M/S. Motilal Padampat Sugar Mills Co. Ltd.

Vs

State of Uttar Pradesh and Others

Civil Appeal No. 1597 of 1972

(P. N. Bhagwati, V. D. Tulzapurkar JJ)

12.12.1978

JUDGMENT

BHAGWATI, J. –

1. This appeal by certificate raises a question of considerable importance in the filed of public law. How far and to what extent is the State bound by the doctrine of promissory estoppel ? It is a doctrine of comparatively recent origin but it is potentially so fruitful and pregnant with such vast possibilities for growth that traditional lawyers are alarmed lest it might upset existing doctrines which are looked upon almost reverntially and which have held the field for a long number of years. The law in regard to promissory estoppel is not yet well settled though it has been the subject of considerable debate in England as well as the United States of America and it has also received consideration in some recent decisions in India and we, therefore, propose to discuss it in some detail with a view to defining its contours and demarcating its parameters. We will first state briefly the facts giving rise to this appeal. This is necessary because it is only where certain fact-situations exist that promissory estoppel can be invoked and applied.

2. The appellant is a limited company which is primarily engaged in the business of manufacture and sale of sugar and it has also a cold storage plant and a steel foundry. On October 10, 1968 a news item appeared in the National Herald in which it was stated that the State of Uttar Pradesh had decided to give exemption from sales tax for a period of three years under Section 4-A of the U.P. Sales Tax Act to all new industrial units in the State with a view to enabling them "to come on firm footing in developing stage". This news item was based upon a statement made by Shri M. P. Chatterjee, the then Secretary in the Industries Department of the Government. The appellant, on the basis of this announcement, addressed a letter dated October 11, 1968 to the Director of Industries stating that in view of the Sales Tax Holiday announced by the Government, the appellant intended to set up a Hydro-generation Plant for manufacture of Vansapati and sought for confirmation that this industrial unit, which it proposed to set up, would be entitled to Sales Tax Holiday for a period of three years from the date it commenced production. The Director of Industries replied by his letter dated October 14, 1968 confirming that "there will be no sales tax for three years on the finished product of your proposed Vanaspati factory from the date it gets power connection for commencing production". The appellant thereupon started taking steps to contact various financiers for financing the project and also initiated negotiations with manufacturers for purchase of machinery for setting up the Vanaspati factory. On December 12, 1968 the appellant's representative met respondent 4 who was at that time the Chief Secretary to the Government as also Advisor to the Governor and intimated to him that the appellant was setting up the Vanaspati factory solely on the basis of the assurance given on behalf of the Government that the appellant would be entitled to exemption from Sales Tax for a period of three years from the date of commencement of

commercial production at the factory and respondent 4 reiterated the assurance that the appellant would be entitled to sales tax holiday in case the Vanaspati factory was put up by it. The appellant by its letter dated December 13, 1968 placed on record what had transpired at the meeting on the previous day and requested respondent 4 "to please confirm that we shall be allowed Sales Tax Holiday for a period of three years on the sale of Vanaspati from the date we start production". On the same day the appellant entered into an agreement with M/s. De Smet (India) Pvt. Ltd., Bombay for supply of plant and machinery for the Vanaspati factory, providing clearly that the appellant would have the option to terminate the agreement, if within 10 weeks exemption from sales tax was not granted by the State Government. Respondent 4 replied on December 22, 1968 confirming that "the State Government will be willing to consider your request for grant of exemption from U.P. Sales Tax for a period of three years from the date of production" and asked the appellant to obtain the requisite application form and submit a formal application to the Secretary to the Government in the Industries Department and in the meanwhile to "go ahead with the arrangements for setting up the factory". The appellant had in the meantime submitted an application dated December 21, 1968 for a formal order granting exemption from sales tax under Section 4-A of the Act. It appears that the letter of respondent 4 dated December 22, 1968 was not regarded as sufficient by the financial institutions which were approached by the appellant for financing the project since it merely stated that the State Government would be willing to consider the request for grant of exemption and did not convey any decision of the State Government that the exemption would be granted. The appellant, therefore, addressed a letter dated January 22, 1969 to respondent 4 pointing out that the financial institutions were of the view that the letter of respondent 4 dated December 22, 1968 "did not purport to commit the Government for the concession mentioned" and it was, therefore, necessary to obtain a formal order of exemption in terms of the application submitted by it. Respondent 4, however, stated categorically in his letter in reply dated January 23, 1969 that the proposed Vanaspati factory of the appellant "will be entitled to exemption from U.P. Sales Tax for a period of three years from the date of going into production and that this will apply to all Vanaspati sold during that period in Uttar Pradesh itself" and expressed his surprise that "a letter from the Chief Secretary to the State Government stating this fact in clear and unambiguous words should not carry conviction with the financial institutions". In view of this unequivocal assurance given by respondent 4, who not only occupied the post of Chief Secretary to the Government but was also Advisor to the Governor functioning under the President's rule, the appellant went ahead with the setting up of the Vanaspati factory. The appellant by its letter dated April 25, 1969 advised respondent 4 that the U.P. Finance Corporation, being convinced by the clear and categorical assurance given by respondent 4 that the Vanaspati factory of the appellant would be entitled to exemption from sales tax for a period of three years from the date of commencement of production, had sanctioned financial assistance to the appellant, and the appellant was going ahead with the project in full speed to enable it to start production at the earliest. The appellant made considerable progress in the setting up of the Vanaspati factory but it seems that by the middle of May, 1969 the State Government started having second thoughts on the question of exemption and letter dated May 16, 1969 was addressed by respondent 5 who was Deputy Secretary to the Government in the Industries Department, intimating that a meeting has been called by the Chief Minister on May 23, 1969 "to discuss the question of giving concession in Sales Tax on Vanaspati products" and requesting the appellant to attend the meeting. The appellant immediately by its letter dated May 19, 1969 pointed out to respondent 5 that so far as the appellant was concerned, the State Government had already granted exemption from Sales Tax by the letter of the Chief Secretary dated January 23, 1969, but still, the appellant would be glad to send its representative to attend the meeting as desired by respondent 5. The proposed meeting was, however, postponed and the appellant was intimated by respondent 5 by its letter dated May 23, 1969 that the meeting would now be held on June 3,

1969. The appellant's representative attended the meeting on that day and reiterated that so far as the appellant was concerned, it had already been granted exemption from Sales Tax and the State Government stood committed to it. The appellant thereafter proceeded with the work of setting up the Vanaspati plant on the basis that in accordance with the assurance given by respondent 4 on behalf of the State Government, the appellant would be exempt from payment of Sales Tax for a period of three years from the date of commencement of production.

3. The State Government however went back upon this assurance and a letter dated January 20, 1970 was addressed by respondent 5 intimating that the Government had taken a policy decision that new Vanaspati Units in the State which go into commercial production by September 30, 1970 would be given partial concession in Sales Tax at the following rates for a period of three years :

> # First year of production .. .. .. 3 1/2 % Second year of production .. .. .. 3 % Third year of production .. .. .. 2 1/2 %##

The appellant by its letter dated June 25, 1970 pointed out to the Secretary to the Government that the appellant proposed to start commercial production of Vanaspati with effect from July 1, 1970 and stated that, as notified in the letter dated January 20, 1970, the appellant would be availing of the exemption granted by the State Government and would be charging Sales Tax at the rate of 3 1/2% instead of 7% on the sales of Vanaspati manufactured by it for a period of one year commencing from July 1, 1970. The factory of the appellant thereafter went into production from July 2, 1970 and the appellant informed the Secretary to the Government about the same by its letter dated July 3, 1970. The State Government however once again changed its decision and on August 12, 1970, a news item appeared in the Northern India Patrika stating that the Government had decided to rescind the earlier decision i.e. the decision set out in the letter dated January 20, 1970, to allow concession in the rates of Sales Tax to new Vanaspati Units. The appellant thereupon filed a writ petition in the High Court of Allahabad asking for a writ directing the State Government to exempt the sales of Vanaspati manufactured by the appellant from Sales Tax for a period of three years commencing from July 2, 1970 by issuing a notification under Section 4-A and not to collect or charge Sales Tax from the appellant for the said period of three years. It appears that in the writ petition as originally filed, there was no plea of promissory estoppel taken against the State Government and the writ petition was, therefore, amended by obtaining leave of the High Court with a view to introducing the plea of promissory estoppel. The appellant urged in the amended writ petition that respondent 4 acting on behalf of the State Government had given an unequivocal assurance to the appellant that the appellant would be entitled to exemption from payment of Sales Tax for a period of three years from the date of commencement of the production and this assurance was given by respondent 4 intending or knowing that it would be acted on by the appellant and in fact the appellant, acting in reliance on it, established the Vanaspati factory by investing a large amount and the State Government was, therefore, bound to honour the assurance and exempt the Vanaspati manufactured and sold by the appellant from payment of Sales Tax for a period of three years from July 2, 1970. This plea based on the doctrine of promissory estoppel was, however, rejected by the Division Bench of the High Court principally on the ground that the appellant had waived the exemption, if any, by accepting the concessional rates set out in the letter of the Deputy Secretary dated January 20, 1970. The appellant thereupon preferred the present appeal after obtaining a certificate of fitness from the High Court.

4. The principal argument advanced on behalf of the appellant in support of the appeal was that respondent 4 had given a categorical assurance on behalf of the State Government that the appellant would be exempt from payment of Sales Tax for a period of three years from the date of

commencement of production and such assurance was given intending or knowing that it would be acted on by the appellant and in fact the appellant, acting in reliance on it, altered its position and the State Government was, therefore, bound, on the principle of promissory estoppel, to honour the assurance and exempt the appellant from Sales Tax for a period of three years from July 2, 1970, being the date on which the factory of the appellant commenced production. The appellant assailed the view taken by the High Court that this claim of the appellant for exemption based on the doctrine of promissory estoppel was barred by waiver, because the appellant had by its letter dated June 25, 1970 accepted that it would avail of the exemption granted under the letter of respondent 5 dated January 20, 1970 and charged Sales Tax at the concessional rate of 3 1/2% instead of 7% during the first year of its production. The appellant urged that waiver was a question of fact which was required to be pleaded and since no plea of waiver was raised in the affidavit filed on behalf of the State Government in opposition to the writ petition, it was not competent to the State Government to rely on the plea of waiver for the first time at the hearing of the writ petition. Even if the plea of waiver was allowed to be raised, notwithstanding that it did not find place in the pleadings, no waiver was made out, said the appellant, since there was nothing to show what were the circumstances in which the appellant had addressed the letter dated June 25, 1970 stating that it would avail of the exemption granted under the letter dated January 20, 1970 and it was not possible to say that the appellant, with full knowledge of its right to claim total exemption from payment of Sales Tax, waived that right and agreed to accept the concessional rates set out in the letter dated January 20, 1970. The State Government on the other hand strongly pressed the plea of waiver and submitted that the appellant had clearly waived its right to complete exemption from payment of Sales Tax by addressing the letter dated June 25, 1970. The State Government also contended that, in any event, even if there was no waiver, the appellant was not entitled to enforce the assurance given by respondent 4, since such assurance was not binding on the State Government and moreover, in the absence of notification under Section 4-A, the State Government could not be prevented from enforcing the liability to Sales Tax imposed on the appellant under provisions of the Act. It was urged on behalf of the State Government that there could be no promissory estoppel against the State Government so as to inhibit it from formulating and implementing its policies in public interest. These were broadly the rival contentions urged on behalf of the parties and we shall now proceed to consider them.

