

**(2005) 09 BOM CK 0098**

**In the Bombay High Court**

**Case No : Writ Petition No. 3321 of 2002**

Western Coalfields Ltd. and Others

APPELLANT

Vs

New India Assurance Ltd.

RESPONDENT

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**Date of Decision : 02-09-2005**

**Acts Referred:**

Constitution of India, 1950 — Article 12, 14, 226, 299  
Insurance Act, 1938 — Section 64VB(3)

**Citation : (2006) 1 MhLj 244**

**Hon'ble Judges : P.S. Brahme, J;B.R. Gavai, J**

**Bench : Division Bench**

**Advocate : S.C. Mehadia, for the Appellant; M.G. Barve and A.J. Pophali, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

B.R. Gavai, J.—Rule. Rule made returnable forthwith.

Shri Barve, the learned Counsel, waives notice on behalf of the respondent.

By consent, heard finally.

2. The present petition is directed against the communication addressed by the respondent, thereby cancelling the Long Term Group Janata Personal Accident Policy, issued in favour of the officers and employees of the petitioner No. 1 herein and further seeks a declaration that the respondent is bound with the commitment to keep the policy alive for a period of 10 years, as per the Memorandum of Understanding dated 14th September, 1999.

3. The facts in brief giving rise to the filing of the present petition, are as under:

The petitioner No. 1 is the Government of India Undertaking wherein more than 61,000 workers and about 2,500 officers are employed. The petitioner Nos. 2 to 7 are the various Unions of the workers and officers working with the Petitioner No. 1. The respondent herein is a Government of India Undertaking and engaged

in the business of general insurance.

4. It is the case of the petitioners herein that one lady employee of the petitioner No. 1 met with an accident in or about January, 1999. It is the submission of the petitioners that after the said accident, the representative of the respondent approached the petitioner No. 1 and submitted a proposal for insuring the employees of the petitioner No. 1 under Group Janata Personal Accident Insurance Policy (hereinafter referred to as the JPA Policy). It is further the contention of the petitioners that it was represented that the JPA Policy can cover the risk for the period ranging from 1 year to 15 years. It is further the case of the petitioners that after prolonged negotiations of the petitioners with the respondent and taking into consideration the social security measures and the interest of the employees, the petitioner No. 1 agreed to insure initially 2,500 officers of the petitioner No. 1. In the negotiations, it was agreed that the Policy would cover the risk for a period of 10 years. The petitioner No. 1, accordingly, paid the premium to the respondent " Rs. 818/- per executive on 10-3-1999. The petitioner thereafter deducted the said amount of premium from the salaries of the said executives.

5. It is the contention of the petitioners that the representatives of the respondent thereafter time and again met the officers of the petitioner No. 1 so as to persuade them to cover non-executive employees also under the JPA Policy. It is further the contention of the petitioners that for that purpose, the representatives of the respondent visited various Area Officers within the jurisdiction of the petitioner No. 1 and also met the representatives of various Unions so as to persuade them to come under the purview of the said JPA Policy. It is further the contention of the petitioners that the respondent submitted a comparative statement to the petitioner No. 1 pointing out therein that the proposal given by the respondent is comparatively much better than the proposal given by the other Insurance Companies.

6. It is the case of the petitioners that after prolonged negotiations, it was agreed that the coverage of the said JPA Policy would also be extended to all the employees of the petitioner No. 1. On 14th September, 1999, the terms and conditions agreed between the parties i.e. the petitioner Nos. 1 to 6 and the respondent, were reduced into Memorandum of Understanding (hereinafter referred to as the MOU) which was signed by the petitioner Nos. 1 to 6 and the respondent. It is the case of the petitioners that in the said MOU, it was specifically agreed that the coverage of the said JPA Policy will be for a period of ten years commencing from 15-3-1999 and it was agreed that one time premium would be charged for the employees " Rs. 403/- and for the spouse " Rs. 81/. It was agreed in the said MOU that since the premium was fixed at Rs. 403/- and since initially, the premium recovered from the officer was " Rs. 818/-, the balance of the premium received in excess was to be refunded to the said officers. Accordingly, on 14-9-1999, the petitioner No. 1 paid an amount of Rs. 2,90,99,714/- to the respondent towards the premium for 61,163 nonexclusive

employees of the petitioner No. 1. It is, thus, the case of the petitioners that total amount of Rs. 3,11,44,714/- was paid to the respondent.

7. The Branch Manager of the respondent sent communication dated 16th August, 2002 to the petitioner No. 1, thereby proposing to cancel the said JPA Policy and to refund the premium of the amount subject to the condition as contained in the Policy. Vide communication dated 19th August, 2002, the petitioner No. 1 pointed out to the respondent that the risk of the employees of the petitioner No. 1 was covered as per the MOU dated 14-9-1999. It was the contention of the petitioner No. 1 that no Policy was issued by the respondent. It was, therefore, pointed out by the petitioner No. 1, in the said communication, that since the coverage of the said JPA Policy was for a fixed period of 10 years, same could not be cancelled prior to expiry of the said period of 10 years. However, without taking into consideration the said communication, the respondent cancelled the JPA Policy with effect from 15-9-2002 vide communication dated 29th August, 2002. Vide another communication dated 4th September, 2002, the respondent informed the petitioner No. 1 that in terms of condition No. 5 of the Terms and Conditions of the Policy, the respondent was entitled to cancel the JPA Policy and as such the said JPA Policy was rightly cancelled. Being aggrieved by the cancellation of the said policy vide communication dated 29th August, 2002, the petitioners have approached this Court by way of present petition.

8. Heard Shri Mehadia, the learned Counsel for the petitioners and Shri M. G. Barve with Shri A. J. Pophali, the learned Counsel for the respondent.

