A U.P. POWER CORPORATION LTD. & ANR.

v.

SANT STEELS & ALLOYS (P) LTD. & ORS.

DECEMBER 10, 2007

B **[A.K. MATHUR AND MARKANDEY KATJU, JJ.]**

Electricity (Supply) Act, 1948—s. 49—Notification under—Concession of 33.33% development rebate to new industrial units in C *hill areas for five years from the date of commencement of supply of electricity—Subsequent Notifications reducing the concession to 17%—Principle of promissory estoppel—Applicability of—Held: Notification was in the nature of delegated legislation and not an Act framed by State Legislature—In such delegated legislation revocation* D *is permissible, if larger public interest is involved or an Act is passed by legislature—On facts, no evidence to make out the case of public interest to revoke the concession granted—Thus, principle of promissory estoppel applicable—However, units entitled to such benefits till the Act of 1999 came into force since after coming into* E *force the Act of 1999 no such concession was granted—Administrative law—Delegated legislation—U.P. Electricity Reforms Act, 1999—Notifications dated 18.1.1992, 15.7.1994, 18.6.1998 and 25.1.1999..*

Administrative law—Promissory estoppel—Applicability of, against State or its instrumentalities—Held: Depends on the facts of F *each case—When State Government makes representation showing benefits to entrepreneurs and entrepreneurs make investment, then revocation of such benefits by State Government would be unfair and arbitrary—Consideration of public interest and that there cannot any estoppel against a Statute are exceptions.*

G **The appellant-U.P. Power Corporation Ltd., issued Notifications and allowed 33.33% hill development rebate in consumption of energy to the new industrial units for a period of five years from the date of commencement of the supply of the electricity. The**

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entrepreneurs established industrial units in the hill areas after incurring huge investments. By subsequent Notifications, the appellant-Corporation restructured the tariffs and the concession was reduced from 33.33% to 17%. The entrepreneurs filed writ petitions challenging the Notifications. The Division Bench of the High Court allowed the writ petitions holding that the appellant was bound by the principle of promissory estoppel and could not revoke the benefit of the concession in consumption of energy given to the writ petitioners for establishing industries in the hill areas. It directed the appellant-Corporation to issue electricity bills to the writ petitioners after allowing 33.33% hill development rebate on the total amount of bill for the remaining unexpired period of five years. Hence the present appeals by the appellants-U.P. Power Corporation Ltd.

Appellant-U.P. Power Corporation Ltd. contended that the notifications modifying the rebate were issued in exercise of the statutory provisions under section 49 of the Electricity (Supply) Act, 1948; that there was large scale theft of energy in the State of U.P.; that the High Court failed to consider the public interest, specifically pleaded by filing an affidavit; that by virtue of the U.P. Electricity Reforms Act, 1999, the new tariff was fixed from August 2000-2001 by the Commission and no estoppel against the Statute could be pleaded after the Act of 1999 having come into force; that it was not in public interest to continue the benefit to these industries located in hill areas; that the entire benefit was not withdrawn, the benefit was rationalized and as a result the energy consumption of these units increased to manifold; and that the whole exercise of restructuring the rebate was done in the public interest only.

Respondent-writ petitioners *inter alia* contended that these concessions were given to the hill areas in pursuance to the direction by the State Government in exercise of power under section 78A of the Act; that under section 49 of the 1948 Act, there is no such contemplation that the exemption could be revoked; that the change in the tariff would be unconstitutional, unfair, arbitrary to the citizens who acted on the promise made by the appellant-Corporation; that

A the State Government/Corp. is estopped from withdrawing these concessions; that the concession which were given had a vested right and it could be revoked by the same Statute; that the revocation was not on the basis of general public interest but only on account of losses the Corporation was trying to make up; and that there is no
B allegation of theft in the hill areas.

Disposing of the appeals, the Court

HELD: 1.1. The Court's approach in the matter of invoking the principle of promissory estoppel depends on the facts of each case.
C But the general principle that emerges is that once a representation has been made by one party and the other party acts on that representation and makes investment and thereafter the other party resiles, such act cannot be stated to be fair and reasonable. When the State Government makes a representation and invites the
D entrepreneurs by showing various benefits for encouraging to make investment by way of industrial development of ackvard areas or hill areas, and the entrepreneurs on the representations so made *bonafidely* make investment, and thereafter, if the State Government resile from such benefits, then it certainly is an act of unfairness and
E arbitrariness. Consideration of public interest and the fact that there cannot any estoppel against a Statute are exceptions. [Para 17]

1.2. It is true that the Authorities have a right to revoke the benefit extended but if the other party has suffered on that account then such representation will be against the public policy and the
F morality. Notification issued under Section 49 of the Act of 1948 for giving the benefit of exemption for the hill areas was in the nature of delegated legislation and not an Act framed by the State Legislature. Therefore, a distinction has to be made between the delegated legislation and the primary legislation framed by the
G Legislature. In Section 49 there is no specific stipulation that the notification issued under Section 49 of the Act could be revoked at any time. So far as the primary legislation is concerned, if the Act is passed by State Legislature and denies the benefit by the primary legislation then no estoppel can be applied against that Act but, so
H far as the case of delegated legislation is concerned, where delegated

authorities pass certain notification in exercise of their delegated authority there is no contemplation mentioned in the Act itself that it is capable of being revoked at any time. Then such notifications cannot be treated at par with the primary Act passed by the State Legislature. The State is fully competent to pass an Act prospectively as well as retrospectively but retrospectivity to the extent of aforesaid nature cannot stand. Therefore, this distinction has to be borne in mind. [Para 18] [1192-G, H; 1193-A, B, C, D]

1.3. It is highly against the public morality that the incumbent who felt persuaded on account of the representation made by the State Government that they will be given certain benefits and they acted on that representation, it does not behove on the part of the appellant-Corporation to withdraw the said benefit before expiry of the stipulated period by issuing the notification revoking the same which the respondents were legitimately entitled to avail. In such a situation the principle of promissory estoppel which has been evolved by the Courts which is based on public morality cannot permit the State to act in such an arbitrary fashion. [Para 18] [1193-E, F, G]

1.4. The grounds for the purpose of public interest which have been pleaded; hardly involve any public interest. They were more of a nature of losses which the Corporation suffered and in order to make these losses, these methods were evolved to reduce and to make good of the losses. Restructuring benefit to 17% of the Tariff 4(A) (demand charges) were the factors which were aimed at to make the losses good for the Corporation. This was not a case in which serious public repercussion was involved. As regards, theft of the energy, if it was proved by cogent datas that as a result of giving this benefit to the entrepreneurs in the hill areas, they were misusing it or there was theft of the energy at a large scale by these persons to whom the concession had been given then, of course, such factors, if all the datas were brought on record, could have persuaded the Court to take a different view of the matter. But simply because there was theft of energy, it cannot be held that the revocation of such concession could be said to be in public interest. Since the benefit was given to these units in the hill areas, there should have been

A overwhelming evidence to show some *mala fide* on the part of these consumers which persuaded the Corporation to revoke it. If there was no misuse of the energy by these units in the hill areas to whom the concession had been granted then in that case it cannot be taken that there was really public interest involved which persuaded the B Corporation to revoke the same.