5. We shall first deal with the question of waiver since that can be disposed of in a few words. The High Court held that even if there was an assurance given by respondent 4 on behalf of the State Government and such assurance was binding on the State Government on the principle of promissory estoppel, the appellant had waived its right under it by accepting the concessional rates of sales tax set out in the letter of respondent 5 dated January 20, 1970. We do not think this view taken by the High Court can be sustained. In the first place, it is elementary that waiver is a question of fact and it must be properly pleaded and proved. No plea of waiver can be allowed to be raised unless it is pleaded and the factual foundation for it is laid in the pleadings. Here it was common ground that the plea of waiver was not taken by the State Government in the affidavit filed on its behalf in reply to the writ petition, nor was it indicated even vaguely in such affidavit. It was raised for the first time at the hearing of the writ petition. That was clearly impermissible without an amendment of the affidavit in reply or a supplementary affidavit raising such plea. If waiver were properly pleaded in the affidavit in reply, the appellant would have had an opportunity of placing on record facts showing why and in what circumstances the appellant came to address the letter dated June 25, 1970 and establishing that on these facts there was no waiver by the appellant of its right to exemption under the assurance given by respondent 4. But in the absence of such pleading in the affidavit in reply, this opportunity was denied to the appellant. It was, therefore, not right for the

High Court to have allowed the plea of waiver to be raised against the appellant and that plea should have been rejected in limine.

6. Secondly, it is difficult to see how, on the facts, the plea of waiver could be said to have been made out by the State Government. Waiver means abandonment of a right and it may be either express of implied from conduct, but its basic requirement is that it must be "an intentional act with knowledge". Per Lord Chelmsford, L.C. in Earl of Darnley v. London, Chatham and Dover Rly. Co. ((1867) LR 2 HL 43, 57 : 16 LT 217). There can be no waiver unless the person who is said to have waived is fully informed as to his right and with full knowledge of such right, he intentionally abandons it. It is pointed out in Halsbury's Laws of England (4th edn.) Volume 16 in paragraph 1472 at page 994 that for a "waiver to be effectual it is essential that the person granting it should be fully informed as to his rights" and Isaacs, J. delivering the judgment of the High Court of Australia in Craine v. Colonial Mutual Fire Insurance Co. Ltd. ((1920) 28 CLR 305 (Aus), has also emphasised that waiver "must be with knowledge, an essential supported by many authorities". Now in the present case there is nothing to show that at the date when the appellant addressed the letter dated June 25, 1970, it had full knowledge of its right to exemption under the assurance given by respondent 4 and that it intentionally abandoned such right. It is difficult to speculate what was the reason why the appellant addressed the letter dated June 25, 1970 stating that it would avail of the concessional rates of Sales Tax granted under the letter dated January 20, 1970. It is possible that the appellant might have thought that since no notification exempting the appellant from Sales Tax had been issued by the State Government under Section 4-A, the appellant was legally not entitled to exemption and that is why the appellant might have chosen to accept whatever concession was being granted by the State Government. The claim of the appellant to exemption could be sustained only on the doctrine of promissory estoppel and this doctrine could not be said to be so well defined in its scope and ambit and so free from uncertainty in its application that we should be compelled to hold that the appellant must have had knowledge of its right to exemption on the basis of promissory estoppel at the time when it addressed the letter dated June 25, 1970. In fact, in the petition as originally filed, the right to claim total exemption from Sales Tax was not based on the plea of promissory estoppel which was introduced only by way of amendment. Moreover, it must be remembered that there is no presumption that every person knows the law. It is often said that everyone is presumed to know the law, but that is not a correct statement : there is no such maxim known to the law. Over a hundred and thirty years ago, Maule, J., pointed out in Martindale v. Falkner ((1846) 2 CB 706 : 135 ER 1124) :

There is no presumption in this country that every person knows the law : it would be contrary to common sense and reason if it were so.

Scrutton, L.J., also once said :

> It is impossible to know all the statutory law, and not very possible to know all the common law.

But it was Lord Atkin who, as in so many other spheres, put the point in its proper context when he said in Evans v. Bartlam ((1937) AC 473, 479 : (1937) 2 All ER 646) :

> . . . the fact is that there is not and never has been a presumption that every one knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application.

It is, therefore, not possible to presume, in the absence of any material placed before the Court, that the appellant had full knowledge of its right to exemption so as to warrant an inference that the appellant waived such right by addressing the letter dated June 25, 1970. We accordingly reject the plea of waiver raised on behalf of the State Government.

7. That takes us to the question whether the assurance given by respondent 4 on behalf of the State Government that the appellant would be exempt from Sales Tax for a period of three years from the date of commencement of production could be enforced against the State Government by invoking the doctrine of promissory estoppel. Though the origins of the doctrine of promissory estoppel may be found in Hughes v. Metropolitan Railway Co. ((1877) 2 AC 439 : 36 LT 932) and Birmingham and District Land Co. V. London and North-Western Rail Co. ((1888) 40 Ch D 268, 286 : 60 LT 527), authorities of old standing decided about a century ago by the House of Lords, it was only recently in 1947 that it was rediscovered by Mr. Justice Denning, as he then was, in his celebrated judgment in Central London Property Trust Ltd. v. High Trees House Ltd. ((1956) 1 All ER 256 : 1947 KB 130). This doctrine has been variously called 'promissory estoppel', 'quasi estoppel' and 'new estoppel'. It is a principle evolved by equity to avoid injustice and though commonly named 'promissory estoppel', it is, as we shall presently point out, neither in the realm of contract nor in the realm of estoppel. It is interesting to trace the evolution of this doctrine in England and to refer to some of the English decisions in order to appreciate the true scope and ambit of the doctrine particularly because it has been the subject of considerable recent development and is steadily expanding. The basis of this doctrine is the inter-position of equity. Equity has always, true to form, stepped in to mitigate the rigours of strict law. The early cases did not speak of this doctrine as estoppel. They spoke of it as 'raising an equity'. Lord Cairns stated the doctrine in its earliest from - it has undergone considerable development since then - in the following words in Hughes v. Metropolitan Railway Company (supra) :

> It is the first principle upon which all Courts of Equity proceed if parties, who have entered into definite and distinct terms involving certain legal results . . . afterwards by their own act, or with their own consent, enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or will be kept in suspense, or held in abeyance, that the person who otherwise might have enforced these rights will not be allowed to enforce them where it would be inequitable, having regard to the dealings which have taken place between the parties.

8. This principle of equity laid down by Lord Cairns made sporadic appearances in stray cases now and then but it was only in 1947 that it was disinterred and restated as a recognised doctrine by Mr. Justice Denning as he then was, in the High Trees' case. The facts in that case were as follows. The plaintiffs leased to the defendants, a subsidiary of the plaintiffs, in 1937 a block of flats for 99 years at a rent of & 2500 a year. Early in 1940 and because of the war, the defendants were unable to find sub-tenants for the flats and unable in consequence to pay the rent. The plaintiffs agreed at the request of the defendants to reduce the rent to & 1250 from the beginning of the term. By the beginning of 1945 the conditions had improved and tenants had been found for all the flats and the plaintiffs, therefore, claimed the full rent of the premises from the middle of that year. The claim was allowed because the court took the view that the period for which the full rent was claimed fell outside the representation, but Mr. Justice Denning, as he then was, considered obiter whether the plaintiffs could have recovered the covenanted rent for the whole period of the lease and observed that in equity the plaintiffs could not have been allowed to act inconsistently with their promise on which the defendants had acted. It was pressed upon the Court that according to the well settled law

as laid down in Jorden v. Money ((1854) 5 HLC 185 : 10 ER 868), no estoppel could be raised against the plaintiffs since the doctrine of estoppel by representation is applicable only to representations as to some state of facts alleged to be at the time actually in existence and not to promises de future which, if binding at all, must be binding only as contracts and here there was no representation of an existing state of facts by the plaintiffs but it was merely a promise or representation of intention to act in a particular manner in the future. Mr. Justice Denning, however, pointed out :

The law has not been standing still since Jorden v. Money. There has been a series of decisions over the last fifty years which, although they are said to be cases of estoppel, are not really such. They are cases of promises which were intended to create legal relations and which, in the knowledge of the person making the promise, were going to be acted on by the party to whom the promise was made, and have in fact been so acted on. In such cases the courts have said these promises must be honoured.

The principle formulated by Mr. Justice Denning was, to quote his own words, "that a promise intended to be binding intended to be acted on and in fact acted on, is binding so far as its terms properly apply". Now Hughes v. Metropolitan Railway Co. (supra) and Birmingham and District Land Co. v. London & North Western Rail Co. (supra), the two decisions from which Mr. Justice Denning drew inspiration for evolving this new equitable principle, were clearly cases where the principle was applied as between parties who were already bound contractually one to the other. In Hughes v. Metropolitan Railway Co. (supra) the plaintiff and the defendant were already bound in contract and the general principle stated by Lord Cairns, L.C. was :

> [I]f parties who have entered into definite and distinct terms involving certain legal results afterwards - enter upon a course of negotiations. The years later Bowen, L.J. also used the same terminology in Birmingham and District Land Co. v. London and North Western Rail Co. (supra) that

if persons who have contractual rights against others induce by their conduct those against whom they have such rights to believe . . . .

These two decisions might, therefore, seem to suggest that the doctrine of promissory estoppel is limited in its operation to cases where the parties are already contractually bound and one of the parties induces the other to believe that the strict rights under the contract would not be enforced. But we do not think any such limitation can justifiably be introduced to curtail the width and amplitude of this doctrine. We fail to see why it should be necessary to the applicability of this doctrine that there should be some contractual relationship between the parties. In fact Donaldson, J. pointed in Dunham Fancy Goods Ltd. v. Michael Jackson (Fancy Goods) Ltd. ((1968) 2 All ER 987, 991) :

> Lord Cairns in his enunciation of the principle assumed a pre-existing contractual relationship between the parties, but this does not seem to me to be essential, provided that there is a pre-existing legal relationship which could in certain circumstances give rise to liabilities and penalties.

But even this limitation suggested by Donaldson, J. that there should be a pre-existing legal relationship which could in certain circumstances give rise to liabilities and penalties is not warranted and it is significant that the statement of the doctrine by Mr. Justice Denning in the High

Trees case does not contain any such limitation. The learned Judge has consistently refused to introduce any such limitation in the doctrine and while sitting in the Court of Appeal, he said in so many terms, in Evenden v. Guildford City Association Football Club Ltd. ((1975) 3 All ER 269 : (1975) 3 WLR 251) :

> Counsel for the appellant referred us, however, to the second edition of Spencer Bower's book on Estoppel by Representation [(1966) pp. 340-342] by Sir Alexander Turner, a judge of the New Zealand Court of Appeal. He suggests that promissory estoppel is limited to cases where parties are already bound contractually one to the other. I do not think it is so limited : see Durham Fancy Goods Ltd. v. Michael Jackson (Fancy Goods) Ltd. It applies whenever a representation is made, whether of fact or law, present or future, which is intended to be binding, intended to induce a person to act on it and he does act on it.

