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**(2021) 11 BOM CK 0087**

**In the Bombay High Court**

**Case No :** Writ Petition No. 4832 Of 2018, 4796 Of 2019

Umesh Devaji Burande And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

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**Date of Decision :** 15-11-2021

**Acts Referred:**

Constitution Of India, 1950 — Article 14, 16, 16(4), 299

**Citation :** (2021) 11 BOM CK 0087

**Hon'ble Judges :** A.S. Chandurkar, J;Avinash G. Gharote, J;Pushpa V. Ganediwala, J

**Bench :** Full Bench

**Advocate :** Vijay N. Morande, A.M. Sudame, K.S. Joshi, S.W. Sambre, S.C. Mehadia, Gouri Venkatraman, Amit Kinkhede

**Final Decision :** Dismissed

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**Judgement**

Avinash G. Gharote, J

1. This full Bench has been constituted by the Hon'ble the Chief Justice, for answering the following two questions :-

(1) Whether in a given facts and circumstances of the present case, principles of Promissory Estoppel and Legitimate Expectation would apply ?

(2) Whether the impugned Government Resolution dated 01/07/2016 has been retrospectively applied to the case of the petitioner ?

2. The need for constituting the Full Bench was felt as the learned Division Bench (Shri Sunil B. Shukre and Shri Anil S. Kilor, JJ.) in Umesh Burande's case [Writ Petition No.4832/2018] while considering the effect of the Government Resolution dated 1/7/2016 in the background of the earlier Government Resolution dated 30/4/2005, and the judgment of another learned Division Bench of this Court (Shri Prasanna B. Varale and Shri Nitin W. Sambre, JJ.) in Sandip Phulchand Tandale Vs. The State of Maharashtra and others (Writ Petition

No.4409/2019, dated 22/4/2019), which also considered the above two Government Resolutions and had held that since the policy of the year 2005 stood superseded by the new policy of the year 2016, the latter would apply and no claim could be laid on the basis of the former, felt that the principles of 'Promissory Estoppel' and 'Legitimate Expectation' were required to be considered in the matter of withdrawal of the benefits of the earlier policy and thus was of the opinion that the controversy needed to be put at rest by an authoritative pronouncement of a Larger Bench on the above questions, whereupon the Hon'ble the Chief Justice has constituted this Full Bench.

3. Before we advert to the arguments, the background facts leading to the present position as occurring in Writ Petition No. 4832/2018 are summarized as under :

(a) the petitioner started playing the sport of 'Ball Badminton' in the year 2002.

(b) the State of Maharashtra on 30/4/2005 came up with a policy to promote sports, and considering that the persons who were into the sports field were required to concentrate on the game which took a lot of their time and energy, whereby their academic career suffered, mooted a reservation of 5% in all Government and Semi- Government offices in Categories A to D for sportsmen who had performed special feats. The game of Ball Badminton was one which was included as a sport in Appendix-A to the Resolution as a game which would be eligible to the benefit of such reservation policy.

(c) the petitioner is claimed to have continued his game of Ball Badminton and is claimed to have secured various certificates in the game. He participated as a player in the Maharashtra Ball Badminton 51st State Junior Championship held at Wardha between 17/12/2005 to 19/12/2005 and secured second place.

(d) on 1/7/2016 the State of Maharashtra introduced the new policy in supersession of the policy as mooted in the earlier Government Resolution dated 30/4/2005.

(e) in 2017 responding to the advertisement by the Maharashtra State Road Transport Corporation (MSRTC) inviting applications for the post of Junior Clerks in which one post was reserved for sports quota, the petitioner had applied and participated in the selection and was included in the select list from 'open sports persons' quota for the post of clerk-typist.

(f) on 20/6/2018 the Divisional Controller, MSRTC, Gadchiroli sent a communication to the Deputy Director Sports and Youth Services, Nagpur for verification of the sports certificate of the petitioner and was after some delay, informed that since the sport of Ball Badminton was not included in the Government Resolution dated 1/7/2016, therefore the certificate could not be verified, which has given rise to Writ Petition No. 4832/2018 being filed by the petitioner.

3.1. In Writ Petition No.4796/2019, the petitioner was playing the game of

'Softball'.

4. Shri Vijay Morande, learned Counsel for the petitioner in Writ Petition No.4832/2018 (Umesh Devaji Burande Vs. State of Maharashtra through its Secretary, Department of Education and Sports, Mantralaya Extension Office, Mumbai and others), submits that the Government Resolution dated 30/04/2005, provides 5% reservation to sportsperson, which include a person playing Ball Badminton. He further submits, that the petitioner has been playing the game since 2002 till 2015 and has acquired proficiency in the game which is evinced by the certificates issued in his favour. By inviting our attention to para no.2 of the Government Resolution dated 30/4/2005, he points out the objects for issuance of the Government Resolution. He further submits that Appendix-A lists the sport of Ball Badminton, for playing which, the certificate of participation has been issued in favour of the petitioner which makes him eligible for the benefit of reservation. The petitioner was selected as a Junior Clerk for MSRTC on 28/5/2018, and subsequent denial of the benefit to him by virtue of the Government Resolution dated 1/7/2016 has led to the filing of the petition. He submits that under the Government Resolution dated 1/7/2016, the petitioner is not eligible as the sport of Ball Badminton has been removed from the game of sports listed in Appendix-A of the Government Resolution dated 30/4/2005, however since the petitioner had already acted upon the promise as contained in the Government Resolution dated 30/4/2005, the petitioner was entitled to be governed by the same and reservation being applied to him as contained therein. He submits that all earlier Government Resolutions have been superseded by the Government Resolution dated 1/7/2016 which changes the groups/categories as well as the sports by deleting some of the sports like Ball Badminton and Softball which were earlier included in the Government Resolution dated 30/4/2005 under which the petitioner was entitled for the benefit of reservation. He submits that the Government Resolution dated 1/7/2016 had no retrospectivity and therefore the petitioner would continue to be governed by the Government Resolution dated 30/4/2005 and thus entitled to benefit of reservation as contained therein.

4.1. Relying on Dr. Ashok Kumar Maheshwari Vs. State of U.P. and another, (1998) 2 SCC 502, he submits that the principle of promissory estoppel and legitimate expectation would clearly apply to the case of the petitioner.

4.2. Shri Morande, learned Counsel for the petitioner, in support of his submissions, has placed reliance upon the judgments in Union of India and others Vs. Indo-Afghan Agencies Ltd., AIR 1968 SC 718 ; State of Rajasthan and another Vs. Mahaveer Oil Industries and others, (1999) 4 SCC 357 ; Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer and others, (2005) 1 SCC 625 ; Secretary, State of Karnataka and others Vs. Umadevi and others, 2006 SCC OnLine SC 407; Jitendra Kumar and others Vs. State of Haryana and another, 2007 SCC OnLine SC 1504 ; Monnet Ispat and Energy Limited Vs. Union of India and others, (2012) 11 SCC 1; Union of India and another Vs. V.V.F. Limited and

another, 2020 SCC OnLine SC 378 and State of Jharkhand and others Vs. Brahmaputra Metalics Ltd., Ranchi and another, 2020 SCC OnLine SC 968.

4.3. He therefore submits that the view taken in Sandip Phulchand Tandale Vs. The State of Maharashtra and others, judgment dated 22/4/2019 in Writ Petition No.4409/2019 with connected matters (High Court, Aurangabad Bench) is not correct.

5. Shri Akshay Sudame, learned Counsel for the petitioner in Writ Petition No.4796/2019 (Piyush s/o Subhash Chandekar Vs. The State of Maharashtra, through Secretary to the Govt. of Maharashtra, School Education & Sports Department, Mantralaya, Mumbai and another) which has been tagged with Writ Petition No.4832/2018, submits that the petitioner had a certificate of having played the game of Softball which was included in Appendix-A to the Government Resolution dated 30/4/2005 and therefore was entitled to the benefit of reservation. He submits that the acquiring of qualification would mean acting upon the Government Resolution by changing one's position which had been done by the petitioner. He submits that the Government Resolution dated 30/4/2005 in fact creates a horizontal reservation which can directly be traceable to Article 16 of the Constitution, which entitles the petitioner and persons similarly situated to him to be considered for employment. Relying upon *Indira Sawhney Vs. Union of India* (1992) Supp. 3 SCC 212 he contends that reservation can also be by way of executive instructions and the Government Resolution dated 30/4/2005 is one such piece of executive instruction which has created reservation as a result of which a vested right has been created in the petitioner which having been crystallized cannot be taken away for which reliance is placed on *J. S. Yadav Vs. State of Uttar Pradesh* and another, (2011) 6 SCC 570 para

20 onwards. He submits that the right to offer one's candidature for employment has been taken away which is impermissible in law. He places reliance upon *Tapti Oil Industries and another Vs. State of Maharashtra*, 1984 Mh.L.J. 321 and *V. R. Potdar Vs. State of Maharashtra*, 1982 Mh. L.J. 799. Reliance is also placed upon *State of Jharkhand and others Vs. Brahmaputra Metalics Ltd., Ranchi* and another, 2020 SCC OnLine SC 968.