[Para 18] [1193-G; 1194-A, B, C, D, E]

1.5. No person can be permitted to misuse the concession or benefit and invoke promissory estoppel. Promissory estoppel is not one sided affair, it is rather two sided affair. If one party abuses the C concession then it is always open to the other party to revoke such concession but if one party avails the benefit and is acting on the same representation made by the other party then the other party who has granted the said benefit cannot revoke the same under the garb of public interest. Therefore, the revocation Notification cannot D be upheld on the grounds that the revocation notification was issued in public interest and that same has the flavour of the statute.

[Para 18] [1194-E, F, G]

1.6. It is true that a detailed statement was given in various paragraphs of the written statement filed by the appellant- E Corporation before the High Court and unfortunately, the High Court did not advert to these details. But, even on examining these details and the points raised by the appellant justifying modification of rebate, a contrary view from that taken by the High Court cannot be arrived at. There is no gain saying that the public interest is F paramount and the private interest has to be sacrificed for the larger interest. But, after a survey of all the cases *on the subject, the judicial consensus that emerges is that whenever the State has made a representation to the public and the public has acted on that representation and suffered economically or otherwise, then in that G case the State should be estopped from withdrawing such benefit to the detriment of such people except in public interest or against the Statute. So far as the public interest as involved in the instant case, it is found that there was no overwhelming evidence to revoke the benefit granted to the industrial units in the hill areas. So far as the H Statute is concerned, the notification was issued under Section 49

of the Act of 1948 and the same was revoked under Section 49 of the Act of 1948 though there was no such provision contained in Section 49 that it will be open to the Corporation to revoke the same but that could be possible by invoking the principle of General Clauses Act. However, in such a delegated legislation the withdrawal could only be permitted if larger public interest is involved or if the Act is passed by legislature. [Para 18] [1194-G; 1195-A, B, C, D]

Pawan Alloys & Casting Pvt. Ltd., Meerut* **v. *U.P.State Electricity Board & Ors.*, **[1997] 7 SCC 251;** *Kasinka Trading & Anr.* **v.** *Union of India & Anr.*, **[1995] 1 SCC 274;** *Sales Tax Officer & Anr* **v.** *Shrijee Sales Corporation & Anr.* **v.** *Union of India,* **[1997] 3 SCC 398;** *Shree Durga Oil Mills & Anr.*, **[1998] 1 SCC 572;** *State of Rajasthan & Anr.* **v.** *Mahaveer Oil Industries & Ors.*, **[1999] 4 SCC 357;** *M/s. Motilal Padampat Sugar Mills Co. Ltd.* **v.** *State of Uttar Pradesh & Ors.*, **[1979] 2 SCC 409;** *MRF Ltd., Kottayam* **v.** *Asstt. Commissioner (Assessment) Sales Tax & Ors.*, **[2006] 8 SCC 702;** *State of Punjab* **v.** *Nestle India Ltd. & Anr.*, **[2004] 6 SCC 465 and** *Mahabir Vegetable Oils (P) Ltd. & Anr.* **v.** *State of Haryana & Ors.*, **[2006] 3 SCC 620, referred to.**

1.7. There cannot be estoppel against a statute. Since the benefits in question have not been recognised by the Act of 1999, therefore, upto the date of coming into force of the Act of 1999, all the benefits which were being given to the respondent- entrepreneurs shall be protected by invoking the principle of promissory estoppel but after coming into force of the Act of 1999, which is a primary legislation enacted by the State Legislature the benefits from the date the Act has come into force, cannot be made available to the respondents. [Paras 18 and 19] [1195-F, G, H]

1.8. The action taken by the appellant-Corporation in revoking the benefits given to the entrepreneurs in the hill areas will sadly reflect their credibility and people will not take the word of the Government. That will shake the faith of the people in the governance. Therefore, in order to keep the faith and maintain good governance it is necessary that whatever representation is made by the Government or its instrumentality which induces the other party

to act, the Government should not be permitted to withdraw from that. This is a matter of faith. [Para 20] [1196-B, C, D]

1.9. The view taken by the Court on invoking the principle of promissory estoppel is correct and the respondent- units would be entitled to such benefits till the U.P. Electricity Reforms Act, 1999 came in to force. Since after coming into force the Act of 1999 no such concession has been granted, therefore, the concession would survive till the Act of 1999 came into force. [Para 21] [1196-D, E]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1215-1216 of 2001.

From the Judgment and Order dated 25.05.2000 of the High Court of Judicature at Allahabad, in Writ Petitio Nos. 15292 and 15293 of 1999.

Dr. A.M. Singhvi and Ratnakar Dash, Pradeep Misra, Amit Bhandari, Daleep Dhayani, Dinesh Kumar Garg and Anuvarat Sharma for the Appellants.

Shanti Bhushan, R.F. Nariman, S. Ganesh, M.L. Bhat, Sudhir Kumar Gupta, Anurag Pandey, Mihir Kumar Chaudhary, M.L. Lahoty, Paban K. Sharma, Poonam Lahoty, Ramesh Singh, Rajeev Sharma, R. Santanam, Manjula Gupta, Irshad Ahmad, R.C. Verma and Pradeep Misra for the Respondents.

The Judgment of the Court was delivered by

A.K. MATHUR, J. 1. These appeals are directed against the order dated 25.5.2000 passed by the Division Bench of the Allahabad High Court whereby the Division Bench has allowed the writ petitions and Clause 9(a) of the notification dated 25.1.1999 (Annexure-8 to the writ petition) and clause 8(a) of the notification dated 18.6.1998 (Annexure - 7 to the writ petition) were struck down. It was further directed that the writ petitioners were entitled to get hill development rebate of 33.33% on the total amount of the bill till the period of 5 years from the date of commencement of supply of the electricity to them and the appellant-Corporation was directed to issue electricity bills to the writ petitioners after allowing 33.33% hill development rebate on the total amount of bill

for the remaining unexpired period of five years. Aggrieved against this order, the present appeals were filed by U.P. Power Corporation Ltd.(hereinafter referred to as Corporation.)