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

9. It may be pointed out that in England the law has been well settled for a long time, though there is some indication of a contrary trend to be found in recent juristic thinking in that country, that promissory estoppel cannot itself be the basis of an action. It cannot found a cause of action : it can only be a shield and not a sword. This narrow approach to a doctrine which is otherwise full of great potentialities is largely the result of an assumption, encouraged by its rather misleading nomenclature, that the doctrine is a branch of the law of estoppel. Since estoppel has always been traditionally a principle invoked by way of defence, the doctrine of promissory estoppel has also come to be identified as a measure of defence. The ghost of traditional estoppel continues to haunt this new doctrine and that is why we find that while boldly formulating and applying this new equity in the High Trees' case, Lord Denning added a qualification that though in the circumstances set out, the promise would undoubtedly be held by the courts to be binding on the party making it, notwithstanding that under the old common law it might be difficult to find any consideration for it, "the courts have not gone so far as to give a cause of action in damages for the breach of such a promise, but they have refused to allow the party making it to act inconsistently with it". Lord

Denning also pointed out in Combe v. Combe ((1951) 2 KB 215, 219 : (1951) 1 All ER 767, 769) that

Much as I am inclined to favour the principle stated in the High Trees case, it is important that it should not be stretched too far lest it should be endangered. It does not create new causes of action where none existed before. It only prevents a party from insisting on his strict legal rights when it would be unjust to allow him to do so, having regard to the dealings which have taken place between the parties . . . .

So also said Buckley J., in the more recent case of Beesly v. Hallwood Estates Ltd. ((1960) 2 All ER 314, 324 : (1960) 1 WLR 549 (Ch D) :

> The doctrine may afford a defence against the enforcement of otherwise enforceable rights : it cannot create an cause of action.

It is, however, necessary to make it clear that though this doctrine has been called in various judgments and text books as promissory estoppel and it has been variously described as 'equitable estoppel', 'quasi estoppel' and 'new estoppel', it is not really based on the principle of estoppel, but it is a doctrine evolved by equity in order to prevent injustice where a promise is made by a person knowing that it would be acted on by the person to whom it is made and in fact it is so acted on and it is inequitable to allow the party making the promise to go back upon it. Lord Denning himself observed in the High Trees' case, expressly making a distinction between ordinary estoppel and promissory estoppel, that cases like the one before him were "..... not cases of estoppel in the strict sense. They are really promises, promises intended to be binding, intended to be acted upon and in fact acted upon". Jenkins, C.J. also pointed out in Municipal Corporation of Bombay v. Secretary to State ((1905) ILR 29 Bom 580, 607 : 7 Bom LR 27) that the "doctrine is often treated as one of estoppel, but I doubt whether this is correct, though it may be a convenient name to apply". The doctrine of promissory estoppel need not, therefore, be inhibited by the same limitation as estoppel in the strict sense of the term. It is an equitable principle evolved by the courts for doing justice and there is no reason why it should be given only a limited application by way of defence.

10. It may be noted that even Lord Denning recognised in Crabb v. Arun District Council (supra) that "there are estoppels and estoppels. Some do give rise to a cause of action. Some do not" and added that "[I]n the species of estoppel called 'proprietary estoppel', it does give rise to a cause of action". The learned Law Lord, after quoting what he had said in Moorgate Mercantile Co. Ltd. v. Twitchings ((1975) 3 WLR 286 : (1975) 3 All ER 314), namely that the effect of estoppel on the true owner may be that

his own title to the property, be it land or goods, has been held to be limited or extinguished, and new rights and interests have been created therein. And this operates by reason of his conduct - what he has led the other to believe - even though he never intended it.

proceeded to observe that "the new rights and interests, so created by estoppel, in or over land, will be protected by the courts and in this way give rise to a cause of action". The Court of Appeal in this case allowed Crabb a declaration of "a right of access at point B over the verge on to Mill Park Road and a right of way along that road to Hook Lane" on the basis of an equity arising out of the conduct of the Arun District Council. Of course, Sponsor Bower and Turner, in their Treatise on The Law Relating to Estoppel by Representation have explained this decision on the basis that it is an instance of the application of the doctrine of estoppel by encouragement or acquiescence or what

has now come to be known as proprietary estoppel which, according to the learned authors, forms an exception to the rule that estoppel cannot found a cause of action. But if we look at the judgments of Lord Denning and Scarman, L.J., it is apparent that they did not base their decision on any distinctive feature of proprietary estoppel but proceeded on the assumption that there was no distinction between promissory and proprietary estoppel so far as the problem before them was concerned. Both the learned Law Lord and the learned Lord Justice applied the principle of promissory estoppel in giving relief to Crabb. Lord Denning referring to what Lord Cairns had said in Hughes V. Metropolitan Railway Co. ((1877) 2 App Cas 430, 448 : 36 LT 932), a decision from which inspiration was drawn by him for evolving the doctrine of promissory estoppel in the High Trees' case, observed that

. . . it is the first principle upon which all courts of equity proceed . . . that it will prevent a person from insisting on his strict legal rights - whether arising under a contract, or on his title deeds, or by statute - when it would be inequitable for him to do so having regard to the dealings which have taken place between the parties.

The decision in the High Trees' case was also referred to by the learned Law Lord and so also other cases supporting the doctrine of promissory estoppel. Scarman, L.J. also observed that in pursuing the inquiry as to whether there was an equity in favour of Crabb, he did not find helpful "the distinction between promissory and proprietary estoppel". He added that this "distinction may indeed be valuable to those who have to teach or expound the law, but I do not think that, in solving the particular problem raised by a particular case, putting the law into categories is of the slightest assistance". It does appear to us that this was a case decided on the principle of promissory estoppel. The representative of the Arun District Council clearly gave assurance to Crabb that they would give him access to the new road at point B to serve the southern portion of his land and the Arun District Council in fact constructed a gate at point B, and in the belief induced by this representation that he would have right to access to the new road at point B, Crabb agreed to sell the northern portion of his land without reserving for himself as owner of the southern portion any right of way over the northern portion for the purpose of access to the new road. This was the reason why the Court raised an equity in favour of Crabb and held that the equity would be satisfied by giving Crabb "the right of access at point B free of charge without paying anything for it". Arun District Council was held bound by its promise to provide Crabb access to the new road at point B and this promise was enforced against Arun District Council at the instance of Crabb. The case was one which fell within the category of promissory estoppel and it may be regarded as supporting the view that promissory estoppel can be the basis of a cause of action. It is possible that the case also came within the rule of proprietary estoppel enunciated by Lord Kingsdown in Ramsden v. Dyson ((1866) LR 1 HL 129 : 14 WR 926) :

The rule of law applicable to the case appears to me to be this : If a man, under a verbal agreement with a landlord for a certain interest in land, or what amounts to the same thing, under an expectation, created or encouraged by the landlord that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord, and without objection by him, lays out money upon the land, a Court of equity will compel the landlord to give effect to such promise or expectation.

and Spencer Bower and Turner may be right in observing that that was perhaps the reason why it was held that the promise made by Arun District Council gave rise to a cause of action in favour of Crabb. But, on what principle, one may ask, is the distinction to be sustained between promissory

estoppel and proprietary estoppel in the matter of enforcement by action. If proprietary estoppel can furnish a cause of action, why should promissory estoppel not ? There is no qualitative difference between the two. Both are the off springs of equity and if equity is flexible enough to permit proprietary estoppel to be used as a cause of action, there is no reason in logic or principle why promissory estoppel should also not be available as a cause of action, if necessary to satisfy the equity.

11. But perhaps the main reason why the English Courts have been reluctant to allow promissory estoppel to found a cause of action seems to be the apprehension that the doctrine of consideration would otherwise be completely displaced. There can be no doubt that the decision of Lord Denning in the High Trees' case represented a bold attempt to escape from the limitation imposed by the House of Lords in Jorden v. Money (supra) and it rediscovered an equity which was long embedded beneath the crust of the old decisions in Hughes v. Metropolitan Railway Co. (supra) and Birmingham and District Land Co. v. London and North Western Rail Co. (supra), and brought about a remarkable development in the law with a view to ensuring its approximation with justice, an ideal for which the law has been constantly striving. But it is interesting to note that Lord Denning was not prepared to go further, as he thought that having regard to the doctrine of consideration which was so deeply entrenched in the jurisprudence of the country, it might be unwise to extend promissory estoppel so as to found a cause of action and that is why he uttered a word of caution in Combe v. Combe (supra) that the principle of promissory estoppel "should not be stretched too far, lest it should be endangered". The learned Law Lord proceeded to add :

> [S]eeing that the principle never stands alone as giving a cause of action in itself, it can never do away with the necessity of consideration when that is an essential part of the cause of action. The doctrine of consideration is too firmly fixed to be overthrown by a side wind.

Spencer Bower and Turner also point out at page 384 of their Treatise (3rd ed.) that it is difficult to see how in a case of promissory estoppel a promise can be used to found a cause of action without according to it operative contractual force and it is for this reason that "a contention that a promissory estoppel may be used to found a cause of action must be regarded as an attack on the doctrine of consideration". The learned authors have also observed at page 387 that "to give a plaintiff a cause of action on a promissory estoppel must be little less than to allow an action in contract where consideration is not shown" and that cannot be done because consideration "still remains a cardinal necessity of the formation of a contract". It can hardly be disputed that over the last three or four centuries the doctrine of consideration has come to occupy such a predominant position in the law of contract that under the English law it is impossible to think of a contract without consideration and, therefore, it is understandable that the English courts should have hesitated to push the doctrine of promissory estoppel to its logical conclusion and stopped short at allowing it to be used merely as a weapon of defence, though, as we shall point out, there are quite a few cases where this doctrine has been used not as founding a cause of action in itself but as a part of a cause of action.

12. The modern attitude towards the doctrine of consideration is, however, changing fast and there is a considerable body of juristic thought which believes that this doctrine is "something of an anachronism". Prof. Holdsworth pointed out long ago in his History of English Law that

the requirements of consideration in its present shape prevent the enforcement of many contracts, which ought to be enforced, if the law really wishes to give effect to the lawful intentions of the

parties to them; and it would prevent the enforcement of many others, if the judges had not used their ingenuity to invent considerations. But the invention of considerations, by reasoning which is both devious and technical, adds to the difficulties of the doctrine.

Lord Wright remarked in an article punished in 49 Harvard Law Review, 1225 that the doctrine of consideration in its present from serves no practical purpose and ought to be abolished. Sir Federick Pollock also said in his well known work on 'Genius of Common Law', p. 91 that the application of the doctrine of consideration "to various unusual but not unknown cases has been made subtle and obscured by excessive dialectic refinement". Equally strong is the condemnation of this doctrine in judicial pronouncements. Lord Dunedin observed in the well known case of Dunlop Pneumatic Tyre Co. (Dunlop Pneumatic Co. v. Selfridge & Co. Ltd., 1915 AC 847 : 113 LT 386) :

> I confess that this case is to my mind apt to nip any budding affection which one might have had for the doctrine of consideration. For the effect of that doctrine in the present case is to make it possible for a person to snap his fingers at a bargain deliberately made a bargain not in itself unfair, and which the person seeking to enforce it has a legitimate interest to enforce.