5.1. Apart from the judgments relied upon by Shri Morande, learned Counsel for the petitioner in Writ Petition No.4832/2018, above, in support of his submissions, he further relies upon the judgments in *Century Spinning and Manufacturing Company Ltd. And another Vs. The Ulhasnagar Municipal Council and another* 1970 (1) SCC 582; *Excise Commissioner U.P. Allahabad and others Vs. Ram Kumar and others*, 1976(3) SCC 540 ; *The Bihar Eastern Gangetic Fisherman Co-op. Society Ltd. Vs. Sipahi Singh and others*, 1977(4) SCC 145; *M/s Motilal Padampant Sugar Mills Co. Ltd. Vs. State of U. P. and others*, 1979 (2) SCC 409 ; *M/s Jit Ram Shiv Kumar and other Vs. State of Haryana and others*, 1981(1) SCC 11 ; *Union of India and others Vs. Godfrey Phillips India Ltd.*, (1985) 4 SCC 369; *Navjyoti Co-op. Group Housing Society and others Vs. Union*

of India and others, (1992) 4 SCC 477 ; Food Corporation of India Vs. M/s Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71 and Union of India and others Vs. Hindustan Development Corporation and others, (1993) 3 SCC 499.

6. Shri Sachin Sambre, learned Counsel for the respondent no.3 in Writ Petition No.4832/2018 supports the view canvassed by the learned Counsels for the petitioners.

7. Mrs. K.S. Joshi, the learned Acting Government Pleader for the respondent nos.1 and 2 contends that :

(A) the question no.1 has not been properly framed as according to her the answer cannot be rendered in the given facts and circumstances of the case as they would be different in each case. She submits that there is a Government Resolution of the year of 2013 in between the Government Resolution of 2005 and 2016 and there have been changes taking place from time to time.

(B) in the Government Resolution dated 30/4/2005 games recognized by the (a) Indian Olympic Association (b) Maharashtra Olympic Association and (c) recommend by Maharashtra Olympic Association were included. Clause 5 of the Government Resolution dated 30/4/2005 reserved the right to make changes in Appendix-A which would indicate that there was no promise given or even if any promise was given it was subject to change at the discretion of the State and therefore no right whatsoever was created nor were the principles of promissory estoppel and legitimate expectation could be said to be attracted in this view of the matter.

(C) the 2005 policy was in force for 11 years and therefore needed change in procedure and requirement to promote sports at National and International level. The policy has to change with circumstances.

(D) since it was realized that the policy of 2005 had failed to achieve its objective and the need was felt to promote games played in national and international tournaments and competitions so as to enhance the standing of the Country the new policy was framed in which the institutions of employment were increased. The games as played in Olympics / Asian Games / Commonwealth were included and more than 32 games including Ball Badminton and Softball were excluded. She submits that there was no crystallized right but a mere advantage was granted for which reliance is placed upon the judgment in Lalit Sehgal Vs. State of Goa and others, 1996 (1) Mh.L.J. 447.

(E) the policy of 2016 was a better policy in larger public and national interest and therefore was required to be sustained. Relying upon Union of India and others Vs. Hindustan Development Corporation and others, (1993) 3 SCC 499 it is submitted that for a policy to be struck down it had to be patently arbitrary, discriminatory or mala fide none of which was there. The criteria for inclusion-exclusion was not being tested. No single game was picked up. Policy was rational in larger public interest.

7.1. The learned Acting Government Pleader Mrs. Joshi further submits that :

(1) There is no challenge in both the petitions to the validity of the Government Resolution dated 1/7/2016. Challenge is only to Appendix-A, in as much it excludes the game of Ball Badminton and Softball.

(2) There are no pleadings as to how the Government Resolution dated 1/7/2016 is detrimental.

(3) The Government Resolution has been issued in larger public interest and has an overriding effect.

(4) The principles of promissory estoppel and legitimate expectation do not apply.

(5) The policies of the State would always fluctuate. They have to be kept modifying based upon the changing conditions/scenario and the needs which arise with such change in the situations, for the betterment of the society and has been altered as per the prevailing situation in the sports arena.

(6) Action in framing the new policy is purely administrative and is not susceptible to judicial review.

(7) There is no violation of any constitutional provisions.

(8) Concept of promissory estoppel cannot give rise to a cause of action when there is a change in policy.

(9) There is no crystallized rights in the petitioner so as to allege any violation.

(10) The Government Resolution dated 1/7/2016, is prospectively applicable which is so stated in Clause-13 of the said Government Resolution itself which makes it effective from 1/8/2016.

(11) Examination of retrospectivity would only be permissible if challenge is raised to the vires of the Government Resolution.

7.2. Reliance is placed upon the judgments in P. Mahendran and others Vs. State of Karnataka and others, (1990) 1 SCC 411; Food Corporation of India Vs. M/s Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71; Union of India and others Vs. Hindustan Development Corporation and others, (1993) 3 SCC 499; Madras City Wine Merchants' Association and another Vs. State of T.N. and another, (1994) 5 SCC 509; Lalit Sehgal Vs. State of Goa and others, 1996 (1) Mh.L.J. 447; P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others, (1996) 5 SCC 268; Shrijee Sales Corporation and another Vs. Union of India, (1997) 3 SCC 398; Sales Tax Officer and another Vs. Shree Durga Oil Mills and another, (1998) 1 SCC 572; Dr. Ashok Kumar Maheshwari Vs. State of U.P. and another, (1998) 2 SCC 502; State of Punjab and others Vs. Ramlubhaya Bagga and others, (1998) 4 SCC 117; State of Rajasthan and another Vs. Mahaveer Oil Industries and others, (1999) 4 SCC 357; Punjab Communications Ltd. Vs. Union of India and others, (1999) 4 SCC 727; Federation of Railway Officers Association and others Vs. Union of India, (2003) 4 SCC 289; Bannari Amman Sugars Ltd.

Vs. Commercial Tax Officer and others, (2005) 1 SCC 625; State Bank's Staff Union (Madras Circle) Vs. Union of India and others, (2005) 7 SCC 584; State of Orissa and others Vs. Gopinath Dash and= others, AIR 2006 SC 651; Directorate of Film Festivals and others Vs. Gaurav Ashwin Jain and others, AIR 2007 SC 1640; Union of India and another Vs. Lieutenant Colonel P.K. Choudhary and others, (2016) 4 SCC 236; Girjamata Labour Co-operative Society Ltd. Vs. State of Maharashtra and others, 2017 (2) Mh.L.J. 622 and Kerala State Beverages (M and M) Corporation Limited Vs. P.P. Suresh and others, (2019) 9 SCC 710.

8. Mrs. Venkatraman, learned Counsel for the intervenor submits that the new policy of the year 2016 is neither arbitrary nor unreasonable. She fully supports the judgment of the Aurangabad Bench, in the case of Sandip s/o Phulchand Tandale Vs. The State of Maharashtra and others in Writ Petition No.4409/2019 dated 22/04/2019 (Coram : Prasanna B. Varale and Nitin W. Sambre, JJ.) and submits that it has dealt with the revised policy correctly and therefore there is no need for any reference; there is no infirmity in the new policy; unless and until the Coordinate Bench holds that there is infirmity in the new policy, it cannot refer the question to a Larger Bench. Inviting our attention to the judgment in the case of Umesh Burande (supra) specifically para 12, she submits, there is no reason given as to whether the new policy is arbitrary or unreasonable; there is no pleading altogether, regarding any illegality in the new policy; the reference to the Larger Bench, itself is not permissible, in absence of a finding being rendered, that the policy is bad, arbitrary or mala fide; the object of the revised policy has not been examined at all. Reliance is placed upon Kasinka Trading Vs. Union of India, (1995) 1 SCC 274 to contend that larger public interest should always prevail. She further submits, that the learned Division Bench making the reference did not examine the object of revised policy. Further reliance is placed upon Union of India and others Vs. Unicorn Industries, (2019) 10 SCC 575 and Kerala State Beverages (M and M) Corporation Limited Vs. P.P. Suresh and others, (2019) 9 SCC 710. Reliance is also placed on Santosh Dnyanoba Chavan Vs. State of Maharashtra and others, 2018 (2) ALL MR 781. She submits that the policy of 2005, was revised in the year 2011 and further also revision is within the discretion of the Government and unless the discretion is found unreasonable there cannot be any interference. She further submits, that this is an enabling provision for which reliance is placed on Union of India Vs. R. Rajeshwaran and another, (2003) 9 SCC 294. She fully supports the new policy of the year 2016 and submits, that there is no question of the principle of legitimate expectation or promissory estoppel, being attracted in the present matter and the questions under reference be answered accordingly.

9. Shri Amit Kinkhede, learned Counsel for the intervenor has also addressed this Court. He supports the new policy and the argument that the principles of promissory estoppel and legitimate expectation have no applicability. He submits that the sport of Ball Badminton or Softball are one which negligible persons are aware of and play, as against which the sports which are given in the Annexure to the new policy, are based upon the recommendations of the Indian Olympic

Committee and are based upon an intention to improve the standing of the Country in the Olympics, which issue according to him, is of a larger public interest and therefore ought to prevail. He further submits, that the classification is clearly reasonable. Inviting our attention to the facts of the matter, he submits that the petitioner in Writ Petition No.4832/2018, has made a statement that he has been playing the sport, since 2002 whereas the policy was framed in the year 2005 and therefore there cannot be any case that the petitioner had acted upon the promise and altered his position to his detriment. Relying upon P & T Scheduled Caste/Tribe Employees' Welfare Association Vs. Union of India, (1988) 4 SCC 147, he submits, that reservation is an exception to Article 14 of the Constitution and only if it is found that the employees were entrenched in the position due to a policy that the principles of legitimate expectation and promissory estoppel would be attracted and not otherwise.

