 AC 837. Lord Simonds after quoting Denning L. J.'s observations said:

"My Lords, I know of no such principle in our law nor was any authority cited. The illegality of an act is the same whether or not the actor has been misled by an assumption of authority on the part of a government officer however high or low in the hierarchy..... The question is whether the character of an act done in face of a statutory prohibition is affected by the fact that it has been induced by a misleading assumption of authority. In my opinion the answer is clearly No."

Lord Normand also was equally severe in his criticism of Denning L. J.'s observations. But what is worthy of notice is that the criticism was confined to the observations second extracted by us and not the observations first extracted. The criticism was with regard to the statement that a subject was entitled to rely even upon a misleading assumption of authority by a government department. There was no criticism of his other observations :

"The Crown cannot escape by saying that estoppels do not bind the Crown, for that doctrine has long been exploded etc."

Sir Alexander Turner in his second edition of *Spencer Bower's Estoppel by Representation* notices this and says

"A more recent authority is *Robertson v. Minister of Pension* 1949 KB 227 a promissory estoppel case, whose authority, though lessened by criticism much as appear in *Howell v. Falmouth Boat Construction Ltd.* may be regarded as untouched on this point."

The point stated by Sir Alexander Turner was,

"The Crown, regarded simply as a Corporation Sole, is amenable to the law of estoppel by representation in the same way as other Corporation Sole."

He referred to the cases of *A.G. of Victoria v. Evershank* : LR 6 PC 354, *Plimmer v. Wellington Corporation*: (1884) 9 AC 699 *Davenport v. R*, 3 AC 115.

26. Again in *Liverpool Taxi Owners' Association* 1972 2 All ER 589 Lord Denning said.

"The other thing I would say is that the Corporation were not at liberty to disregard their undertaking. They were bound by it so long as it was not in conflict with their statutory duty, it is said that a Corporation cannot contract itself out of its statutory duties..... But that principle does not mean that a

Corporation can give an undertaking and break it as they please. So long as the performance of that undertaking is compatible with their public duty, they must honour it."

27. of course, estoppel it has been said, cannot avail "to release the plaintiff from an obligation to obey such a statute (a statute imposing a duty of a positive kind), nor can it enable the defendant to escape from a statutory obligation of such a kind on his part." (Vide AIR 1937 114 (Privy Council) . This rule has been extended to statutory discretion and it has been said,

"I can see no logical distinction between a case, such as that of an estoppel being sought to be raised to prevent the performance of a statutory duty and one where it is sought to be raised to hinder the exercise of a statutory discretion. After all, in a case of discretion there is a duty under the statute to exercise a free and unhindered discretion." (per Lord Parker C. J. in *Southend Corporation v. Hodgson Ltd.* 1961 (2) All ER 46: 1962 (1) QB 416.

28. We must notice here that the doctrine of estoppel by representation even in its applicability to private individuals, has certain limits based on considerations of general social policy. It will be useful to refer here to a decision of the Privy Council in *Kok Hoong v. Leong Cheong Mines* 1964 (1) All ER 300 where the extent to which considerations of general social policy may limit the doctrine of estoppel has been explained as follows:--

"..... a more direct test to apply..... is to ask whether the law that confronts the estoppel can be seen to represent a social policy to which the Court must give effect in the interests of the public generally or some sections of the public, despite any rules of evidence as between themselves that the parties may have created by their conduct or otherwise..... General social policy does from time to time require the denial of legal validity to certain transactions by certain persons. This may be for their own protection as in the case of the infant or other category of persons enjoying what is to some extent a protected status, or for the protection of others who may come to be engaged in dealings with them, as, for instance, the creditors of a bankrupt. In all such cases there is no room for the application of another general and familiar principle of the law that a man may if he wishes, disclaim a statutory provision enacted for his benefit, for what is for a man's benefit and what is for his protection are not synonymous terms. Nor is it open to the Court to give its sanction to departures from any law that reflects such a policy, even though the party concerned has himself behaved in such a way as would otherwise tie his hands,"

29. Thus, it appears that in England the doctrine that estoppels do not bind the Crown was "exploded" long ago. The present position is that the Crown may be bound by the representation of an officer acting within the scope of his authority but not if it prevents the performance of a statutory duty or hinders the exercise of a statutory discretion or allows someone to escape from discharging a statutory obligation. The doctrine of "executive necessity" may yet unfetter the

Crown if a term to that effect may be implied in the representation. Considerations general social policy based on the public interest may also prevent the application of the doctrine of equitable estoppel.

30. The Indian scene is not much different from the American or English, as we shall see presently. But. Shri Nehra urged that the recent pronouncement of the Supreme Court offered no scope for raising an estoppel against the Government. He relied on the following observations of the Supreme Court in *Excise Commissioner, Uttar Pradesh, Allahabad and Others Vs. Ram Kumar and Others*, :--

""It is now well-settled by a catena of decisions that there can be no question of estoppel against the Government in the exercise of its legislative, sovereign or executive powers,"

Though at first blush, it might appear as if the Supreme Court was laying down the proposition that there could not be any estoppel against the Government in the exercise of its powers, legislative, sovereign or executive, a closer examination of the discussion and the precedents considered by the Supreme Court shows that the Supreme Court was not enunciating any such wide principle or was retreating, as claimed by the learned counsel for the appellant, from the earlier decisions in *Union of India v. Indo-Afghan Agencies Ltd.* AIR 1968 SC 718 and other like cases. We do not have any doubt that when the Supreme Court said "there can be no question of estoppel" they were not saying "there can never be any question of estoppel". If they were departing from the earlier view, surely they would have referred to the case of *Indo-Afghan Agencies* or explained it. In the very next sentence following the observations quoted above, the Supreme Court reiterated the approval which had been accorded in *M. Ramanatha Pillai Vs. The State of Kerala and Another*, , to the following statement contained in *American Jurisprudence* 2nd Ed. at page 783 paragraph 123:--

"Generally a State is not subject to estoppel to the same extent as is an individual or a private corporation. Otherwise, it might be rendered helpless to assert its powers in Government. Therefore, as a general rule the doctrine of estoppel will not be applied against the State in its Governmental, public or sovereign capacity."