The doctrine of consideration has also received serve criticism at the had of Dean Roscoe Pound in the United States. The reason is that promise as a social and economic institution becomes of the first importance in a commercial and industrial society and it is an expression of the moral sentiment of a civilised society that a man's word should be 'as good as his bond' and his fellowmen should be able to rely on the one equally with the other. That is why the Law Revision Committee in England in its Sixth Report, made as far back as 1937, accepted Prof. Holdsworth's view and advocated that a contract should exist if it was intended to created or affect legal relations and either consideration was present or the contract was reduced to writing. This recommendation, however, did not fructify into law with the result that the present position remains what it was. But having regard to the general opprobrium to which the doctrine of consideration has been subjected by eminent jurists we need not be unduly anxious to protect this doctrine against assault or erosion nor allow it to dwarf or stultify the full development of the equity of promissory estoppel or inhibit or curtail its operational efficacy as a juristic device for preventing injustice. It may be pointed out that the Law Commission of India in its 13th Report adopted the same approach and recommended that, by way of exception to Section 25 of the Indian Contract Act, 1872, a promise, express or implied, which the promisor knows or reasonably should know, will be relied upon by the promise, should be enforceable, if the promisee has altered his position to his detriment in reliance on the promise. We do not see any valid reason why promissory estoppel should not be allowed to found a cause of action where, in order to satisfy the equity, it is necessary to do so.

13. We may point out that even in England where the judges, apprehending that if a cause of action is allowed to be founded on promissory estoppel it would considerably erode, if not completely overthrow, the doctrine of consideration, have been fearful to allow promissory estoppel to be used as a weapon of offence, it is interesting to find that promissory estoppel has not been confined to a purely defensive role. Lord Denning himself said in Combe v. Combe (supra) that promissory estoppel "may be a part of a cause of action", though "not a cause of action itself". In fact there have been several cases where promissory estoppel has been successfully invoked by a party to support his cause of action, without actually founding his cause of action exclusively upon it. Two such cases are : Robertson v. Minister of Pensions ((1949) 1 KB 227 : (1948) 2 All ER 767) and Evenden v. Guildford City Association Football Club Ltd. ((1975) 3 All ER 269). The English courts have thus gone a step forward from the original position when promissory estoppel was regarded merely

as a passive equity and allowed it to be used as a weapon of offence to a limited extent as a part of the cause of action, but still the doctrine of consideration continues to inhibit the judicial mind and that has thwarted the full development of this new equitable principle and the realisation of its vast potential as a juristic technique for doing justice. It is true that to allow promissory estoppel to found a cause of action would seriously dilute the principle which requires consideration to support a contractual obligation, but that is no reason why this new principle, which is a child of equity brought into the world with a view to promoting honesty and good faith and bringing law closer to justice, should be held in fetters and not allowed to operate in all its activist magnitude, so that if may fulfill the purpose for which was conceived and born. It must be remembered that law is not a manusoleum. It is not an antique to be taken down dusted admired and put back on the shelf. It is rather like an old but vigorous tree having its roots in history, yet continuously taking new grafts and putting out new sprouts and occasionally dropping deal wood. It is essentially a social process. The end product of which is justice and hence it must keep on growing and developing with changing social concepts and values. Otherwise, there will be estrangement between law and justice and law cease to have legitimacy. It is true, as pointed out by Mr. Justice Holmes, that continuity with the past is a historical necessity but it must also be remembered at the same time, as pointed out by Mr. Justice Cardozo that "conformity is not be turned into a fresh". We would do well to recall the famous words uttered by Mr. Justice Cardozo while closing his first lecture on "Paradoxes of Legal Science" :

> The disparity between precedent and ethos may so lengthen with the years that only covin and chicanery would be disappointed if the separation were to end. There are many intermediate stage more over, between adherence and reversal. The pressure of the mores, if inadequate to obliterate the past, may fix direction for the future. The evil precedent may live, but so sterilized and truncated as to have small capacity for harm. It will be prudently ignored when invoked as an apposite analogy in novel situations, though the novel element be small. There will be brought forward other analogies, less precise, it may be, but more apposite to the needs of morals. The weights are constantly shifted to restore the equilibrium between precedent and justice.

Was it not Lord Denning who exhorted judges not be timorous souls but to be bold spirits ready to allow a new cause of action, If action, if justice so required (Candler v. Craine Christmas & Co. ((1951) 2 KB 164, 178 : (1951) 1 All ER 426)).

14. We may profitably consider at this stage what the American law on the subject is, because in the United States the law has always shown a greater capacity for adjustment and growth than elsewhere. The doctrine of promissory estoppel has displayed remarkable vigour and vitality in the hands of American judges and it is still rapidly developing and expanding on the United State. It may be pointed out that this development does not derive its original in any way from the decision of Lord Denning in the High Trees' case but antedates this decision by number of years : perhaps it is possible that it may have helped to inspire that decision. It was long before the decision in the High Trees' case that the American Law Institute's "Restatement of the Law of Contracts" came out with the following proposition in Article 90 :

> A promise which the promisor should reasonably except to induce action or forbearance of a definite and substantial character on the part of the promise, and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.

This proposition was explained and elucidated by several illustrations given in the article and one of such illustrations was as follows :

> A promises B to pay him an annuity during B's life. B there upon resigns a profitable employment, as A excepted that he might. B receives the annuity for some years, in the meantime becoming disqualified from again obtaining good employment. A's promise is binding.

It is true that the Restatement has not the same weight as a source of law, as actual decisions of courts of high standing, yet the principle set out in Article 90 has in fact formed the basis of a number of decisions in various States and it is now becoming increasingly clear that a promise may in the United States derive contractual enforceability if it has been made by the promisor intending that it would be acted on and the promise has altered his position in reliance on it notwithstanding that there is no consideration in the sense in which that word is used in English and Commonwealth jurisprudence. Of course the basic requirement for invoking this principle must be present namely, that the fact-situation should be such that "injustice can be avoided only by enforcement of the promise". There are numerous examples of the application of this principle to be found in recent American decisions. There is, for instance, the long line of cases in which a promise to give in charitable subscription has been consistently held to be enforceable at the suit of the charity. Though attempts have been made to justify these decisions by reasoning that the charity by commencing or continuing its charitable work after receiving promise has given good consideration for it, we do not think that, on closer scrutiny, the enforceability of the promise in these cases can be supported by spelling out the presence of some form of consideration and the true principle on which they are really based is the principle of promissory estoppel. This is also the view expressed in the following statement at page 557 of Vol. 19 of American Jurisprudence :

> A number of courts have upheld the validity of charitable subscriptions on the theory of promissory estoppel holding that while a mere promise to contribute is unenforceable for want of consideration, if money has been expended or liabilities have been incurred in reliance on the promise so that non-fulfillment will cause injury to the payee, the donor is estopped to assert the lack of consideration, and the promise will be enforced.

Chief Justice Cardozo, presiding over the Court of Appeals of the State of New York, explained the ratio of these decisions in the same terms in Allengheny College v. National Chautauque County Bank (57 ALR 980) :

> The half-truths of one generation tend at times to perpetuate themselves in the law as the whole truths of another, when constant repetition brings it about that qualifications, taken once for granted, are disregarded or forgotten. The doctrine of consideration has not escaped the common lot. As far back as 1881, Justice Holmes in his lectures on the Common Law (p. 292) separated the detriment which is merely a consequence of the promise from the detriment which is in truth the motive or inducement, and yet added that the courts 'have gone far in obliterating this distinction'. The tendency toward effacement has not lessened with the years. On the contrary there has grown up of recent days a doctrine that a substitute for consideration or an exception to its ordinary requirements can be found in what is styled a 'promissory estoppel'. Williston Contract, Sections 139, 116. Whether the exception has made its way in this State to such an extent as to permit us to say that

> the general law of consideration has been modified accordingly, we do not now attempt to say. Cases such as 234 NY 479 and 431 may be signposts on the road. Certain at least it is that we have adopted the doctrine of promissory estoppel as the equivalent of consideration in connection with our law of charitable subscriptions. So long as those decisions stand, the question is not merely whether the enforcement of a charitable subscription can be squared with the doctrine of consideration in all its ancient rigor. The question may also be whether it can be squared with the doctrine of consideration as qualified by the doctrine of promissory estoppel.

We have said that the cases in this State have recognized this exception, if exception it is though to be. Thus, in 12 NY 18 the subscription was made without request, express or implied that the church do anything on the faith of it. Later, the church did incur expense to the knowledge of the promise or, and in the reasonable belief that the promise would be kept. We held the promise binding though consideration there was none except upon the theory of a promissory estoppel. In 74 NY 72 a situation substantially the same became the basis for a like ruling. So in 103 NY 600 and (1901) 167 NY 96 the moulds of consideration as fixed by the old doctrine were subject to a like expansion. Very likely, conceptions of public policy have shaped, more or less subconsciously, the rulings thus made. Judges have been affected by the thought that defence of that character are 'breaches of faith towards the public, and especially towards those engaged in the same enterprise, and an unwarrantable disappointment of the reasonable expectations of those interest'. W. F. Allen, J., in 12 NY 18 and 97 Vt. 495 and cases there cited. The result speaks for itself irrespective of the motive. Decisions which have stood so long, and which are supported by so many considerations of public policy and reason, will not be overruled to save the symmetry of a concept which itself came into our law, not so much from any reasoned conviction of its justice, as from historical accidents of practice and procedure. (8 Holdsworth, History of English Law, 7 et seq.) The concept survives as one of the distinctive features of our legal system. We have no thought to suggest that it is obsolete or on the way to be abandoned. As in the case of other concepts, however, the pressure of exceptions has led to irregularities of form.

It is also interesting to note that the doctrine of promissory estoppel has been widely used in the United States in diverse other situations as founding a cause of action. The most notable instance are to be found in what may be called the "sub-contractory bid cases" in which a contractor about to tender for contract invites a sub-contractor to submit a bid for a sub-contract and after receiving his bid, the contractor submits a tender. In such cases, the sub-contractor has been held unable to retract his bid and be liable in damages if he does so. It is not possible to say that any deteriment which the contractor may be able to show in these cases would amount to consideration in its strict sense and these decisions have plainly been reached on an application of the doctrine of promissory estoppel. One of such cases was Orennan v. Star Paving Company ((1958) 31 Cal 2d 409) where Traynor, J. explicitly adopted as good law the text of Article 90 of the Restatement of the Law of Contract quoted above and stated in so many words that the "the absence of consideration is not fatal to the enforcement of such a promise". There are also numerous cases where the doctrine of promissory estoppel has been applied against the Government where the interest of justice morality and common fairness clearly dictated such a course. We shall refer to these when we discuss the applicability of the doctrine of equitable estoppel against the Government. Suffice it to state for the present that the doctrine of promissory estoppel has been taken much further in the United States than in English and Commonwealth jurisdictions and in some States at least, it has been used to reduce, if not to destroy, the prestige of consideration as an essential of valid contract. Vide Spencer Bower and Turner's Estoppel by Representation (2d) page 358.

15. We now go on to consider whether, and if so to what extent is the doctrine of promissory estoppel applicable against the Government. So far as the law in England is concerned, the position cannot be said to be very clear. Rowlatt, J., in an decision in Rederiaktiebolaget Amphitrite v. The King ((1921) 3 KB 500 : 126 LT 63), held that an undertaking given by the British Government to certain neutral shipowners during the First World War that if the shipowners sent a particular ship to the United Kingdom with a specified cargo, she shall not be detained, was not enforceable against the British Government in a court of law and observed that his main reason for taking this view was that

. . . it is not competent for the Government to fetter its future executive action, which must necessarily be determined by the needs of the community when the question arises. It cannot by contract hamper its freedom of action in matter which concern the welfare of the State.

