M/s. Jit Ram Shiv Kumar and Others

Vs

State of Haryana and Others

Civil Appeals Nos. 1237-1238 of 1970

(Syed M. Fazal Ali, P. S. Kailasam JJ)

16.04.1980

JUDGMENT

P. S. KAILASAM, J. –

1. These two appeals are by certificate granted by the Punjab & Haryana High Court at Chandigarh in Civil Writ 444 of 1968 and Civil Writ 2975 of 1967 respectively. The petitions were disposed of by a full Bench of the High Court on December 15, 1969.

2. The appellants who were the petitioners before the High Court prayed for a writ of certiorari or mandamus or any other appropriate writ for quashing the resolution No. 6 dated July 21, 1965 of the municipality and letter of the Government of Haryana to the President of the Municipal Committee, Bahadurgarh dated October 30, 1967. The facts of the case briefly are as follows :

3. The Municipal Committee of Bahadurgarh, respondent 2, established Mandi Fateh in Bahadurgarh Town, with a view to improve trade in the area. The municipal committee decided that the purchasers of the plots for sale in the mandi would not be required to pay octroi duty on goods imported within the said mandi. In pursuance of this decision, resolution No. 8 dated December 20, 1916 was passed by the municipality. Handbills were issued for the sale of the plots on the basis of the resolution and it was proclaimed that Fateh Mandi would remain exempt from payment of octroi. Subsequently by resolution No. 4 dated May 20, 1917, the municipal committee decided that the term No. 14 to the conditions of sale, namely, that the plots would not be required to pay octroi, be amended to the effect that the mandi shall remain immune from payment of octroi duty for ever. When the resolution was received by the Commissioner of Ambala, in paragraph 3 of his letter dated June 26, 1917 marked as Annexure 'A' in the writ petition, he noted :

> I note that by its resolution No. 4 of May 20, 1917, the municipal committee has undertaken that octroi shall never be imposed in the mandi. This is ultra vires, the municipal committee cannot make such an undertaking and this should be explained to the purchasers of sites before they begin building so that if they wish they may withdraw from the purchase.
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> Of course, it is unlikely that octroi will be imposed.
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> On receipt of this letter, the President of the municipal committee made representations that if octroi duty was to be levied, there will be no purchasers for the plots and the entire scheme will fall through. On receipt of this representation on September 20, 1917 (Annexure 'B'), the Commissioner revised his view and stated

that he was cancelling para 3 of his letter dated June 26, 1917 that is to say :

That in deference to the strong views of the municipal committee and to your own opinion that the market will collapse if I insist upon it, I withdraw my objection to the undertaking made by the municipal committee that octroi will not be imposed on the market. As soon as the market is established it will be necessary to consider what from of taxation is best to cover the market share of municipal expenses.

The municipal committee on March 10, 1919 imposed house-tax of Rs. 3-14-6 per cent. per annum on the shopkeepers to cover the expenditure of the market.

4. This state of affairs continued till September 4, 1953 when the municipal committee by notification No. 9697-C-53/63830 dated September 4, 1953 included Fateh Mandi, Bahadurgarh, within the octroi limits. The Examiner of Local Funds pointed out that the municipal committee is under obligation to charge octroi on goods imported into Fateh Mandi. The President of the municipal committee made a representation to the Deputy Commissioner on February 24, 1954. The municipal committee again passed another resolution No. 1 dated March 2, 1954 that the Fateh Mandi will remain free from octroi duty according to the terms of the proclamation of the sale relating to the sale of plots. The matter was referred to the Punjab State which after thoroughly examining the whole matter, confirmed Resolution No. 1 passed by the municipal committee on March 2, 1954. Subsequently, the municipal committee changed its mind and by its resolution dated May 8, 1954, resolved that octroi duty should also be levied on the goods imported into Fateh Mandi. But this resolution was annulled by the Punjab Government under Section 236 of the Punjab Municipal Act. The Examiner of the Local Funds Accounts in the mean time insisted on the levy of octroi duty on the goods imported into Fateh Mandi and the Punjab Government after discussing the issue on April 9, 1956 informed the President of the municipal committee that the government's action in confirming the resolution No. 1 of March 2, 1954 of the Municipal Committee, Bahadurgarh exempting goods imported into Fateh Mandi from levy of octroi duty under Section 70(2)(c) of the Municipal Act, 1911, is quite in order and that no separate notification to this effect was necessary under the rules. Again on July 21, 1965, the Municipal Committee, Bahadurgarh resolved that the government be requested to cancel resolution No. 1 dated March 2, 1954. The State of Haryana, respondent 1, which came into existence on November 1, 1964 under the Punjab Reorganisation Act, by its memo dated October 30, 1967 approved the resolution No. 6 dated July 21, 1965 of municipal committee and cancelled the municipal resolution No. 1 of March 2, 1954. As a result of the decision of the government, the municipal committee started charging octroi duty on the goods imported into the mandi. On these facts, the petitioners submitted that the resolution No. 6 of the municipal committee dated July 21, 1965 (Annexure 'G') and the approval granted by the Haryana State as per its order dated October 30, 1967 (Annexure 'H') are illegal and ultra vires and without jurisdiction.

5. A Full Bench of the High Court rejected the petition mainly on three grounds. Firstly, it found that the State Government is entitled under Section 62-A of Punjab Act 48 of 1953 to direct the municipal committee to impose octroi duty and as such even if the municipality is found to have erred in imposing the octroi duty, the legislative powers of the State cannot be questioned. Secondly, it found, that it was not within the competence of the municipality to grant any exemption from payment of octroi duty and this act is ultra vires its powers and cannot be enforced. Thirdly, it found that the court cannot go into the question as to whether the petitioners' plea based on equity that the municipality is bound, cannot be gone into for want of adequate facts.

6. Dealing with the first contention, relating to the legislative powers of the State, it will be seen that Punjab Act 48 of 1953, introduced Section 62-A which runs as follows :

> (1) The State Government may, by special or general order notified in the official Gazette, require a committee to impose any tax mentioned in Section 61, not already imposed at such rate and within such period as may be specified in the notification and the committee shall thereupon act accordingly.
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> (2) The State Government may require a committee to modify the rate of any tax already imposed and thereon the committee shall modify the tax as required within such period as the State Government may direct.
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> (3) If the committee fails to carry out any order passed under sub-section (1) or (2) the State Government, may by a suitable order notified in the official Gazette, impose or modify the tax. The order so passed shall operate as if it were a resolution duly passed by the committee and as if the proposal was sanctioned in accordance with the procedure contained in Section 62.