9.1. In so far as question No.2 is concerned, he submits, that the petitioner had applied in 2017 after the revised Government Resolution of 2016 came into force in which case, the question of any retrospectivity would not arise at all. For the applicability of the principle of retrospectivity, he relies upon P. Mahendram Vs. State of Karnataka (1990) 1 SCC 411.

9.2. He has also placed on record a compilation of judgments in support of his contention, which are as under :-

- (i) Motilal Padampant Sugar Mills Vs. State of U. P. (1979) 2 SCC 409.
- (ii) Union of India Vs. Godfrey Philips India Ltd. (1985) 4 SCC 369
- (iii) P & T Scheduled Caste/Tribe Employees' Welfare Association Vs. Union of India (1988)4 SCC 147
- (iv) P. Mahendram Vs. State of Karnataka (1990) 1 SCC 411
- (v) Darjansingh Vs. Rampal Singh 1992 Supp (1) SCC 191
- (vi) Union of India Vs. Hindustan Development Corp. (1993) 3 SCC 499
- (vii) P.T.R. Exports Madras (P) Ltd. Vs. Union of India (1996) 5 SCC 268
- (viii) State Bank's Staff Union Vs. Union of India (2005) 7 SCC 584
- (ix) State of Karnataka Vs. Umadevi (2006) 4 SCC 1
- (x) Monnet Ispat and Energy Ltd. Vs. Union of India (2012) 11 SCC 1
- (xi) Union of India Vs. Lt. Col. P. K. Choudhary (2016) 4 SCC 236
- (xii) Kerala State Beverages Corp. Ltd. Vs. P. P. Suresh (2019) 9 SCC 710
- (xiii) State of Jharkhand Vs. Brahmaputra Metalics Ltd. 2020 SCC Online SC 968.

10. Shri S.C. Mehadia, learned Counsel raises a question as to whether the petitioner was really induced by the policy. He submits that the answer has to be

'no' for the reason that the first certificate of participation filed on record as regards the petitioner is of the year 2002, which would indicate that he was

15 years of age at that time and therefore had an affection towards the game. The participation was before the policy came into being. He further submits that between 2005 and 2015, there is no certificate of participation placed on record indicating that

the petitioner continued to play the game. The policy of 2016, was brought into effect from 1/8/2016, as against which the petitioner has applied in the year 2017 when he was 30 years of age, which clearly indicates that the application is not during the currency of the policy of the year 2005. He therefore contends that if the application itself is made upon the supersession of the policy of the year 2005, the petitioner cannot claim any benefit thereunder, and would be governed under the policy of the year 2016.

11. At the out set, we feel that the questions referred to need to be rephrased. We, therefore, rephrase the questions as under :-

(1) Whether a legally enforceable right can be claimed based upon the principles of promissory estoppel and legitimate expectation in respect of the policy framed under the Government Resolution dated 30/4/2005, which has been superseded by the Government Resolution dated 1/7/2016 ?

(2) Whether the Government Resolution dated 1/7/2016 is retrospectively applicable ?

12. Shri Morande, learned Counsel for the petitioner in rebuttal submits that the policy as framed in the Government Resolution dated 1/7/2016 is good and he has no qualms in that regard. He admits that the object of both the policies of 2005 and 2016 was laudable as it provided succour to a sportsman at the end of his career in sports by promising him job security for his future by compensating him for the time, energy and efforts spent by him in excelling in the particular sport.

12.1. The only grievance is the deletion of the game from Appendix-A leading to the petitioner being denied the benefit of reservation. He submits that by the policy of the year 2005 the State had promised the benefit of 5% reservation to sports persons in jobs available with Government and Semi-Government Institutions and thus was estopped from now turning back and it is based upon such promise that the petitioner had undertaken the game of Ball Badminton and had spent a larger part of his youth in playing the game and excelling therein.

12.2. He submits that there is a difference between a reservation and a concession. While a concession can be withdrawn a reservation cannot. What was granted was a reservation and not a concession and therefore according to him, it was not permissible for the State to resile from the policy of 2005, as it created a legitimate expectation in the minds of the petitioner and persons similarly situated like him of their future being secured by getting a job in the reservation

as provided.

12.3. Citing the example of P. T. Usha, the learned Counsel submits that it is because of such policy that she could excel in the sport and bring laurels to the Country.

13. The principle of promissory estoppel, the origins of which could be found in *Hughes Vs. Metropolitan Railway Co.* (1877) AC 439 and *Birmingham and District Land Co. Vs. London and North-Western Rail Co.* (1888) 40 Ch D 268, by the House of Lords, had gone into oblivion, and was resurrected by Lord Denning in 1947 in *Central London Property Trust Ltd. Vs. High Trees House Ltd.* (1956) 1 ALL ER 256, and has been taken up, applied and expanded by the Indian Courts, thereafter. The principle of promissory estoppel is founded in equity.

13.1. In *Indo-Afghan Agencies Ltd.* (supra), the Hon'ble Apex Court was considering the question of enforcement of a scheme, floated by the Textile Commissioner, which enabled exporters to be entitled to import raw materials of the total amount equal to 100% of the FOB value of the exports, and had held, that the claim of the respondents therein was appropriately founded upon the equity, which arose in their favour, as a result of the representation made on behalf of the Union of India in 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 representation made by it and on the facts as proved in that case, it was held that no ground had 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.

13.2. In *Century Spinning and Manufacturing Company Ltd.* (supra) [1970 (1) SCC 582] a three Judges Bench of this Court after noting what had been said in *M/s Indo-Afghan Agencies Ltd* (supra) held that 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.

13.3. In *Ram Kumar and others* (supra) [1976 (3) SCC 540] a four Judges Bench of the Hon'ble Apex Court sounding a discordant note, it was held, that there could be no estoppel against the State Government in exercise of its legislative, sovereign or executive powers and it was permissible for the State to frame a policy which was in the interest of revenues of the State, designed to meet the ever increasing pressing needs of the developing society. *Indo-Afghan* (supra) however, was not noticed.

13.4. In *Sipahi Singh* (supra) [1977 (4) SCC 145], which was a case regarding enforcement of a contractual right, the three Judges Bench of the Hon'ble Apex Court after noting *Indo-Afghan* (supra) and distinguishing the same, on the ground that the claim therein was founded upon equity, which arose in the favour of the petitioner therein as a result of the representation made on behalf of the Government regarding a particular scheme, reiterated the position as laid down

in Ram Kumar (supra) to hold that the doctrine of promissory estoppel could not be pressed into service as there cannot be any estoppel against the Government in exercise of its sovereign, legislative and executive functions.

13.5. In M/s. Motilal Padampat Sugar Mills Co. Ltd. (supra) [(1979) 2 SCC 409] the Hon'ble Apex Court, has while considering the plea of an assurance given by the respondent no.4 therein on behalf of the State Government that the appellant would be exempted from sales-tax for a period of three years from the date of commencement of production, has traced the origins of the doctrine of promissory estoppel and the principles involved therein in the following words :-

"8. ----- . The doctrine would seem to apply even where there is no pre-existing legal relationship between the parties, but the promise is intended to create legal relations or affect a legal relationship which will arise in future. Vide Halsbury's Laws of England 4th Edn., p. 1018, Note 2 to para 1514. Of course it must be pointed out in fairness to Lord Denning that he made it clear in the High Trees case that the doctrine of promissory estoppel cannot found a cause of action in itself, since it can never do away with the necessity of consideration in the formation of a contract, but he totally repudiated in Evenden case the necessity of a pre-existing relationship between the parties and pointed out in Crabb v. Arun District Council [(1975) 3 All ER 865 : (1975) 3 WLR 847], that equity will, in a given case where justice and fairness demand, prevent a person from insisting on strict legal rights, even where they arise, not under any contract, but on his own title deeds or under statute. The true principle of promissory estoppel, therefore, seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not.

9. ---- it is a doctrine evolved by equity in order to prevent injustice where a promise is made by a person knowing that it would be acted on by the person to whom it is made and in fact it is so acted on and it is inequitable to allow the party making the promise to go back upon it. ----- It is an equitable principle evolved by the courts for doing justice and there is no reason why it should be given only a limited application by way of defence.

10. ----- But, on what principle, one may ask, is the distinction to be sustained between promissory estoppel and proprietary estoppel in the matter of enforcement by action. If proprietary estoppel can furnish a cause of action, why should promissory estoppel not? There is no qualitative difference between the two. Both are the offsprings of equity and if equity is flexible enough to permit

proprietary estoppel to be used as a cause of action, there is no reason in logic or principle why promissory estoppel should also not be available as a cause of action, if necessary to satisfy the equity.

13. ----. It is true that to allow promissory estoppel to found a cause of action would seriously dilute the principle which requires consideration to support a contractual obligation, but that is no reason why this new principle, which is a child of equity brought into the world with a view to promoting honesty and good faith and bringing law closer to justice, should be held in fetters and not allowed to operate in all its activist magnitude, so that it may fulfil the purpose for which it was conceived and born. It must be remembered that law is not a mausoleum.

It is not an antique to be taken down, dusted, admired and put back on the shelf. It is rather like an old but vigorous tree, having its roots in history, yet continuously taking new grafts and putting out new sprouts and occasionally dropping dead wood. It is essentially a social process, the end product of which is justice and hence it must keep on growing and developing with changing social concepts and values. Otherwise, there will be estrangement between law and justice and law will cease to have legitimacy. -----.