2. In order to dispose of these appeals brief facts may be detailed below. Pursuant to industrial policy of the State of Uttar Pradesh, U.P.State Electricity Board (now U.P. Power Corporation Limited) [hereinafter to be referred to as the "Corporation"]- the appellant herein framed its tariffs vide notifications dated 18.1.1992 & 15.7.1994. By these notifications 33.33% hill development rebate was allowed to the new industrial units for a period of five years from the date of commencement of the supply of the electricity. The above concession was initially valid till 31.3.1995. It was later on extended up to 31.3.1997. It was alleged that all the writ petitioners established industrial units in the hill areas after huge investments and after executing agreement with the appellant-Corporation. But subsequently, by notifications dated 18.6.1998 and 25.1.1999 the concession which was earlier given was reduced by the appellant-Corporation from 33.33% to 17% which is arbitrary and not permissible according to principle of promissory estoppel and in that connection reliance was placed on a decision of this Court in *Pawan Alloys & Casting Pvt. Ltd., Meerut* v. *U.P.State Electricity Board & Ors.*, [1997] 7 SCC 251. Written statement was filed by the appellant-Corporation and the appellant took the stand that the impugned tariffs were new structured tariff in respect of HV-1 category of consumers and it was empowered to frame tariff under the provisions of Section 49 of the Electricity (Supply) Act, 1948 (hereinafter to be referred to as the Act of 1948). It was also contended that this restructuring was necessitated in order to avoid loss to the Corporation due to theft of electricity and it was done in the public interest.

3. In order to appreciate the controversy involved in the matter, it will be appropriate to refer to the relevant tariff notification issued from time to time by the appellant- Corporation. The first in point of time is the tariff vide notification dated 18.1.1992. Relevant provisions of clauses read as under :

"4. Rate of Charge (Energy Charges) :

A All KWH consumed in the month 200 paise per KWH.

5. Extra Charge or Rebate:

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

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

C (a) Above 11 KV upto 66 KV 5%

(b) Above 66 KV upto 132 KV 7.5%

(c) Above 132 KV 10%.

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D 8. Concessions:

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

G 1. Name of eight Hill Districts:

2. Almora district

3. Chamoli district

4. Pauri Garhwal district

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5. Pithoragarh district

6. Uttar Pradesh district

7. Tehri Garhwal district

8. Uttarkashi district

9. Dehradun district.

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

Therefore, this concession was extended to the entrepreneurs in the hill districts including Dehradun who established their industries at the height of 610 metres (2000 feet) above M.S.L.for a period of five years. Then on 15.7.1994 another notification was issued. Relevant provisions of Clauses 4,5 & 8 read as under :

"4. Rate of Charge (Energy Charges) :

All KWH consumed in 3 month 280 paise per KWH.

5.Extra Charge or Rebate:

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

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

A (a) Above 11 KV upto 66 KV 5%

(b) Above 66 KV upto 132 KV 7.5%

© Above 132 KV 10%.

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8.Concessions:

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

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

Description of Area of Hill Districts:

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1. Almora district

2. Pithoragah district

3. Chamoli district

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4. Uttarkashi district

5. Pauri Garhwal district excluding Nagarpalika area of Kotdwara.

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

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

8. Dehradun district excluding Doiwala, Rampur, Sahaspur and

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Vikas Nagar Blocks.

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

The development rebates under this clause shall be allowed subject to the condition that the net amount payable after allowing these rebates would not be less than the amount of minimum consumption guarantee under item 6 above."

Meaning thereby that the energy charges were increased from 200 paise to 280 paise and the concession granted to the hill areas continued. Thereafter, in supercession of earlier notifications another notification was issued in which energy charges were increased from 280 paise to 308 paise per KW. But the concession granted earlier continued. Relevant provision reads as under :

"4. Rate of Charge (Energy Charges) :

All KWH consumed in one month 308 paise per KWh.

5. Extra Charge or Rebate:

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

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

A (iii) Above 11 KV upto 66 KV 5%

(iv) Above 66 KV upto 132 KV 7.5%

(v) Above 132 KV 10%.

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8.Concessions:

The concessions mentioned hereunder shall be applicable to consumers connected upto 31.3.97.

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

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

Description of Area of Hill Districts:

1.Almora district

F 2.Pithoragah district

3.Chamoli district

4.Uttarkashi district

5.Pauri Garhwal district excluding Nagarpalika area of G Kotdwara.

6.Tehri Garhwal district excluding Muni Ki Reti town area and Dhalwala villae under Narendra Nagar Block.

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

Blocks.

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

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

The development rebates under this clause shall be allowed subject to the condition that the net amount payable after allowing these rebates would not be less than the amount of minimum consumption guarantee under item 6 above."

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

"4. *RATE OF CHARGE :*

(A) *Demand Charge*

1. Induction Furnaces	Rs.700/- per KVA/ month
2. ARC Furnaces	Rs.615/- per KVA/ month
3. Rolling/ Re-rolling Mills	Rs.440/- per KVA/month

(b) Plus Energy Charge

A All KWH consumed in the month 100 Paise per month.

Notes:

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

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

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5. *EXTRA CHARGE OR REBATE:*

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

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

(a) Above 11 KV upto 66 KV 5%

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(b) Above 66 KV upto 132 KV 7.5%

(c) Above 132 KV 10%

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8. *CONCESSION:*

The concessions mentioned hereunder shall be applicable to consumers connected upto 31.03.1997.

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

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Provided that the above development rebate shall not be

available to the Department/ Corporations/ Undertaking of State/ Central Government and Local Bodies.