The words "generally", "to the same extent" and "general" show that estoppel is not ruled out altogether against a State and that estoppel may be permissible to some extent in exceptional cases, though not to the same extent as against an individual since different considerations, including considerations of the public interest and public policy, arise in the application of the doctrine of estoppel against a State.

31. In the case of *M. Ramanatha Pillai Vs. The State of Kerala and Another*, , the question was whether Ramanathan Pillai who had been appointed as Vigilance Commissioner, pursuant to an agreement with the Government could claim that

the Government was estopped from abolishing the post of Vigilance Commissioner thereby terminating his services. The, High Court held that the power to create or abolish a post was a governmental function which the Government had to discharge as a duty owed to the public. There could be no estoppel in respect of a discretion which was to be exercised for the benefit of the public. The Supreme Court affirmed the decision of the High Court holding that the power (o create or abolish a post was a matter of governmental policy to be decided according to "exigencies of circumstances end administrative interest" and "in the interest of administration and general public." The Supreme Court after quoting the observations already extracted by us from American Jurisprudence 2nd Edition page 783 paragraph 123, observed:--

"The High Court rightly held that the Courts exclude the operation of the doctrine of estoppel when it is fundamental that the authority against whom estoppel is pleaded has owed a duty to the public against whom estoppel cannot fairly operate."

It is seen that the Supreme Court did not say in Ramanathan" g case that there could never be any estoppel against the Government. All that the Supreme Court said was that estoppel would be excluded where the Government was discharging a duty which it owed to the public.

32. The next case to which the Supreme Court made a reference in Excise Commissioner, Uttar Pradesh, Allahabad and Others Vs. Ram Kumar and Others, , was, the case of State of Kerala and Another Vs. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. etc., . It is of course elementary that no action of the executive can ever bind the legislature so as to prevent it from making a law, and, once a law is made, the executive is bound to obey the law notwithstanding any promises made earlier. This was the position which was accepted by the Supreme Court in the case of Gwalior Rayon Silk Manufacturing (Wvg.) Company where Palekar J. observed:--

"We do not see how an agreement of the Government can preclude legislation on the subject. The High Court has rightly pointed out that the surrender by the Government of its legislative powers to be used for public good cannot avail the company or operate against the Government as equitable estoppel."

These observations of Palekar J. were quoted with approval in Excise Commr. U.P. v. Ram Kumar. We do not think that there is anything in these observations to justify the wide proposition submitted to us by Shri Nehra.

33. The Supreme Court next referred with approval to the decision of the House of Lords in Falmouth Boat Construction Co. Ltd. v. Howell 1950 (1) All ER 538 to which we have already referred. The observations of Lord Simonds, already extracted by us, were also quoted by the Supreme Court. The observations of the House of Lords have already been explained by us. They were made not with reference to the statement of Lord Denning that the doctrine that the Crown can escape by saying that estoppels do not bind the Crown had long been exploded

but with reference to the view expressed by Lord Denning that even the representation of an officer acting beyond the scope of his authority would bind the Crown. The House of Lords was emphatic that an act induced by a misleading assumption of authority cannot create an estoppel. That was all.

34. Reference was then made to the decision in *Asst. Custodian, Evacuee Property v. B.K. Agarwala* : AIR 1974 SC 2325, where it was held that a reply given by the Assistant Custodian to an enquiry that the property in question was not evacuee property did not bind the department in the exercise of its duties under the Evacuee Property Act . The automatic vesting of evacuee property in the Custodian by virtue of the Act could not be undone by the reply given by the Assistant Custodian in answer to a query.

35. The Supreme Court then referred to a decision of High Court of Jammu and Kashmir in *Malhotra and Sons v. Union of India* AIR 1976 J&K 41 and quoted the following observations with approval:--

"The Court will only bind the Government by its promise to prevent manifest injustice or fraud and will not make the Government a slave of its policy for all times to come when the Government acts in its governmental, public or sovereign capacity."

We will refer to the Jammu and Kashmir case later but for the present it suffices to say that the above-extracted observations only show that the Government cannot be prevented by any estoppel from revising its policy from time to time. No one can dispute that. But it does not follow therefrom that while a policy is in force, the Government is free to depart from its policy whenever it pleases.

36. The Supreme Court next referred to the following observations of the Supreme Court of the United States in *Federal Crop Insurance Corporation v. Merrill* (1947) 232 US 380:--

"It is too late in the day to urge that the Government is just another private litigant, for purposes of charging it with liability, whenever it takes over a business theretofore conducted by private enterprise or engages in competition with private ventures.... Whatever the form in which the Government functions anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority.....And this is so even though as here, the Agent himself may have been unaware of the limitations upon his authority..... "Men must turn square corners when they deal with the Government" does not reflect a callous outlook. It merely expresses the duty of all courts to observe the conditions defined by Congress for charging the public treasury."