It is admitted that the State Government is empowered under Section 62-A to require the municipal committee to impose octroi duty and under sub-section (3) if the committee fails to carry out the order of the government, the State Government may impose octroi duty. Under Section 70(2)(c), a municipal committee by a resolution passed at a special meeting and confirmed by the State Government may exempt in whole or in part from the payment of any such tax any person or class of persons or any property or description of property. In exercise of these powers, the State Government had by its order dated May 4, 1954 confirmed resolution No. 1 passed by the municipal committee in its special meeting held on March 2, 1954 regarding the exemption of goods imported into Fateh Mandi from levy of octroi duty. Subsequently, in reply to the objection raised by the Examiner of Local Funds, the government pointed out by its letter dated April 9, 1956 (Annexure 'F') that the government's action confirming the resolution No. 1 dated March 2, 1954 of the municipal committee exempting goods imported into Fateh Mandi, under Section 70(2)(c) of the Punjab Municipal Act, 1911, is quite in order. By the impugned order dated October 30, 1967 the government approved the resolution No. 6 of the Municipal Committee dated July 21, 1965 and permitted the municipality to levy the octroi duty. The action taken by the State Government is strictly in conformity with the powers conferred on it under Section 70(2)(c) of the Act. It exempted the petitioners from payment of octroi duty for a particular period and ultimately withdrew the exemption. The action of the government cannot be questioned as it is in exercise of its statutory functions. The plea of estoppel is not available against the State in the exercise of its legislative or statutory functions. The government have powers to direct the municipality to collect the octroi tax if the municipality fails to take action by itself under Section 62-A(3). Further, even on facts, this plea is not available as against the government as it is not the case of the petitioners that they acted on the representation of the government. We, therefore, agree with the view of the Full Bench that the plea of estoppel is not available against the government for questioning the validity of the impugned government order.

7. The second contention is that the municipality is estopped from levying or recommending the levy of the tax to the government as in the proclamation of sale it notified that no octroi duty will be levied and it was only in pursuance of such representation, the petitioners purchased the property. We feel this plea should also fail because the municipal committee had no authority to exempt the Fateh Market from the levy of octroi duty. If the municipal committee had passed a resolution or

issued a notification that no octroi duty will be levied, it will be ultra vires the powers of the municipal committee. When a public authority acts beyond the scope of its authority the plea of estoppel is not available to prevent the authority from acting according to law. It is in public interest that no such plea should be allowed.

8. The third contention that was raised by the learned counsel for the appellants before the High Court and reiterated before us, is that the municipality and its successors are bound by the doctrine of promissory estoppel and as such are estopped from levying the octroi duty. The High Court rejected the plea on the following grounds :

> 1. The petitioners are not the original purchasers of the plots in Fateh Mandi. They are either descendants of or transferees from the original purchasers of the plots.
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> 2. No sale deed was executed by the municipal committee in favour of the original purchasers undertaking that no octroi duty will be levied.
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> 3. No allegation has been made that the original purchasers would not have purchased the plots, if condition No. 14 about immunity from payment of octroi had not been there.

The learned counsel by reference to the names of the list of the purchasers was able to satisfy us that some of the appellants are the original purchasers and as such the first objection raised before the High Court is not sustainable. Again, regarding the third objection, that there is no allegation that the original purchasers would not have purchased the plots if condition No. 14 about immunity from payment of octroi had not been there, it was submitted as erroneous as in the affidavit filed in support of the writ petition, the petitioners had pleaded in paragraph 2 that on the faith of the representation, the petitioners purchased the plots and constructed establishments. The learned counsel is, therefore, right in his submission that the third objection raised before the High Court is without substance. But the High Court was right in pointing out that none of the sale deeds executed by the municipal committee in favour of the purchasers was produced before the court. These circumstances would show that the contract between the parties has not been proved to have been reduced in writing and executed in the manner prescribed under Section 47 of the Act. Strictly, therefore, under the terms of the Municipal Act, the appellants are not entitled to any enforceable legal right. But it was submitted that even though the contract had not been executed in due form, the appellants would be entitled to relief under the doctrine of promissory estoppel.

9. The question that arises for consideration in these cases is whether the proclamation of sale which notified that there would be no octroi levy in the market relying on which statement the petitioners bid at the auction, would estop the municipality by operation of the doctrine of promissory estoppel from recommending to the government and the government levying octroi duty under Section 61 of the Punjab Municipalities Act. To answer this question it is necessary to examine at some length the rights and liabilities of the State under a contract entered into by it with third parties and in transactions carried on by it in exercise of its executive and statutory functions.

10. Article 299(1) of the Constitution of India provides that all contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise. This Article in the Constitution

corresponds to Section 175(3) of the Government of India Act, 1935. In cases, that arose out of Section 175(3) of the Government of India Act, 1935, this Court starting from Seth Bikhraj Jaipuria v. Union of India ((1962) 2 SCR 880 : AIR 1962 SC 113 : (1962) 2 SCJ 479), has repeatedly held that the provision is mandatory and not directory, that the provision is enacted as a matter of public policy, that the State should be saddled with liability for unauthorised contracts and that the provision is enacted in the public interest. In Mulamchand v. State of M.P. ((1968) 3 SCR 214 : AIR 1968 SC 1218 : (1968) 2 SCJ 924), the earlier decisions of this Court were relied on and it was held that the reasons for enacting the provision is not for the sake of some form but for safeguarding the government against unauthorised contracts. The provisions are embodied on the ground of public policy - on the ground of protection of general public - and these formalities cannot be waived or dispensed with. The court clearly observed that -

> if the plea of the respondent regarding estoppel or ratification is admitted that would mean, in effect, the repeal of an important constitutional provision intended for the protection of the general public. That is why the plea of estoppel or ratification cannot be permitted in such a case.

11. It was contended before this Court in Karamshi Jethabhai Somayya v. State of Bombay ((1964) 6 SCR 984 : AIR 1964 SC 1714), that in an agreement entered into under the Act by statutory authority in pursuance of a statutory power, that consequences provided under the statute would follow and would not fall within the ambit of Section 175(3) of the Government of India Act. This Court after examining the terms of the contract found that it did not fall within the provisions of the Act and, found it unnecessary to deal with the contention.

12. The scope of the doctrine of equitable estoppel arose for consideration before his Court in Collector of Bombay v. Munpl. Corpn. of City of Bombay (1952 SCR 43 : AIR 1951 SC 469 : 1951 SCJ 752). In 1865, the Government of Bombay called upon the predecessor in title of the Corporation of Bombay to remove some markets from a certain site and vacate it, and on the application of the then 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 corporation gave up the sites on which the old markets were situated and spent a sum of over 17 lacs in erecting and maintaining markets on the new site. In 1940, the Collector of Bombay, overruling the objection of the corporation, assessed the new site under Section 8 of the Bombay City Land Revenue Act to land revenue rising from Rs. 7,500 to Rs. 30,000 in 50 years. The corporation sued for a declaration that the order of assessment was ultra vires and that it was entitled to hold the land for ever without payment of assessment. The Supreme Court held by a majority of four judges to one that the government was no entitled to assess land revenue for the land in question. Three of the judges who were parties to the majority judgment found that the corporation had taken possession of the land in terms of the government resolution and continued in such possession openly, uninterruptedly and as of right for over 70 years and acquired 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, but only for the purpose of a market and for no other purposes. The right acquired included as part of it an immunity from payment of rent which constituted a right in limitation of the government's right to assess in excess of the specific limit established and preserved by the government resolution within the meaning of Section 8 of the Bombay City Land Revenue Act. Before the court there was considerable discussion as to the scope and effect of the principle of equity enunciated in Ramsden v. Dyson (1866 LR 1 HL 129 : 14 WR 926 (HL)), as to whether such principle should be extended to the facts

of the case and as to whether the facts of the case attract the application of the equity established in Ramsden v. Dyson (1866 LR HL 129 : 14 WR 926 (HL)) or attract the equity established in Maddison v. Alderson, and Walsh v. Lonsdale (1882 LR 21 Ch D 9 : 46 LT 858 (CA)), and finally as to whether the decision of the Privy Council in Ariff v. Jadu Nath Majumdar ((1931) 58 IA 91 : ILR 55 Cal 1090 : AIR 1929 Cal 101 : 33 CWN 333), the equity in Ramsden v. Dyson (1866 LR 1 HL 129 : 14 WR 926 (HL)) can prevail against the requirement of formalities laid down in the Victorian Statute referred to above any more than the equity in Maddison v. Alderson ((1883) 8 AC 417 : 52 LJ QB 737 : 49 LT 303) can do against he requirements of the Transfer of Property Act. The majority of the judges did not express any opinion on this question but decided the appeal on a narrower and shorter ground stated above. One of the Judges, Chandrasekhara Aiyar, J. constituting the majority expressed his view thus : (SCR p. 63)