DESCRIPTION OF AREA OF HILL DISTRICTS:

1. Almora district

2. Pithoragah district

3. Chamoli district

4. Pauri Garhwal district excluding Nagarpalika area of Kotdwara.

5. Uttarkashi district

6. Tehri Garhwal district excluding Muni Ki Reti town area and Dhalwala villae under Narendra Nagar Block.

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

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

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

Similar is the notification dated 25.1.1999which is identical to the notification dated 18.6.1998. But in this notification dated 25.1.1999 the concession was not in clause 8 but the concession has been re-numbered from clause 8 to clause 9 which is identical and as such need not be

A reproduced again. As a result of these two notifications i.e. notifications dated 18.6.1998 & 25.1.1999 two significant things happened, that the tariff was divided into two parts i.e. demand charge plus energy charge. The energy charge was charged earlier at 308 paise per KV was reduced to 100 paise KVA per month but the demand charge i.e. induction furnace, B ARC furnace, rolling/re-rolling mills etc. which were fixed charges, concession was given at the rate of 17 % computed under item No.4(A) i.e. induction furnace @ Rs.700/- per KVA/ month, ARC furnace @ Rs.615/- per KVA/month and Rolling/ Re-rolling Mills @ Rs.440/- per KVA/ month. Therefore, as a result of restructuring of tariff, the demand C charges under item 4(A) were made fixed but the energy charges were reduced from 308 paise to 100 paise per month. It is not the case that the appellant has completely revoked the concession. It is the case that appellant- Corporation has reduced the energy charges from 308 paise per KVA to 100 paise but the demand charges have been fixed per KVA/ D month and the concession has been re-scheduled instead of giving them 33.33% the energy charges have been reduced which is applicable to all but in the case of demand charges for hill areas it has been reduced to 17 % in respect of demand A charges and that was allowed to be continued for the unexpired period of five years to its existing connections E which have not completed five years from the date of commencement of supply. At the same time the appellant- Corporation has denied this benefit to the State Departments/ Corporations, Undertakings of the State/ Central Government and local Bodies. Therefore, so far as the private consumers are concerned, this has been kept in tact.

F 4. Now, in this factual controversy, we have to examine whether the concession in the consumption of energy which has been given to the writ petitioners for establishing the industries in the hill areas can be revoked or modified by the appellant-corporation or not. The High Court has taken the view that the appellant is bound on the principle of promissory estoppel G and it cannot revoke the benefit.

5. Dr.A.M.Singhvi, learned senior counsel for the appellant has given nine reasons that this modification of the rebate is fully justified for the following reasons:

H (i) That the notifications have been issued in exercise of the

statutory provisions under section 49 of the Act of 1948, therefore, it has statutory flavour. A

(ii) That there is complete change of tariff i.e. it has two parts, (a) demand charge and (b) energy charge.

(iii) That there has been reduction in the energy consumption charges i.e. from 308 paise to 100 paise per unit. B

(iv) That there was large scale theft of energy in the State of U.P.

(v) That units were closing on account of these concessions.

(vi) That there is no total withdrawal of the rebate but by restructuring concession at the rate of 17% continues in the demand charges. C

(vii) That the High Court has failed to consider the public interest which was specifically pleaded by filing a detailed affidavit. D

(viii) That no *malafide* is attributed.

(ix) That actual cost of energy production has shoot up to Rs.2.50.

Therefore, learned senior counsel for the appellant submitted that the appellant-corporation is fully within its right to modify the rebate and the principle of promissory estoppel cannot estop. Dr.Singhvi also submitted that the Division Bench of the High Court has relied on a decision in *Pawan Alloys & Casting Pvt. Ltd.* (supra) in which no affidavit was filed. This was not appreciated by the High Court and therefore, the whole situation has turned on that count. Dr.Singhvi has also raised the question of laches, estoppel, waiver and acquiesance and submitted that the earlier writ petition was filed challenging the notification dated 18.6.1998 and it was withdrawn with liberty and thereafter on 4.11.1999 application to recall the order was filed which was rejected. Again, another writ petition has been filed without permission of the High Court. Dr.Singhvi submitted that by virtue of the U.P. Electricity Reforms Act, 1999, (hereinafter to be referred to as the Act of 1999) now the new tariff has been fixed from August, 2000-2001 by the Commission because now the power to determine the tariff has been given to the Commission and no estoppel against the Statute can be pleaded after the Act of 1999 having come E F G H

A into force. Dr.Singhvi, learned senior counsel submitted that in view of the affidavit filed by Shri C.R.Goswami, Executive Engineer, Electricity Distribution Division, Kotdwar, Uttarakhand on behalfof the appellant and a comparative chart has been annexed to indicate that in fact after introduction of two part tariff, energy consumption of these units has B considerably increased. The chart has been filed along with the affidavit in respect of all the writ petitioners except Shree Sidhbali Steels Ltd.

6. As against this, Mr.Shanti Bhusan, learned senior counsel for the respondent- writ petitioners submitted that these concessions were given to the hill areas in pursuance to the direction by the State Government in C exercise of power under Section 78A of the Act of 1948 and submitted that the State Government was fully competent to do so. The State/ Corporation. has made a representation on which the private entrepreneurs have made huge investments and therefore, the State Government-Corporation cannot wriggle out from it and the State Government-Corp. D is estopped from withdrawing these concessions. Mr.S.Ganesh, learned senior counsel appearing for some of the writ petitioners has also submitted that the concession which has been given has a vested right and it can only be revoked by the same Statute.

E 7. Both the learned senior counsel appearing for the parties relied on number of decisions of this Court on the subject. Since the High Court has relied primarily on the decision of this Court in *Pawan Alloys & Casting Pvt. Ltd.* (supra), therefore, it would be profitable to first examine the said decision. In this case, the U.P.State Electricity Board F by notifications issued in exercise of powers under Section 49 of the Act of 1948 held out promises to the industrial units established in different parts of the State of U.P. and they were given concession in the electricity charges to the extent of 10 per cent of rebate for a period of three years for the first time and the same was prematurely withdrawn by subsequent G notification which gave rise to number of writ petitions being filed in the High Court and the principle of promissory estoppel was invoked. In the writ petitions it was contended that when rebate was given to the new industrial units for a period of three years, the Board could not have arbitrarily withdrawn the same prior to the expiry of a period of three years. It was contended that such withdrawal of concession is applicable H

prospectively and cannot have retrospective effect to the earlier existing industrial units. The Board contested the matter. The Allahabad High Court framed the following three questions. (i) Whether the Board is estopped from withdrawing the said rebate before the completion of the 3/5 year period, by virtue of the doctrine of promissory estoppel ? (ii) Whether the agreement executed by the petitioners bars them from questioning the impugned notification ? (iii) Whether the impugned notification has no application to existing consumers and does it apply to only those consumers who receive the supply on or after 1-8-1986 ? The High Court after hearing the contesting parties came to the conclusion that the respondent-Board was estopped by virtue of the doctrine of promissory estoppel from withdrawing the development rebate before the completion of the period of three years. On second point, the High Court came to the conclusion that the writ petitioners were barred from questioning the impugned notification on the express terminology found in the agreements entered into by them with the Board for supply of electricity and under those agreements the Board was given full play to revise the tariff rates which included development rebate also from time to time and consequently the impugned notification was not illegal. On the third issue, it was held that the notification dated 31-7-1986 could not be said to be retrospective and consequently, the High Court dismissed all the writ petitions. Aggrieved against this, the matter came up before this Court by Pawan Alloys & Casting Pvt. Ltd. This Court after review of all the earlier decisions observed as follows :