In that case, the insurance policy was issued in ignorance of a statutory prohibition. It was thus opposed to statute and therefore wholly unauthorised. The Supreme Court said that the Insurance Corporation which was a wholly

Government owned Corporation would not be bound by the policy issued by its officers.

37. It will, therefore, be seen that of the precedents noticed by the Supreme Court in *Excise Commissioner, Uttar Pradesh, Allahabad and Others Vs. Ram Kumar and Others*, *M. Ramanatha Pillai Vs. The State of Kerala and Another*, was a case where estoppel was negatived against the sovereign and constitutional right of the Government to create or abolish a post in the discharge of Governmental duty to the public. *State of Kerala and Another Vs. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. etc.*, was a case where an estoppel was negatived against the right of the legislature to make laws under the Constitution. The observations in *Howell v. Falmouth Boat Construction Co.* 1951 AC 837 were made to deny an estoppel being raised against the Crown on the basis of an act induced by misleading assumption of authority by an officer of the Crown. *Asst. Custodian of Evacuee Property v. B.K. Agarwala* ( : AIR 1974 SC 2325) was a case where the Court refused to raise an estoppel against the performance of statutory functions by the Evacuee Department. The case of *Federal Crop Insurance Corporation* (1947) 232 US 380 was again a case where the representation made by the officer of the Corporation was in breach of the statute. Thus, the precedents noticed by the Supreme Court in *Ram Kumar's* case do not sustain the wide submission of the learned counsel that there can never be any estoppel against the Government. The observation of the Supreme Court that there can be no question of estoppel against the Government in the exercise of its legislative, sovereign or executive powers must, therefore, be read in the light of the facts of the case and the precedents noticed with approval by the Court. While there can hardly be any dispute that there cannot be any estoppel against the Government in the exercise of its legislative or sovereign powers, there can also be no dispute that there can be no estoppel against the Government in the exercise of its executive powers in so far as policy matters are concerned. In other words, the Government cannot be confined to a particular policy for perpetuity but has the liberty to change or revise its policy from time to time according to the exigencies of circumstances and the demands of the public interest. From the precedents to which the Supreme Court has referred, we think that it is in that sense that the Supreme Court said that there can be no question of estoppel against the Government in the exercise of its executive powers, meaning thereby there can be no estoppel against the Government in the exercise of its public governmental powers.

The facts of the case, which also support this conclusion, were that at the time of the auction of certain liquor shops there was in force a notification of the Government exempting sales of country liquor from levy of sales tax. This notification was subsequently withdrawn by the Government. It was sought to be argued that the notification which was in force at the time of the sale of liquor shops operated as an estoppel against the Government and precluded it from levying sales tax on sales of country liquor. The argument was repelled as the Government had a statutory right to levy sales tax and the Government could

not divest itself of the statutory right. The Government had the right to withdraw the notification exempting country liquor from the levy of sales tax if it felt impelled to do so in the interest of the revenues of the State. It is clear from the facts that what the Supreme Court decided was that there could be no estoppel against the Government in the performance of its statutory duty in levying sales tax.

38. We may now refer to some other decisions of the Supreme Court which were not referred to in *Excise Commissioner, Uttar Pradesh, Allahabad and Others Vs. Ram Kumar and Others*, . The first case that requires to be noticed is *Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others*, . The facts of the case were as follows: In 1865, the Government of Bombay called upon the Corporation of Bombay to remove some markets from a certain site and vacate it. In turn, the Government granted another site to the municipality adding that "the Government did not consider that any rent should be charged to the municipality as the markets will be, like other buildings, for the benefit of the whole community." Thereafter the Corporation invested huge sums of money to erect and maintain markets on the new site. More than half a century later, the Government sought to assess the new site u/s 8 of the Bombay City Land Revenue Act, which enabled such assessment if the Corporation did not have a right in limitation of the right of the Government. The Supreme Court held that though there was no factual grant by the Government to the Corporation because of non-compliance with statutory formalities, nonetheless, the Corporation had acquired the limited right to hold the land in perpetuity free of rent and assessment. Chandrasekhara Aiyer J. observed:--

"The accident that the grant was invalid does not wipe out the existence of the representation of the fact that it was acted upon by the Corporation .....Invalidity of the grant does not lead to the obliteration of the representation. Can the Government be now allowed to go back on the representation, and, if we do so, would it not amount to our countenancing the perpetration of what can be compendiously, described as legal fraud which a Court of equity must prevent from being committed? If the resolution can be read as meaning that the grant was a rent-free land, the case would come strictly within the doctrine of estoppel enunciated in Section 115 of the Indian Evidence Act. But even otherwise, i.e., if there was merely the holding out of a promise that no rent will be charged in the future, the Government must be deemed in the circumstances of the case to have bound themselves to fulfil it. Whether it is the equity recognised in *Ramsden's case* or it is some other form of equity, is not of much importance. Courts must do justice by the promotion of honesty and good faith, as far as it lies in their power. As pointed out by Jenkin C.J. in *Dadoba Janardhan's case*, a different conclusion would be opposed to what is reasonable, to what is probable, and to what is fair."

39. The facts of *Union of India v. Indo-Afghan Agencies* AIR 1968 SC 718 are too well-known to be recapitulated. The Supreme Court while considering the

question of Equitable Estoppel noticed that the Government did not rely upon the defence of executive necessity. It also noticed that there was no plea that the scheme was subject to an implied term that the Union of India was at liberty not to grant the import Certificate for the full value of the goods exported if they deemed it inexpedient to do so.