19. When we turn to the Indian law on the subject it is heartening to find that in India not only has the doctrine of promissory estoppel been adopted in its fullness but it has been recognized as affording a cause of action to the person to whom the promise is made. The requirement of consideration has not been allowed to stand in the way of enforcement of such promise. The doctrine of promissory estoppel has also been applied against the Government and the defence based on executive necessity has been categorically negated. ----.

and laid down the position regarding the doctrine of promissory estoppel, in the following words :-

24. ----. The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, 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 promisee, 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 299 of the Constitution. ----. The doctrine of promissory estoppel is a significant judicial contribution in that direction. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have 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 promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should

be held bound by the promise made by it. When the Government is able to show that in view of the facts as have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. ----- . It is only if

the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise "on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position" provided of course it is possible for the promisee to restore status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable. ---.

33. ----. We do not think that in order to invoke the doctrine of promissory estoppel it is necessary for the promisee to show that he suffered detriment as a result of acting in reliance on the promise. But we may make it clear that if by detriment we mean injustice to the promisee which would result if the promisor were to recede from his promise, then detriment would certainly come in as a necessary ingredient. The detriment in such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee, if the promisor were allowed to go back on the promise. ----. It would, therefore, be correct to say that in order to invoke the doctrine of promissory estoppel it is enough to show that the promisee has, acting in reliance on the promise, altered his position and it is not necessary for him to further show that he has acted to his detriment."

The judgment in Ram Kumar (supra) was duly considered and the observation as made therein in regard to the applicability of the doctrine of promissory estoppel against the Government was held to be obiter.

13.6. In *M/s Jit Ram Shiv Kumar and others (supra)*, the Hon'ble Apex court after considering *Indo-Afghan Agencies Ltd. and Motilal Padampat Sugar Mills Co. (P) Ltd. (supra)* held as under :-

" 51. On a consideration of the decisions of this Court it is clear that there can be no promissory estoppel against the exercise of legislative power of the State. So also the doctrine cannot be invoked for preventing the Government from acting in discharge of its duty under the law. The Government would not be bound by the act of its officers and agents who act beyond the scope of their authority and a person dealing with the agent of the Government must be held to have notice of the limitations of his authority. the Court can enforce compliance by a public authority of the obligation laid on him if he arbitrarily or on his mere whim ignores the promises made by him on behalf of the Government. It would be open to the authority to plead and prove that there were special considerations which necessitated his not being able to comply with his obligations in public interest."

It was also held, that the decisions of the Hon'ble Apex Court, in *Excise Commissioner U.P. Allahabad Vs. Ram Kumar (supra)*, which held that the State Government was not estopped or precluded from subjecting the sales of liquor to tax, if it felt impel to do so, in the interest of revenue of the State, by following the two earlier decisions in *M. Ramnatha Pillai Vs. State of Kerala*, in which while dealing with the question, whether the Government had right to abolish a post in the service that the power to create or abolish a post is not related to the doctrine of pleasure but is a matter of Governmental policy and every sovereign Government has this power in the interest and necessity of internal administration as the creation and abolition of a post is dictated by policy decision, exigencies of circumstances and administrative necessity and the creation, the continuance and the abolition of post are all decided by the Government in the interest of administration and general public and the Courts exclude the operation of the doctrine of estoppel when it is found that the authority against whom estoppel is pleaded has owed a duty to the public against whom the estoppel cannot fairly operate; and *State of Kerala Vs. Gwalior Rayon Silk Mfg. (Wvg.) Company Limited, 1973 (2) SCC 713 (C.B.)* in which it was held 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, correctly stated the law. The position of law regarding the invocation and application of the plea of promissory estoppel was summed up as under :-

"40. The scope of the plea of doctrine of promissory estoppel against the Government may be summed up as follows:

- (1) The plea of promissory estoppel is not available against the exercise of the legislative functions of the State.
- (2) The doctrine cannot be invoked for preventing the Government from

discharging its functions under the law.

(3) When the officer of the Government acts outside the scope of his authority, the plea of promissory estoppel is not available. The doctrine of ultra vires will come into operation and the Government cannot be held bound by the unauthorised acts of its officers.

(4) When the officer acts within the scope of his authority under a scheme and enters into an agreement and makes a representation and a person acting on that representation puts himself in a disadvantageous position, the Court is entitled to require the officer to act according to the scheme and the agreement or representation. The officer cannot arbitrarily act on his mere whim and ignore his promise on some undefined and undisclosed grounds of necessity or change the conditions to the prejudice of the person who had acted upon such representation and put himself in a disadvantageous position.

(5) The officer would be justified in changing the terms of the agreement to the prejudice of the other party on special considerations such as difficult foreign exchange position or other matters which have a bearing on general interest of the State.

41. Before we conclude, we would refer to a recent decision of this Court in *Motilal Padampat Sugar Mills Co. (P) Ltd. v. State of U.P.* [(1979) 2 SCC 409 : 1979 SCC (Tax) 144 : (1979) 2 SCR 641] It has been held that there can be no promissory estoppel against the exercise of legislative power and the legislature cannot be precluded from exercising its legislative functions by resort to the doctrine of promissory estoppel. It has also held that when the Government owes a duty to the public to act differently, promissory estoppel could not be invoked to prevent the Government from doing so. The doctrine cannot be invoked for preventing the Government from acting in discharge of its duty under the law. The Government would not be bound by the acts of its officers and agents, who act beyond the scope of their authority. A person dealing with an agent of the Government must be held to have noticed all the limitations of his authority."

13.7. In *Tapti Oil Industries and another Vs. State of Maharashtra and others* 1984 Mh. L.J. 321, the Full Bench of this Court held that the doctrine of promissory estoppel is available against even executive action of the State. It is not necessary for invoking the doctrine of promissory estoppel to trace the right to any action of the Government under a legislative enactment. If certain representations are made by the State Government, the question as to whether those representations are made in the exercise of its executive power or not is not relevant and if the promisee has acted on those representations and altered his position, then it will not be permissible for the State to resile from its promise or representation to the prejudice of the person who has acted on that promise.

13.8. In *Godfrey Philips India Ltd. (supra)*, the Court after noticing *Motilal Padampat Sugar Mills (supra)* and *Jit Ram (supra)* expressed its disagreement with the observations in *Jit Ram (supra)* to the extent that they conflicted with

the statement of law in *Motilal Padampat Sugar Mills* (supra) and introduced reservations cutting down the full width and amplitude of the propositions of law laid down in *Motilal Padampat Sugar Mills* (supra) and held as under :

"13. Of course we must make it clear, and that is also laid down in *Motilal Sugar Mills* case [(1979) 2 SCC 409 : 1979 SCC (Tax) 144 : (1979) 2 SCR 641] that there can be no promissory estoppel against the Legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or, power of the officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires; if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it. This aspect has been dealt with fully in *Motilal Sugar Mills* case [(1979) 2 SCC 409 : 1979 SCC (Tax) 144 : (1979) 2 SCR 641] and we find ourselves wholly in agreement with what has been said in that decision on this point."

13.9. The principle of legitimate expectation, was explained in *Food Corporation of India v. Kamdhenu Cattle Feed Industries* (1993) 1 SCC 71 in the context of contractual obligations of the State, in the following words :-

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness."

Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

which indicates that the said principle is aimed at obliterating arbitrariness in State actions.

13.10. In *Union of India Vs. Hindustan Development Corpn.*, (1993) 3 SCC 499, the Hon'ble Apex Court, in regard to the doctrine of legitimate expectation, had held as under :

"33. On examination of some of these important decisions it is generally agreed that legitimate expectation gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negating a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overriding public interest. Therefore even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision

taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the courts cannot interfere with a decision. In a given case whether there are such facts and circumstances giving rise to a legitimate expectation, it would primarily be a question of fact. If these tests are satisfied and if the court is satisfied that a case of legitimate expectation is made out then the next question would be whether failure to give an opportunity of hearing before the decision affecting such legitimate expectation is taken, has resulted in failure of justice and whether on that ground the decision should be quashed. If that be so then what should be the relief is again a matter which depends on several factors."

13.11. In *Mahaveer Oil Industries* (supra) it was held that public interest required that the State be held bound by the promise held out by it, but this would not preclude the State from withdrawing the benefit prospectively even during the period of the scheme, if public interest so requires and even in a case where the party has acted on the promise, if there is any supervening public interest which requires that the benefit be withdrawn or the scheme be modified, that supervening public interest would prevail any promissory estoppel.

13.12. In *Punjab Communications Ltd.* (supra) while dilating upon the question of applicability of the principle of legitimate expectation, it was held that though a policy, may create a legitimate expectation, which normally would be binding upon the decision maker, however, such a policy can be changed by the decision maker in overriding public interest, since choice of policy is for the decision maker, this, however, change in policy must satisfy the test of *Wednesbury* unreasonableness, so as to enable the Court to interfere.

13.13. In *Federation of Railway Officers' Association* (supra) it was held that the judicial review of a policy evolved by the Government is limited; when policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the Statute, it cannot be said to be an unrestricted discretion, on matters affecting policy and requiring technical expertise the Court would deal the matters for decision of those who are qualified to address the issues and unless the policy or action is inconsistent with the constitution and the laws or arbitrary or irrational or abuse of power, the Court will not interfere with such matters.