Whether it is the equity recognised in Ramsden case (1866 LR 1 HL 129 : 14 WR 926 (HL)), or it is some other form of equity, is not of much importance. Courts must do justice by the promotion of the honesty and good faith, as far as it lies in their power. As pointed out by Jenkins, C.J. in Dadoba Janardhan case (Dadoba Janardhan v. Collector of Bombay, LIR 25 Bom 714 : 3 Bom LR 603) a different conclusion would be opposed to what is reasonable, to what is probable, and what is fair.

The other judges of the court who spoke for the court refrained from going into this question. The view of Chandrasekhara Aiyar, J. being the view of one of the judges of the majority, cannot be taken as the view of the court. Patanjali Sastri, J., as he then was, dissented with the majority and stated : [SCR p. 44 (from head-note)]

The principle of Ramsden v. Dyson (1866 LR 1 HL 129 : 14 WR 926 (HL)) cannot prevail against statutory requirements regarding disposition of property or making of contracts by government .... The right to levy land revenue is no part of the government's right to property but a prerogative of the Crown and adverse possession of the land could not destroy the Crown's prerogative to impose assessment on the land.

13. A Bench of four Judges of this Court in a decision Excise Commr., U.P., Allahabad v. Ram Kumar 1976 Supp SCR 532 : (1976) 3 SCC 540 : 1976 SCC (Tax)) 360), after examining the case-law on the subject observed that "it is now well settled by a catena of decisions that there can be no question of estoppel against the government in exercise of its legislative, sovereign or executive powers". The earlier decisions of this Court in M. Ramanatha Pillai v. State of Kerala ((1974) 1 SCR 515 : (1973) 2 SCC 650 : 1973 SCC (L&S) 560 : AIR 1973 SC 2641), and State of Kerala v. Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. ((1974) 1 SCR 671 : (1973) 2 SCC 713 : AIR 1973 SC 2734) was followed. It may, therefore, be stated that the view of this Court has been that the principle of estoppel is not available against the government in exercise of legislative, sovereign or executive power.

14. On behalf of the petitioners, it was submitted that a liberal view was taken by this Court in the decision Union of India v. Indo-Afghan Agencies Ltd. ((1968) 2 SCR 366 : AIR 1968 SC 718 : (1968) 2 SCJ 889) which recognised the principle of promissory estoppel and held that whether the agreement is executive or administrative in character, the courts have power in appropriate cases to compel performance of the obligations imposed by the schemes upon the departmental authorities. As his decision is relied on as the sheet anchor of the doctrine of promissory estoppel, the facts of the case and the decision rendered therein, have to be examined carefully. M/s. Indo-Afghan Agencies Ltd., the respondents before this Court exported woollen goods to Afghanistan and were issued an Import Entitlement Certificate by the Textile Commissioner not for the full f.o.b. value of

the goods exported, but for a reduced amount. By virtue of the powers conferred under Section 3 of the Imports and Exports (Control) Act, 1947, the Central Government issued the Imports (Control) Order, 1955 setting out the policy governing the grant of import and export licence. During the relevant period, it provided for the grant to an exporter, certificates to import raw materials of a total amount equal to 100% of the f.o.b. value of his exports. Clause 10 of the Scheme provided that the Textile Commissioner could grant an import certificate for a lesser amount if he is satisfied after holding an enquiry that he declared value of the goods is higher than the real value of the goods. It was contended, amongst other grounds, that the government on grounds of executive necessity was the sole judge of the validity of its action in matters relating to import and export policy, because the policy depended upon the economic climate and other related matters and had to be in its very nature flexible with power in the government to modify or adjust it as the altered circumstances necessitate. It was pleaded that if the government was held bound by every representation made by it regarding its intentions, it would amount to holding the government as being bound by contractual obligations even though no formal contract in the manner required by Article 299 of the Constitution was executed. Regarding the objection on the ground of contravention of Article 299 of the Constitution, the court held that the respondents were not seeking to enforce any contractual right but were seeking to enforce compliance of the obligation which is laid upon the Textile Commissioner by the terms of the scheme and the claim of the respondents was founded upon the equity which arose in their favour as a result of the representation made on behalf of the government in the Export Promotion Scheme. It may be noted that no finding was recorded by the Textile Commissioner, that there was any infringement which entitled him to reduce the quota under Clause 10 of the Scheme.

15. The facts of the case disclose that the defence by executive necessity was not relied upon in the affidavit filed on behalf of the Union of India. It was also not pleaded that the representation in the scheme was subject to an implied term that the Union of India will not be bound to grant the import certificate for the full value of the goods if they deem it inexpedient to grant the certificate. The court after referring to earlier decisions of this Court accepted the view expressed in those decisions that reduction in the amount of import certificate may be justified on the ground of misconduct of the exporters in relation to goods exported or on such considerations as the difficult foreign exchange position or other matters which have a bearing on he general interest of the State. Summing up the law laid down by the earlier cases, the court found that in each of the three cases (Ed. : Joint Chief Controller of Imports & Exports v. Amin Chand Mutha, (1966) 1 SCR 262 : AIR 1966 SC 478; Ramchand Jagdish Chand v. Union of India, (1962) 3 SCR 72 : AIR 1963 SC 563; Probhudas Morajee Rajkotia v. Union of India, AIR 1966 SC 1044) this Court held that it was competent to grant relief in appropriate cases, if, contrary to the scheme, the authority declined to grant a licence or import certificate or the authority acted arbitrarily and that the Union of India and its officers are not entitled at their mere whim to ignore the promises made by the government. It rejected the plea on behalf of the government that the Textile Commissioner is the sole judge of the quantum of the import licence to be granted to an exporter and that the courts were powerless to grant relief if the promised import licence is not given to an exporter who has aced in his prejudice relying upon the representation. The decision is, therefore, an authority for the proposition that in the absence of a plea of executive necessity, the court in appropriate cases is entitled to compel performance of the obligations imposed by the scheme on the departmental authority. The right of the government on relevant considerations, such as difficult foreign exchange position or other matters which have a bearing on the general interest of the State, to reduce the amount of import certificate was recognised. But the authorities have to act according to the terms of the scheme and not arbitrarily or at their mere whim to ignore the promises made by the government. On the facts

of the case, the court gave relief as the authorities declined to act according to the terms of the scheme and acted arbitrarily and at their mere whim ignoring the promises made by the government. The question as to the applicability of the doctrine of promissory estoppel against the legislative or executive acts of the government did not strictly arise in the case. That the decision was thus generally understood as stated above is seen from the view expressed by Mr H. M. Seervai on CONSTITUTION OF INDIA, 2nd Edn., Vol. I, paragraph 11 at para 146-B, p. 433 :

The authorities considered by the Supreme Court, and the conclusions drawn from them, by Shah, J. is the present case, merely affirm the proposition that the government could not go back upon promises made in the exercise of discretionary power as embodied in a sheme, merely on a whim (emphasis by Mr. Seervai) .... A promissory estoppel cannot stand on as higher footing than a contract entered into between a citizen or subject and a public authority, and it is settled by numerous decisions that no public authority entrusted with discretionary power to be exercised for the public good can bind itself by a contract not to exercise that discretion when the public good demands its exercise.