> "34.Consequently it must be held that relying upon the representations held out by the Board in these earlier notifications assuring grant of incentive rebate of 10% on the total bill of electricity consumption charges these new industries being assured that for three years this concession will be available had burnt their boats and spent large amounts and had established their industries in the area falling in the operative jurisdiction of the Board in the State of U.P.
>
> 35. Under these circumstances when no public interest was sought to be pressed into service by the Board for withdrawal of this incentive rebate, as seen earlier, the equity which had arisen in

favour of the appellants remained untouched and undisturbed by any overwhelming and superior equity in favour of the Board entitling it to withdraw this development rebate in a premature manner leaving these promises high and dry before the requisite period of three years earlier guaranteed to them by way of development rebate had got exhausted. This takes us to the consideration of the second aspect of the matter."

8. Dr.Singhvi, learned senior counsel for the appellant-Corporation emphasized that in fact the whole case turned on the question that no public interest was sought to be pressed into service by the Board on the incentive rebate. But, in the present case, specific affidavit was filed and all the detailed facts were disclosed pertaining to the public interest but that was not dealt with by the High Court. Therefore, *Pawan Alloys & Casting Pvt. Ltd.* (supra) case stands distinguished. Learned senior counsel submitted that if proper public interest had been pleaded in *Pawan Alloys & Casting Pvt. Ltd.*(supra) then perhaps the situation would have been different. In this connection, learned senior counsel for the appellant-Corporation invited our attention to the question of public interest which was pleaded before the High Court and which was not considered by the High Court. Learned senior counsel for the appellant-corporation submitted that all the nine points which have been mentioned above were mentioned in the counter affidavit filed by the appellant-corporation before the High Court and in that connection, he invited our attention to paragraphs 5, 6, 7, 10, 40, 42, 44, 48 of the counter affidavit and specifically invited our attention to paragraph 53 that the Corporation is incurring a loss of Rs.15 to 20 crores. Learned senior counsel also invited our attention to paragraphs 56, 58 & 60 of the counter affidavit filed before the High Court and submitted that it was not in public interest to continue this benefit to these industries located in hill areas and further submitted that the entire benefit was not withdrawn. This benefit has been rationalized and as a result of this rationalization an affidavit was filed to show that the energy consumption of these units has increased to manifold. Therefore, this restructuring of the rebate has not proved disadvantageous to these industries but for the larger public interest this was done and it not a case that the appellant has totally revoked the concession but the concession still exists in modified form. Therefore, the whole exercise was done in

the public interest only. Learned senior counsel stressed that in fact all this public interest was not disclosed in *Pawan Alloys & Casting Pvt. Ltd.* (supra). Therefore, this turned against the Board on that count. In the present case all the nine points raised by him were raised before the High Court of Allahabad but the High Court has totally ignored the same.

9. Learned senior counsel for the appellant- Corporation also invited our attention to another decision of this Court in *Kasinka Trading & Anr.* v. *Union of India & Anr.*, [1995] 1 SCC 274. In this case, a notification was issued under Section 25 (1) of the Customs Act in public interest exempting from basic duty and specific date to which it will remain in force. Prior to expiry of that date another notification was issued in exercise of same power in public interest withdrawing the exemption on excise duty on the materials imported. Public interest was explained by the Government and in that context, it was held that Government being satisfied about the public interest in withdrawing the exemption no unequivocal representation or promise extended by merely specifying the period of operation of the exemption notification so as to attract the doctrine of promissory estoppel. It was pointed out that exemption under Section 25 was not in the nature of any incentive and has the effect of only suspending levy and collection of customs duty and can be revoked or withdrawn in public interest. It was further observed that when exemption is granted in exercise of statutory powers, it is implicit that it can also be rescinded or modified at any time in exercise of the same power and it was observed that withdrawal of exemption is a matter of Government policy with which the Court would not in the absence of any manifest injustice, *mala fides* or fraud interfere. It was observed as follows :

> "The doctrine of promissory estoppel is applicable against the Government also particularly where it is necessary to prevent fraud or manifest injustice. The doctrine, however, cannot be pressed into aid to compel the Government or the 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". 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. Bald

A 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. The doctrine of promissory estoppel cannot be invoked in the abstract and the B courts are bound to consider all aspects 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 do equity and the fundamental principles of equity must for ever be present in the mind of the court, while considering the applicability C of the doctrine. The doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation."

D However, it was also observed as follows:

"The reasons given by the Union of India justifying withdrawal of the exemption notification are not irrelevant to the exercise of the power in ''public interest'', nor are the same shown to be E insufficient to support the exercise of that power. The exemption notification was not issued as a potential source of extra profit for the importer. Again, at the same time when the notification was withdrawn by the Government there was no scope for any loss to be suffered by the importers. The exemption notification did not F hold out to the appellants any enforceable promise. Neither the notification was of an executive character nor did it represent a scheme designed to achieve a particular purpose. It was a notification issued in public interest and again withdrawn in public interest."

G 10. Our attention was also invited to a decision of this Court in *Shrijee Sales Corporation & Anr.* v. *Union of India,* [1997] 3 SCC 398. In this case it was observed as follows :

"Moreover, the Government is competent to resile from a H promise even if there is no manifest public interest involved,

provided, of course, no one is put in any adverse situation which cannot be rectified. Even where there is no such overriding public interest, it may still be within the competence of the Government to resile from the promise on giving reasonable notice which need not be a formal notice, giving the promise a reasonable opportunity of resuming his position, provided, of course, it is possible for the promise to restore the *status quo ante*. If, however, the promise cannot resume his position, the promise would become final and irrevocable."

This case in turn followed *Kasinka Trading* (supra).