13.14. In *Bannari Amman Sugars Ltd.* (supra) while considering the plea of promissory estoppel and legitimate expectation and so also *audi alteram partem*, the Hon'ble Apex Court held that a claim based on merely legitimate expectation without anything more cannot ipso facto give a right though it can be one of the grounds to consider whether the decision was violative of these principles, warranting interference, as the powers of the Court to review administrative action must be restricted to general legal limitations applicable and it was held that if the State's Acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities and adopted policies and the ultimate test is whether on the touchstone of reasonableness the policy

decision comes out unscathed. It also held that a restriction could not be held said to be unreasonable merely because in a given case, it operates harshly. It also held that in order to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be led in the petition itself by the party invoking the doctrine and bald expressions without any supporting material to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine and the Courts are bound to consider all expects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine the Courts have to be equity and the fundamental principles of equity must forever be present in the mind of the Court.

13.15. The principles regarding the invocation and applicability of the doctrine of promissory estoppel and legitimate expectation, thereafter, upon consideration of what has been held in *Indo-Afghan; Century Spinning and Manufacturing Company Ltd. ; Ram Kumar; Sipahi Singh; Motilal Padampat; Godfrey Phillips India Ltd.; Hindustan Development Corporation; Kanishka Trading ; P.T.R. Exports (Madras) Pvt. Ltd. ; Dr. Ashok Kumar Maheshwari ; Bannari Amman Sugars Ltd. (supra)* have been summed up by the Hon'ble Apex Court in *Monnet Ispat & Energy Ltd. (supra)* in the following words :-

"182. In my view, the following principles must guide a court where an issue of applicability of promissory estoppel arises: 182.1. Where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is, in fact, so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not.

182.2. The doctrine of promissory estoppel may be applied against the Government where the interest of justice, morality and common fairness dictate such a course. The doctrine is applicable against the State even in its governmental, public or sovereign capacity where it is necessary to prevent fraud or manifest injustice. However, the Government or even a private party under the doctrine of promissory estoppel cannot be asked to do an act prohibited in law. The nature and function which the Government discharges is not very relevant. The Government is subject to the rule of promissory estoppel and if the essential ingredients of this doctrine are satisfied, the Government can be compelled to carry out the promise made by it.

182.3. The doctrine of promissory estoppel is not limited in its application only to defence but it can also furnish a cause of action. In other words, the doctrine of

promissory estoppel can by itself be the basis of action.

182.4. For invocation of the doctrine of promissory estoppel, it is necessary for the promisee to show that by acting on promise made by the other party, he altered his position. The alteration of position by the promisee is a sine qua non for the applicability of the doctrine. However, it is not necessary for him to prove any damage, detriment or prejudice because of alteration of such promise.

182.5. In no case, the doctrine of promissory estoppel can be pressed into aid to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. No promise can be enforced which is statutorily prohibited or is against public policy.

182.6. It is necessary for invocation of the doctrine of promissory estoppel that a clear, sound and positive foundation is laid in the petition. Bald assertions, averments or allegations without any supporting material are not sufficient to press into aid the doctrine of promissory estoppel.

182.7. The doctrine of promissory estoppel cannot be invoked in abstract. When it is sought to be invoked, the court must consider all aspects including the result sought to be achieved and the public good at large. The fundamental principle of equity must forever be present to the mind of the court. Absence of it must not hold the Government or the public authority to its promise, assurance or representation.

#### Principles of legitimate expectation

188. It is not necessary to multiply the decisions of this Court. Suffice it to observe that the following principles in relation to the doctrine of legitimate expectation are now well established:

188.1. The doctrine of legitimate expectation can be invoked as a substantive and enforceable right.

188.2. The doctrine of legitimate expectation is founded on the principle of reasonableness and fairness. The doctrine arises out of principles of natural justice and there are parallels between the doctrine of legitimate expectation and promissory estoppel.

188.3. Where the decision of an authority is founded in public interest as per executive policy or law, the court would be reluctant to interfere with such decision by invoking the doctrine of legitimate expectation. The legitimate expectation doctrine cannot be invoked to fetter changes in administrative policy if it is in the public interest to do so.

188.4. The legitimate expectation is different from anticipation and an anticipation cannot amount to an assertable expectation. Such expectation should be justifiable, legitimate and protectable.

188.5. The protection of legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words, personal benefit must give way to public interest and the doctrine of legitimate expectation would not be invoked which could block public interest for private benefit."

On facts it was held that the State Government had full power to recall the recommendation made to the Central Government for some good reasons, in the matter of application made for the grant or renewal of a mining lease as no one has a legal or vested right in respect of the same. In a separate concurring judgment Hon'ble Shri Justice Gokhale, pointed out the distinction between the promissory estoppel and legitimate expectation in the following words :-

"289. As we have seen earlier, for invoking the principle of promissory estoppel there has to be a promise, and on that basis the party concerned must have acted to its prejudice. In the instant case it was only a proposal, and it was very much made clear that it was to be approved by the Central Government, prior whereto it could not be construed as containing a promise. Besides, equity cannot be used against a statutory provision or notification.

290. What the appellants are seeking is in a way some kind of a specific performance when there is no concluded contract between the parties. An MoU is not a contract, and not in any case within the meaning of Article 299 of the Constitution of India. Barring one party (Adhunik) other parties do not appear to have taken further steps. In any case, in the absence of any promise, the appellants including Adhunik cannot claim promissory estoppel in the teeth of the notifications issued under the relevant statutory powers. Alternatively, the appellants are trying to make a case under the doctrine of legitimate expectations. The basis of this doctrine is in reasonableness and fairness. However, it can also not be invoked where the decision of the public authority is founded in a provision of law, and is in consonance with public interest. As recently reiterated by this Court in the context of the MMDR Act, in para 83 of Sandur Manganese [(2010) 13 SCC 1] "it is a well-settled principle that equity stands excluded when a matter is governed by statute". We cannot entertain the submission of unjustified discrimination in favour of Bihar Sponge and Iron Ltd. as well for the reason that it was not pressed before the High Court nor was any material placed before this Court to point out as to how the grant in its favour was unjustified."

13.16. The position regarding legitimate expectation, was thereafter considered in Lieutenant Colonel P.K. Choudhary (supra), while considering the doctrine of legitimate expectation in the matter of promotion and noticing Kamdhenu Cattle Feed Industries; Hindustan Development Corporation; Punjab Communications Ltd. and Monnet Ispat & Energy Ltd. (supra) it was held that legitimate expectation as an argument cannot prevail over a policy introduced by the Government which does not suffer from any perversity, unfairness or unreasonableness or which does not violate any fundamental or other

enforceable rights vested. The following is what has been said :-

"52. Legitimate expectation as a concept has engaged the attention of this Court in several earlier decisions to which we shall presently refer. But before we do so we need only to say that the concept arises out of what may be described as a reasonable expectation of being treated in a certain way by an administrative authority even though the person who has such an expectation has no right in law to receive the benefit expected by him. Any such expectation can arise from an "express promise" or a "consistent course of practice or procedure" which the person claiming the benefit may reasonably expect to continue. The question of redress which the person in whom the legitimate expectation arises can seek and the approach to be adopted while resolving a conflict between any such expectation, on the one hand, and a public policy in general public interest on the other, present distinct dimensions every time the plea of legitimate expectation is raised in a case.

58. That apart, legitimate expectation as an argument cannot prevail over a policy introduced by the Government which does not suffer from any perversity, unfairness or unreasonableness or which does not violate any fundamental or other enforceable rights vested in the respondents. In the case in hand, the Government has, as a matter of policy, decided to lower the age profile of officers serving in Combat Arms and Combat Arms Support pursuant to the recommendations made by the Expert Committees. We have in the earlier part of the judgment dealt with the recommendations made by the Committees and the objectives sought to be achieved by the policy decisions of the Government. There is nothing perverse, unreasonable or unfair about the policy that the age of officers serving in Combat Arms and Combat Arms Support will be lowered by creating additional vacancies to be allotted on Command Exit Model. In the absence of any perversity, unreasonableness or unfairness in the policy so introduced, we see no reason to allow the argument based on legitimate expectation to unsettle or undo the policy which is otherwise laudable and intended to render the Indian Army more efficient and better equipped for combat situations. It also is not a case where no reasonable person could have taken the decision which the Government have taken as regards the need for lowering the age profile of the Commanding Officers or their exit after 2½ to 3 years to occupy positions which the Government have created for the officers to occupy till they are considered for promotion to the next higher rank."

13.17. The principles regarding legitimate expectation, have been laid down in Kerala State beverages (M & M) Corporation Ltd Vs. P. P. Suresh (2019) 9 SCC 710 wherein the Hon'ble Apex Court was considering the applicability of the doctrine of legitimate expectation in the background of a vested right of employment claimed by the Abkari workers who had lost their livelihood due to ban on attack in the state of Kerala and the state had taken a decision to provide the displaced workers employment by adjusting them against 25% of the daily wage vacancies that would arise in the Corporation. The question regarding any

vested right of employment was answered as under :-

"12 There is no dispute that a number of abkari workers lost their livelihood due to the ban on arrack in the State, in the year 1996. Dissatisfied with the monetary compensation provided to them, they demanded employment in the Corporation. The agitation turned violent and to find an immediate solution to the law and order problem, the Government took a decision to provide employment to displaced abkari workers, adjusting them against 25% of the daily wage vacancies that would arise in the Corporation. There was no assurance given to all the displaced abkari workers that they would be re-employed. The assurance given by the Government was to reserve 25% of daily wage vacancies that would arise in future for the displaced abkari workers. It cannot be said that a vested right accrued to all the abkari workers to claim employment in retail outlets in the Corporation. We do not agree with the submission of the respondents that a vested right was created by the Government Order dated 20-2-2002 and that it was indefeasible. There was no unequivocal promise that all the displaced workers would be provided re-employment.