9. Shri Mehadia, the learned Counsel for the petitioners, submits that the respondent herein, after one of its employees met with an accident in the month of January, 1999, had approached the petitioner No. 1 to cover the accident risk of its executives and employees under the said JPA Policy. He further submitted that initially, on 10th March, 1999, it was agreed that the risk of accident of its executive shall be covered under the said JPA Policy. He further submitted that thereafter the respondent addressed various communications to the petitioners thereby representing that the proposal given by the respondent Company for covering the risk of its employees was the most advantageous one. He further submitted that not only this, but the senior officers of the respondent held discussions with the representatives of the various Unions and explained them the scheme in detail and persuaded them to accept the scheme for coverage of all employees working in W.C.L. He submitted that the respondent on more than one occasions, represented to the petitioners, that the said JPA Policy would cover the risk for a period of 10 years from 15-3-1999 to 14-3-2009. He submitted that it was also represented that the said JPA Policy was much more advantageous as compared to the Personal Accident Policy and, therefore, the employees of the petitioner No. 1 should accept the said JPA Policy. He further submitted that not only this, but the officers of the respondent extensively toured all the areas of W.C.L. in Maharashtra and Madhya Pradesh so as to

convince the officers and the employees in those areas to accept the JPA Policy. He further submitted that the General Manager and the Regional Manager of the respondent and the top executives of General Insurance Company had a meeting with the Manager of the petitioner No. 1 and Steering Committee Members for giving correct picture of JPA Policy as proposed for W.C.L. He further submitted that on all occasions, it was specifically represented that the coverage of the Policy would be for a period of ten years. He submitted that after a prolonged persuasion by the respondent and detailed negotiations, MOU dated 14th September, 1999, was arrived at between the petitioners Nos. 1 to 6 and the respondent. He submitted that as per the terms and conditions under the said MOU, in addition to covering the risk of the employees of the petitioner No. 1 for an amount of Rs. 5,00,000/- towards accident, the respondent had also agreed to cover the risk of spouses of the employees for an amount of Rs. 1,00,000/-. It was also agreed that one time premium of Rs. 403/- per employee was to be charged and for spouses an additional premium of an amount of Rs. 81/- was to be charged. He submitted that the employees and their spouses were to be covered automatically under the said scheme, whose premium had been deducted and deposited by Management to the Insurance Company and the persons concerned were entitled to receive the amount on the basis of the certificate issued by the W.C.L. authority even without the Certificate being issued by the Insurance Company. He further submitted that as per Clause 13 of the MOU, though it was decided that the periodical review of the Scheme can be made between the officials of the respondent and the Union/Management representatives of the W.C.L. However, it was agreed that there shall be no change/review of the period and the amount insured.

10. Shri Mehadia, therefore, submitted that the respondent had on umpteen number of occasions, represented to the petitioners that the coverage of the JPA Policy shall be for a fixed period of 10 years and in no case, the said period shall be changed. He further submitted that acting on that representation, the petitioners had accepted the said JPA Policy and paid the premium. He, therefore, submitted that it was not permissible for the respondent to resile from the said promise and arbitrarily cancel the said JPA Policy prior to the expiry of the period of 10 years.

11. Shri Mehadia relied on the judgment of the Apex Court in the case of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, . To counter the preliminary objection raised on behalf of the respondent that the dispute between the parties arises out of the contractual matters and as such, this Court should not exercise the jurisdiction under Article 226 of the Constitution of India, he submitted that since the respondent is a State within the meaning of Article 12 of the Constitution of India, even in contractual matters, it is required to act fairly and reasonably and if its actions are arbitrary or unreasonable, then this Court would not be precluded from exercising its jurisdiction under Article 226 of the Constitution of India. In support of this submission, he relied on the judgment of the Apex Court in the case of ABL

International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, .

12. Shri Barve, the learned Counsel appearing on behalf of the respondent, has raised a preliminary objection as regards the maintainability of the petition. He submitted that: the dispute between the petitioners and the respondent arises out of purely contractual matter. He submitted that the respondent, in terms of the Condition No. 5 of the Terms and Conditions of the Policy, has an unequivocal right to cancel the Policy for any reason. He submitted that the respondent, exercising the right available to it under Condition No. 5, has cancelled the JPA Policy. He, therefore, submitted that since the respondent has exercised right available to it, the remedy, if any, available to the petitioners is under the ordinary law and not under the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

13. On merits, Shri Barve submitted that Section 64VB(3) of the Insurance Act, 1938 (hereinafter referred to as the said Act) provides that any refund of premium which may become due to the Insured on account of cancellation of Policy, shall be paid by the Insurer directly to the Insured by cross cheque or pay order or by Postal Money Order and the proper receipt shall be obtained by the Insurer from the Insured. He, therefore, submitted that the statute itself permits the remainder of the premium to be refunded for the remaining period of the Policy on pro-rata basis. He, therefore, submitted that if the statute permits the cancellation and when the respondent is willing to pay the said amount as required u/s 64VB(3) of the said Act, no fault could be found with the action of the respondent. He submitted that as a matter of fact, the respondent, vide communication dated 29th August, 2002, has itself offered to refund the premium on pro-rata basis, for the residual period and hence the respondent has complied with the requirement of law.

14. Shri Barve further submitted that Clause 13 of MOU is not in conflict with the Condition No. 5 of the terms and conditions of the JPA Policy. He submitted that the MOU provides that the period of JPA Policy shall not be reduced. He, however, submitted that it is nowhere provided in the MOU that the Policy cannot be cancelled. He, therefore, submitted that since the right to cancel the Policy, which is available under Condition No. 5, has not been specifically taken away in MOU, the respondent will have to be deemed to have reserved their right to cancel the Policy. He further submitted that the cancellation of Policy and reduction of period of policy are two different terms having different connotations. He submitted that by the impugned communication, the respondent has not reduced the period of Policy, but cancelled it and, therefore, no fault could be found with the action of the respondent as it is in accordance with the Condition No. 5. He further submitted that the MOU, at the most, could be termed as a proposal and not the terms and conditions of the JPA Policy and as such, even if there is something in the MOU, it shall not have any effect if it is inconsistent with the terms and conditions of the JPA Policy. He submitted that

even from the endorsement dated 14th September, 1999, it is clear that what has been extended to the employees of the petitioner No. 1 and their spouses is the coverage under the said JPA Policy. He submitted that even though there is a mention in the said endorsement to the MOU dated 14-9-1999, the said MOU will have to be construed as a proposal and not what is granted under the policy.

15. Shri Barve, the learned Counsel, also attacked the conduct of the petitioners. He submitted that the employees of the petitioner No. 1 have all the while enjoyed the benefits under the terms and conditions under the said JPA Policy and only after the cancellation, it is said that the petitioners are not bound by the terms and conditions of the JPA Policy. He submitted that on no occasion, the petitioners have raised a question regarding the applicability of the conditions of the said MOU. Only after the cancellation of the said JPA Policy, a reliance is sought to be placed on the said MOU. He, therefore, submitted that the petitioners, who are changing their stands, are not entitled to equitable relief under Article 226 of the Constitution of India.

16. Shri Barve further submitted that there is no question of any promise being made by the respondent to the petitioners and as such the principle of promissory estoppel is not applicable to the facts of the present case. He further submitted that the cancellation of the JPA Policy in question is on the basis of the policy decision taken by the respondent to cancel all Long Term JPA Policies for sum assured above Rs. 1,00,000/- and which were issued prior to May, 1999. He further submitted that in pursuance to the said policy decision, the JPA Policy issued to Credit to Credit Co-operative Society of the employees of Nagpur Regional Office of the respondent has also been cancelled. He, therefore, submitted that since the cancellation of the JPA Policy is on the basis of the policy decision taken on all India level, there was no scope for interference by this Court in its extraordinary jurisdiction under Article 226 of the Constitution of India.