Then they proceeded to observe:--

"We are unable to accede to the contention that the executive necessity releases the Government from honouring its solemn promises relying on which citizens have acted to their detriment."

After examining the provisions of the scheme, the Supreme Court observed that even if the scheme was in character executive, the Union Government and its officers were not entitled at their mere whim to ignore the promises made by the Government. The Supreme Court further observed that reduction in the amount of Import Certificate might be justified on the ground of misconduct of the exporter in relation to the goods exported or on such considerations such as difficult foreign exchange position or other matters which had a bearing on the general interests of the State, but that was not the plea before them. The Supreme Court, therefore, said:--

"We hold that the claim of the respondents is appropriately found upon the equity which arises in their favour as a result of the representation made on behalf of the Union of India under the Export promotion Scheme and the action taken by the respondents acting upon that representation under the belief that the Government would carry out the representations made by it. On the facts proved in this case, no ground has been suggested before the Court for exempting the Government from the equity arising out of the acts done by the exporters to their prejudice relying upon the representation"

The Supreme Court then referred to its earlier decision in *Collector of Bombay v. Municipal Corporation of the City of Bombay* AIR 1951 Bom 469 and observed that that case was a clear authority that even if the facts did not fall within the terms of Section 115 of the Evidence Act, it was still open to a party which had acted on a representation made by the Government to claim that the Government should be bound to carry out the promises made by it, even though the promise was not recorded in the form of a formal contract as required by the Constitution. Finally, they said--

"Under our Jurisprudence, the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it in order to claim to be the Judge of its own obligations to the citizens on an ex parte appraisal of the circumstances in which the obligation has arisen."

This decision of the Supreme Court is a clear authority for the proposition that in

appropriate cases it is permissible and necessary to invoke the doctrine of equitable estoppel against the Government. But it also recognises the position that the doctrine of equitable estoppel is not absolute and that absolution from title doctrine is permissible where the conduct of the party claiming the estoppel justifies it or where the general interests of the State require it.

40. *Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another*, was a case where the High Court of Bombay had dismissed a writ petition in limine without assigning any reason. It was a case where, on the municipality agreeing to exempt existing factories from levy of octroi duty for a period of seven years, the Government included the industrial area within the limits of the Municipality, The municipality also passed a resolution exempting the existing factories from payment of octroi duty for a period of seven years. Later, when the municipality proposed to levy octroi duty, the owners of the factories invoked the jurisdiction of the High Court under Article 226 of the Constitution to restrain the municipality from collecting octroi duty from them. The Supreme Court held that there were several triable issues and it was not right that the writ petition should have been dismissed in limine. The matter was remanded to the High Court with a direction to issue a rule to the municipality and the Government and to dispose of the petition. In the course of the discussion, the Supreme Court made certain observations which must naturally be understood in the context of the circumstances that they were only considering the question whether the High Court was justified in dismissing the writ petition in limine. The observations made by the Supreme Court were as follows :

"Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice. The obligation arising against an individual out of his representation amounting to a promise may be enforced *ex contractu* by a person who acts upon the promise when the law requires that a contract enforceable a "law against a public body shall be in certain form or be executed in the manner prescribed by statute, the obligation if the contract be not in that form may be enforced against It in appropriate cases in equity.....

If our nascent democracy is to thrive different standards of conduct for the people and the public bodies cannot ordinarily be permitted. A public body is in our judgment, not exempt from liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice."

41. In *Mathra Prashad and Sons Vs. State of Punjab*, by a press note, the Government announced that no sales tax will be charged in respect of sales of tobacco which fell under the Tobacco Vend Fees Act and that any tax already recovered from a dealer would be refunded. Notwithstanding the press note, the Excise and Taxation Officer was proceeding to assess the dealers. A writ of

prohibition was sought against the proposed levy of sales tax. The Supreme Court said:--

"There can be no estoppel against the statute. If the law requires that a certain tax be collected, it cannot be given up, and any assurance that it would not be collected, would not bind the State Government, whenever it chose to collect it."

42. In *Narinder Chand Hem Raj and Others Vs. Lt. Governor, Administrator, Union Territory, Himachal Pradesh and Others*, ), the appellant claimed that at the time of the auction of liquor shops, it was announced by the Deputy Commr. that no sales tax would be levied on the sale of Indian-made foreign liquor, but despite the assurance, the Government levied and collected sales tax from the appellant. An order was sought to restrain the Government and its officers from enforcing the levy of sales-tax on Indian-made foreign liquor. The Supreme Court observed that the power to impose a tax was undoubtedly a legislative power. The levy of tax could only be done by the authority; of law and not by any executive order. Unless the executive was specifically empowered by law to give any exemption it could not say that it would not enforce the law as against a particular person. No Court could give a direction to the Government to refrain from enforcing a provision of law. Referring to the decision. *Union of India v. Indo-Afghan Agencies Ltd.*. AIR 1968 SC 718 the Supreme Court observed:--

"The ratio of that decision again cannot have any bearing on the point under consideration. So long as that scheme was in force, the Government was bound to implement the scheme. This Court did not hold that the Government was not competent to change the scheme. If the scheme had statutory force, it bound the Government as much as it bound the exporters. In that event, the Court shall compel the Government to act according to the scheme. If, on the other hand, the scheme contained merely administrative instructions then the Government having made the representation referred to earlier, on the basis of which the exporters had exported certain goods, the Government was not estopped from going back on the representation made by it."