13. The assurance given to the abkari workers that they would be considered for employment in 25% of the daily wage vacancies that would arise in the Corporation, according to the Government, had to be altered due to administrative exigencies. The implementation of the decision to provide employment to displaced abkari workers was not possible in view of the fact that the number of vacancies of daily wage employees after the year 2002 were very less whereas there was a large number of displaced abkari workers to be accommodated. In view of the difficulties faced by the Government in implementation of the Government Order dated 20-2-2002, the Government found it fit to modify the policy decision by a Government Order dated 7-8-2004. It came to the notice of the Government that several displaced abkari workers perished after 1996. Their families had to be provided immediate succour. To give priority to the families in immediate need, the Government decided that dependent sons of the deceased abkari workers who died after the year 1996 would be provided employment against the 25% daily wage vacancies in the Corporation. The said decision cannot be termed as unreasonable or arbitrary as it was taken in light of overriding public interest. Relevant considerations were taken into account by the Government to alter the Government Order dated 20-2-2002."

In so far as the doctrine of legitimate expectation is concerned the Hon'ble Apex Court relying on Punjab Communications Ltd. Vs. Union of India and others (1999) 4 SCC 727, held that the position was as under :-

"19. An expectation entertained by a person may not be found to be legitimate due to the existence of some countervailing consideration of policy or law. [ H.W.R. Wade & C.F. Forsyth, Administrative Law (Eleventh Edn., Oxford University Press, 2014).] Administrative policies may change with changing

circumstances, including changes in the political complexion of Governments. The liberty to make such changes is something that is inherent in our constitutional form of Government. [Hughes v. Department of Health and Social Security, 1985 AC 776, 788 : (1985) 2 WLR 866 (HL)].

20. The decision-makers' freedom to change the policy in public interest cannot be fettered by applying the principle of substantive legitimate expectation. [Findlay, In re, 1985 AC 318 : (1984) 3 WLR 1159 : (1984) 3 All ER 801 (HL)] So long as the Government does not act in an arbitrary or in an unreasonable manner, the change in policy does not call for interference by judicial review on the ground of a legitimate expectation of an individual or a group of individuals being defeated.

21. The assurance given to the respondents that they would be considered for appointment in the future vacancies of daily wage workers, according to the respondents, gives rise to a claim of legitimate expectation. The respondents contend that there is no valid reason for the Government to resile from the promise made to them. We are in agreement with the explanation given by the State Government that the change in policy due was to the difficulty in implementation of the Government Order dated 20-2-2002. Due deference has to be given to the discretion exercised by the State Government. As the decision of the Government to change the policy was to balance the interests of the displaced abkari workers and a large number of unemployed youth in the State of Kerala, the decision taken on 7-8-2004 cannot be said to be contrary to public interest. We are convinced that the overriding public interest which was the reason for change in policy has to be given due weight while considering the claim of the respondents regarding legitimate expectation. We hold that the expectation of the respondents for consideration against the 25% of the future vacancies in daily wage workers in the Corporation is not legitimate."

13.18. The issue thereafter fell for consideration of a three Judges Bench of the Hon'ble Apex Court in Union of India Vs. Unicorn Industries (2019) 10 SCC 575 , and after considering the position as enunciated in Kanishka Trading; Shree Durga Oil Mills; Mahaveer Oil Mills; Shreejee Sales Corporation (supra); Shri Sidhballi Steels Vs. State of U.P. 2011 (3) SCC 193 and D.G. of Foreign Trade Vs. Kanak Exports 2016(2) SCC 226, it was held as under :-

"18. It has been observed, that the withdrawal of exemption in public interest is a matter of policy and the courts would not bind the Government to its policy decisions for all times to come, irrespective of the satisfaction of the Government that a change in the policy was necessary in the public interest. It has been held that, where the Government acts in public interest and neither any fraud or lack of bona fides is alleged much less established, it would not be appropriate for this Court to interfere with the same. Ultimately, this Court came to the conclusion that the withdrawal of the exemption was in the public interest and, therefore, refused to interfere with the order of the Delhi High Court dismissing the petitions.

20. It could thus be seen that, it has been held that when withdrawal of the exemption is in public interest, the public interest must override any consideration of private loss or gain. In the said case, the change in policy and withdrawal of the exemption on the ground of severe resource crunch have been found to be a valid ground and to be in public interest.

22. It could thus be seen that this Court observed that once public interest is accepted as a superior equity which can override an individual equity, the same principle should be applicable in such cases where the period is prescribed.

26. It could thus be seen that, it is more than well settled that the exemption granted, even when the notification granting exemption prescribes a particular period till which it is available, can be withdrawn by the State, if it is found that such a withdrawal is in the public interest. In such a case, the larger public interest would outweigh the individual interest, if any. In such a case, even the doctrine of promissory estoppel would not come to the rescue of the persons claiming exemptions and compel the State not to resile from its promise, if the act of the State is found to be in public interest to do so."

13.19. The Hon'ble Apex Court thereafter in *State of Jharkhand and Others Vs Brahmputra Metalics Ltd., Ranchi* and Another 2020 SCC OnLine SC 968 dilated upon the doctrine of promissory estoppel and legitimate expectation and upon a consideration of *Monnet Ispat and Energy (supra)* held that for the application of the doctrine of promissory estoppel, there has to be a promise based on which the promisee has acted to its prejudice, whereas in contrast while applying the doctrine of legitimate expectation, the primary considerations are reasonableness and fairness in State action and considering *Lt. Col. P.K. Choudhary (supra)* held that the doctrine of legitimate expectation cannot be claimed as a right in itself, but can be used only when the denial of a legitimate expectation leads to the violation of Article 14 of the constitution. Further considering *Kamdheni Cattle Feed Industries (supra)* and *NOIDA Entrepreneurs Assn Vs. NOIDA* 2011(6) SCC 508, it held that the doctrine of substantive legitimate expectation is one of the ways in which the guarantee of non-arbitrariness enshrined under Article 14 of the Constitution finds concrete expression.

13.20. In *Union of India and Another Etc. Vs. V.V.F. Limited* and Another 2020 SCC OnLine SC 378 a three Judges Bench of the Hon'ble Apex Court, while considering the doctrine of promissory estoppel held that when the public interest warrants, the principles of promissory estoppel cannot be invoked and that the rule of promissory estoppel being an equitable doctrine has to be moulded 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 and it was held as under :-

"58. As observed hereinabove, the subsequent notifications/industrial policies do not take away any vested right conferred under the earlier notifications/industrial policies. Under the subsequent notifications/industrial policies, the persons who

establish the new undertakings shall be continue to get the refund of the excise duty. However, it is clarified by the subsequent notifications that the refund of the excise duty shall be on the actual excise duty paid on actual value addition made by the manufacturers undertaking manufacturing activities.

Therefore, it cannot be said that subsequent notifications/industrial policies are hit by the doctrine of promissory estoppel. The respective High Courts have committed grave error in holding that the subsequent notifications/industrial policies impugned before the respective High Courts were hit by the doctrine of promissory estoppel. As observed and held hereinabove, the subsequent notifications/industrial policies which were impugned before the respective High Court can be said to be clarificatory in nature and the same have been issued in the larger public interest and in the interest of the Revenue, the same can be made applicable retrospectively, otherwise the object and purpose and the intention of the Government to provide excise duty exemption only in respect of genuine manufacturing activities carried out in the concerned areas shall be frustrated. As the subsequent notifications/industrial policies are "to explain" the earlier notifications/industrial policies, it would be without object unless construed retrospectively. The subsequent notifications impugned before the respective High Courts as such provide the manner and method of calculating the amount of refund of excise duty paid on actual manufacturing of goods. The notifications impugned before the respective High Courts can be said to be providing mode on determination of the refund of excise duty to achieve the object and purpose of providing incentive/exemption. As observed hereinabove, they do not take away any vested right conferred under the earlier notifications. The subsequent notifications therefore are clarificatory in nature, since it declares the refund of excise duty paid genuinely and paid on actual manufacturing of goods and not on the duty paid on the goods manufactured only on paper and without undertaking any manufacturing activities of such goods."

It is not necessary to multiply judgments as the citations relied upon by the learned Counsel for the parties, enunciate the doctrine of promissory estoppel and legitimate expectation, which stand addressed by the above judicial pronouncements. It is thus apparent that the principles of promissory estoppel and that of legitimate expectation, cannot come in the way of larger public interest and the State would always have the right to change the policy, if it can be demonstrated that factors existed, which required it to change or modify the policy on account of the policy having become unworkable, not giving the desired result or was in larger public interest or such other reasons as may pass the test of reasonableness. Personal benefit must give way to public interest and the doctrine of legitimate expectation would not be invoked which could block public interest for private benefit. Judicial review would thus be confined to an examination as to whether there was any arbitrariness, unreasonableness in the matter of change of policy and not otherwise. It is thus based upon the position as enunciated from the above judicial pronouncements that the questions

referred to have to be answered.

14. At the outset, what is material to note is that the policy as framed by the Government Resolution dated 30/4/2005, was amended by the Government Resolutions dated 1/12/2010, 21/5/2011, 10/4/2013 and 1/10/2005 earlier also.