17. Shri Barve, the learned Counsel for the respondent, relied on the judgment of the Apex Court in the case of Central Bank of India Ltd. Vs. Hartford Fire Insurance Co. Ltd., , unreported judgment of the Division Bench of this Court in the case of Pune District Central Co-operative Bank Ltd. v. National Insurance Co. Ltd. and Ors., Writ Petition No. 1399 of 2002, and the order of the Division Bench of this Court in the case of Yavatmal District Central Co-operative Bank and Ors. v. New India Assurance Co. Ltd., Writ Petition No. 3715 of 2002.

18. Having heard the learned Counsel for the parties, we will first dealt with the question regarding the tenability of the present petition on the ground of non-exercise of alternate remedy.

19. It is not in dispute that the respondent is a Government of India Undertaking and as such a State within the meaning of Article 12 of the Constitution of India. The factual position is also not disputed by the parties to the present petition. It is also not necessary to record any evidence for determining the issues between

the parties.

20. In the case of ABL International Ltd. (cited supra) the appellant before the Apex Court, had approached the respondent Corporation to cover the risk arising out of the export of Tea made by the appellant as per the assigned contract so as to insure the risk of payment of consideration that was involved in the said contract of export. After considerable correspondence between the parties, the respondent No. 1 therein, had issued a comprehensive risk policy effective from 23rd September, 1993 to 30th September, 1995. The Kazakhstan Government, as required under the contract, also gave an irrevocable guarantee that in the event the Corporation, for any reason whatsoever, was unable to meet its obligation of payment due under the contract, said Government would make payment to the exporter in US Dollars. Initially, the payment of consideration was agreed to be made by the barter of goods. However, later on, it was agreed that the consideration amount for the goods received was to be by way of US Dollars. However, the said Kazak Corporation failed to make payment and though the Kazakhstan Government had agreed to pay the amount of balance consideration, did not fulfil its part of the guarantee given in the contract due to lack of funds. On the failure of Kazakhstan Government to fulfil its part, the appellant made claim against the first respondent therein which had covered the said risk of compensating the loss suffered by it by the non-payment of the consideration amount for the supply of Tea made to the Kazak Corporation. However, the first respondent therein rejected the claim of the appellant on the ground that the appellant had changed the terms of the contract of payment without first consulting it and, therefore, it had no obligation to compensate the appellant for the loss suffered by it. This alleged change of terms of the contract, according to the first respondent, was due to the fact that the appellants had rejected the barter offer made by the Kazak Corporation and had opted for cash payment in US dollars which according to the first respondent, was not the mode of payment contemplated in the contract between the exporter and the Kazak Corporation. Though, in spite of further correspondence, the respondent No. 1 reiterated its right to repudiate the claim, the ABL Corporation filed writ petition before the learned single Judge of the Calcutta High Court praying for cancellation of the letter of repudiation. The learned single Judge of the Calcutta High Court came to a conclusion that though the petition involved a dispute regarding contractual obligation, the respondent No. 1 being Government under the meaning of Article 12 of the Constitution of India, was bound by the terms of the contract and therefore, for such non-performance, writ was maintainable and as such allowed the writ petition and issued a writ and directions as prayed for by the said ABL International Ltd.

In an appeal by the respondent No. 1 therein, the appellate Bench of the Calcutta High Court reversed the finding and held that the claim of the ABL International Ltd. involved the disputed questions of facts which could not be adjudicated under Article 226 of the Constitution of India. The appellate Court, therefore, allowed the appeal and dismissed the writ petition. Being aggrieved

thereby, the said ABL International Ltd. approached the Apex Court.

The respondent-Export Credit Corporation of India Ltd. had contended before the Apex Court that since the writ petition arises out of the contractual matter and since there were disputed questions of facts involved in the matter, and that since the writ petition was in the nature of money claim, the remedy to the appellant under Article 226 of the Constitution was not available and as such the appellate Bench had rightly dismissed the writ petition. After considering various pronouncements of the Apex Court on this issue, the Apex Court negated this contention and observed thus :

26. Therefore, this objection must also fail because in a given case it is open to the writ Court to give such monetary relief also.

27. From the above discussion of ours, following legal principles emerges as to the maintainability of a writ petition :

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the Court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power (See : Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, ) and this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.

21. In the facts of the present case, as we have already observed hereinabove that the respondent is an instrumentality of the State, that there are no disputed questions of facts involved which require adducing of evidence, that petition pertains to the rights of more than 63,000 employees employed in the various areas of the petitioner No. 1 and further that for the reasons to follow, we find that the action of the respondent is not reasonable and as such violative of mandate of Article 14 of the Constitution of India, we are not inclined to accept the preliminary objection raised by the learned Counsel for the respondent

regarding tenability of the petition.

22. We now consider the merits of the matter. The case of the petitioners is principally based on promissory estoppel. By various pronouncements of the Apex Court, it has been held that the doctrine of promissory estoppel is also equally applicable to the executive action. The Apex Court in the case *M.P. Sugar Mill* (cited supra) has held thus :

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."

It can be seen that the Apex Court has in unequivocal terms held that the doctrine of promissory estoppel is also recognized as affording a cause of action to the person to whom the promise is made. It is also held that the doctrine of promissory estoppel has also been applied to the Government and the defence based on executive necessity has been categorically negated.

Considering the position of law as pronounced by English Courts and the American Courts and the pronouncements of the Apex Court, the Apex Court concluded in para 24 as under :

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 Govt. would be held bound by the promise and the promise would be enforceable against the Govt. 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. It is elementary that in a republic governed by the rule of law, no one, howsoever, high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned; the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel? Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of "honesty and good faith"? Why should the Government not be held to a high "standard of rectangular rectitude while dealing with its citizens"? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its contractual obligations, but, let it be said to the eternal glory of this

Court, this doctrine was emphatically negated in the Indo-Afghan Agencies case (AIR 1968 SC 718) and the supremacy of the rule of law was established. It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual."

23. However, the Apex Court itself made an exception regarding the applicability of the said doctrine of promissory estoppel to the governmental action. The Apex Court further observed in para 24 as under :

...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 subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the 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 which 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. The Government cannot, as Shah, J., pointed out in the Indo-Afghan Agencies case, claim to be exempt from the liability to carry out the promise "on some indefinite and undisclosed ground of necessity or expediency", nor can the Government claim to be the sole judge of its liability and repudiate it" on an ex parte appraisal of the circumstances". If the Government wants to resist the liability, it will have to disclose to the Court what are the subsequent events on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those events are such as to render it inequitable to enforce the liability against the Government."