43. In *Kashmir House v. Deputy Commercial Tax Officer* ILR (1972) AP 125: 1971 Tax LR 1421. a Division Bench of the Andhra Pradesh High Court of which one of us was a member held that a representation made by the Board of Revenue would not estop the assessing authority acting under the General Sales Tax Act from discharging the statutory duty to determine whether a commodity was taxable or not. We had said :--

"There can be no estoppel, legal or equitable, against the statute. What the legislature has prescribed must be done and no authority can contract itself or others out of what is prescribed by the legislature. We are firmly of the opinion that the statutory right and duty to levy tax entrusted by the legislature to the assessing authority cannot be the subject-matter of a bargain and if there is such a bargain, the Court will not enforce a bargain on any alleged ground of estoppel, it would be against the public policy to do so."

Reference was made by us to the decision of Lord Denning in *Robertson v. Minister of Pensions* (1949) 1 KB 227 and we observed :--

"Under our constitution, it is impossible to conceive of a legislative mandate being subordinated to an executive assurance on any theory of agency. Will any Court uphold an assurance given by a Minister to an industrialist that if he started an industry in the Minister's home town, he would not be subjected to tax? Nor are we able to see, with greatest respect to Denning J., why the Crown should be held to be bound by an unauthorised assurance given by a department whose task it was not to decide the question concerned in the assurance and which task was expressly entrusted by law to another authority."

44. *Malhotra and Sons v. Union of India*, AIR 1976 J & K 41. was a case where certain cash assistance was offered by the Government of India to exporters of walnuts as it was thought necessary to do so to offset the losses which the exporters would otherwise incur. When it was realised that the price of walnut had shot up and exporters were making huge profits, the Government unilaterally withdrew the scheme for giving cash assistance. The petitioners claimed that they were entitled to cash assistance since pursuant to the scheme originally formulated by the Government, they had invested huge sums of money in the business of export of walnuts. This plea was negatived by the High Court, in the course of the discussion, the learned Judge made certain observations which were quoted with approval by the Supreme Court in *Excise Commissioner, Uttar Pradesh, Allahabad and Others Vs. Ram Kumar and Others*, . and which have already been extracted by us. With those observations, there cannot be any quarrel. The learned Judge, however, went on to say that the doctrine of equitable estoppel had no application to the State when the State was acting in its public, governmental or sovereign capacity except when it was necessary to prevent fraud or manifest injustice. We do not think that the rule is capable of being stated in such general or broad terms.

45. It is of interest to notice that the judgment of the learned single Judge, which is the subject-matter of the appeal before us, was expressly dissented from by the learned single Judge of the High Court of Jammu and Kashmir on the ground that the decisions of the Supreme Court in *M. Ramanatha Pillai Vs. The State of Kerala and Another*, , *State of Kerala and Another Vs. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. etc.*, and *Asst. Custodian of Evacuee v. B.K. Agarwala* ( : AIR 1974 SC 2325), were not considered by the learned Judge of the Punjab and Haryana High Court. It was urged before by us the learned counsel for the Government of Punjab that the approval accorded by the Supreme Court in *Excise Commissioner, Uttar Pradesh, Allahabad and Others Vs. Ram Kumar and Others*, , to some of the observations of the Jammu and Kashmir High Court in the walnuts case necessarily implied the disapproval by the Supreme Court of the judgment under appeal. We cannot agree with this submission. We mention the submission only to reject it.

46. This kaleidoscope of precedents, Indian. American and English, shows us that

in the final analysis the doctrine of equitable estoppel is but a rule of fair-play founded on the principle of justice, equity and good conscience. Good administration demands that rules of fairplay should be observed by all Governmental and Public Authorities. Good administration requires that the Government and other public authorities should be bound by promises made by them, upon which others have acted as much as parties are bound by similar promises. But, there is a difference. The Government acts for the people. It acts in the public interest. The people, for whom the Government acts, require to be protected against the unauthorised, prejudicial or mischievous acts of the persons who act for the Government. The people cannot be bound by promises which are unauthorised, or, which are prejudicial to the public interest or which are productive of public mischief. Therefore, the need to restrict the application of the doctrine of equitable estoppel to Governmental activity. Therefore, the unwisdom and inexpediency of applying the doctrine too widely. There are, of course, certain obvious limitations: When the Government acts in a sovereign capacity there can never be any question of estoppel. Nor can there ever be an estoppel to prevent Parliament from making a law. Nor can the Government, while functioning as a delegate of Parliament, be estopped from legislating contrary to the promises earlier held out by it in an executive capacity. Nor can there be an estoppel to prevent the Government from carrying out the mandates of Parliament. Parliament is supreme and the executive Government cannot estop itself from discharging the obligations imposed upon it by Act of Parliament. Nor can the Government do something or be compelled to do something which is prohibited by statute or which is opposed to obvious legislative policy. And, the Government cannot be bound by an estoppel to do indirectly that which it cannot do directly; it cannot bind itself to circumvent a statute. Again, a Government cannot bind itself or a succeeding Government, by an estoppel, to a fixed policy. The political dynamism of the State requires review and revision of policy and a Government must have the right at all times to change its policy. Accrued rights have to be honoured no doubt. But, no rights based on promissory estoppel can ever be considered to accrue which are against the public interest and opposed to the public policy or which affect the public revenues. No one can be permitted to take undue advantage of a representation made by a servant of the people and claim rights as against the people themselves and to their proven detriment, if such rights are not consistent with the public good. A rule of evidence such as equitable estoppel may not be invoked against the people and the State if it is shown to be against the general interest of the people and the State or against the advancement of their known social policy or if it affects the public revenues. Precise definition of the limits is difficult as this branch of the law is yet evolving-Boundaries will have to be determined in individual cases with reference to the facts of the cases.