11. Our attention was invited to a decision of this Court in *Sales Tax Officer & Anr.* v. *Shree Durga Oil Mills & Anr.*, [1998] 1 SCC 572. In this case it was held that the Government was competent to change its policy in public interest on the basis of resource crunch and that would be sufficient for non-applicability of the rule of promissory estoppel. Their Lordships held that public interest can override consideration of private loss or gain. Any Industrial Policy Resolution (IPR) can be changed by the State looking to its severe economic crunch and in this case the respondent sought to invoke this IPR which was issued on 18.7.1979 and was effective for the period 1979-83. The respondent established its industry on 28.11.1979. Therefore, on factual aspect also this Court found that within four months of establishment of industry, the respondent was not likely to suffer any loss. But at the same time, their Lordships observed as follows :

"Any IPR can be changed if there is an overriding public interest involved. In the instant case, it has been stated on behalf of the State that various notifications granting sales tax exemptions to the dealers resulted in severe resource crunch. On reconsideration of the financial position, it was decided to limit the scope of the earlier exemption notifications issued under Section 6 of the Orissa Sales Tax Act. Because of this new perception of the economic scenario of the State, the scope of the earlier notifications had to be restricted. Withdrawal of notification was done in public interest. The Court will not interfere with any action taken by the Government in public interest. Public interest must override any

A consideration of private loss or gain. Thus the plea of change of policy trade on the basis of resource crunch should have been sufficient for dismissing the respondent's case based on the doctrine of promissory estoppel."

B 12. Our attention was invited to another decision of this Court in *State of Rajasthan & Anr.* v. *Mahaveer Oil Industries & Ors.*, [1999] 4 SCC 357. In this case also Government of Rajasthan gave sales tax incentive scheme for industries in 1987 exempting new industrial units from the tax on sale of goods manufactured by them for sale within the State for a specified period i.e. from 5.3.1987 to 31.3.1997. Oil extraction and C manufacturing was one of the industries eligible to the benefit of the scheme but the same was revoked. On facts it was found that the Scheme had failed to achieve its object and had rather adversely affected the oil industry. In this situation, it was held that the Government can in public interest revoke the policy and the doctrine of promissory estoppel cannot D preclude the Government from issuing such notification and on facts it was found that the respondent had not taken any effective steps for starting a new unit prior to the issuance of the notification. It was observed as follows:

E "Public interest requires that the State be held bound by the promise held out by it in such a situation. But this does not preclude the State from withdrawing the benefit prospectively even during the period of the Scheme, if public interest so requires. Even in a case where a party has acted on the promise, if there is any F supervening public interest which requires that the benefit be withdrawn or the Scheme be modified, that supervening pubic interest would prevail over any promissory estoppel."

13. As against this, Mr. Shanti Bhushan, learned senior counsel appearing for the respondents has submitted that in view of Section 78- G A of the Act of 1948 a direction was issued by the State Government for giving this development concession and the State was competent to give such direction and in pursuance of that the hill development rebate was given. Mr. Shanti Bhushan submitted that it will be arbitrary and unfair if those entrepreneurs who have established their industries on the H representation made by the State that they will be given certain

concessions and in pursuance of that they have made huge investments and now that the concession has been withdrawn it will ruin those entrepreneurs and therefore, the appellant- Corporation is estopped from going back from their representation. In this connection, he principally relied on a decision of this Court in *M/s. Motilal Padampat Sugar Mills Co.Ltd.* v. *State of Uttar Pradesh & Ors.*, [1979] 2 SCC 409 and specially invited our attention to paragraph 24 of the judgment. In paragraph 24, their Lordships have summed up the ratio of the earlier decisions given by this Court as follows :

> "Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry6 out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisement of the circumstances in which the obligation has arisen.
>
> 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 promise and, in fact, the promise, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promise, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 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 prides 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

A 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
B the Government to repudiate even its contractual obligations; but, let it be said to the eternal glory of this Court, this doctrine was emphatically negatived in the *Indo-Afghan Agencies* case and the supremacy of the rule of law was established. It was laid down by this Court that the Government cannot claim t be immune from
C 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
D it would be acted on by the promise and the promise would after his position relying upon it. But if the Government makes such a promise and the promise 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
E individual. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society and the constant endeavour of the Courts and the legislature most, therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible. The
F 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..."

Mr.Shanti Bhushan emphasized on the basis of this observation made in
G this case that benevolent Government has to act with equity and the Court should yield in favour of the equity whenever case arises of a citizen who has acted *bona fidely* on the basis of the representation made by the Government or by the instrumentality of the State. Mr. Shanti Bhushan submitted that since representation was made by the appellant-
H Corporation, therefore, industries were established in the hill areas and

now the appellant-corporation wanted to change the tariff that will be unconstitutional, unfair and arbitrary to the citizens who have acted on the promise made by the appellant-corporation. In this connection, Mr.Shanti Bhushan also submitted that this is violative of Article 14 of the Constitution as held in *MRF Ltd., Kottayam* v. *Asstt. Commissioner (Assessment) Sales Tax & Ors.*, [2006] 8 SCC 702. In that case, the Court held that revocation of such notification is arbitrary and one of us (Hon'ble Katju.J) was a party to the judgment. In this case the concept of doctrine of legitimate expectation was invoked. In this case, the State of Kerala issued notification granting exemption for expansion in the manufacture of certain products including rubber-based goods. The assessee manufacturer relying on that introduction of exemption commenced commercial production after investing huge amount. This concession was granted for a fixed period of seven years. But during the currency of the period of exemption the State Government issued another notification excluding the formation of a compound rubber from the definition of "manufacture" for the purpose of the original exemption notification. Therefore, this premature deprivement of the exemption to the assessee manufacturer was held by the Court arbitrary, unjust and unreasonable. Their Lordships invoked the doctrine of legitimate expectation. It was contended before the Court that the notification was a statutory one and no plea of estoppel would lie against the statute. But their Lordships held that the principle of underlying legitimate expectation was based on Article 14 of the Constitution and any action taken by the State which went against the rule of fairness was liable to be struck down. Finally this Court after review of the cases on the subject, invoked the principle of promissory estoppel and also the legitimate expectation and found that the revocation of the exemption granted for a period of seven years by the State Government was arbitrary, unjust and unreasonable and was liable to be quashed. It was observed as follows :

> "This Court in *E.P.Royappa* v. *State of T.N.*, [1974] 4 SCC 3 observed that where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14. Equity that arises in favour of a party as a result of a representation made by the State is founded on the basic concept of "justice and fair play". The attempt to

A take away the said benefit of exemption with effect from 15-1-1998 and thereby deprive MRF of the benefit of exemption for more than 5 years out of a total period of 7 years, in our opinion, is highly arbitrary, unjust and unreasonable and deserves to be quashed. .. .."

B

14. Mr.Shanti Bhushan, learned senior counsel invited our attention to paragraph 33 of the judgment in *Pawan Alloys & Casting Pvt. Ltd.*(supra) and submitted that in fact an argument was made at the Bar that the high-powered Tariff Realisation Committee advised the Board for withdrawing this rebate and the Board acted in the light of the said report C submitted to it in the year 1986. It was submitted that the genesis of the notification was the recommendation of the Tariff Realisation Committee. Therefore, the Court concluded that the rebate was revoked not on the ground of general public interest but solely on the ground of commercial interest of the Board. Therefore, it was observed as follows :

D

"Consequently it must be held on the facts of these cases that the impugned withdrawal notification was not backed up by any demands of public interest which would outweigh the individual interests of the appellant-promisees who had acted upon the same."