15. The purpose behind bringing the policy for reservation in employment to sportsperson, as spelt out from the Government Resolution dated 30/04/2005, appears to be that the sports activity, is an integral part in the social life of the nation as well as the State, which enables the sportsperson to participate in various international and national competitions which brings name and fame, not only to the sportsperson but also to the nation. It was found that there was a demand for reservation from various quarters for sportspersons to be assured of employment. After considering that the time period for developing a career in sports and the academic career is the same, as a result of which, if a sportsperson turns to developing his career in the field of sport, his career in the academic field naturally suffers, as a result of which, the sportsperson is unable to compete with students who have concentrated on the academic career alone and their parents in such a situation also do not promote a sports career by preferring a career in academics as there was also the lack of opportunity of employment after having devoted a better part of the career building time, towards sports, the need was therefore felt for framing a policy which would address the issue of giving an impetus to a person to choose a career in sports, as a result of which, the Government Resolution dated 30/4/2005 was brought into effect. By the said Government Resolution dated 30/4/2005 a 5% reservation was provided in various offices as listed in Clause (1) therein for sportspersons and criteria were laid down, in Clauses (3) and (4) therein upon fulfilling which, the sportsperson would become entitled to be considered for appointment in the 5% posts as reserved for sportspersons found to be complying with the criteria and found to be eligible. The sports, playing of which would make a sportsperson eligible for the reservation were categorized into four categories -A to D and the sports were to be those approved by (1) the Indian Olympic Association (2) Maharashtra Olympic Association and (3) those recommended by the Maharashtra Olympic Association. The procedure was also laid down, which was to be adopted for grant of employment. Terms and conditions to be fulfilled/complied with, to enable a sportsperson to avail of the benefit were also laid down in Clause (7) of the said Government Resolution dated 30/4/2005.

16. Appendix-A to the said Government Resolution dated 30/4/2005 gave a list of the sports approved by these associations. The sport of 'Ball Badminton' was included in the list of sports approved by the Indian Olympic Association and the sport of 'Softball' was included in the list of sports as recommended by the Maharashtra Olympic Association. It is thus apparent that the said Government Resolution dated 30/4/2005 did not specify particular sports which would be entitled to the benefit of reservation but the naming of such sport was left to the

discretion of (1) the Indian Olympic Association (2) Maharashtra Olympic Association to be approved by them and (3) those recommended by the Maharashtra Olympic Association. This would clearly indicate that the approval and recommendation were not fixed but could vary, depending upon the decision, approval and recommendation of the Indian Olympic Association and Maharashtra Olympic Association.

17. In fact this position is illustrated by the judgment in the case of Santosh Dnyoba Chavan Vs. The State of Mah. & Ors. 2018 (2) All M.R. 781, in which the sport of 'Atya Patya', which was included in Appendix-A of the Government Resolution dated 30/4/2005, as the sport approved by the Indian Olympic Association, for which competitions were held by the Atya Patya Federation of India, affiliated to All India Olympic Association. The petitioner therein had several certificates in the sport of Atya Patya and had also represented the State. He had appeared for the Maharashtra Public Service Commission (MPSC ) preliminary examination in 2014 and had cleared it. The main examination was also cleared by him. The appointment was sought from the sports quota and when the certificates were sent for verification, it was stated that the petitioner did not qualify since the Indian Olympic Association had withdrawn the affiliation of Atya Patya Federation of India vide Circular dated 11/2/2011, and therefore he was not qualified. In Writ Petition it was noticed that the Indian Olympic Association had amended its constitution in its Annual General Assembly on 12/2/2011, whereby the category of recognized members was deleted, due to which the affiliation of 31 National Federations, which included the Atya Patya Federation of India which was a recognized member, stood withdrawn/de-recognized in respect of which a circular was duly issued by the Indian Olympic Association. This fact came to the notice of the State of Maharashtra in February 2013 as a result of which a Government Resolution was issued on 30/12/2013, whereby the sportspersons who had played during the period from February 2011 to December 2013, were protected by holding them eligible for the benefit of reservation and sports certificates which were sent to the Directorate of Sports for verification prior to 28/2/2014 only should be presumed to have approval of Indian Olympic Association and accordingly should be verified, which was challenged as violative of Article 14 of the Constitution. A learned Division Bench of this Court, held that what sports activity/event should be considered for giving 5% reservation under the Government Resolution dated 30/4/2005, would fall within the domain of the respondents and it was not for the Courts to re-write the policy of the Government, had dismissed the petition. The position that the benefit of the policy as contained in the Government Resolution dated 30/4/2005, was not in respect of particular sports, but was in respect of sports approved by the Indian Olympic Association and approved/recommended by the Maharashtra Olympic Association, stood confirmed.

18. Clause-5 of the Government Resolution dated 30/4/2005 being material in this regard, it would be apt to reproduce the same, which is as under :-

It would thus be apparent that the right to change the sport in Appendix-A entitled for reservation, has been specifically reserved by the State. This would further indicate that though the playing of a particular sport, subject to the satisfaction of the eligibility criteria laid down, could entitle a sportsperson for being considered for the reservation, the sport could be changed by the State at any time. The representation thus given in the policy as emanating from the Government Resolution dated 30/4/2005, was capable of being changed at any time, from time to time, based upon the need felt by the State. The promise or expectation given/created therefore was capable of being changed anytime, which condition was contained in the Government Resolution dated 20/4/2005 itself, and thus was a promise which was neither fixed or absolute, but a conditional one and therefore merely because some of the sports as listed in Appendix-A of the Government Resolution dated 30/4/2005 were deleted that would not mean that a sportsperson had acquired any claim on the basis of the principle of promissory estoppel or legitimate expectation. One single Clause-5 of the Government Resolution dated 30/4/2005 makes these principles inapplicable.

19. Even Clause-3(d) of the Government Resolution dated 30/4/2005, conferred upon the State the discretion to directly appoint a sportsperson who had brought laurels to the State, by diluting the age and educational criteria as contained therein, which would indicate the nature of discretion retained by the State.

20. By a subsequent Government Resolution dated 9/12/2010, for exercising the discretion as vested in the State under Clause-3(d) of the Government Resolution dated 30/4/2005, for direct appointment, so as to expedite the appointments, Committees were constituted to make recommendations. The Hon'ble the Chief Minister was also empowered to grant an appointment in a given case directly, without even asking for the recommendation of the Committees as constituted under the Government Resolution dated 9/12/2010. All the appointments to be made by direct mode, were subject to the 5% limit of reservation as contained in the Government Resolution dated 30/4/2005.

21. Thereafter by a Government Resolution dated 21/5/2011, the position as regards the sportspersons competent to be appointed directly under Clause- 3(d) of the Government Resolution dated 30/4/2005 for having performed a feat which brought laurels to the State, was clarified by defining the expression 'feat which glorified the State's name', as under :

This would reaffirm the position that the terms of the Government Resolution dated 30/4/2005 were being clarified and changed from time to time as in the original Government Resolution dated 30/4/2005, in Clause - (4) (a) - (Group-A) - the eligibility criteria stated that the sportsperson ought to have participated in an International Sports Competition, individually or as a team member representing the Country and must have secured 1/2/3 place or Gold/Silver/Bronze medal and such competitions must have been organized by International Federations associated with International Olympic Association. There was no mention of Asian Games and Commonwealth Games, which were introduced for

the first time by the Government Resolution dated 21/5/2011. Similar is the position in respect of Clause-(4) (b) - (Group-B) - in the original Government Resolution dated 30/4/2005, wherein the eligibility criteria was changed by introducing the Asian Championship Event; Junior World Championship Event and Youth Olympic which also were introduced for the first time by the Government Resolution dated 21/5/2011.

22. The Government Resolution dated 10/4/2013 further amended the Government Resolution dated 21/5/2011 for direct appointment by making some deletions therein, one of them being the eligibility criteria for appointment in Group-C and D. To be included in Group-C, the criteria was expanded to include even a sportsperson who had represented the Country in tournaments/events indicated in Group-A and B of the Government Resolution dated 30/4/2005 as it stood modified by the Government Resolution dated 21/5/2011. For being included in Group-D the criteria was expanded to include (a) having secured a medal in South Asian Championship and Commonwealth Championship or (b) having secured a medal in a tournament/event organized by an International Federation associated with the International Olympic Committee in which at least 6 countries had participated or (c) all tournaments/ events which made one eligible to be included in Groups - A, B and C or (D) has stood first in National Games.

23. It is further material to note that Appendix-A and B, annexed to the Government Resolution dated 10/4/2013, did not include most of the games approved by the Indian Olympic Association which were included in Appendix-A of the Government Resolution dated 30/4/2005 as well as some approved by the Maharashtra Olympic Association such as Aquatics and Lawn Tennis but included new games such as Yatching, Sailing, Equestrian, Fencing and Wrestling.

24. This would indicate that time and again not only a particular sport but also the tournaments where a sportsperson participated were being changed.

25. Then came the Government Resolution dated 1/10/2015, which included differently abled sportsperson who had participated in games/ tournaments/ events organized by National Disabled Federation associated with the Indian Olympic Association in Groups - A to D of the Government Resolution dated 30/4/2005 which also included the 'Para Olympic' and 'Blind Sports' in Appendix-A to the Government Resolution dated 10/4/2013 for the purpose of Direct appointment.

26. Thereafter came the Government Resolution dated 1/7/2016, by which the Government Resolution dated 30/4/2005 and all subsequent Government Resolutions thereto were superseded and a revised policy for reservation was brought into being.