This observation has however not been regarded by jurists "as laying down the correct law on the subject since it is 'very wide and it is difficult to determine its proper scope'". Anson's English Law of Contract, 22 d. 174. The doctrine of executive necessity propounded by Rowlatt. J., was in fact disapproved by Denning, J., as he then was, in Robertson v. Minister of Pensions (supra) where the learned Judge said :

> The Crown cannot escape by saying that estoppels do not bind the Crown, for that doctrine has long been exploded. Nor can be Crown escape by praying in aid the doctrine of executive necessity, that is the doctrine that the Crown cannot bind itself so as to fetter its future executive action. That doctrine was propounded by Rowlatt, J., in Rederiaktiebolaget Amphitrite v. The King but it was unnecessary for the decision, because the statement there was not a promise which was intended to be binding but only an expression of intention. Rowlatt, J., seems to have been influenced by the cases on the right of the Crown to dismiss its servants at pleasure, but those case must now all be read in the light of the judgment of Lord Atkin in Reilly v. The King (1954 AC 176, 179). In my opinion the defence of executive necessity is of limited scope. It only avails the Crown where there is an implied term to that effect or that is the true meaning of the contract.

It is true that the decision of Denning, J., in this case was overruled by the House of Lords in Howell v. Falmouth Boat Construction Co. Ltd. (1951 AC 837 : (1951) 2 All ER 278) but that was on the ground that the doctrine of promissory estoppel cannot be invoked to "bar the Crown from enforcing a statutory prohibition or entitle the subject to maintain that there has been no breach of it". The decision of the House of Lords did not express any disapproval of the applicability of the doctrine of promissory estoppel against the Crown nor did it overruled the view taken by Denning, J., that the Crown cannot escape its obligation of promissory estoppel by "praying in aid the doctrine of executive necessity." The statement of the law by Denning, J., may, therefore, still be regarded as holding the field and it may be taken to be judicially favoured view that the Crown is not immune from liability under the doctrine of promissory estoppel.

16. The courts in American for a long time took the view that the doctrine of promissory estoppel does not apply to the Government but more recently the courts have started retreating from that position to a sounder one, namely, that the doctrine of promissory estoppel may apply to the Government when justice so requires. The second edition and American Jurisprudence brought out in 1966 in paragraph 123 points out that "equitable estoppel will be invoked against the State when justified by the facts", though it does warn that this doctrine "should not be lightly invoked against

the State". Later in the same paragraph it is stated that "as a general rule, the doctrine of estoppel will not be applied against the State in its governmental, public or sovereign capacity", but a qualification is introduced that promissory estoppel may be applied against the State even in its governmental public or sovereign capacity if "its application is necessary to prevent fraud or manifest injustice". Since 1966 there in an increasing trend towards applying the doctrine of promissory estoppel against the State and the old law that promissory estoppel does not apply against the Government is definitely declining. There have been numerous cases in the State courts where it has been held that promissory estoppel may be applied even against the Government in its governmental capacity where the accommodation of the needs of justice to the needs of effective government so requires.

17. The protagonists of the view that promissory estoppel cannot apply against the Government or a public authority seek to draw inspiration from the majority decision of the United State Supreme Court in Federal Crop Insurance Corporation v. Merrill (332 US 380 : 92 L ED 10(1947). But we do not think that decision can be read as laying down the proposition that the doctrine of promissory estoppel can never be invoked against the Government. There the Country Committee acting as the agent of the Federal Crop Insurance Corporation which was a wholly Government-owned corporation constitution under the Federal Crop Insurance Act, advised the respondents that their entire 460 acres of spring wheat crop which included spring wheat reseeded on winter wheat acreage was insurable and acting upon it, the respondents made an application for insurance which was forwarded by the Country Committee to the Denver office of the Corporation with a recommendation for acceptance. The application did not mention that any part of the insured crops was reseeded and it was accepted by the Denver office of the Corporation. There were at this time wheat crop insurance regulations framed by the Corporation and published in the Federal Register which prohibited insurance of spring wheat reseeded on winter wheat acreage but neither the respondents not the Country Committee which was acting as the agent of the Corporation was aware of them. A few months later, most of the respondent's crop was destroyed by drought and on a claim being made by the respondents under the policy if insurance, the Corporation refused to pay to loss on the ground that the wheat crop insurance regulations expressly prohibited insurance of reseeded wheat. The refusal was upheld by the Supreme Court by a majority of five to four. The majority observed :

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

It will be seen that the Corporation was held entitled to repudiate its liability because the wheat crop insurance regulations prohibited insurance of reseeded wheat and the assurance given by the County Committee as the agent of the Corporation that the reseeded wheat was insurable being contrary to the wheat crop insurance regulations, could not be held binding on the Corporation. It was not within the authority of the County Committee to give such assurance contrary to the wheat crop insurance regulations and hence no promissory estoppel against the Corporation could be founded

upon it. This decision did not say that even if an assurance given by an agent it within the scope of his authority and is not prohibited by law, it would still not create promissory estoppel against the Government. But, it may be pointed out, even this limited holding has come in for considerable criticism at the hands of jurists in the United State. [See Davis on Administrative Law (3rd ed.) pages 344-345.] Referring to the observation of the majority that "Men must turn square corners when they deal with the Government", Maguire and Zimet have poetically responded by saying : "It is hard to see why the Government should not be held to a like standard of rectangular rectitude when dealing with its citizens". (Maguire and Zimet, Hobson's Choice, and Similar Practices in Federal Taxation, 48 Harv L Rev 1281, 1299)

18. There has so far not been any decision of the Supreme Court of the United States taking the view that the doctrine of promissory estoppel cannot be invoked against the Government. The trend in the State courts, of late, has been strongly in favour of the application of the doctrine of promissory estoppel against the Government and public bodies "where interest of justice, morality and common fairness clearly dictate that course". It is being increasingly felt that "that the Government ought to set a high standard in its dealings and relationships with citizens and the word of a duty authorised Government agent, acting within the scope of his authority, ought to be as good as a Government bond". Of course, as pointed out by the United States Court of Appeal, Third circuit in Valsonavich v. United States (335 FR 2d 96), the Government would not be estoppel "by the acts of its officer and agents who without authority enter into agreements to do what the law does not sanction or permit" and "those dealing with an agent of the Government must be held to have notice of limitations of his authority" as held in Merril's case. This is precisely what the House of Lords also held in England in Howell v. Falmouth Boat Construction Co. Ltd. (supra) where Lord Simonds state the law to be :

> The illegality of an act is the same whether or not the actor has been misled by an assumption of authority on the part of a Government officer however high or law in the hierarchy . . . . The question is whether the character of an act done is face of a statutory prohibition is effected by the fact that it has been induced by a misleading assumption of authority. In my opinion, the answer is clearly : No.

But if the acts or omissions of the officers of the Government are within the scope of their authority and are not otherwise impermissible under the law, they "will work estoppel against the Government".

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 negatived. It is remarkable that as far back as 1880, long before the doctrine of promissory estoppel was formulated by Denning, J., in England, a Division Bench of two English Judges in the Calcutta High Court applied the doctrine of promissory estoppel and recognised a cause of action founded upon it in the Ganges Manufacturing Co. v. Sourujmull ((1880) ILR 5 Cal 669 : 5 CLR 533). The doctrine of promissory estoppel was also applied against the Government in a case subsequently decided by the Bombay High Court in Municipal Corporation of Bombay v. The Secretary of State ((1905) ILR 29 Bom 580 : 7 Bom LR 37).

20. The facts of this last mentioned case in Municipal Corporation of Bombay v. The Secretary of State are a little interesting and it would be profitable to refer to them. The Government of Bombay, with a view to constructing an arterial road, requested the Municipal Commissioner to remove certain fish and vegetable markets which obstructed the construction of the proposed road. The Municipal Commissioner relied that the markets were vested in the Corporation of justices but that he was willing to vacate certain municipal stables which occupied a portion of the proposed site, if the Government would rent other land mentioned in his letter, to the Municipality at a nominal rent, the Municipality undertaking to erect on such land "stables of wood and iron with rubble foundation to the removed at six months' notice on other suitable ground being provided by Government". The Government accepted the suggestion of the Municipal Commissioner and sanctioned the application of the Municipal Commissioner for a site for stabling on the terms set out above and the Municipal Commissioner thereafter entered into possession of the land and constructed stable, workshops and chawls on the same at considerable expense. Twenty-four later the Government served a notice on the Municipal Commissioner determining the tenancy and requesting the Municipal Commissioner to deliver possession of the land within six months and in the meantime to pay rent at rate of Rs. 12,000 per month. The Municipal Corporation declined to hand over possession of the land or to pay the higher rent and the Secretary of State for India thereupon filed a suit against the Municipal Corporation for a declaration that the tenancy of the Municipality stood determined and for an order directing the Municipality to pay rent at the rate at the rate of Rs. 12,000 per month. The suit was resisted by the Municipal Corporation on the ground that events which had transpired had created an equity in favour of the of the Municipality which afforded an answer to the claim of the Government to eject the Municipality. This defence was upheld by a Division Bench of the High Court and Jenkins, C.J., speaking on behalf of the Divisions Bench, pointed out that, in view of the following facts, namely :

. . . the Municipality gave up the old stables levelled the ground and erected the movable stables in 1866 in the belief that they had against the Government an absolute right not to be turned out until not only the expiration of six months' notice, but also other suitable ground was furnished : that this belief is referable to an expectation created by the Government that their enjoyment of the land would be in accordance with this belief : and that the Government knew that the Municipality were acting in this belief so created :

> an equity was created in favour of the Municipality which entitled it "to appeal to the Court for its aid in assisting them to resist the Secretary of State's claim that they shall be ejected from the ground". The learned Chief Justice pointed out that the doctrine which he was applying took its origin "from the jurisdiction assumed by Courts of Equity to intervenes in the case of or to prevent fraud" and after referring to Ramsden v. Dyson (1866) LR 1 HL 170) observed that the Crown also came within the range of this equity. This decision of the Bombay High Court is a clear authority for the proposition that it is open to a party who has acted on a representation made by the Government to claim that the Government shall be bound to carry out the promise made by it, even though the promise is not recorded in the form of a formal contract as required by the Constitution. That is how this decision has in fact been interpreted by this Court in Union of India v. Indo-Afghan Agencies ((1968) 2 SCR 366 : AIR 1968 SC 718 (1968) 2 SCJ 889).