24. Principle of law as enunciated by the Apex Court in the case of M.P. Sugar

Mill (cited supra) has been approved by the various pronouncements of the Apex Court including in the case of Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., and in the case of Sharma Transport Rep. by D.P. Sharma Vs. Government of Andhra Pradesh and Others, .

25. It can, thus, be seen that the Government, like an ordinary citizen, if makes a promise knowing or intending that it will be acted upon by the promisee and in fact, the promisee acts relying on it and alters his position, Government will be held to be bound by the promise if the promise is enforceable against the Government at the instance of the promisee. It is also crystal clear that in such matters, the Government would stand on the same footing as the private individual. It is also well settled that since the said doctrine is an equitable doctrine, it must yield when the equity so requires. When the Government is in a position to show that having regard to the facts subsequently transpired, it will be inequitable to hold a Government by the promise made by it to the promisee and if the public interest would be prejudiced, if the Government is required to carry out the said promise, the Courts would have to balance the public interest in the Government carrying out the promise made to the citizen, which had made the citizen to act upon it and alter his position and the public interest likely to suffer if the promise is required to be carried out by the Government and determine which way the equity lies.

26. In the backdrop of this principle, we will have to examine the facts of the present case. However, in order to invoke the doctrine of promissory estoppel, it is necessary that the foundation must be laid in the petition itself by the party invoking the doctrine. The Apex Court in the case of Sharma Transport (cited supra) in para 13 observed thus :

There is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel, clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and that 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."

In the light of the aforesaid observations of the Apex Court, we have to examine the pleadings in the petition and the material placed on record by the petitioners in support of the petition.

27. The petitioners have specifically averred in paragraph Nos. 3 and 4 of the petition that the officers of the respondent had time and again contacted the petitioner No. 1 and the representative of petitioner Nos. 2 to 7, inducing them to accept the policy issued by the respondent. It is further averred in the petition that the representatives of the respondent have toured the entire area within the jurisdiction of the petitioner No. 1 and held discussions with the Area Managers, representatives of the various Unions in the areas, pointing out to them the

benefits of accepting the policy issued by the respondent. It has also been further specifically averred by the petitioners that a clear and unambiguous representation was made to the petitioners that the period of JPA Policy would be for 10 years and that the said conditions would not be under review. It is, thus, the contention of the petitioners that relying on the said promise, the employees of the petitioner No. 1 were induced to accept the said JPA Policy by paying premium from their salaries. It is further the contention of the petitioners that after detailed and prolonged negotiations, the terms and conditions as agreed between the parties were reduced into writing by the MOU which was duly signed by the parties and that the said MOU clearly provided that in no case the term of the JPA Policy would be reduced for a period of less than 10 years. It has also been averred by the petitioners that the petitioner No. 1, in fact, accepted the proposal of the respondent by way of social security measure so as to protect the interest of its employees and officers. It is the contention of the petitioners that acting on the promise of the respondent, 63,748 employees had accepted the said JPA Policy and paid one time premium for the period of 10 years. It is, therefore, submitted that the respondent now cannot be permitted to resile from the promise made by it to the petitioners.

28. Vide their communication dated 10th February, 1999 addressed by the Branch Manager of the respondent, the respondent sent a proposal to the Director of the petitioner No. 1 for coverage of its employees under the said JPA Policy. The relevant portions from the said communication reads thus :

Recently we came to know through the local daily that one of your Lady Officer met with the road accident on heavy vehicular Traffic Road, just nearby to your office. Moreover your Executive, Staffs and Workers are working in high Hazard conditions. No doubt you are taking care of your Employees by providing various Financial Aid Schemes and Free Medical Facilities, even though, when a Employee succumb to the injuries or suffered serious bodily injuries his family needs more financial help.

Our company has devised a novel JANATA PERSONAL ACCIDENT POLICY with maximum financial benefits with minimum premium.

(X) (A) FOR EXECUTIVES AND STAFF : (i) Sum Insured per employee : Rs. 5.00 Lacs. (ii) Policy period : 10 years. (iii) Premium per employee : Rs. 1375/- (one time premium) (B) FOR WORKERS (i) Sum Insured per Worker : Rs. 2.00 Lacs. (ii) Policy Period : 10 Years. (iii) Premium per Workers : Rs. 550/- (one time premium) (9) SPECIAL DISCOUNT : We allow 15% Special Discount as a corporate Sector, in addition to the group discount mentioned above.

We now request you to give us an opportunity to meet you in person along with our DIVISIONAL MANAGER AND REGIONAL MANAGER FAX finalising the Policy.

The Divisional Manager and the Branch Manager of the respondent addressed another communication to the Director (Personnel) of the petitioner No. 1 on 10th March, 1999, the relevant portion of the said communication reads thus :

Kindly recall the discussion held with you on 9-3-1999 along with our Regional Manager, Dr. Mahesh Durle in your office conveying us to submit our offer for coverage of all your employees in order to avail benefit of 70% discount in the premium for insurance of Rs. 5.00 lakhs for 10 years policy period.

The undersigned, along with Dr. Rajendra Nistane, Divisional Manager, has also held discussions with the President of Coal Mines Officers Association of India along with its Central Executive Body members during which we have explained them our scheme in detail on 10-3-1999 and they are convinced to accept the scheme for coverage of all Officers working in WCL.

Accordingly, for coverage of all Officers working in WCL, the insurance slab shall be as under :

Executives : Group slab 2001-5000 Applicable Group Discount 30% Premium per employee Rs. 1375.00 Less 30% Group Discount Rs. 412.50 Rs. 962.50 Less 15% Corporate Discount Rs. 144.37 NET PREMIUM PER EXEC. Rs. 818.00 Total No. of Executives 2,500 Total Premium Rs. 20,45,000/-. Premium structure together for all Executives and Staff members : Group Slab 7500-1,00,000 Group Discount 55% Premium per employee Rs. 1375.00 (for 10 years Policy Period) Less 55% Group Discount Rs. 756.25 Rs. 618.75 Less 15% Corporate Discount Rs. 92.81 Rs. 525.94 Net Premium per employee Rs. 526.00 We request you to kindly arrange to make the payment of insurance premium in respect of all Officers to us in advance which works out to Rs. 20.45 lakhs in respect of 2500 officials and later on you can deduct this amount from their salary as agreed by the CMOAL Officials.

We shall also request you to kindly arrange our meeting with your five Trade Union officials and other Associations, if any, so that we can also convince them to accept the scheme which is highly beneficial for the industrial employees and to get the maximum discount of 70% to all the employees.