16. It is only in public interest that it is recognised that an authority acting on behalf of the government or by virtue of statutory powers cannot exceed his authority. Rule of ultra vires will become applicable when he exceeds his authority and the government would not be bound by such action. Any person who enters into an arrangement with the government has to ascertain and satisfy himself that the authority who purports to act for the government, acts within the scope of his authority and cannot urge that the government is in the position of any other litigant liable to be charged with liability.

17. In refuting the contention that the contract is unenforceable on the ground that there had been no strict compliance of the requirement of Article 299 of the Constitution, the court observed that the respondents were not seeking to enforce any contractual rights but were seeking to enforce compliance with the obligation which was laid upon the Textile Commissioner by the terms of the scheme. Thus, the relief that was granted by the court was by enforcing the compliance of the obligation which was laid upon the Textile Commissioner by the terms of the scheme. The court proceeded to state that the claim of the respondents is appropriately founded upon the equity which arises in their favour as a result of the representation made on behalf of the Union of India in the Export Promotion Scheme, and the action taken by the respondents acting upon that representation under the belief that the government would carry out the representation made by it. Thus the equity which the court was enforcing was to direct compliance of the obligation which is laid upon the Textile Commissioner by the terms of the scheme. The equity cannot be understood as barring the authority from modifying the scheme on special considerations such as difficult foreign exchange position or other matters which have a bearing on the general interest of the State (vide p. 385). The purport of the judgment is made clear by its own observation :

> 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 ex parte appraisement of the circumstances in which the obligation has arisen.

The observations of the court that the claim of the respondents is properly founded on the equity should be understood on the facts and findings of the court in the case. The court relying on the observations of Chief Justice Jenkins, observed that even though the case does not fall within the

terms of Section 115 of the Evidence Act, it is still 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. The court would be bound when the officer made the promise within the scope of his authority and failed to act upon it at his mere whim and acted arbitrarily on some undefined and undisclosed grounds of necessity.

18. Before proceeding further with the case, we will refer briefly to the purport of the doctrine of promissory estoppel. The doctrine of promissory estoppel burst into sudden blaze in 1946 when Denning, J. sitting in the Court of Kings Bench delivered the judgment in Central London Property Trust Ltd. v. High Trees House Ltd. ((1947) 1 KB 130 : (1956) 1 All ER 256 (KBD)) which has now become famous as the High Trees Case. The facts of the case are : During the war many people left London owing to bombing. Flats were empty. In one block, where the flats were let on 99 years leases at pounds 2,500 a year, the landlord agreed to reduce it by half and to accept pounds 1,250 a year. When the bombing was over, and the tenants came back, the landlord sought to recover the full rent at pounds 2,500 a year. Denning, J. held that the landlord could not recover the full amount for the time when the flats were empty. The lease was a lease under seal which according to English Common Law, could not be varied by an agreement by parol, but only by deed. The learned Judge invoked equity to his aid and said that if there has been a variation of a deed by simple contract the courts may give effect to it. The counsel for the lessee pleaded that the lessor had agreed though without consideration to accept the rent at a reduced rate, and set up a plea of estoppel by way of defence to the claim for arrears of rental calculated at the full rate. Faced with Foakes v. Beer ((1884) 9 AC 605 : 51 LT 833 (HL)), if the defence was raised as a matter of contract and Jorden v. Money ((1854) 5 HL Cas 185 : 10 ER 868), if it was raised as estoppel, Denning, J. held that the estoppel sustained although based on an assurance as to the future, because the promisor intended to be legally bound and intended his promise to be acted upon, with the result that it was so acted upon. In Jorden v. Money ((1854) 9 AC 605 : 51 LT 833 (HL)), the House of Lords held that a promise to pay a smaller sum of money in discharge of larger amount which was due, was void since such a promise was without consideration. Denning, J. relying on Fenner v. Blake ((1900) 1 QB 426 : 69 LJ QB 257 : 82 LT 149); Re Wickham ((1917) 34 TLR 158 : 1917 HBR 272); Re Porter William & Co. Ltd. ((1937) 2 All ER 361 (Ch D)) and Buttery v. Pickard (1946 WN 25 : 174 LT 144), observed that these 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 on and in the circumstances the plaintiff-company will be bound by the arrangement in its letter. Though the observations of Denning, J. in High Trees case ((1947) 1 KB 130 : (1956) 1 All ER 256 (KBD)) were in the nature of obiter dicta, the decision became the starting point of the several shades of opinion regarding the scope of promissory estoppel. It is necessary for our purpose to go into the development of law of promissory estoppel starting from High Trees case ((1947) 1 KB 130 : (1956) 1 All ER 256 (KBD)). It is sufficient to state that since the High Trees ((1947) 1 KB 130 : (1956) 1 All ER 256 (KBD)) decision was rendered, many elaborations and glosses have appeared in the reports. Turner in his book ESTOPPEL BY REPRESENTATION has a separate chapter dealing with promissory estoppel. The doctrine as observed by the author at the conclusion of the chapter, "burst out into sudden blaze in 1946 has ever since continued to smoulder, and that its original author has constantly maintained his interest in its further development, now in this direction, now in that". But there has been high places counselling conservatism. Lord Hailsham of St. Marylebone, has expressed his views in Woodhouse Ltd. v. Nigerian Produce Ltd. (1932 AC 431) as follows :

> I desire to add that the time may soon come when the whole sequence of cases based

on promissory estoppel since the war .... systematically explored.

19. This subject though interesting may not be relevant in administering Indian Law. Section 63 of the Contract Act provides that when a creditor accepts a lesser sum in satisfaction of the whole debt, the whole debt becomes discharged. This provision is a wide departure from the English law and the discussion about Jorden v. Money ((1854) 5 HL Cas 185 : 10 ER 868) wherein it was held that a promise to accept a smaller sum is devoid of consideration, becomes pointless. So also the doctrine of estoppel referred to in the High Trees case ((1947) 1 KB 130 : (1956) 1 All ER 256 (KBD)) is, to some extent taken care of by Sections 65 and 70 of the Indian Contract Act. Section 65 provides that when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it or to make compensation for it, to the person from whom he received it. Under Section 70 of the Contract Act, an obligation is cast on the person enjoying benefit of a non-gratuitous act to compensate the person who lawfully performed the act. As to whether the provisions of Sections 65 and 70 of the Indian Contract Act, are applicable to contract which is not according to Section 175 of the Government of India Act and Article 299 of the Constitution of India, there is a difference of opinion. Sir Maurice Gwyer expressed his view that when a contract is void, recourse to Section 70 cannot be had. Later, the Supreme Court held in State of W.B. v. B. K. Mondal & Sons (1962 Supp 1 SCR 876 : AIR 1962 SC 779), that Section 70 was applicable to such a case. This decision was followed in New Marine Coal Co. Ltd. v. Union of India ((1964) 2 SCR 859 : AIR 1964 SC 152), and in later cases by the Supreme Court.