21. We don't find any decision of importance thereafter on the subject of promissory estoppel until we come to the decision of this Court in Collector of Bombay v. Municipal Corporation of the City of Bombay (1952 SCR 43 : AIR 1951 SC 469). The facts giving rise to this case were that in 1865

the Government of Bombay called upon the predecessor in title of the Municipal Corporation of Bombay to remove old markets from a certain site and vacate it and on the application of the Municipal Commissioner, the Government passed a resolution approving and authorising the grant of another site to the Municipality. The resolution stated further that "the Government do not consider that any rent should be charged to the Municipality as the markets will be like other public buildings, for the benefit of the whole community". The Municipal Corporation gave up the site on which the old markets were situated and spent a sum of Rs. 17 lakhs in erecting and maintaining markets on the new site. In 1940 the Collector of Bombay assessed the new site to land revenue and the Municipal Corporation thereupon filed a suit for a declaration that the order of assessment was ultra vires and it was entitled to hold the land forever without payment of any assessment. The High Court of Bombay held that the Government had lost its right to assess the land in question by reason of the equity arising on the facts of the case in favour of the municipal Corporation and there was thus a limitation on the right of the Government to assess under Section 8 of the Bombay City Land Revenue Act. On appeal by the Collector to this Court, the Majority Judges held that the Government was not, under the circumstances of the case, entitled to assess land revenue on the land in question, because the Municipal Corporation had taken possession of the land in terms of the Government resolution and had continued in such possession openly, uninterruptedly and of right for over seventy years and thereby acquired the limited title it had been prescribing for during the period, that is to say, the right to hold the land in perpetuity free of rent. Chandrasekhara Aiyer, J. agreed with the conclusion reached by the majority but rested his decision on the doctrine of promissory estoppel. He pointed out that the Government could not be allowed to be back on the representation made by it and stressed the point in the form of an interrogation by asking : "if we do so, would it is not amount to out countenancing the perpetration of what can be compendiously described as legal fraud which a court of equity must prevent being committed ?". He observed that even if the resolution of the Government amounted merely to "the holding out of a promise that no rent will be charged in the future, the Government must be deemed in the circumstances of this case to have bound themselves to fulfill it. Whether it is the equity recognised in Ramsden's case (supra) or it is some other form of equity, is not of much importance. Courts must do justice by the promotion of honesty and good faith, as far as it lies in their power". This was, of course the solitary view of Chandrasekhara Aiyer, J., but it was approved by this Court in no uncertain terms in Indo-Afghan Agencies case (supra).

22. Then we come to the celebrated decision of this Court in the Indo-Afghan Agencies case (supra). It was in this case that the doctrine of promissory estoppel found its most eloquent exposition. We may briefly state the facts in order to appreciate the ratio of the decision Indo-Afghan Ltd. who were the respondents before the Court, acting in reliance on the Export Promotion Scheme issued by the Central Government, exported woollen goods to Afghanistan and on the basis of their exports claimed to be entitled to obtain from the Textile Commissioner import entitlement certificate for the full F.O.B. value of the goods exported as provided in the Scheme. The Scheme wasn't a statutory Scheme having the force of law but it provided that an exporter of woollen good would be entitled to import raw material of the total amount equal to 100% of the F.O.B. value of his exports. The respondents contended that, relying on the promise contained in the Scheme they had exported woollen goods to Afghanistan and were, therefore, entitled to enforce the promise against the Government and to obtain import entitlement certificate for the full F.O.B. value of the goods exported on the principle of promissory estoppel. This contention was sought to be answered on behalf of the Government by pleading the doctrine of executive necessity and the argument of the Government based on this doctrine was that it is not competent for the Government to fetter its future executive action which must necessarily be determined by the needs of the community when

the question arises and no promise or undertaking can be held to be binding on the Government so as to hamper its freedom of executive action. Certain observations of Rowlatt, J., in Rederiaktiebolaget Amphitrite v. The King (supra) were sought to be pressed into service one behalf of the Government in support of this argument. We have already referred to these observations earlier and we need not reproduce them over again. These observation undoubtedly supported the contention of the Government but it was pointed out by the Court that these observation were disapproved by Denning, J., Robertson v. Minister of Pensions (supra) where the learned Judge said that

nor can the Crown escape by praying in aid the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so as to fetter its future executive action .... the defence of executive necessity is of limited scope. It only avails the Crown where there is an implied term to that effect or that is the true meaning of the contract

and this statement of Denning, J., was to be preferred as laying down the correct law on the subject. Shah, J., speaking on behalf of the Court, observed :

> We are unable to accede to the contention that the executive necessity releases the Government from honouring its solemn promises relying on which citizens have acted to their detriment. Under our constitutional set up no person may be deprived of his right or liberty except in due course of and by authority of law : if a member of the executive seeks to deprive a citizen of right of liberty otherwise than in exercise of power deprived from the law - common of statute - the Courts will be competent to and indeed would be bound to, protect the right of the aggrieved citizen.

The defence of executive necessity was thus clearly negatived by this Court and was pointed out that it did not release the Government from its obligation to honour the promise made by it, if the citizen, acting in reliance on the promise had altered his position. The doctrine of promissory estoppel was in such a case applicable against the Government and it could not be defeated by invoking the defence of executive necessity.

23. It was also contended on behalf of the Government that if the Government were held bound by every representation made by it regarding its intention, when the exporters have acted in the in the manner they were invited to act, the result would be that the Government would be bound by a contractual obligation even though no formal contract in the manner required by Article 299 was executed. But this contention was negatived and it was pointed out by this Court that the respondents "are not seeking to enforce may contractual right : they are seeking to enforce compliance with the obligation which is laid upon the Textile Commissioner by the terms of the Scheme, and we are of the view that even if the Scheme is executive in character, the respondents who were aggrieved because of the failure to carry out the terms of the Scheme were entitled to seek resort to the Court and claim that the obligation imposed upon the Textile Commissioner by the Scheme be obligation imposed upon the Textile Commissioner by the Scheme be ordered to be carried out." It was thus laid down that a party who has, acting in reliance on a promise made by the Government altered his position, is entitled to enforce the promise against the Government, even though the promise is not in the form of formal contract as required by Article 299 and that Article does not militate against the applicability of the doctrine of promissory estoppel against the Government.

24. This Court finally, after referring to the decision in the Ganges Manufacturing Co. v. Sourujmull

(supra), Municipal Corporation of the City of Bombay v. Secretary of State for India (supra) and Collector of Bombay v. Municipal Corporation of the City of Bombay (supra), summed up the position 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 carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an parte appraisement of the circumstances in which the obligation has arisen.

The law may, therefore, now be settled as 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 premise, 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 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 law, 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 that same footing as a private individual so far as the obligation of the law 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 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 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 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 need make a promise knowing or intending that it would be acted on by the promisee and the promisee would after his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon if 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. 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 must, therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible. The doctrine of promissory estoppel is a significant judicial contribution in that direction. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity to requires. If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promise and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts as have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the Court would

have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the 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-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 appraisement of the circumstances". If the Government wants to resist the liability, it will have to disclose to the Court what are the facts and circumstance on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability : the Government would have to show that precisely is the changed policy and also it reason and justification so that 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 whether the Government should not held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise "on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position" provided of course it is possible for the promise to restore status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable. Vide Emmuanuel Avodeji Ajaye v. Briscoe ((1964) 3 All ER 556 : (1964) 1 WLR 1326).

25. The doctrine of promissory estoppel was also held applicable against a public authority like a Municipal Council in Century Spinning and Manufacturing Co. Ltd. v. Ulhasnagar Municipal Council ((1970) 1 SCC 582 : (1970) 3 SCR 854 : AIR 1971 SC 1021). The question which arose in this case was whether the Ulhasnagar Municipal Council could be compelled to carry out a promise made by its predecessor Municipality that the factories in the industrial area within its jurisdiction would be exempt from payment of octroi for seven years from the date of the levy. The appellant company, in the belief induced by the assurance and undertaking given by the predecessor Municipality that its factory would be exempt from octroi for a period of seven years, expanded its activities, but when the Municipal Council came into being and took over the administration of the former Municipality, it sought to levy octroi duty on the appellant-company. The appellant-company thereupon filed a writ petition under Article 226 of the Constitution in the High Court of Bombay to restrain the Municipal Council from enforcing the levy of octroi duty in breach of the promise made by the predecessor Municipality. The High Court dismissed the petition in limine but, on appeal, this Court took the view that this was a case which required consideration and should have been admitted by the High Court. Shah, J., speaking on behalf of the Court, pointed out :

> Public bodies are as much bound as private individual to carry out representations of facts and promises made by them, relying on which other persons have altered their

> position to their prejudice. The obligation arising against in individual out of his representation amounting in to a promise may be enforced ex contract by a person who acts upon the promise : when the law requires that a contract enforceable at law against a public body shall be in certain form or be executed in the manner prescribed by statute, the obligation may be if the contract be not in that form be enforced against it in appropriate cases in equity.

The learned Judge then referred to the decision in the Indo-Afghan Agencies case and observed that in that case it was laid down by this Court that "the Government is not exempt from the equity arising out of the acts done by citizens to their prejudice relying upon the representation as to its future conduct made by the Government". It was also pointed by the learned Judge that in the Indo-Afghan Agencies case this Court approved of the observations made by Denning, J., Robertson v. Minister of Pensions (supra) rejecting the doctrine of executive necessity and held them to be applicable in India. The learned Judge concluded by saying in words pregnant in the hope and meaning for democracy :

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

This Court refused to make a distinction between a private individual and a public body so far as the doctrine of promissory estoppel is concerned.

26. We then come to another important decision of this Court in Turner Morrison & Co. Ltd. v. Hungerford Investment Trust Ltd. ((1972) 3 SCR 711 : (1972) 1 SCC 857) where the doctrine of promissory estoppel was once again affirmed by this Court Hegde. J., speaking on behalf of the Court, pointed out :

> 'Estoppel' is rule of equity. That rule has gained new dimension in recent years. A new class of estoppel, i.e. promissory estoppel has come to be recognised by the courts is this country as well as in England. The full implication of 'promissory estoppel' is yet to be spelled out.

The learned Judge, after referring to the decisions in High Trees case, Robertson v. Minister of Pensions (supra) and the Indo-Afghan Agencies case, pointed out that "the rule laid down in these decisions undoubtedly advance the cause of justice and hence we have no hesitation in accepting it."

27. We must also refer to the decision of this Court in M. Ramanatha Pillai v. State of Kerala". Because that was a decision strongly relied upon on behalf of the State for negativing the applicability of the doctrine of estoppel against the Government. This was a case where the appellant was appointed to a temporary post and on the post being abolished, the service of the appellant was terminated. The appellant challenged the validity of termination of service, inter alia on the ground that the Government was precluded from abolishing the post and terminating the service, on the principle of promissory estoppel. This ground based on the doctrine of promissory estoppel was negatived and it was pointed out by the Court that the appellant knew that the post was temporary, suggesting clearly that the appellant could not possibly be led into the belief that the post would not be abolished. If the post was temporary to the knowledge of the appellant, it is obvious

that the appellant knew that the post would be liable to abolished at any time and if that be so, there could be no factual basis for invoking the doctrine of promissory estoppel for the purpose of precluding the Government from abolishing the post. This view taken by the Court was sufficient to dispose of the contention based on promissory estoppel and it was not necessary to say anything more about it, but the Court proceeded to cite a passage from American Jurisprudence, Vol. 28 (2 ed) at 783, paragraph 123 and observed that the High Court rightly held "that the courts exclude the operation of the doctrine of estoppel. When it is found that the authority against whom estoppel is pleaded has owed a duty to the public against whom the estoppel cannot fairly operate". It was this observation which was heavily relied upon on behalf of the State but well fail to see how it can assist the contention of the State. In the first place, this observation was clearly obiter, since as pointed out by us, there was on the facts of the present case no scope for the applicability of the doctrine of promissory estoppel. Secondly, this observation was based upon a quotation from the passage in paragraph 123 of page 783 of Volume 28 of American Jurisprudence (2 ed.), but unfortunately this quotation was incomplete and it overlooked perhaps inadvertently, the following two important sentence at the commencement of the paragraph which clearly show that even in the united States the doctrine of promissory estoppel is applied against the State "when justified by the facts" :

> There is considerable dispute as to the application of estoppel with respect to the State. While it is said that equitable estoppel will be invoked against the State when justified by the facts, clearly the doctrine of estoppel should not lightly invoked against the State.