2. We also confirm that the policy period can also be continued for the period of 10 years even after the retirement of any employee.

3. As the scheme is going to close on 15-3-1999, please pay the premium on or before 15th March, 1999 to avail the benefit of the Group Policy and the discount therein.

29. It appears that subsequent to the negotiations between the petitioner Nos. 1 and 7 and the respondent, it was agreed that 2,500 executives of the petitioner No. 1 would be covered under the said JPA Policy and accordingly, premium amount of Rs. 20,45,000/- towards said JPA Policy was paid by the petitioner No. 1 to the respondent. The respondent has acknowledged the receipt of the said payment vide communication dated 15th March, 1999 and has also represented in the said communication that the JPA Policy would be covering the risk for the period of 10 years from 15-3-1999 to 14-3-2009.

30. The respondent thereafter submitted a comparative chart to the petitioners

comparing the pros and cons of the JPA Policy with Annual Personal Accident Policy. The relevant clauses from the said chart are as under :

Sr. LONG TERM JPA POLICY ANNUAL P.A. POLICY No. Rs. 5.00 LACS AND 10 YEARS Rs. 5.00 LACS AND 1 YEAR Only one time payment of premium 0.3 Premium has to be paid yearly. 3 for policy period of 10 years. Long Term Contract. All the 0.7 Annual Contract. employees remain covered for 10 At the time of each renewal of the years period, without any alteration policy, previous years claim ratio is in the benefit and change in to be examined. If the claim ratio is premium, sum insured. adverse then the renewal policy 7 may attract the loading/increase in premium. Easy in Operation being Long Term 10. Difficult in Operation Being Policy of 10 years with one time Annual Contract, every year fresh premium exercise has to be done exercise has to be carried out. As only. the premium is collected from employees for 10 years period, the confusion may arise for retiring employees in near future when they 10 will not be covered after their retirement.

Thereafter, the respondent gave a document duly signed by the Divisional Manager as well as the Branch Manager of the respondent, to the petitioners, stating therein few good reasons for taking Long Term Group J.P.A. Policy with the respondent. The relevant extract reads thus :

5) The only Company -- who has taken initiative and drive for providing financial security to the Employees of W.C.L. and successfully finalised this policy for the Executives of the Company.

6) The only Company -- Vigorously canvassed for extending the benefits of this scheme also to the non-executives and Workers of W.C.L.

7) The only Company -- Participated in series of meeting held with the Steering Committee Members Management of W.C.L.

8) The only Company -- who has extensively toured all ten areas of W.C.L. in Maharashtra and M.P. and developed excellent rapport with all the Personal Managers and JCC's.

9) The only Company -- who has arranged meeting of General Manager, Regional Manager of New India and top executives of G.I.C. with W.C.L. Management and Steering Committee Members for giving correct picture of the policy we proposed for W.C.L.

10) The only Company -- who has received official sanction from Head Office to execute the scheme for your Organisation.

31. After prolonged negotiations between the petitioner Nos. 1 to 7 on one hand and the respondent on another hand, the parties arrived at the terms and conditions. The said terms and conditions were reduced into Memorandum of Understanding dated 14-9-1999. The relevant portion of the said MOU reads thus :

Insurance of employees of W.C.L. against accident (death and disability) was under consideration and follow up since March, 99. All the Subsidiaries of the G.I.C. showed their interest. They were called for discussion and revising their terms. A brief of the same has been brought out separately.

The final meeting was held on 11-9-1999 with the officers of the New India Assurance Co. and representatives of the Unions and WCL Management and the following MOU is arrived at.

1. It is agreed that WCL will go for the Group Janata Personal Policy with The New India Assurance Co. Ltd. (A Subsidiary of General Insurance Corporation Ltd.) Mumbai. It was agreed by the Insurer to include the spouse along with the existing employees limited to one nominated spouse. Those who are un-married now but married subsequently, such spouse will be covered till the expiry of the period i.e. till 14-9-2009

3. Coverage of accident will be guided by the general definition/prescription by the Insurer. The risk will commence with effect from 15-9-1999 for the employees of WCL and their spouse which shall continue for a period of 10 years from the date of commencement irrespective of the fact, whether he is on the roll, retired, dismissed or declared medically unfit or separated for any reasons whatsoever.

9. The employees and spouse will be covered automatically under the scheme whose premium has been deducted and deposited by the Management to the Insurance Company and the person concerned will be entitled to receive the amount on the basis of a certificate issued by the WCL authorities, even without certificate being issued by the insurer.

13. The periodical review of the scheme can be had between officials of New India Assurance Co., Ltd. and the Union/Management representatives of WCL as and when required. One of the parties may request the other for such review. However, there will be no change/review of the period and the amount insured.

14. The Officers of W.C.L. and RI/IV of CMPDI, Nagpur have deposited Rs. 818/- for such insurance. Each one of them will be refunded the difference by the Insurer (a sum of Rs. 334/-) through the Management of WCL. The said difference will be adjusted from the amount to be paid to the New India Assurance Co.

15. The willing employees of mines situated in the district of Chandrapur and also the non-executive employees of R.I-IV of the CMPDI may be covered subsequently but the scheme will commence from the date the payment is received from them but would terminate on the date of termination of the scheme i.e. on 14-9-2009.

32. After the MOU was entered into between the parties, the respondent made endorsement on the policy on the same date. The relevant portion of the said endorsement reads thus :

Notwithstanding anything to the contrary, it is hereby declared and agreed that as per request of Insured and M.O.U. dated 14-9-1999, we have extended the coverages of Long Term Group Janata Personal Accident Policy No. 47/160202/00356 for the employees of WCL Ltd. and their spouses, numbering Approx. 60,000.