E

Mr.Shanti Bhushan, learned senior counsel submitted that in the present case also, the revocation is not on the basis of general public interest but it is only on account of losses the Corporation trying to make up the losses revoked this concession. Therefore, learned senior counsel submitted that F it is not the consideration of general public interest but based on the commercial angle. Learned senior counsel invited our attention to the decision in *Kasinka Trading & Anr.* (supra), specially to paragraph 21 of the judgment and submitted that, that case is distinguishable on the ground that it only suspended the levy and collection of customs duty G wholly or partially and there was no promise for benefit to public at large. Thus, the exemption notification issued under Section 25(1) of the Customs Act is an exercise of the statutory power of the State under the law itself and the State can revoke the same as per General Clauses Act. Therefore, Mr.Shanti Bhushan distinguished the case of *Kasinka Trading* H (supra) that the said case was not the case in which any promise was

made and on which the assessee has acted and invoked certain benefits. It was a general notification giving certain benefits and it was revoked back in public interest. Learned senior counsel invited our attention to a decision of this Court in *ShriJee Sales Corporation & Anr.* (supra) and submitted that it was not an inducement but a case of promissory estoppel when a promise is made and citizen is induced to act on those representation, then in that case, once the party has suffered on account of so called inducement, then in that case it cannot be revoked to the disadvantage of the other party. Learned senior counsel submitted that in *Shrijee Sales Corporation & Anr.* (supra) and *Shree Durga Oil Mills & Anr.* (supra) certain tax exemption was given and subsequently it was revoked and learned senior counsel submitted that those cases are distinguishable, that there were not the cases in which inducement was made, and the party acted on that inducement. Those were the cases where exemption was given on customs and sales tax but it was not in the nature of inducement or any representation or promise on the part of the other party to encourage the entrepreneurs to come and make their investments.

15. Learned senior counsel invited our attention to a decision of this Court in *State of Punjab* v. *Nestle India Ltd. & Anr.*, [2004] 6 SCC 465 in which a representation was made by the Government in the manner de hors the Rules but a statement was made by the Finance Minister in his Budget speech for 1996-97 making representation to the effect that the State Government had abolished purchase tax on milk. The manufacturers of milk products, therefore, were not paying the purchase tax on milk for the assessment year 1996-97 and mentioned this fact in their returns. The taxing authority entertained such returns. The manufacturers passed on the benefit of exemption to the dairy farmers and milk producers. However, after expiry of the said assessment year, the Government took a decision not to abolish purchase tax on milk and the taxing authority therefore raised a demand for the assessment year 1996-97. On these facts, the Court held that in absence of proof of any overriding public interest rendering the enforcement of estoppel against the Government was inequitable, notwithstanding that no exemption notification as required by the statute was issued. It was held that the State Government cannot resile from its decision to exempt milk and raise a demand for the aforesaid assessment year. However, the same principle

A of estoppel was not invoked after assessment year 1996-97. The Court enforced the principle of estoppel. All the earlier cases on the subject were reviewed by the Court and ultimately it was concluded as follows :

> "47. The appellant has been unable to establish any overriding public interest which would make it inequitable to enforce the
B estoppel against the State Government. The representation was made by the highest authorities including the Finance Minister in his Budget speech after considering the financial implications of the grant of the exemption to milk. It was found that the overall benefit to the State's economy and the public would be greater if the
C exemption were allowed. The respondents have passed on the benefit of that exemption by providing various facilities and concessions for the upliftment of the milk producers. This has not been denied. It would, in the circumstances, be inequitable to allow the State Government now to resile from its decision to exempt
D milk and demand the purchase tax with retrospective effect from 1-4-1996 so that the respondents cannot in any event readjust the expenditure already made. The High Court was also right when it held that the operation of the estoppel would come to an end with the 1997 decision of the Cabinet."

E

Similarly, our attention was invited to paragraph 16 of the judgment in *Shree Durga Oil Mills & Anr.* (supra). Mr.Shanti Bhushan submitted that in the aforesaid case Section 6 of the Orissa Sales Tax Act clearly contemplated that the State Government can grant exemption from sales tax and likewise withdraw any such exemption. Learned senior counsel
F submitted that so far as Section 49 of the Act of 1948 is concerned, there is no such contemplation that it can also revoke the same. It is only because of the provisions of the General Clauses Act it can be revoked but not once granted under Section 49(3) of the Act of 1948, there is no provision for any revocation of the exemption granted to certain class of
G persons having regard to the geographical condition of the area, the nature of supply and the purpose for which supply is required and other relevant factors. Mr.Shanti Bhushan also submitted that there is no allegation of theft in the hill area by the persons to whom the power had been granted at a concessional rate. and all the circumstances which have been taken

H

into consideration for revocation of the exemption notification show that there was no overwhelming consideration for revoking such exemption in public interest.

16. Mr.S.Ganesh, learned senior counsel appearing for some of the respondents invited our attention to a decision of this Court in *Mahabir Vegetable Oils (P) Ltd. & Anr.* v. *State of Haryana & Ors.*, [2006] 3 SCC 620. In this case, the appellants were the owner of solvent extraction plants. Industrial policy for the period 1.4.1988 to 31.3.1997 granted incentive by way of sales tax exemption to the industries set up in backward areas in the State. Solvent at that time was not included in the negative list in the Rules. In August, 1995 the appellants purchased land to set up a net unit and they made huge amount in construct work, erection of plant and that investment constituted 45% of the total investment. They started trial production on 26.3.1997 and commercial production on 29.3.1997 and then they applied for grant of exemption for payment of sales tax. Meanwhile, the State Government notified its intention to amend the Haryana General Sales Tax Rules and invited objections and thereafter they issued notification on 16.12.1996 which included solvent extraction plants in the negative list but Note 2 appended to that list provided that the industrial units which had made investment upto 25% of the anticipated cost of the project and which had been included in the negative list for the first time would be entitled to the sales tax benefits related to the extent of investment made upto 3.1.1996. On 28.5.1997 Note 2 was omitted. As a result of this, the appellants were deprived of the benefit and consequently, the Department rejected the application for exemption. This was challenged unsuccessfully before the High Court and ultimately the matter reached this Court and this Court held that the incumbents had made huge investment pursuant to and in furtherance of the representation made by the State Government and the State Government without assigning any reason withdrew the exemption with retrospective effect at the end of the operative period. The retrospective withdrawal of the exemption was found to be bad in law. In this context, their Lordships observed as follows:

> "Undisputedly, when the appellants started making investments, Rule 28-A was operative. Representation indisputably was made

A in terms of the said Rules, The relevant provisions of the Act and the Rules framed thereunder indisputably were made keeping in view the industrial policy of the State."