47. What then are the facts of the present case? We have already set out in some detail the facts leading up to the setting up of the Vanaspati factory by the Company at Rajpura. The letter dated 2-7-68 from the Director of Industries to

the Company along with which was sent the Government's brochure on its New Policy in regard to industrial Development shows that there was at that stage a general representation that Purchase and Sales Tax and Inter-State Sales Tax would be refunded for a period of five years to any one selling up selected industries at any of the three focal points. The preliminary correspondence was followed by the meeting on 16-10-1968 between Shri Khaitan and Shrimati Grewal, representing the Company and the Government, respectively. Shri H.L. Sibal, learned counsel for the Company, urged that final decisions were taken at that meeting, and that Shrimati Grewal, on behalf of the Government, persuaded Shri Khaitan to purchase land at Rajpura and set up a Vanaspati plant there, assuring him that the land so purchased would be included within the Rajpura, "focal point" and that the Company would be entitled to all the concessions and incentives mentioned in the Policy Statement issued by the Government.

48. We do not think that any final decision was taken at the meeting between Shri Khaitan and Shrimati Grewal. As already pointed out by us, there is no contemporaneous record of what took place at the meeting. But we have the note prepared by Shrimati Grewal on 1-4-1969 for the consideration of the Industries Minister and the Finance Minister. One thing which clearly emerges from her note is that she did not assure the Company either on 16-10-1968 or thereafter that the Company would be entitled to the concessions if they set up the factory at Rajpura. She could not have given any such assurance since no plot of the extent required by the Company was available within the area already acquired by the Government. All that she did, according to the note, was to encourage the Company to purchase land for setting up the industry at Rajpura, with perhaps an implied promise that a way would be found for favourably considering the claim of the Company for the concessions. Clearly there was no definite commitment on her part. That is why we find her pleading with the Ministers as late as on 1-4-1969 for an early settlement of the question. It is also obvious that she was not competent to take any final decision in the matter and she was, therefore, seeking the orders of the Ministers. The subsequent letters and telegrams from the Company to the Secretary, Industries Department also show that there was no final commitment on the part of the Government on 16-10-1968 as claimed by the Company. In the letter dated 25-10-1968, the Company wanted it to be made clear whether the concessions relating to refund of Purchase and Sales Tax and the exemption from Excise Duty would be available for a period of five years from the date of commencement of production. If a final decision had already been taken at the meeting held on 16-10-1968 there was no need for the Company to seek confirmation. The telegram dated 11-1-1969 and the two letters dated 13-1-1969 and 23-1-1969 also show that the Company was seeking confirmation from the Government. We do not, therefore, think that any final decision was taken at the meeting held on 16-10-1968. The note of Shrimati Grewal was approved by the Industries Minister and the Finance Minister and the final decision of the Government was communicated to the Company on 16-6-1969. Therefore, it may be said that it

was- only on 16-6-1969 that the Government definitely committed themselves to the Company to grant concessions and incentives. The concessions and incentives were to be the- same as were admissible to a Unit in the "focal point" of industrial growth, But, by that time, according to the Government, the policy of the Government had been revised on 14-5-1969 and the Company was entitled only to those concessions as were available under the revised policy.

49. Considerable argument was advanced by Shri H.L. Sibal to the effect that the so-called revised policy did not come into force on 14-5-1969 as claimed by the Government. He argued that the document said to contain the revised policy was nothing but an inter-departmental memorandum which was not released to the public on 14-5-1969. The argument was based on the circumstances that the memorandum which was addressed to all the concerned departments including the Accountant General contained a direction that the departments should examine, if instead of first collecting the tax and then reimbursing it, the Sales Tax Act itself could not be suitably amended to provide for direct exemption. It was also directed that until the Act was so amended the department was to refund Sales Tax, Purchase Tax and Inter-State Sales Tax as provided in the memorandum. We do not think that there is any force in the submission of Shri Sibal. In the first place, the memorandum begins with the statement, "the Governor of Punjab is pleased to accord sanction to the grant of following concessions to the industrial units in the State." The memorandum ends with the statement, "this sanction issues with the concurrence of Finance Department conveyed vide their U.O. No. 2895-F-D-II-69, dated 10-4-1969." Copies of the memorandum were sent to all District Industries Officers and Assistant Industries Officers "for giving wide publicity". We have no doubt that the Memorandum dated 14-5-1969 is a statement of Governmental Policy and not one of the many mere inter-departmental communications which usually precede a decision by the Government. The finding of the learned single Judge also was that the industrial policy of the Government of Punjab was revised on 14-5-1969. If the industrial policy of the Government of Punjab stood revised on 14-5-1969, the Company to whom the final decision of the Government was conveyed on 16-6-1969 could only claim the concessions and incentives offered under the revised policy. The concessions under the revised policy in regard to taxation were refund of Sales Tax on finished products for a period of five years from the date of licence or registration of the unit in respect of (i) direct sales to consumers (ii) inter-State sales. That was all that the Company could legitimately claim.

50. The rules made by the Governor which came into effect from 1-4-1969 show that the first step in order to be eligible for the concessions and incentives was to make an application under Rule 3 for registration as a new industry in the focal point. In the present case, the Company submitted its application for registration as new industry in the focal point under Rule 3 on 26-11-1969 and registration was granted on 3-4-1970. We are of the opinion that the Company could not claim the grant of incentives and concessions with reference to a date earlier

than the date of its application for its registration under Rule 3. By that time, the revised policy had come into force and the Company was entitled only to those incentives and concessions that were offered by the revised policy.