33. From the aforesaid documents, it can clearly be seen that the respondent canvassed and persuaded the petitioner No. 1 so also the representatives of the Unions of the workers working with the petitioner No. 1 and the officers of the petitioner No. 1, to accept the JPA Policy of the respondent. The representation was made by the respondent to the petitioner No. 1 and its workers that the JPA Policy offered by the respondent is the best so as to protect the interest of the employees of the petitioner No. 1 from the accident risk. It is pertinent to note that the respondent had initiated the proposal to cover the employees of the petitioner No. 1 under the JPA Policy after one of the employees of the petitioner No. 1 met with an accident. This is evident from the communication sent by the respondent dated 10th February, 1999. It is also clear from the communication addressed by the respondent to the petitioner No. 1 that the JPA Policy was to be operative for a period of 10 years. Not only this, but the respondent has gone to the extent of making representation that the JPA Policy would be continued for the period of 10 years even after retirement of the employees. From the comparative chart given by the respondent, it is clear that at more than one place, they have made a representation that the JPA Policy would be operative for a period of 10 years with payment of premium at only one time. From the document signed by the Divisional Manager as well as the Branch Manager of the respondent, stating good reasons for taking their JPA Policy, it is clear that respondent company vigorously canvassed, toured the entire area and participated in the meetings so as to convince the officers and the employees of the petitioner No. 1 to accept the said JPA Policy. It is also clear from the said document that the General Manager, the Regional Manager of the respondent, so also the top executives of the G.I.C. had meetings with the Manager of the petitioner No. 1 and Steering Committee members for giving correct picture of the JPA Policy. It is further clear that all the negotiations culminated in MOU. In the said MOU, it was clearly stated that the coverage of the JPA Policy would be for a period of 10 years from the date of commencement, irrespective of the fact whether the employees are on the roll, retired, dismissed, declared medically unfit or separated for any reason whatsoever. It is also clear from Clause 13 of the MOU that though a periodical review of the Scheme was permissible, there was specific stipulation that there will be no change/review of the period and the amount assured. This MOU is duly signed by Regional Manager, Divisional Manager and the Branch Manager of the respondent and the Director (Personnel), General Manager (IR), General Manager (RR and CD/Co-ordn) and Finance Manager (Estb) of the petitioner No. 1 and the representatives of the Unions. It is also clear that under the said MOU, it was also agreed that the employees of mines situated in district of Chandrapur and other employees who

may be covered subsequently, would be covered under the Scheme from the date of payment received, but the termination of the Scheme would be on 14-9-2009.

34. The endorsement dated 14-9-1999 reads as under :

"It is hereby declared and agreed that as per the request of the Insured and MOU dated 14-9-1999, we have extended the coverage of Long Term Group Janata Personal Accident Policy No. 47/160202/0356 for the employees of W.C.L. and their spouses numbering approximately 60,000.

(emphasis supplied)

It is, thus, clear that the respondents, representing the petitioners that the employees of the petitioner No. 1 would be covered under the said JPA Policy upto 14th September, 2009, induced the petitioner No. 1 and its employees to accept the JPA Policy of the respondent. It is further clear that the petitioner No. 1, taking into consideration the requirements of protecting the interest of its employees and the requirement of social security measure, accepted the proposal of the respondent. So also the employees of the petitioner No. 1, numbering more than 63,000, agreed to accept the JPA Policy issued by the respondent by paying premium. We, therefore, find that there was clear, unambiguous and unequivocal promise on behalf of the respondent that the said JPA policy would continue for a period of 10 years i.e. upto 14th September, 2009.

35. The respondent is heavily relying on the condition No. 5 of the Terms and Conditions of the JPA Policy. The said term reads thus :

5) The company may at any time by notice in writing terminate this policy provided that the Company shall in that case return to the Insured the then last paid premium in respect of such persons in respect of whom no claim has arisen, less pro-rata part thereof for the portion of the current insurance period which shall have expired. Such notice shall be deemed sufficiently given if posted addressed to the Insured at the address last registered in the Company's books and shall be deemed to have been received by the Insured at the time when the same would be delivered in the ordinary course of post."

It is not in dispute that the JPA Policy was initially made applicable only to the executives of the petitioner No. 1 on 14th March, 1999. Thereafter there was a series of communications addressed by the respondent. The respondent through its senior officers, held rounds of discussions with the officers of the petitioner No. 1, representatives of the Unions of the employees working with the petitioner No. 1 and thereafter, after prolonged negotiations, the terms and conditions were reduced into writing vide MOU dated 14th September, 1999. Not only this, but reference to the said MOU also find place in the endorsement to the Policy dated 14th September, 1999. We, therefore, find that the said Condition No. 5, which gives unilateral power to the respondent to cancel the policy, stands modified by

the promise given by the respondents to the petitioners subsequently and the terms and conditions reduced into writing vide said MOU dated 14th September, 1999 which MOU also finds place in the endorsement to the policy dated 14th September, 1999.

36. The next contention advanced on behalf of the learned Counsel for the respondent is that by cancellation of JPA Policy, no prejudice would be caused to the petitioner No. 1 or its employees, inasmuch as the respondent is willing to refund the premium for the remainder of the period on pro-rata basis. In this respect, we may refer to the observations made by the Apex Court in para 33 of the M.P. Sugar Mill's case (cited supra).

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 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.

37. It is, thus, clear that so as to invoke the doctrine of promissory estoppel, it is not necessary to point out the prejudice suffered by the promisee by acting on the promise, but it is necessary to show the prejudice which would be caused to the promisee if the promisor were allowed to go back from the promise. In the present case, the petitioner No. 1 so also its employees have accepted the JPA Policy as a social security measure, acting on the promise of the respondent that it will cover the risk of death/permanent disability on account of accident for a fixed period of 10 years. On the basis of the said representation/promise, the petitioners were induced to accept the JPA Policy and pay the premium. If the respondent resiles from the said promise, we find that injustice will be caused to the petitioners and its employees inasmuch as for the remainder of the period, the employees of the petitioner No. 1 would not be covered under the said JPA Policy which is the social security measure and when the respondent had given unequivocal promise that the said JPA Policy would cover the risk up to 14th September, 2009.

38. The next contention raised on behalf of the respondent is that the said JPA Policy has been terminated on account of policy decision at the national level. It is submitted that since the cancellation of JPA Policy is on account of change in the policy, it would not be appropriate for this Court to interfere with the same in its extraordinary jurisdiction. In this respect, we may refer to the observations of the Apex Court in the case of M.P. Sugar Mill's case (Cited supra)

Mere claim of change of policy would not be sufficient to exonerate the Government from liability; the Government would have to show what precisely is the changed policy and also its reason and justification so the Court can judge

for itself which way the public interest lies and what the equity of the case demands. 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.

39. It is, thus, clear that mere change in the policy will not be sufficient to exonerate the Government from the liability. It is for the authority to show what precisely is the changed policy and the reason and justification for the same. It is also necessary that the authority claiming to resile from the promise must place proper and adequate material on record so as to show that the overriding public interest requires that the Government should not be held bound by the promise and should be free to act unfettered by it.

40. However, in the facts of the present case, except merely saying that there is change in policy, the respondent has not placed anything on record to show as to what is the changed policy, as to what is the reason for change in the policy and as to what is the justification for change in the policy. The respondent has also not placed any material, leave aside proper and adequate material, for the perusal of this Court so as to consider as to whether the change in the policy was on reasonable ground and was justified and as to whether the overriding public interest requires that the respondent should not be held bound by the promise. We are, therefore, unable to accept the contention raised by the respondent in this behalf.