20. In discussing the scope of the doctrine of promissory estoppel, and its applicability against the government and government officers in their dealings with the subject, Lord Denning, J. in Robertson v. Minister of Pensions ((1949) 1 KB 227 : (1948) 2 All ER 767 : 1949 LJR 323) observed : (ALL ER p. 770)

The Crown cannot escape by saying that estoppels do no bind the Crown for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so as to fetter its future executive action. That doctrine was propounded by Rowlatt, J., in Rederiaktiebolaget Amphitrite v. King ((1921) 3 KB 500 : 91 LJKB 75), 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 be influenced by the cases on the right of the Crown to dismiss its servants at pleasure but those cases must now all be read in the light of the judgment of Lord Atkin in Reilly v. King (1934 AC 176, 179 : 103 LJ PC 41) .... In my opinion, the defence of executive necessity is of limited scope. It only avails he Crown where there is an implied term to that effect, or that is the true meaning of the contract.

Lord Denning was dealing with a case of a serving army officer who wrote to the war office regarding a disability and received a reply that his disability had been accepted as attributable to "military service". Relying on that assurance, he forebore to obtain an independent medical opinion. The Minister of Pensions took the view that appellant's disability could not be attributed to war service. Lord Denning held that between the subjects such an assurance would be enforceable because it was intended to be binding, intended to be acted upon, and it was in fact aced upon; and the assurance was also binding on the Crown because no term could be implied that he Crown was at liberty to revoke it.

21. The decision in Robertson case ((1949) 1 KB 227 : (1948) 2 All ER 767 : 1949 LJR 323) is quoted with approval in the Indo-Afghan case ((1968) 2 SCR 366 : AIR 1968 SC 718 : (1968) 2

SCJ 889) but before we revert to the Indo-Afghan case ((1968) 2 SCR 366 : AIR 1968 SC 718 : (1968) 2 SCJ 889), we will follow the course which Robertson case ((1949) 1 KB 227 : (1948) 2 All ER 767 : 1949 LJR 323) took. The correctness of the case came up for consideration before the House of Lords in Howell v. Falmouth Boat Construction Ltd. (1951 AC 837 : (1951) 2 All ER 278 : (1951) 2 TLR 151). The appeal was preferred to the House of Lords from the Court of Appeal against the judgment of Bucknil, Singleton and Denning, L. JJ. In his judgment in the Court of Appeal, Denning, L. J. pressed the principle in the following terms : (All ER p. 280)

Whenever government officers, in their dealings with a subject, take on themselves to assume authority in a matter with which the subject is concerned, he is entitled to rely on their having the authority which they assume. He does not know, and cannot be expected to know the limits of their authority and he ought not to suffer if they exceed it. That was the principle which I applied to Robertson v. Minister of Pensions ((1949) 1 KB 227 : (1948) 2 All ER 767 1949 LJR 323) and it is applicable in the present case also. (Falmouth Boat Constn. Ltd. v. Howell, (1950) 1 All ER 538, 542)

Commenting on the view taken by Denning, L.J. Lord Simonds observed : (All ER p. 280)

My Lords, I know of no such principle in our law nor was any authority for it cited. The illegality of an act is the same whether or not the actor has been misled by an assumption of authority on the part of a government officer however high or low in the hierarchy ..... The question is whether the character of an act done in face of a statutory prohibition is affected by the fact that it has been induced by a misleading assumption of authority. In my opinion, the answer is clearly : No. Such an answer may make more difficult the task of the citizen who is anxious to walk in the narrow way, but that does not justify a different answer being given.

Lord Normand referred to the principle laid down by Denning L.J. and observed : (All ER p. 285)

As I understand this statement, the respondents were, in the opinion of the learned Lord Justice, entitled to say that the Crown was barred by representations made by Mr. Thompson and acted on by them from alleging against them a breach of the statutory order, and, further, that the respondents were equally entitled to say in a question with the appellant that there had been no breach. But it is certain that 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 from prosecuting for its breach.

The view expressed by the House of Lords and the Privy Council has been followed in English cases.

22. The Privy Council in Antonio Buttigieg v. Capt. Stephen H. Cross (AIR 1947 PC 29 : 229 IC 80), has ruled 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, that it cannot by contract hamper its freedom of action in matters which concern the welfare of the State. The competent military authority approached the appellant for opening a club for officers serving in his Majesty's forces. The appellant stated his willingness to take on lease certain premises and asked the military authorities to procure him a licence to continue the club after the termination of the war. The military authorities failed to obtain a licence and the appellant was informed of their inability to obtain the licence and an officer on behalf of the military authorities stated that the appellant should have a guarantee seeing that the war was not likely to come to an end quickly and that the club

would be kept open throughout the war. The rules for the conduct of the club were drawn up and were approved by the military authorities. Rule 18 provided that the club should endure during the time when the said hostilities existed. The club was placed out of bounds for service members by order of the military authorities because the club was being mismanaged by the sale of liquor long after permitted hours. As the club was a purely service club, it was subsequently wound up. The appellant complained of the loss to which he had been put by placing the club out of bounds and sought to hold the military authorities responsible for such loss. The Court of Appeal while giving judgment in favour of the military authorities observed : (AIR p. 31)

It is a settled principle, and it has been constantly held by this Court and in local case-law, that those two functions of the civil or the Military Government are totally distinct. The military authorities could not have renounced those rights, inasmuch as it would have been immoral and against every fundamental principle of Constitutional Law if the authorities, in order to open a club - which is a purely administrative act - were to sacrifice interests which are far more important and therefore of a much higher order, whether political, moral or affecting public order. Consequently when, within the administrative sphere, the government enters into a contract with a private individual, the government is bound to respect that contract, but it does not thereby deprive itself of its political power to issue orders that may become necessary by reason of public order, jure imperii - even though, in consequence of such orders, the contract itself becomes impossible of fulfilment.