51. Our discussion of the facts has so far been with reference to the material which was placed before the learned single Judge. However, there is some further material which also requires our consideration. After Shri Sibal had concluded replying to the arguments of Shri Nehra, when the case appeared to have come to a close, Shri Nehra produced before us certain records, supported by the affidavit of Shri O.P. Jain, Deputy Director of Industries. As the records appeared to us to be vital for a decision of the case, we allowed Shri Nehra to produce the records and gave the Company an opportunity to inspect the records. After inspecting the records, Shri Khaitan filed an affidavit on behalf of the Company. We regret to have to mention that those incharge of the conduct of this case on behalf of the Government of Punjab were seriously remiss in not producing these vital records before the learned single Judge. The learned counsel for the Government of Punjab was unable to explain why the records were not produced before the learned single Judge and why no reliance was placed upon them despite the plea in the affidavit of Shri Khosla that the Cabinet Sub-Committee had decided on 15-12-1966 that no refund of Sales Tax should be given on indirect sales. Even before us, as already mentioned by us, it was only towards the end that the records were produced. We consider the matter very serious and suggest that there should be a further probe by the authorities concerned.

52. The records now produced before us show that on 15-12-1966 there was a meeting of the Cabinet Sub-Committee at which were present, the Chief Minister (G.S. Musafir), the Revenue and Industries Minister, the Food and Supplies Minister, the Secretary, Industries Department, the Joint Secretary, Finance representing the Finance Department, the Director of Industries and the Assistant Commr. of Excise and Taxation. The memorandum submitted by the Industries Department on "Industrial Development-New Policy of Punjab Government" was considered. The memorandum submitted to the Cabinet Sub-Committee showed the existing position, the proposals for decision and the financial implication in different columns. In regard to taxation, the existing position, the proposals, etc. were shown as follows :--

(See Existing Position on next page). The decision of the Cabinet Sub-Committee in regard to the proposal for refund of Sales Tax was,

"The proposal to refund tax on indirect sales (page 7 of the memorandum) was not approved"

53. According to Shri Nehra, the decision of the Cabinet Sub-Committee was that refund of Sales-tax was to be confined to the tax paid on (i) Direct sales to consumers and (ii) Inter-State sales only, while according to Shri Sibal, the decision was that there was to be refund of sales tax on all sales of finished

products except indirect sales made through registered dealers. Shri Sibal urged that the speech made by the Chief Minister at a Conference of industrialists on 20-12-1966, the brochures issued by the Government in 1967 and 1968, the correspondence which passed between the Government and the Company and the speech made by the Governor on 6-3-69 were consistent with his interpretation of the decision taken on 15-12-1966. Though there appears to be some force in the submission of Shri Sibal, we are unable to agree with the submission in view of the fact that the actual proposal which was considered by the Cabinet Sub-Committee was to refund tax on (i) Direct Sales to consumers (ii) Inter-State Sales and (iii)

"Existing position   Proposal now to decision   Financial implication

#### TAXATION :

(a) Refund of Sales Tax on purchase of raw material (PurchaseTax) by new or expanding industrial units for five years from the date of licence or registration of the unit.

No change.

Decision already taken by the Government last year. Provision for refund will be made under the focal points scheme included in the plan.

(b) Refund of Sales Tax on finished products for five years from the date of licence or registration of the unit.

No change. It only needs to be clarified that the refund would apply to the Sales Tax on products of industries in the focal points in all the following three types of cases :? (i) Direct sales to consumers (ii) Inter-State sales (iii) Indirect sales made through registered dealers where actual tax is collected by the dealers but the benefit of the incentive of refund will be given to manufacturing unit in the focal unit.

(c) ?

Exemption from octroi/terminaltax for five years to new and expanding units.

No burden on the State Govt. is competent to grant exemption under the law."

Indirect sales made through registered dealers where actual tax was collected by the dealers. The Cabinet Sub-Committee approved the proposal except in regard to indirect sales. That meant that the approval of the Cabinet Sub-Committee was in respect of items (i) and (ii) only, that is, in respect of tax on (i) direct sales to consumers and (ii) Inter-State sales as urged by Shri Nehra. The decision of the Cabinet Sub-Committee was exactly what was incorporated in the revised policy of 14-5-1969. It is, however, a mystery, as to why, despite the decision of the Cabinet Sub-Committee taken so early as on 15-12-1966, the Government of Punjab published brochures in 1967 and 1968 and why its officers went on corresponding with the Company as if an industrialist setting up an

industry in a focal point would be entitled to refund of Sales Tax for a period of five years, without any restriction as to whether the sales were made directly to consumers or not. This too is a matter which requires a probe on another front. All that we can say in this case is that the brochures and the correspondence contained wholly unauthorised representations in regard to refund of Sales Tax.

54. Finally let us assume the decision of the Cabinet Sub-Committee dated 15-12-66 never took effect; let us assume the revised policy of 14-5-69 was publicised and took effect in 1971 only; let us assume it was in pursuance of the re-presentation contained in the brochure of 1966 and the letter dated 2-7-68 and an assurance held out that the land purchased by the Company would be included within the focal point at Rajpura that the Company established its Vanaspati factory at Rajpura. Would these circumstances vest in the Company a right against the Government to demand a refund of the Sales Tax paid by it? Would the Government be precluded by the doctrine of equitable estoppel from resisting the claim of the Company? Would social policy and the public interest justify the application of the doctrine of equitable estoppel?