41. Insofar as the reliance placed by the learned Counsel for the respondent on the judgment of the Apex Court in the case of Central Bank of India (cited supra) is concerned, the Apex Court in the said case has held that the Court must give effect to the plain meaning of the words however it may dislike the result. In the said case, the clause for consideration before the Apex Court was one which permitted both the parties to mutually terminate the contract at their will. The Apex Court, therefore, held that since the plain and categorical language used in the said clause permitted either of the parties to terminate the said contract, it was not open for the Court to give any other meaning than the plain and unambiguous meaning and the Court must give effect to the said meaning. However, it can be seen from the perusal of the said judgment that the question of promissory estoppel was not for consideration before the Apex Court and, therefore, in our view, the said judgment would not be applicable to the facts of the present case.

42. Insofar as the judgment of the Division Bench of this Court in the case of Pune District Central Co-operative Bank Ltd. is concerned, it is not in dispute that the clause under consideration before the Division Bench of this Court was an identical clause which fell for consideration in the present matter. This Court,

relying on the judgment of the Apex Court in the case of Central Bank of India (cited supra), held that the said clause empowers the Insurance Company to terminate the policy at any time. This Court also negated the contention that such a clause was contrary to the public policy or unconscionable. This Court also negated the contention regarding the applicability of the doctrine of promissory estoppel in view of the fact that when the parties consciously agreed in the contract that the contract may be terminated by either of them in a certain manner, it would not be permissible for one of the parties to contend that the termination is not possible on the ground of promissory estoppel. However, from the perusal of the judgment in the aforesaid case, we find that the facts in the present case are different than the facts which arose for consideration before the Division Bench in the aforesaid case. In the aforesaid case, the claim of the petitioner was based only on the terms and conditions of the contract. However, in the present case, the petitioners have placed sufficient material on record which show that the respondent had induced them to accept the JPA Policy by representing to the petitioners and its employees on more than one occasions that the period of JPA Policy would not be reduced in any case prior to 10 years. The terms and conditions of the said JPA Policy was further modified by the MOU dated 14-9-1999 wherein it has been specifically agreed that though the JPA Policy is subject to review, the condition regarding period and premium would not be changed in any eventuality. In that view of the matter, we find that the judgment of the Division Bench in the case of Pune Central Co-operative Bank would not be applicable to the facts of the present case. For the same reason, we find that the order passed by the Division Bench in Writ Petition No. 3715/2002 in the case of Yavatmal District Central Co-operative Bank is also not applicable to the facts of the present case.

43. We may also refer to the judgment of the Apex Court in the case of Biman Krishna Bose Vs. United India Insurance Co. Ltd., . In the aforesaid case, the Apex Court held that the United India Insurance Company, being an acquiring Company under the provisions of General Insurance Business (Nationalisation) Act, 1972, had the trappings of "the State" being other authorities under Article 12 of the Constitution of India. It is further held that the acquiring company thus, being State under Article 12 of the Constitution of India, are expected to act fairly and reasonably. In the said case, the respondent-United India Insurance Company Ltd. had refused to renew the mediclaim policy of the appellant on the ground of his past conduct, i.e. going into litigation for payment of his claim. Emphasizing the requirement of the instrumentalities of the State like the present respondent to act fairly and reasonably, the Apex Court observed thus :

Where an insurance company under the provisions of the Act has assumed monopoly in the business of general insurance in the country and thus acquired the trappings of the "State" being other authorities under Article 12 of the Constitution, it requires to satisfy the requirement of reasonableness and fairness while dealing with the customers. Even in an area of contractual

relations, the State and its instrumentalities are enjoined with the obligations to act with fairness and in doing so, can take into consideration only the relevant materials."

The Apex Court in the case of Hanil Era Textile Ltd. v. Oriental Insurance Co. Ltd. and Ors. reported in (2001) 1 SCC 269, in para 13 has referred to the book relating to Fire and Motor Insurance, 2nd Edn, by the learned Author E.R. Hardy Evamy and quoted the observations from the said Book at page 7 as under :

The contract of the insurance, like other contracts of insurance, differs from any ordinary contract in that it requires, throughout its existence, the utmost good faith (*uberrima fides*) to be observed on the part of both the insured and the insurers.

In addition to the ordinary obligation, which exists in every contract that all representations made by the parties during the negotiations leading up to the contract shall be honestly made, it is an implied term of the contract of fire insurance that the person seeking the insurance shall communicate to the insurers all matters within his knowledge which are in fact material to the question of the insurance, and not merely all those which he believes to be material.

44. It is, thus, clear that the contract of insurance differs from any ordinary contract, inasmuch as it requires that utmost good faith is to be observed on the part of both the Insured and Insurer. It is further clear that all the representations made by the parties during the negotiations leading up to the contract are to be honestly made. From the facts of the present case, it can be seen that the present respondent has throughout represented to the petitioners during the negotiations and up to the stage of MOU and subsequent endorsement on the JPA Policy, that the period of risk covered will be fixed for 10 years. From the documents on record which are subsequent to the JPA Policy dated 14th March, 1999, it is clear that the respondent had, time and again, represented that the period of contract will be for 10 years and in the MOU, a clear representation is given that the said period would not be changed.

45. We may also refer to the judgment of the Apex Court in the case of Chairman, Life Insurance Corporation and Ors. v. Rajiv Kumar Bhaskar reported in AIR 2005 SCW 3636. In the said case, the Life Insurance Corporation of India had issued the policy under Salary Saving Scheme of L.I.C. to the employees of the employer. Under the said Scheme, under tripartite agreement, the employer accepted the sole responsibility to collect the premium from its employees and remit the same by way of cheque to Corporation. However, the employer failed to pay the amount of premium to the Corporation. The Apex Court found that even though the employer failed to pay the amount of premium to the Corporation, still the Corporation could not be permitted to get discharged from its contractual obligation. The Apex Court observed thus in paragraph No. 31 of the said judgment as under :

We may, furthermore, observe that having induced the employer to act as a model employer and discharge its social obligations vis-a-vis its employees it may not be permissible for a "State" within the meaning of Article 12 of the Constitution to contend at this belated stated that in the event of default on the part of the employer, it may get itself discharged from its contractual obligations in such a cavalier manner."

In the facts of the present case also, we find that the respondent had induced the petitioner No. 1 to act as a model employer and discharge its social obligation vis-a-vis its employees. Not only that, it had induced by canvassing in various area offices of W.C.L. in Maharashtra and Madhya Pradesh and also represented the benefits of the Scheme to the representatives of the Union by making representation that the risk of accidental death/disability of the employees of the petitioner No. 1 would be covered for a period of 10 years.

46. In the aforesaid case, though there was a default on the part of the employer in not paying the premium, still the Apex Court held that the Life Insurance Corporation, being State within the meaning of Article 12 of the Constitution of India, could not be discharged from its contractual obligation and was bound to honour the policy and to pay the assured amount.