Even the truncated passage quoted by the Court recognised in the last sentence that though, as a general rule, the doctrine of promissory estoppel would not be applied against the State in its governmental, public or sovereign capacity, the Court would unhesitatingly allow the doctrine to be invoked in cases where it is necessary in order "to prevent fraud to manifest injustice". This passage leaves no doubt that the doctrine of promissory estoppel may be applied against the State even in its government, public or sovereign capacity where it is necessary to prevent fraud or manifest injustice. It is difficult to imagine that the Court citing this passage with approval could have possibly intended to lay down that in no case can the doctrine of promissory estoppel be invoked against the Government. Lastly, a proper reading of the observation of the Court clearly shows that what the Court intended to say was that where the Government owes a duty to the public to act differently, promissory estoppel cannot invoked to prevent the Government from doing so. This proposition is unexceptionable, because where the Government owes a duty to the public to act in a particular manner, and here obviously duty means a course of conduct enjoined by law, the doctrine of promissory estoppel cannot be invoked for preventing the Government from acting in discharge of its duty the law. The doctrine of promissory estoppel cannot be applied in teeth of an obligation or liability impose by law.

28. We may then refer to the decision of this Court in Assistant Custodian v. Brij Kishore Agarwala ((1975) 1 SCC 21 : (1975) 2 SCR 359). It is not necessary to reproduce the facts of this case, because the only purpose for which this decision was relied upon on behalf of the state was to show that the view taken by the House of Lords in Howell v. Falmouth Boat Construction Co. Ltd. (supra) was preferred by this Court to that taken by Lord Denning in Robertson v. Minister of Pensions (supra). It is true that in this case the Court expressed the opinion "that the view taken by the House of Lords is the correct one and not the one taken by Lord Denning" but we fail to see how that can possibly help the argument of the State. The House of Lords did not in Howell's case negative the applicability of the doctrine of promissory estoppel against the Government. What it laid down was

merely this, namely, that no representation or promise made by an officer can preclude the Government from enforcing a statutory prohibition. The doctrine of promissory estoppel cannot be availed to permit or condone a breach of the law. The ratio of the decision was succinctly put by Lord Normand when he said" . . . . neither a minister nor any subordinate officer of the Crown can by any conduct or representation bar the Crown from enforcing a statutory prohibition or entitle the subject to maintain that there has been no breach of it". It may also be noted that promissory estoppel cannot be invoked to compel the Government or even a private party to do an act prohibited by law. There can also be no promissory estoppel against the exercise of legislative power. The Legislature can never be precluded from exercising its legislative function by resort to the doctrine of promissory estoppel. Vide State of Kerala v. Gwalior Rayon Silk Manufacturing Co. Ltd. ((1973) 2 SCC 713, 730 (para 39) : (1974) 1 SCR 671, 688)

29. The next decision to which we must refer is that in Excise Commissioner, U. P., Allahabad v. Ram Kumar ((1976) 3 SCC 540 : 1976 SCC (Tax) 360 : 1976 Supp SCR 532). This was also a decision on which strong reliance was placed on behalf of the State. It is true that, in this case, the Court observed that "it is now well settled by a catena of decisions that there can be no question of estoppel against the Government in the exercise of its legislative, sovereign or executive powers," but for reasons which we shall presently state, we do not think this observation can persuade us to take a different view of the law than that enunciated in the Indo-Afghan Agencies' case. In the first place, it is clear that in this case there was factually no foundation for invoking the doctrine of promissory estoppel. When the State auctioned the licence for retail sale of country liquor and the respondents being the highest bidders were granted such licence, there was in force a Notification dated April 6, 1959, issued under Section 4 of the U.P. Sales Tax Act, 1948, exempting sale of country liquor from payment of sales tax. No announcement was made at the time of the auction whether the exemption from sales tax under this Notification dated April 6, 1959 was or was not likely to be withdrawn. However, on the day following the commencement of the licence granted to the respondents, the Government of U.P. issued a Notification dated April 2, 1969 superseding the earlier Notification dated April 6, 1959 and imposing sales tax on the turnover in respect of country spirit with immediate effect. This Notification dated April 2, 1969 was challenged by the respondents by filing a writ petition and amongst the several grounds of challenge taken in the writ petition, one was that "since the State Government did not announce at the time of the aforesaid auction that the Notification .... dated April 6, 1959 was likely to be withdrawn and the sales of country liquor were likely to be subjected to the levy of sales tax during the excise year and in reply to the query made by them at the time of the auction they were told by the authorities that there was no sales tax on the sale of country liquor, the appellants herein were estopped from making the demand in respect of sales tax and recovering the same from them". It was in the context of this ground of challenge that the Court came to make the observation relied upon on behalf of the State. Now, it is clear that, even taking the case of the respondents at its highest, there was no representation or promise made by the Government that they would continue the exemption from sales tax granted under the Notification dated April 6, 1959 and would not withdraw it, and the Notification dated April 2, 1969 could not, therefore, be assailed as being in breach of any such representation or promise. There was, accordingly, no factual basis for making good the plea of promissory estoppel and the observation made by the Court in regard to the applicability of the doctrine of promissory estoppel against the Government was clearly obiter. That perhaps was the reason why the Court did not consider it necessary to refer to the earlier decisions in Century Spinning & Manufacturing Co.'s case and Turner Morrison's case and particularly the decision in the Indo-Afghan Agencies case where the Court in so many terms applied the doctrine of promissory estoppel against the Government in the exercise of its executive power. It is not possible to believe

that the Court was oblivious of these earlier decisions, particularly when one of these decisions in the Indo-Afghan Agencies case was an epoch-making decision which marked a definite advance in the field of administrative law. Moreover, it may be noted that though, standing by itself, the observation made by the Court that "there can be no question of estoppel against the Government in exercise of its legislative, sovereign or executive powers" may appear to be wide and unqualified, it is not so, if read in its proper context. This observation was made on the basis of certain decisions which the Court proceeded to discuss in the succeeding paragraphs of the judgment. The Court first relied on the statement of the law contained in paragraph 123 at page 783, Volume 28 of the American Jurisprudence (2 ed.), but it omitted to mention the two important sentences at the commencement of the paragraph and the words "unless its application is necessary to prevent to fraud or manifest injustice" at the end, which clearly show that even according to the American Jurisprudence, the doctrine of promissory estoppel is not wholly inapplicable against the Government in its governmental, public or sovereign capacity, but it can be invoked against the Government "when justified by the facts" as for example where it is necessary to prevent fraud or injustice. In fact, as already pointed out above, there are numerous cases in the United States where the doctrine of promissory estoppel has been applied against the Government in the exercise of its Governmental, public or executive powers. The Court then relied upon the decision in the Gwalior Rayon Silk Manufacturing Co.'s case, but that decision was confined to a case where legislation was sought to be precluded by relying on the doctrine of promissory estoppel and it was held, and in our opinion rightly, that there can be no promissory estoppel against the legislature in the exercise of its legislative function. That decision does not negative the applicability of the doctrine of promissory estoppel against the Government in the exercise of its governmental, public or executive powers. The decision in Howell's case was, thereafter, relied upon by the Court, but that decision merely says that the Government cannot be debarred by promissory estoppel from enforcing a statutory prohibition. It does not countenance an absolute proposition that promissory estoppel can never be invoked against the Government. The Court also cited a passage from the judgment of the High Court of Jammu & Kashmir in Malhotra & Sons v. Union of India (AIR 1976 J & K 41 : 1975 J & K LR 567), but this passage itself makes it clear that the courts will bind the Government by its promise where it is necessary to do so in order to prevent manifest injustice or fraud. The last decision on which the Court relied was Federal Crop Insurance Corporation v. Merrill (supra) but this decision also does not support the view contended for on behalf of the State. We have already referred to this decision earlier and pointed out that the Federal Crop Insurance Corporation in this case was held not liable on the policy of insurance, because the regulations made by the Corporation prohibited the insurance of reseeded wheat. The principle of this decision was that promissory estoppel cannot be invoked to compel the Government or a public authority to carry out a representation or promise which is contrary to law. It will thus be seen from the decisions relied upon in the judgment that the Court could not possibly have intended to lay down an absolute proposition that there can be no promissory estoppel against the Government in the exercise of its governmental, public or executive powers. That would have been in complete contradiction of the decisions of this Court in the Indo-Afghan Agencies case, Century Spinning and Manufacturing Co. case and Turner Morrison's case and we find it difficult to believe that the Court could have ever intended to lay down any such proposition without expressly referring to these earlier decisions and overruling them. We are, therefore, of the opinion that the observation made by the Court in Ram Kumar's case does not militate against the view were are taking on the basis of the decisions in the Indo-Afghan Agencies' case, Century Spinning & Manufacturing Co.'s case and Turner Morrison's case in regard to the applicability of the doctrine of promissory estoppel against the Government.

30. We may then refer to the decision of this Court in Bihar Eastern Gangetic Fishermen Co-

Operative Society Ltd. v. Sipahi Singh ((1977) 4 SCC 145 : AIR 1977 SC 2149). It was held in this case in paragraph 12 of the judgment that the respondent could not invoke the doctrine of promissory estoppel because he was unable to show that, relying on the representation of the Government, he had altered his position by investing moneys and the allegations made by him in that behalf were "much too vague and general" and there was accordingly no factual foundation for establishing the plea of promissory estoppel. On this view, it was unnecessary to consider whether the doctrine of promissory estoppel was applicable against the Government, but the Court proceeded to reiterate, without any further discussion, the observation in Ram Kumar's case that "there cannot be any estoppel against the Government in the exercise of its sovereign, legislative and executive functions". This was clearly in the nature of obiter and it cannot prevail as against the statement of the law laid down in the Indo-Afghan Agencies case. Moreover, it is clear from paragraph 14 of the judgment that this Court did not intend to lay down any proposition of law different from that enunciated in the Indo-Afghan Agencies case, because it approved of the decision in the Indo-Afghan Agencies case and distinguished it on the ground that in that case there was no enforcement of contractual right but the claim was founded upon equity arising from the Scheme, while in the case before the Court, a contractual right was sought to be enforced. There is, therefore, nothing in this decision which should compel us to take a view different from the one we are otherwise inclined to accept.

31. We may point out that in the latest decision on the subject in Radhakrishna Agarwal v. State of Bihar ((1977) 3 SCC 457) this Court approved of the decisions in the Indo-Afghan Agencies case and Century Spinning and Manufacturing Co.'s case and pointed out that these were cases "where it could be held that public bodies or the State are as much bound as private individuals are to carry out obligations incurred by them because parties seeking to bind the authorities have altered their position to their dis-advantage or have acted to their deteriment on the strength of the representations made by these authorities." It would, therefore, be seen that there is no authoritative decision of the Supreme Court which has departed from the law laid down in the celebrated decisions in the Indo-Afghan Agencies case and the Century Spinning & Manufacturing Co.'s case. The law down in these decisions as elaborated and expounded by us continues to hold the field.