Their Lordships held that the doctrine of promissory estoppel will operate
B even in the legislative field. Learned senior counsel submitted that such concession which has been granted cannot be revoked as the beneficiary acquired a vested right and the same can only be revoked by the Statute.

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

18. Learned senior counsel for the appellant has cited nine instances which can be loosely categorised into two i.e. (i) that there cannot be any estoppel against the statute and (ii) overriding public interest. So far
F as the first part is concerned i.e. the revocation has the statute flavour i.e. the benefit which was extended under Section 49 of the Act of 1948 and the notification had been issued revoking the same benefit under Section 49 of the Act of 1948 by invoking the provisions of the General Clauses Act that an authority granting exemption has a right to revoke the same
G also. It is true that it has a right to revoke the same but if the other party has suffered on that account then such representation will be against the public policy and the morality. Notification issued under Section 49 of the Act of 1948 for giving the benefit of exemption for the hill areas was in the nature of delegated legislation and not an Act framed by the State
H Legislature. Therefore, a distinction has to be made between the delegated

legislation and the primary legislation framed by the Legislature. In Section 49 there is no specific stipulation that the notification issued under Section 49 of the Act of 1948 can be revoked at any time as was in the case of *Shree Durga Oil Mills & Anr.* (supra) where Section 6 of the Orissa Sales Tax Act itself provided that the notification is capable of being revoked at any time. Therefore, a distinction has to be made between the delegated legislation and the primary legislation. So far as the primary legislation is concerned, if the Act is passed by State Legislature and denies the benefit by the primary legislation then no estoppel can be applied against that Act but so far as the case of delegated legislation is concerned, where delegated authorities passes certain notification in exercise of his delegated authority there is no contemplation mentioned in the act itself that it is capable of being revoked at any time. Then such acts cannot be treated at par with the primary Act passed by the State Legislature. The State is fully competent to pass an Act prospectively as well as retrospectively but retrospectivity to the extent of aforesaid nature cannot stand. Therefore, this distinction has to be borne in mind. In the present case, the U.P. Electricity Reforms Act, 1999 came into force with effect from 2000. Therefore, if such benefit has not been extended then a different stand will follow but so far as the delegated legislation is concerned, this kind of revocation cannot be sustained. It is highly against the public morality that the incumbent who have felt persuaded on account of the representation made by the State Government that they will be given certain benefits and they acted on that representation, it does not behove on the part of the appellant-corporation to withdraw the said benefit before expiry of the stipulated period by issuing the notification revoking the same which the respondents were legitimately entitled to avail. We fail to understand why the appellant-corporation which made a representation and allowed the other party to act upon such representation could resile and leave the citizens in a lurch. In such a situation the principle of promissory estoppel which has been evolved by the Courts which is based on public morality cannot permit the State to act in such an arbitrary fashion. Other grounds for the purpose of public interest which have been pleaded; namely that there are two methods of tariff provided by the amendment and the actual consumption has been reduced based on the calculation of energy charges per KV from 308 paise to 100 paise and

A there was large scale theft or that units were closing down and there was no *mala fide* intention in the matter of revocation of the notification and the cost of production of power has gone up to Rs.2.50 per unit, are considerations which hardly involve any public interest. They were more of a nature of losses which has been suffered by the Corporation and in B order to make these losses, these methods were evolved to reduce and to make good of the losses. Restructuring benefit to 17% of the Tariff 4(A) (demand chages)are the factors which are aimed at to make the losses good for the Corporation. This is not case in which serious public repercussion was involved. These are not the factors which put together C can constitute a public interest. Theftof the energy if it was proved by cogent datas that as a result of giving this benefit to the entrepreneurs in the hill areas, they were misusing it or there was theft of the energy at a large scale by these persons to whom the concession had been given then of course such factors, if all the datas were brought on record of course D could have persuaded the Court to take a different view of the matter. But simply because there was theft of energy allow the State cannot persuade us to hold that the revocation of such concession can be said to be in public interest. Since the benefit was given to these units in the hill areas, there should have been overwhelming evidence to show some E *mala fide* on the part of these consumers which have persuaded the Corporation to revoke it. If there was no misuse of the energy by these units in the hill areas to whom the concession had been granted then in that case it cannot be taken that there was really public interest involved which persuaded the Corporation to revoke the same. No person can be permitted to misuse the concession or benefit and invoke promissory F estoppel. Promissory estoppel is not one sided affair, it is rather two sided affair. If one party abuses the concession then it is always open to the other party to revoke such concession but if one party avails the benefit and is acting on the same representation made by the other party then the other party who has granted the said benefit cannot revoke the same G under the garb of public interest. Therefore the grounds that the revocation notification was issued in public interest and that same has the flavour of the statute, cannot persuade us to uphold it. sustained. It is true that a detailed statement was given in various paragraphs of the written statement filed by the appellant-corporation before the Allahabad High Court and H

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

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

A 20. In this 21st century, when there is global economy, the question of faith is very important. Government offers certain benefits to attract the entrepreneurs and the entrepreneurs act on those beneficial offers. Thereafter, the Government withdraws those benefits. This will seriously affect the credibility of the Government and would show the B shortsightedness of the governance. Therefore, in order to keep the faith of the people, the Government or its instrumentality should abide by their commitments. In this context, the action taken by the appellant-Corporation in revoking the benefits given to the entrepreneurs in the hill areas will sadly reflect their credibility and people will not take the word C of the Government. That will shake the faith of the people in the governance. Therefore, in order to keep the faith and maintain good governance it is necessary that whatever representation is made by the Government or its instrumentality which induces the other party to act, the Government should not be permitted to withdraw from that. This is a D matter of faith.

21. Therefore, as a result of our above discussion, we hold that the view taken by the Allahabad High Court on revoking the principle of promissory estoppel is correct and the respondent- units will be entitled to such benefits till the U.P. Electricity Reforms Act, 1999 came in to E force. Since after coming into force the Act of 1999 no such concession has been granted, therefore, the concession shall survive till the Act of 1999 came into force. The appeals are accordingly disposed of with no order as to costs.

F N.J. Appeals disposed of.