27. What is material to note is that the learned Counsels for the petitioners do not dispute the validity of the Government Resolution dated 1/7/2016 and neither any challenge thereto has been laid in the petitions in this regard. What

is disputed is only the deletion of some sports, from the list of sports for which reservation shall be available as per the Government Resolution dated 1/7/2016 namely, Ball Badminton and Softball in case of the present petitions. It is material to note that the Government Resolution dated 1/7/2016 not only deletes the sports of Ball Badminton and Softball, from its ambit, but except for Chess, Kabaddi and Khokho, it deletes all other Indian/Local sports. The criterion of being included in Group-A, B, C and D is based upon the sports played in the various tournaments, as indicated in Schedule-A to the Government Resolution dated 1/7/2016. There is yet another significant difference in as much as, whereas the earlier Government Resolution dated 30/4/2005, restricted the 5% reservation, to the offices as indicated in Clause-1 (a) to (e) therein, the Government Resolution dated 1/7/2016, expanded the same, to various other institutions, as would be apparent, from the following table.

28. It is further material to note that the need for superseding the Government Resolution dated 30/4/2005 and all its subsequent Government Resolutions, Circulars, Corrigendum etc. was felt, as in absence of requisite information regarding the requirements, a number of applicants, were later on found to be ineligible, as a result of which, a number of seats remained vacant and in some cases it also resulted in litigation and thus the purpose for which the Government Resolution dated 30/4/2005 was brought into being was not being achieved.

29. Thus, the Government Resolution dated 1/7/2016, framed comprehensive policy for according reservations of 5% to sportspersons, fulfilling the eligible criteria as laid down therein. What is apparent are two significant changes which have been made in the Government Resolution dated 1/7/2016, one of them being, of enlarging the number of institutions where the reservations would be available, as indicated in Clause-1 of the same and the other making it available on the basis of participation in the tournaments/sports events conducted, as indicated in Clause - 2 thereof.

30. Thus, it would be apparent that the Government Resolution dated 1/7/2016 by enlarging the number of institutions where the 5% reservation would become available and the criteria being participation in the sports events being conducted under the aegis of various institutions, was clearly intended to address a larger public interest than what the Government Resolution dated 30/4/2005 and its amendments were intended to do. It is thus axiomatic that when the Government Resolution dated 1/7/2016, serves a larger public interest, the State was clearly within its competence to do so and the question of the State being estopped by the principle of promissory estoppel and that of legitimate expectation would not come in the way of the State, in formulating a policy, to subserve a greater base and larger public interest, so that the benefit of the reservation, would become available, to more number of sportspersons than it was earlier available. A similar position was considered by the Hon'ble Apex Court in P.P. Suresh (supra), and what has been said therein would equally apply to the present case too.

31. Even otherwise, as pointed out above, Clause -5 of the Government Resolution dated 30/4/2005, made it amply clear, that the State had reserved the right in itself, in changing the sports, as enumerated in Appendix -A from time to time, which would indicate that the promise given was conditional one and therefore, even if it was presumed that due to the promise a legitimate expectation was created of being considered for the reservation on playing of a certain sport, the same clearly was subservient to Clause-5 and therefore, was a conditional one.

32. There is also no challenge to the change in policy on the basis of any discrimination or violation of Article 14 of the Constitution. As approved in *Bramhaputra Metalics* (supra) the principle of promissory estoppel necessarily requires that there is a promise on the basis of which the party concerned must have acted to its prejudice and that the doctrine of legitimate expectation cannot be claimed as a right in itself, but can be used only when the denial of a legitimate expectation leads to violation of Article 14 of the Constitution. As pointed out above, there is no ground regarding violation of Article 14 of the Constitution. That apart, Clause-5 of the Government Resolution dated 30/4/2005 by reserving the right to change the sport, clearly indicated to the concerned person that the promise was subject to change any time, and it has to be demonstrated that the promise has been acted upon to the detriment of the concerned person. Can the mere playing of a sport mean that a promise to be considered for reservation, was acted upon. In our considered opinion this would not be so, for the mere playing of a sport by itself, would not entitle a sportsperson to the benefit of the policy as there were other requirements to be fulfilled for meeting the eligibility prescribed for seeking the benefit of the reservation, as is evident from Clause -3 and 4 of the Government Resolution dated 30/4/2005.

33. The change in policy from the one as contained in the Government Resolution dated 30/4/2005 to the one as contained in the Government Resolution dated 1/7/2016, was clearly on account of failure of the earlier policy and to address a larger base and in wider public interest, which is clearly permissible in law and thus the same cannot be said to have been hit by the principles of promissory estoppel or legitimate expectation.

34. The contention that the policy as contained in the Government Resolution dated 30/4/2005, constituted a horizontal reservation, which was directly traceable to Article 16 of the Constitution and therefore a vested right had been created to offer one's candidature, which was being sought to be taken away by the Government Resolution dated 1/7/2016, has to be looked into in the context of what is meant by the creation of a vested right.

34.1. In *J.S. Yadav Vs. State of Uttar Pradesh and another*, (2011) 6 SCC 570 a vested right has been held to mean as under :

"20. "17. The word 'vested' is defined in *Black's Law Dictionary* (6th Edn.) at p.

1563, as:

'Vested; fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent.'

Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights.

In Webster's Comprehensive Dictionary (International Edn.) at p. 1397, 'vested' is defined as:

'[L]aw held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interests.' "

(See *Bibi Sayeeda v. State of Bihar* [(1996) 9 SCC 516 : AIR 1996 SC 1936] at SCC p. 527, para 17.)

21. The word "vest" is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word "vest" has also acquired a meaning as "an absolute or indefeasible right". It had a "legitimate" or "settled expectation" to obtain right to enjoy the property, etc. Such "settled expectation" can be rendered impossible of fulfilment due to change in law by the legislature. Besides this, such a "settled expectation" or the so-called "vested right" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the law. (Vide *Howrah Municipal Corpn. v. Ganges Rope Co. Ltd.* [(2004) 1 SCC 663] )

22. Thus, "vested right" is a right independent of any contingency. Such a right can arise from a contract, statute or by operation of law. A vested right can be taken away only if the law specifically or by necessary implication provides for such a course."

To demonstrate the existence of a vested right, first it has to be established, that the right claimed has been enjoyed, which is not the position herein as there was merely an expectancy to be considered, and nothing else. J.S. Yadav (supra) clearly indicates that mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights and the principle would equally be applicable in the present matter. In P.P. Suresh (supra) while considering the assurance given by the Government as reflected from the Government Order dated 20/2/2002 to provide employment to displaced Abkari workers, adjusting them against 25% of the daily wage vacancies that would arise in the Corporation, it was held that no vested right was created by virtue of such an assurance.

34.2. The Government Resolution dated 30/4/2005, did not create a horizontal reservation, as per Clause - 7 (7) therein, on the playing of any particular sport,

but the same was created in respect of a sport approved/recommended by the authorities as stated therein and which sport was to be approved/recommended was at the sole discretion of the Indian Olympic Association and the Maharashtra Olympic Association. Thus, even if a horizontal reservation was created, a sportsperson, playing a particular sport could not claim an absolute right, for the benefit of reservation, as the playing of such particular sport, was at the discretion of the above authorities, apart from which under Clause-5 of the Government Resolution dated 30/4/2005, the right to make changes in the sports in Appendix-A, was kept reserved by the State, in itself. In the instant case also what has been indicated or provided by the Government Resolution dated 30/4/2005, was the reservation of 5% for sportspersons in the matter of employment, on complying criteria as laid down therein and nothing else, which was based upon the anticipated continuance of the then existing law/assurance which was the Government Resolution dated 30/4/2005 and thus it cannot be said that any vested right was created in the matter. This 5% reservation in the matter of employment, has not been taken away by the Government Resolution dated 1/7/2016, but only the criteria has been changed to accommodate a larger number of sportspersons and the number of institutions where such 5% reservation for sportspersons would become available has been enlarged, so that a greater number of vacancies would become available.

34.3. That apart Article 16 (4) of the Constitution is only an enabling provision as held in P&T Scheduled Caste/Tribe Employees' Welfare Assn. Vs. Union of India (1988) 4 SCC 147, and the State would always have the liberty to make changes in policies, based upon the change in circumstances, criteria, conditions, unworkability of the policy, addressing a larger public interest and similar factors.

Question No.1 is therefore answered as under :

A legally enforceable right cannot be claimed based upon the principles of promissory estoppel and legitimate expectation in respect of the policy framed under the Government Resolution dated 30/4/2005 as its superseding by the Government Resolution dated 1/7/2016 is in larger public interest.

Question No.2 :

35. In so far as question No.2 is concerned, it need not detain us longer, as one has only to look at the language of the Government Resolution dated 1/7/2016, for an answer. The Government Resolution dated 1/7/2016 contains Clause-(xiii), which for the sake of ready reference is reproduced as under :-

36. A bare perusal of Clause-(xiii) of the Government Resolution dated 1/7/2016 would indicate that the Government Resolution dated 1/7/2016 has been made operational/operative, one month after the date of its publication and thus would come into effect on 1/8/2016. This clearly indicates that the Government Resolution dated 1/7/2016 is prospective in operation w.e.f. 1/8/2016 onwards and therefore, is not retrospective in operation. We therefore need not consider the judgments as cited at the bar on this question. Needless to say the

applicability of any Government Resolution has to be tested on the date of the application made.

Question No.2 is therefore answered as under :

The Government Resolution dated 1/7/2016 is not retrospectively applicable.

37. The matter may now be placed before the learned Division Bench to decide the writ petitions in light of the answers above.

38. Before we part, it would be appropriate to place on record our appreciation for the assistance rendered by the learned Counsels named above, who had addressed us during the course of arguments and have rendered valuable assistance to us in arriving at the answers to the questions referred to us.