During the arguments before the Privy Council, it was conceded on behalf of the appellant taking into consideration the decision in Adams v. London Improved Motor Coach Builders Ltd. ((1921) 1 KB 495 : 1920 All ER Rep 340 : 90 LJ KB 685) and Rederiaktiebolaget Amphitrite ((1921) 3 KB 500 : 91 LJKB 75) v. King, that it was not open to the Crown to bind itself not to close the club if that course became necessary in the public interest and the order placing the club out of bounds was justified in the circumstances which existed. Having thus observed the Privy Council quoted the following passage from the judgment of Rowlatt, J. in Rederiaktiebolaget Amphitrite case ((1921) 3 KB 500 : 91 LJKB 75) 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 the freedom of action in matters which concern the welfare of the State, and stated that these words appear to their Lordship to cover that aspect of the present case. While House of Lords in Howell case (1951 AC 837 : (1951) 2 All ER 278 : (1951) 2 TLR 151) disagreed with the observations of Lord Denning, J. in Robertson case ((1949) 1 KB 227 : (1948) 2 All ER 767 : 1949 LJR 323), the Privy Council approved the law laid down by Rowlatt, J. in Rederiaktiebolaget Amphitrite case ((1921) 3 KB 500 : 91 LJKB 75) which was dissented to by Denning, J. in Robertson case ((1949) 1 KB 227 : (1948) 2 All ER 767 : 1949 LJR 323). It may be noted that in Indo-Afghan case ((1968) 2 SCR 366 : AIR 1968 SC 718 : (1968) 2 SCJ 889), the court quoted the passage from Denning's judgment which did not approve the view of Rowlatt, J. The Privy Council approved the view taken by Rowlatt, J. in Rederiaktiebolaget Amphitrite case ((1921) 3 KB 500 : 91 LJKB 75).

23. In Cory (William) & Son Ltd. v. City of London Corpn. ((1951) 2 KB 476 : (1951) 2 All ER 85), London Corporation acting as sanitary authority under the Public Health (London) Act, 1936 made a contract with the claimants, barge and lighter owners, for the removal of refuse from a wharf in the City of Hornchurch, Essex, where it was to be dumped. In April, 1948, the corporation

acting as port health authority for the Port of London, sealed by-laws concerning the disposal of refuse in the area of the port one of which relating to coamings and coverings of barges, was far more onerous on the claimants than the requirements in the contract of 1936. It was provided that this by-law was not to come into effect until November 1, 1950. It was contended by the claimants that by the provisions of the contract of 1936, there was an implied or an express term that the corporation should not impose more onerous burden on the claimants as to the coamings and coverings of their barges than those contained in the contract of 1936. The plea of the claimants was rejected and the court held relying on a decision in York Corpn. v. Henry Leatham & Sons Ltd. ((1924) 1 Ch 557 : 1924 All ER Rep 477 : 40 TLR 371) that the corporation being under a duty under the Act of 1936, expressed in imperative language, to make by-laws for the disposal of refuse within the area of the port, the term for which the claimants contended, whether express or implied was ultra vires the corporation.

24. In York Corpn. v. Henry Leatham & Sons ((1924) 1 Ch 557 : 1924 All ER Rep 477 : 40 TLR 371), the corporation made two contracts with the defendants to which they agreed to accept, in consideration of the right to navigate the Dues, a regular annual payment of pounds 600 per annum, in place of the authorised tolls. It was held that the contracts were ultra vires and void because under them the corporation had disabled itself, whatever emergency might arise, from exercising its statutory powers to increase tolls as from time to time might be necessary. The decision was based on the incapacity of a body charged with statutory powers for public purpose to divest itself of such powers or to fetter itself in the use of such powers.

25. In Commissioners of Crown Lands v. Page ((1960) 2 KB 274 : (1960) 2 All ER 726 (CA)), in 1945, the Minister of Works, acting on behalf of the Crown and in exercise of powers conferred by the Defence (General) Regulations, 1939 requisitioned premises which had been demised in 1937 by the Commissioners of Crown Lands for a term of 25 years. The premises were derequisitioned on September 5, 1945 until July 5, 1955 and the landlord brought proceedings claiming arrears of rent. The lessee alleged that she had been "evicted" by the requisitioning and that, accordingly, payment of rent has been suspended. It was conceded that the Crown was one and indivisible as lessor and requisitioning authority. It was held that since the entry was by the Crown in the proper exercise of its executive authority, it did not amount to an eviction and rent, accordingly, continued to be payable. The view expressed by Lord Denning, J. in Robertson v. Minister of Pensions ((1949) 1 KB 227 : (1948) 2 All ER 767 : 1949 LJR 323) that in the present day age no distinction should be drawn as the legal effect of its or their actions between the Crown and the ordinary subjects, so that the effect of a representation made by the Crown could no longer be qualified so as to be subject to the future exercise by the Crown of its executive authority, was relied on. Lord Evershed, M.R., while observing that the facts of the case were different held that the general proposition laid down by Denning L.J., was not accepted by the House of Lords in Howell v. Falmouth Boat Construction Co. Ltd. (1951 AC 837 : (1951) 2 All ER 278 : (1951) 2 TLR 151) Devlin, J. stated the principle in the following terms : (All ER p. 735)

When the Crown, or any other person, is entrusted, whether by virtue of the prerogative or by statute, with discretionary powers to be exercised for the public good, it does not, when making a private contract in general terms, undertake (and it may be that it could not even with the use of specific language validly undertake) to fetter itself in the use of those powers, and in the exercise of its discretion.

Referring to the view of Denning, L.J. in Robertson v. Minister of Pensions ((1949) 1 KB 227 : (1948) 2 All ER 767 : 1949 LJR 323), the learned Judge observed : (All ER p. 736)

The observations of Denning, J., in Robertson v. Minister of Pensions ((1949) 1 KB 227 : (1948) 2 All ER 767 : 1949 LJR 323) on the doctrine of 'executive necessity', were, I think, directed to a case of that sort. Here we are dealing with an act done for a general executive purpose, and not an act done for the purpose of achieving a particular result under the contract in question.

In Southend-on-Sea Corpn. v. Hodgson (Wickford) Ltd. ((1962) 1 QB 416 : (1961) 2 All ER 46 : (1961) 2 WLR 806) a company wished to establish a builder's yard and found suitable premises. They wrote to the borough engineer, a chief official employed by the local planning authority asking for a lease of the premises for 20 years for the purpose of establishing a builder's yard. The engineer replied that the premises had an existing user right as a builder's yard and that no planning permission was, therefore, necessary. Relying on the borough engineer's letter, the company bought the premises and started to use them as builder's yard. They would not have done so if, as a consequence of the letter, they had not thought that no further planning permission was required. Later, the local planning authority notified the company that a considerable amount of evidence had been presented to them showing that the premises had not been used as a builder's yard and had no existing user as such; that they had decided that the premises could not be used without planning permission. The court on the above facts held that assuming that the statement that the premises had an existing user right as a builder's yard was a pure representation of fact, estoppel could not operate to hinder or prevent the exercise by the local planning authority of their statutory discretion under Section 23 of the Town and Country Planning Act, 1947 in deciding whether to serve an enforcement notice, since this discretion was intended to be exercised for the benefit of the public or section thereof.

26. The decisions of the English courts referred to above clearly indicate that the English courts did not accept the view of Denning, J. in Robertson v. Minister of Pensions ((1949) 1 KB 227 : (1948) 2 All ER 767 : 1949 LJR 323). The House of Lords in Howell v. Falmouth Boat Construction Co. Ltd. (1951 AC 837 : (1951) 2 TLR 151) disagreed with the view of Lord Denning, J. holding that there could not be an estoppel against express provisions of the law nor could the State by it action waive its rights to exercise powers entrusted to it for the public good. The Privy Council in Antonio Buttigieg case (AIR 1947 PC 29 : 229 IC 80) approved the view of Rowlatt, J. in Rederiaktiebolaget Amphitrite case ((1921) 3 KB 500 : 91 LJKB 75) with which Denning, J. did not agree.