47. Insofar as the reliance placed by the learned Counsel appearing on behalf of respondent on the provisions of Section 64VB(3) of the said Act, is concerned, we do not find that there is much merit in the contention in this regard. No doubt that it is a settled law that rule of promissory estoppel would not apply against a statute and that no promise would be enforced which is contrary to the statutory provisions. However, from the perusal of Section 64VB(3) of the said Act, it is clear that it only provides for a manner in which the premium is to be refunded on a pro-rata basis for the remainder of the term, after cancellation of the policy. However, the learned Counsel for the respondent has not been in a position to point out to us any provision in the statute which permits the respondent to unilaterally cancel the said JPA Policy without assigning any reason. In that view of the matter, the contention in this regard will have to be rejected.

48. Insofar as the contention of the learned Counsel for the respondent regarding the conduct of the petitioners in getting the benefits to its employees under the terms and conditions of the said Policy and not raising the issue regarding the applicability of the terms and conditions of the MOU, is concerned, the same is also without substance. It is contended by the learned Counsel for the respondent that the employees of the petitioner No. 1 have taken the benefits under the JPA Policy at earlier point of time and at that point of time, did not raise the issue regarding applicability of said MOU.

49. It can be seen from the perusal of the MOU that though most of the terms and conditions regarding risk coverage were as per the terms and conditions of the JPA Policy, only certain conditions were modified by the said MOU. The most important condition was that the term of the JPA Policy and the amount of

premium shall not be varied in any eventuality. We, therefore, find that only when the respondent made an attempt to unilaterally cancel the JPA Policy much prior to the expiry of ten years" period, there was a cause for the petitioners to raise an issue regarding the applicability of the MOU. At earlier point of time, there was no occasion to raise the said issue and as such the contention in this respect is totally without substance.

50. In the conclusion, therefore, we find that the respondent being an instrumentality of the State and as such "State" within the meaning of Article 12 of the Constitution of India, is bound to act reasonably and fairly even in contractual matters. We find that the respondent had given an unequivocal, unambiguous and clear representation to the petitioner that the said JPA Policy would be for a period of 10 years and that the said period of 10 years shall, in no case, be varied and that in any event the JPA Policy would continue to cover risk till 14th September, 2009. The reliance placed on Condition No. 5 of the Terms and Conditions, in our view, is not of much assistance to the case of the respondent. The respondent, subsequent to the issuance of the said JPA Policy dated 14th March, 1999, had held detailed negotiations with the petitioners, had vigorously canvassed in the various areas of the W.C.L. in Maharashtra and Madhya Pradesh thereby representing that the risk of death/disability on account of accident of the employees of the petitioner No. 1, would be covered for a period of 10 years on payment of one time premium and have thereby induced the petitioner No. 1 and its employees to accept the JPA Policy by paying one time premium. Not only this, but the respondent has entered into a tripartite MOU i.e. between firstly the petitioner No. 1, secondly the petitioner Nos. 2 to 6 and thirdly the respondent, therein specifically mentioning that the period of JPA Policy would be for 10 years and though the other terms and conditions were subject to review, the period of JPA Policy was not subject to review and have also stated in the endorsement on the JPA Policy that the said obligation under the said JPA Policy was extended to the employees as per the MOU. We, therefore, find that there is an unequivocal representation made by the respondent that the period of JPA policy would not be changed prior to 14th September, 2009. We, therefore, find that the respondent was bound to honour the representation made to the petitioners. The only ground on which the respondent is claiming to resile from the said promise is the change of policy. However, except mere whisper that there has been change in the policy, no material, leave aside proper or adequate material, has been placed for consideration before this Court so as to test the reasonableness and justification in the so called change in the policy. It is also not the case of the respondent that the overriding public interest demands that the respondent should not be held to be bound by the promise made by them. Even accepting the case of the respondent for a moment that the rights and obligations purely arise out of contractual matters, even in that eventuality, as held by the Apex Court in various pronouncements, since the respondent is a "State" within the meaning of Article 12 of the Constitution of India, even in contractual matters, it is expected

to act reasonably and fairly. As held by the Apex Court in the case of Hanil Era Textiles Ltd. (cited supra), in a contract of Insurance utmost good faith has to be observed. The representations made by the parties during the negotiations leading up to the contract are required to be honestly made. In the present case, on more than one occasions, a representation has been made that the contract will be for a period of 10 years and in no case, it will come to an end prior to 14th September, 2009. From the facts, it is also clear that the respondent had induced the petitioner No. 1 and its employees to accept the JPA Policy as a social security measure in the interest of welfare of the employees of the petitioner No. 1, by representing that on payment of one time premium, the risk of death/disability on account of accident would be covered for a period up to 14-9-2009. We, therefore, find that even if the contention of the respondent is accepted for a moment that the rights and obligations of the parties arises out of contractual obligation, even in that eventuality, as held by the Apex Court in the case of Chairman, Life Insurance Corporation (cited supra) and Biman Krishna Bose (cited supra), the respondent being an instrumentality of the State, is required to act fairly and reasonably and not arbitrarily even in contractual matters. The said scheme being social security measure, the respondent cannot be permitted to terminate the contract at its whims and fancy without assigning any cogent and relevant reason for the same. In any case, we have held that the petitioners have made out a case of promissory estoppel. The respondent has made an unequivocal, unambiguous and clear representation to the petitioner that the said JPA Policy will be in operation for a period up to 14th September, 2009. Acting on the said promise, the petitioner No. 1 and its employees had subscribed to the said JPA Policy by paying one time premium. We find that if the respondent is permitted to cancel the JPA Policy abruptly, it will cause injustice to more than 63,000 employees of the petitioner No. 1 who were allured to accept the said JPA Policy by the respondent. We have already held that the respondent has not made out any case by placing any material on record, so as to point out its policy decision and as to how the said change in policy is reasonable or justifiable. We, therefore, have no hesitation to hold that the respondent is estopped from resiling from the promise made by it to the petitioners. We have further no hesitation in holding that the action of the respondent in cancelling the JPA Policy vide communication dated 29th August, 2002 is neither fair nor reasonable. We, therefore, find that the said communication dated 29th August, 2002 thereby cancelling the JPA Policy No. 47/160202/0356 is not sustainable in law. The petition is, therefore, allowed. The communication dated 29th August, 2002 thereby cancelling JPA Policy No. 47/160202/0356 is quashed and set aside. It is declared that the employees of the petitioner No. 1, who have subscribed to the said policy, are entitled to the benefits of the said JPA Policy till 14th September, 2009.

51. Rule is, accordingly, made absolute with no order as to costs.