32. We may now turn to examine the facts in the light of the law discussed by us. It is clear from the letter of respondent 4 dated January 23, 1969 that a categorical representation was made by respondent 4 on behalf of the Government that the proposed vanaspati factory of the appellant would be entitled to exemption from sales tax in respect of sales of vanaspati effected in Uttar Pradesh for a period of three years from the date of commencement of production. This representation was made by way of clarification in view of the suggestion in the appellant's letter dated January 22, 1969 that the financial institutions were not prepared to regard the earlier letter of respondent 4 dated December 22, 1968 as a definite commitment on the part of the Government to grant exemption from sales tax. Now the letter dated January 23, 1969 clearly shows that respondent 4 made this representation in his capacity as the Chief Secretary of the Government, and it was, therefore, a representation on behalf of the Government. It was faintly contended before, us on behalf of the State that this representation was not binding on the Government, but we cannot countenance this argument, because, in the first place, the averment in the writ petition that respondent 4 made this representation on behalf of the Government was not denied by the State in the affidavit in reply filed on its behalf, and secondly, it difficult to accept the contention that respondent 4, who was at the material time the Chief Secretary to the Government and also advisor to the Governor who was discharging the functions of the Government during the President's rules, had no authority to bind the Government. We must, therefore, proceed on the basis that this representation made by respondent 4 was a representation within the scope of his authority and was

binding on the Government. Now, there can be no doubt that this representations was made by the Government knowing or intending that it would be acted on by the appellant, because the appellant, had made it clear that it was only on account of the exemption from sales tax promised by the Government that the appellant had decided to set up the factory for manufacture of vanaspati at Kanpur. The appellant, in fact, relying on this representation of the Government, borrowed money from various financial institutions, purchased plant and machinery from M/s. De Smet (India) Pvt. Ltd., Bombay and set up a vanaspati factory at Kanpur. The facts necessary for invoking the doctrine of promissory estoppel were, therefore, dearly present and the Government was bound to carry out the representation and exempt the appellant from sales tax in respect of sales of vanaspati effected by it in Uttar Pradesh for a period of three years from the date of commencement of the production.

33. The State, however, contended that the doctrine of promissory estoppel had no application in the present case because the appellant did not suffer any detriment by acting on the representation made by the Government : the vanaspati factory set up by the appellant was quite a profitable concern and there was no prejudice caused to the appellant. This contention of the State is clearly unsustainable and must be rejected. We do not think it is necessary, in order to attract the applicability of the doctrine of promissory estoppel, that the promise, acting in reliance on the promise, should suffer any detriment. What is necessary is only that the promisee should have altered his position in reliance on the promise. This position was impliedly accepted by Denning J., in the High Trees case when the learned Judge pointed out that the promise must be one "which was intended to create legal relations and which, to the knowledge of the person making the promise, was going to be acted on by the person to whom it was made and which was in fact acted on". If a promise is "acted on", such action, in law as in physics, must necessarily result in an alteration of position". This was again reiterated by Lord Denning in W. J. Alan & Co. Ltd. v. El Nasr Export and Import Co. ((1972) 2 All ER 127, 140) where the learned Law Lord made it clear that alteration of position "only means that he (the promisee) must have been led to act differently from what he would otherwise have done. And, if you study the case in which the doctrine has been applied, you will see that all that is required is that the one should have acted on the belief induced by the other party". Viscount Simonds also observed in Tool Metal Manufacturing Co. Ltd. v. Tungsten Electric Co. Ltd. ((1955) 2 All ER 657) that "..... the gist of the equity lies in the fact that one party has by his conduct led the other to after his position". The judgment of Lord Tucker in the same case would be found to depend likewise on a fundamental finding of alteration of position, and the same may be said of that of Lord Cohen. Then again in Emmanuel Ayodeji Ajayi v. Briscoe (supra) Lord Hedson. Then said : "This equity is, however, subject to the qualification (1) that the other party has altered his position". The same requirement was also emphasised by Lord Diplock in Kammins Ballrooms Co. Ltd. v. Zenith Investment (Terquay) Ltd. ((1970) 2 All ER 871) What is necessary, therefore, is no more than that there should be alteration of position on the part of the promisee. The alteration of position need not involve any detriment to the promisee. If detriment were a necessary element, there would be no need for the doctrine of promissory estoppel because, in that event, in quite a few cases, the detriment would form the consideration and the promise would be binding as a contract. There is in fact not a single case in England where detriment is insisted upon as a necessary ingredient of promissory estoppel. In fact, in W. J. Alan & Co. Ltd. v. EI Nast Export and Import Co. (supra), Lord Denning expressly rejected detriment as an essential ingredient of promissory estoppel, saying :

> A seller may accept a less sum for his good than the contracted price, thus inducing (his buyer) to believe that he will not enforce payment of the balance : see Central London Property Trust Ltd. v. High Trees House Ltd. and D. & C. Builders Ltd. v.

> Rees ((1956) 3 All ER 837). In none of these cases does the party who acts on the belief suffer any detriment. It is not detriment, but a benefit to him to have an extension of time or to pay less, or as the case may be. Nevertheless, he has conducted his affairs on the basis that he has had that benefit and it would not be equitable now to deprive him of it.

We do not think that in order in invoke the doctrine of promissory estoppel it is necessary for the promisee to show that he suffered detriment as a result of acting in reliance on the promise. But we may make it clear that if by detriment we mean injustice to the promisee which would result if the promisor were to recede from his promise, then detriment would certainly come in as 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. The classic exposition of detriment in this sense is to be found in the following passage from the judgment of Dixon, J. in the Australian case of Grundt v. The Great Boulder Pty. Gold Mines Ltd. ((1938) 59 CLR 641 (Aus) :

> . . . . It is often said simply that the party asserting the estoppel must have been induced to act to his induced to act to his detriment. Although substantially such a statement is correct and leads to no misunderstanding, it doesn't bring out clearly the basal purpose of the doctrine. That purpose is to avoid or prevent a detriment to the party asserting the estoppel by compelling the opposite party to adhere to the assumption upon which the former acted or abstained from acting. This means that the real detriment or harm from which the law seeks to give protection is that which would flow from the change of position if be assumption were deserted that led to it. So long as a the assumption is adhere to the party who altered his situation upon the faith of it cannot complain. His complaint is that when afterwards the other party makes a different state of affairs the basis on an assertion of right against him then, if it is allowed, his own original change of position will operate as a detriment. His action or inaction must be such that, if the assumption upon which he proceeded were shown to be wrong, and an rights and duties of himself and the opposite party, the consequence would be to make his original act or failure to act a source of prejudice.

If this is the kind of detriment contemplated, it would necessary be present in every case of promissory estoppel, because it is on account of such detriment which the promisee would suffer if the promisor were to act differently from his promise, that the Court would consider it inequitable to allow the promisor to go back upon his promise. It would, therefore, be correct to say that in order to invoke the doctrine of promissory estoppel it is enough to show that the promisee has, acting in reliance on the promise, altered his position and it is not necessary for him to further show that he has acted to his detriment. Here, the appellant clearly altered its position by borrowing moneys from various financial institutions, purchasing plant and machinery from M/s. De Smet (India) Pvt. Ltd., Bombay and setting up a vanaspati plant, in the belief induced by the representation of the Government that sales tax exemption would be granted for a period of three years from the date of commencement of the production. The Government was, therefore, bound on the principle of promissory estoppel to make good the representation made by it. Of course, it may be pointed out that if the U.P. Sales Tax Act, 1948 did not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the statute, but since Section 4 of the U.P. Sales Tax Act, 1948 confer power on the Government to grant exemption from sales tax, the

Government can legitimately be held bound by its promise to exempt the appellant from payment of sales tax. It is true that taxation is a sovereign or governmental function, but for reasons which we have already discussed, no distinction can be made between the exercise of a sovereign or governmental function and a trading or business activity of the Government, so far as the doctrine of promissory estoppel is concerned. Whatever be the nature of the function which the Government is discharging, the Government is subject to the rule of promissory estoppel and if the essential ingredient of this rule are satisfied, the Government can be compelled to carry out the promise made by it. We therefore, of the view that in the present case the Government was bound to exempt the appellant from payment of sales tax in respect of sales of vanaspati effected by it in the State of Uttar Pradesh for a period of three years from the date of commencement of the production and was not entitled to recover such sales tax from the appellant.

34. Now, for the assessment year 1970-71, that is, July 2, 1970 to March 31, 1971, the appellant collected from its customers sales tax amounting to Rs. 6,81,178.95 calculated at the rate of 3 1/2% on the sale price. But when the assessment was made by the Sales Tax Authorities, sales tax was levied on the appellant at the rate of 7% and the appellant was required to pay up a further sum of Rs. 6,80,949.42. The appellant had prayed for an interim order in the present appeal staying further proceedings, but this Court, by an order dated April 3, 1974, granted interim stay only on the appellant paying up the amount of sales tax due for the assessment year 1970-71 before July 31, 1974 and so far as the assessment years 1971-72, 1972-73 and 1973-74 were concerned, the Court directed that the assessments for those years may proceed, but only the final order shall not be passed. The result was that the appellant had to pay up the further sum of Rs. 6,80,949.42 for the assessment years 1970-71. The appellant collected from the customers for the assessment year 1971-72 an aggregate sum of 9,91,207.17 by way of sales tax at the rate of 3 1/2% for the period April 1, 1971 to July 1, 1971, 4% for the period July 2, 1971 to January 24, 1972 and 7% for the period January 25, 1972 to March 31, 1972 and deposited this amount in the Treasury. Similarly, for the assessment year 1972-73, the appellant collected from its customers an aggregate sum of Rs. 19,36,597.23 as and by way of sales tax at the rate of 7% of the sale price and this amount was deposited by the appellant in the Treasury, and so also for the first quarter of the assessment year 1973-74 up to the end of which the exemption from sales tax was to continue, the appellant collected and paid an aggregate sum of Rs. 4,84,884.05 at the rate of 7% of the state price. If appears that surcharge amounting to Rs. 2,85,008.09 for the period of the exemption was also paid by the appellant into the Treasury. The assessments for the assessment years 1971-72, 1972-73, and 1973-74 were, however, not completed in view of the stay order granted by this Court. Now, obviously since the Government is bound to exempt the appellant from payment of sales tax for period of three years from July 2, 1970, being the date of commencement of the production, the appellant would not be liable to pay any sales tax to the State in respect of sales of vanaspati effected during that period and hence the State would have to refund to the appellant the amount of sales tax paid for the period July 2, 1970 to March 31, 1971, subject to any claim which the state may have to retain any part of such amount under any provision of law. If the State has any such claim, it must be intimated to the appellant within one month from to day and it must be adjudicated upon within a further period of one moth after giving proper opportunity to be heard to the appellant If no such claim is made, or, if made, not adjudicated upon within the time specified, the State will refund the amount of sales tax to the appellant with interest thereon at the rate of 6% per annum from the date when such refund becomes due and if such claim is made and adjudicated upon within the specified time and it is found that a part of this amount is liable to be retained by the State under some provision of law, the State will refund the balance to the appellant with interest at the like rate. So far as the assessment years 1971-72, 1972-73 and 1973-74 are concerned the Sales Tax

Authorities will proceed to complete the assessments for those assessment years in the light of the law laid down in this judgment and the amount of sales tax deposited by the appellant will be refunded a be appellant to the extent to which they are not found due and pebbles a result of the assessments, subject to any claim which the State may have to retain those amounts under any provisions of law.

35. We accordingly allow the appeal, set-aside the judgment of the High Court and issue a writ, order or direction to the above effect against the respondents. The State will pay the costs of the appellant throughout.

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