27. We may now revert back to Indo-Afghan Agencies case ((1968) 2 SCR 366 : AIR 1968 SC 718 : (1968) 2 SCJ 889). The court after quoting a passage from Rowlatt, J. in Rederiaktiebolaget Amphitrite v. Kind ((1921) 3 KB 500 : 91 LJKB 75) agreed with the view expressed by Anson's ENGLISH LAW OF CONTRACT, 22nd Ed., p. 174, that the observation is clearly very wide and it is difficult to determine its proper scope. The court quoted (at SCR p. 375) the passage of Denning, J. at p. 231 wherein the learned Judge expressed the disagreement with the view of Rowlatt, J :

> The Crown cannot escape by saying that estoppels do not bind the Crown for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so as to fetter its future executive action. That doctrine was propounded by Rowlatt, J., in Rederiaktiebolaget Amphitrite v. King ((1921) 3 KB 500 : 91 LJKB 75) 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 cases must now all be read in the light of the judgment of Lord Atkin in Reilly v. King (1934 AC 176, 179 : 103 LJ PC 41) .... 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.

After quoting the above passage, the court summarised the facts and decision rendered by Denning, J. The decision of the House of Lords in Howell case (1951 Ac 837 : (1951) 2 All ER 278 : (1951) 2 TLR 151) or that of the Privy Council was not brought to the notice of the court.

28. The law laid down by the House of Lords in Howell case (1951 AC 837 : (1951) 2 All ER 278 : (1951) 2 All ER 278 : (1951) 2 TLR 151) has been accepted as correct by this Court in recent decision of this Court by a Bench of four Judges in Excise Commr., U.P. Allahabad v. Ram Kumar (1976 Supp SCR 532 : (1976) 3 SCC 540 : 1976 SCC (Tax) 360). The respondents before this Court were the highest bidders in an auction for exclusive manufacture and selling of liquor in the State of U.P. Before holding the auction, the rates of excise duty and prices of different varieties of country liquor and also the conditions of licence were announced. No announcement was made as to whether the exemption from sales tax in respect of sale of country liquor granted by the notification dated April 6, 1959 was or was not likely to be withdrawn. On the day following the day when the licences were granted, the Government of U.P. issued a notification under Sections 3-A and 4 of U.P. Sales Tax Act, 1948 superseding the earlier notification exempting the payment of sales tax and imposing sales tax on the turnover in respect of country liquor at the rate of 10 paise per rupees. The respondents challenged the validity of the notification issued under the Sales Tax Act on the ground that the State Government did not announce at the time of the earlier auction that the earlier notification was likely to be withdrawn. This Court on a consideration of the question whether the State Government is estopped from levying the sales tax, after referring to the earlier decisions of this Court held that the State Government is not estopped or precluded from subjecting the sales of liquor to tax if it felt impelled to do so in the interest of revenue of the State. The court followed two earlier decisions of this Court viz. M. Ramanatha Pillai v. State of Kerala ((1974) 1 SCR 515 : (1973) 2 SCC 650 : 1973 SCC (L&S) 560 : AIR 1973 SC 2641) and State of Kerala v. Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. ((1974) 1 SCR 671 : (1973) 2 SCC 713 : AIR 1973 SC 2734). In Ramanatha Pillai case ((1974) 1 SCR 671 : (1973) 2 SCC 713 : AIR 1973 SC 2734), Ray, C.J. while dealing with the question whether the government has a right to abolish a post in the service, observed that the power to create or abolish a post is not related to the doctrine of pleasure. It is a matter of governmental policy. Every sovereign government has this power in the interest and necessity of internal administration. The creation or abolition of a post is dictated by policy decision, exigencies of circumstances and administrative necessity. The creation, the continuance and the abolition of post are all decided by the government in the interest of administration and general public. The learned Chief Justice after quoting a passage in AMERICAN JURISPRUDENCE, 2d. at p. 783, paragraph 123, observed that the estoppel alleged by the appellant Ramanatha Pillai was on the ground that he entered into an agreement and thereby changed his position to his detriment. 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.

29. In State of Kerala v. Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. ((1974) 1 SCR 671 : (1973) 2 SCC 713 : AIR 1973 SC 2734), Palekar, J., who delivered the opinion with which Krishna Iyer, J. and Bhagwati, J. agreed, rejected the contention that an agreement entered into by the government with the parties, excluded the legislation on the subject. The plea of equitable estoppel was put forward on the ground that the company established itself in Kerala for the production of rayon cloth pulp on an understanding that the government would bind itself to supply the raw material.

Later government was unable to supply the raw material and by an agreement undertook not to legislate for the acquisition of private forests for a period of 60 years if the company purchased forest lands for the purpose of its supply of raw materials. Accordingly, the company purchased 30,000 acres of private forests from the Nilabjri Kovila Kanna Estate for Rs. 75 lacs and, therefore, it was argued that the agreement would operate as equitable estoppel against the State. This Court agreed with the High Court that the surrender by the government of its legislative powers to be used for public good cannot avail the company or operate against the government as equitable estoppel.

30. In Asstt. Custodian of Evacuee Property v. Brij Kishore Agarwala ((1975) 2 SCR 359 : (1975) 1 SCC 21 : AIR 1974 SC 2325), it was pleaded that the first respondent made an enquiry from the Assistant Custodian whether the property was evacuee property and was told that it was not. As the first respondent acted on this representation, it was pleaded that the Assistant Custodian was estopped from contending that the property was evacuee property. Thus, dismissing this plea, the court observed : (SCC p. 24, para 5)

We do not consider that the fact that the first respondent had made an enquiry from the Assistant Custodian whether the property in question was an evacuee property and was told that it was not makes any difference to this question.

Reliance was placed on the observations of Denning, L.J. in Robertson v. Minister of Pensions ((1949) 1 KB 227 : (1948) 2 All ER 767 : 1949 LJR 323), holding that the letter by the war office which assured that the appellant's disability had been accepted as attributable to the military service, was binding on the Crown and through the Crown the Minister of Pensions. The court pointed out that the decision in Robertson v. Minister of Pensions ((1949) 1 KB 227 : (1948) 2 All ER 767 : 1949 LJR 323) had been disapproved by the House of Lords in Howell case (1951 AC 837 : (1951) 2 All ER 278 : (1951) 2 TLR 151). After referring to the passage from the judgment of Lord Denning, Lord Simonds and Lord Normand which have been extracted earlier, this Court expressed its opinion that the view taken by the House of Lords is correct and not that is taken by Lord Denning.

31. In Excise Commissioner, U.P., Allahabad v. Ram Kumar (1976 Supp SCR 532 : (1976) 3 SCC 540 : 1976 SCC (Tax) 360), the court after consideration of the case-law on the subject, held that it was settled by a catena of cases that there could be no question of estoppel against the legislative and sovereign functions.

32. A passage in AMERICAN JURISPRUDENCE, 2d. at page 783, paragraph 123 was extracted by Ray, C.J. in Ramanatha Pillai case (See Supra note 11. SCC p. 660, para 37) and Jaswant Singh, J. in Excise Commissioner case (See supra note 10. SCC p. 546, para 20). The passage in paragraph 123 is as follows :

> Generally, a State is not subject to an estoppel to the same extent as in an individual or private corporation. Otherwise, it might be rendered helpless to assert its powers in government. Therefore as a general rule the doctrine of estoppel will not be applied against the State in its governmental, public or sovereign capacity. An exception however arises in the application of estoppel to the State where it is necessary to prevent fraud or manifest injustice.