55. Now, the Punjab General Sales Tax Act is intended to raise public revenues and provides, generally, for the levy of tax on all sales of goods. Elaborate provision is made in the Act for the levy, assessment and collection of tax and for appeals and revisions. While tax is generally leviable on all sales of goods, the statute expressly prescribes that sales of certain goods shall be tax free, that certain class of dealers shall be exempt from payment of tax and that tax shall be refunded under certain circumstances. Section 6(1) provides that no tax shall be payable on the sale of goods specified in Schedule "B" subject to the conditions and exceptions set out therein. Section 6(2) enables the State Government to add or delete from Schedule "B" but this can only be done after giving, by notification, notice, of not less than 20 days, of its intention to do so. Apparently, the provision regarding notice is introduced to enable interested members of the public, including dealers, to make representations. Section 30 enables the State Government to exempt any class of Co-operative Societies or persons from the payment of tax if the Government is satisfied that it is necessary or expedient to do so in the interests of cottage industry. Such exemption has to be granted by a notification and such notification is required to be laid before the State legislature. Section 12 enables the assessing authority to refund any amount of tax which has been paid by him in excess of the amount due from him under the Act. The refund has, however, to be claimed within a period of 3 years. Thus the declaration of goods as tax free, the exemption granted to dealers and the refund to be paid to assessee is expressly provided for and regulated by statute. Goods in order to be free from the levy of sales tax have to be included in Schedule "B" after due notice, by notification, is given to the public; dealers may be exempt from payment of sales tax if it is so notified in the interests of cottage industry; and, refund may be granted where tax is paid in excess of the amount due under the "Act. The Act does not enable the Government to declare any goods as tax free except in the manner provided by

Section 6 or to declare any dealer exempt from payment of tax except in the manner provided by Section 30, or to refund any tax except in the manner provided by S- 12. The Act does not contemplate the exercise of any power by the Government in regard to these matters except as provided in those provisions.

Section 27 of the Act enables the Government to make rules for carrying out the purposes of the Act and in particular in regard to matters specified in Section 27(2). It does not authorise the Government to exercise any power similar to the powers given to it under Sections 6 12 and 30. Therefore, if the Government purports not to levy tax on the sale of certain goods, to exempt some dealers from payment of tax or to refund the tax paid by some assesseees, otherwise than in accordance with the provisions of Sections 6 30 and 12 of the Act, the Government would be acting in a manner prejudicial to the raising of the public revenues and contrary to the scheme and policy of the Act. The elaborate scheme of the Act and the machinery provided by it would become meaningless, the public policy involved in the raising of public revenues would be frustrated and the social policy of encouraging cottage industry as evident from Section 30 would be thwarted. Section 30 provides for exemption from payment of tax in the case of notified class of Co-operative Societies and dealers in the interests of cottage industry only, To grant refund of sales tax to large industry is to circumvent the provisions of Section 30. Indeed, it is evident that those who obtain refund are in a better position than those who are exempt from payment of tax, since in the former case the burden of the tax would have been passed on to the other dealers and to consumers- In effect and substance, the Company, instead of the Government, would be collecting and appropriating sales tax on goods. The Company would be raising revenues for itself instead of for the public. Public revenues would become private revenues. And, again, such diversion of public revenues to large industry may even be considered to be contrary to the directive principle contained in Article 39(c) which enjoins a duty on the State to direct its policy towards securing "that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment." There are then Articles 265 and 266 of the Constitution which provide that no tax shall be levied or collected except by authority of law, that all revenues received by the State shall form one consolidated Fund to be entitled "the consolidated Fund of the State" and that no moneys out of the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in the Constitution. No provision of any Appropriation Act or other law sanctioning the refund of tax has been brought to our notice. A refund, if granted, would be entirely without legislative sanction.

56. It is true that the promotion of large industry is also, in one sense, in the public interest. The Government is not debarred from promoting large industry by granting incentives such as the refund of sales tax but that may be properly done by suitably amending the Sales Tax Act. It may not be done by what

tantamounts to taking the law into its own hands, as it were. Promises giving rise to such situations may not be enforced by Courts against the Government.

57. The learned counsel for the Government of Punjab argues that claim for refund of tax relating to the years 1969-70, 1970-71, 1971-1972 and 1972-73 made in Civil Writ No. 5653 of 1975 should be rejected as belated. In the view that we have taken, it is unnecessary to go into this question.

58. We, therefore, hold that on the facts and in the circumstances of the case there was no equitable estoppel operating against the Government entitling the Company to refund of sales tax. firstly, because the lights of the Company, if any, came into existence on 16-6-1969 by which time the revised policy of the Government had taken effect, secondly because even if it could be said that the Company acted in pursuance of the earlier representations, such representations were contrary to the decision dated 15-12-1966 of the Cabinet Sub-Committee and thirdly, because it would be opposed to the scheme and purpose of the Punjab General Sales Tax Act as well as general social and public policy. Letters Patent Appeal No. 368 of 1975 is allowed and Civil Writ No. 1588 of 1972 and Civil Writ No. 5653 of 1975 are dismissed. There will be no order as to costs.

59. The Government had throughout expressed its readiness to refund Inter-State Sales Tax and Tax paid on direct sales to consumers. It will be open to the Company to approach the Government for refund of Inter-State Sales Tax and tax on direct sales to consumers. We do not propose to issue any writ directing the Government to do so.