33. But the learned Judges did not include the last sentence :

> An exception however arises in the application of estoppel to the State where it is necessary to prevent fraud or manifest injustice.

34. In Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. v. Sipahi Singh (AIR 1977 SC 2149 : (1977) 4 SCC 145) this Court held 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 to his prejudice. The court accepted the view of this Court expressed in Ram Kumar case (1976 Supp SCR 532 : (1976) 3 SCC 540 : 1976 SCC (Tax) 360) and held that there cannot be any estoppel against the government in the exercise of its sovereign, legislative or executive functions.

35. The leading case of the Supreme Court of the United States cited and relied upon in Ram Kumar case (1976 Supp SCR 532 : (1976) 3 SCC 540 : 1976 SCC (Tax) 360) at SCC p. 547, para 25, is Federal Crop Insurance Corpn. v. Merrill (332 US 380), in which the United States Supreme Court observed as follows :

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

The court also relied on the views of the textbook writer Melville M. Bigelow and concluded that the plea of estoppel does not operate against the government or its assignees.

36. The extract from the AMERICAN JURISPRUDENCE which summarises the American Law, and he decision in Federal Crop Insurance Corpn. case (332 US 380), make it clear that the plea of estoppel is not available against the government and its legislative or executive functions except for preventing fraud or manifest injustice.

37. It was submitted that the cases cited above cannot be relied on as an authority for the proposition that the doctrine of promissory estoppel is not applicable against the government in the exercise of its legislative and statutory functions as they were in the nature of obiter dicta and that on the facts the present case could be distinguished. The Indo-Afghan Agencies ((1968) 2 SCR 366 : AIR 1968 SC 718 : (1968) 2 SCJ 889), Century Spg. & Mfg. Co. Ltd. (Century Spinning & Mfg. Co. Ltd. v. Ulhasnagar Munpl. Council, (1970) 3 SCR 854 : (1970) 1 SCC 582 : AIR 1971 SC 1021) and Turner Morrison & Co. Ltd. v. Hungerford Investment Trust Ltd. ((1972) 3 SCR 711 : (1972) 1 SCC 857 : AIR 1972 SC 1311), were strongly relied on. We have pointed out that all that the Indo-Afghan Agencies case ((1968) 2 SCR 366 : AIR 1968 SC 718 : (1968) 2 SCJ 889) laid down was, that a public authority acting on behalf of the government cannot on its own whim and in an arbitrary manner seek to alter the conditions accepted by him to the prejudice of the other side. The decision in terms accepts the view expressed in earlier cases that after taking into consideration the exigencies and change of circumstances, the authority can modify the conditions in exercise of his

powers as a public authority.

38. In Century Spinning and Manufacturing Co. Ltd. v. Ulhasnagar Munpl. Council (Century Spinning & Mfg. Co. Ltd. v. Ulhasnagar Munpl. Council, (1970) 3 SCR 854 : (1970) 1 SCC 582 : AIR 1971 SC 1021), the facts of the case are set out in the head-note and may be briefly stated. The State of Maharashtra on the representation made by certain manufacturers proclaimed the exclusion of the industrial area from the municipal jurisdiction. The municipality made representations to the State requesting that the proclamation be withdrawn, agreeing to exempt the factories in the industrial area from payment of octroi from the date of levy. The State acceded to the request of the municipality. The appellants expanded their activities relying on the municipality's assurance. The Maharashtra Municipalities Act was enacted and the municipality took over the administration. Thereafter, the municipality sought to levy octroi duty on the appellant amounting to about Rs. 15 lacs per annum. The High Court dismissed the petition in limini filed by the industrialists against the levy of octroi. In an appeal to this Court it was held that the High Court had not given any reason for dismissing the petition in limini and that on a consideration of the averments in the petition and the materials placed before the High Court, the appellants were entitled to have its grievance heard against the action of the municipality which was prima facie unjust. In remanding the matter to the High Court, this Court observed : (See supra note 40. SCC p. 586, para 10)

A representation that something will be done in future may involve an existing intention to act in future in the manner represented. If the representation is acted upon by another person it may, unless the statute governing the person making the representation provides otherwise, result in an agreement enforceable at law; if the statute requires that the agreement shall be in a certain form, no contract may result from the representation and acting thereafter, but the law is not powerless to raise in appropriate cases an equity against him to compel performance of the obligation arising out of his representation.

In dealing with the question as to how far the public bodies are bound by representation made by them on which other persons have altered their position to their prejudice, the court held that the obligation arising against an individual out of his representation amounting to a promise may be enforced ex contractu by a person who acts upon the promise : when the law requires that a contract enforceable 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 an appropriate case in equity. The court read the decision in Union of India v. Indo-Afghan Agencies ((1968) 2 SCR 366 : AIR 1968 SC 718 : (1968) 2 SCJ 889) as holding that the government is not exempt from the equity arising out of the acts done by citizens to their prejudice, relying upon the representations as to its future conduct made by the government. This observation will have to be read along with the conditions that were laid down in the Indo-Afghan case ((1968) 2 SCR 366 : AIR 1968 SC 718 : (1968) 2 SCJ 889) and cannot be read as holding that the rule of estoppel will be applicable against the government in the exercise of its legislative and statutory powers. The court (See supra note 40. SCC p. 586, para 11) quoted the following passage from Denning, J., Crown cannot escape by saying that estoppels do not bind the Crown for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so as to fetter its future executive action, and observed that the court in Indo-Afghan case ((1968) 2 SCR 366 : AIR 1968 SC 718 : (1968) 2 SCJ 889) held that it was applicable to India. It may be noted that apart from not noticing Howell case (1951 AC 837 : (1951) 2 All ER 278 : (1951) 2 TLR 151), the court in Indo-Afghan case ((1968) 2 SCR 366 : AIR 1968 SC 718 : (1968) 2 SCJ 889) did not say that the law as extracted from Denning, J.'s judgment was applicable to India. The court after considering the Indo-

Afghan case ((1968) 2 SCR 366 : AIR 1968 SC 718 : (1968) 2 SCJ 889) and Howell case (1951 AC 837 : (19510 2 All ER 278 : (1951) 2 TLR 151), expressed thus : (Ibid., SCC p. 587, para 12)

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

39. The third decision on which reliance was placed, for the proposition that doctrine of promissory estoppel is applicable against the State acting in exercise of its legislative or executive function is Turner Morrison and Co. Ltd. v. Hungerford Investment Trust Ltd. ((1972) 3 SCR 711 : (1972) 1 SCC 857 : AIR 1972 SC 1311) The case related to the payment of tax due from Hungerford by Turner Morrison. The court observed that if for any reason Turner Morrison had not undertaken any responsibility to discharge the liability of Hungerford, the latter could have taken recourse to voluntary liquidation. Hence there could be no doubt that acting on the basis of the representation made by Turner Morrison, Hungerford placed itself in a disadvantageous position. Hungerford raised the plea that the resolution was of the company, afforded a good basis for raising a plea of promissory estoppel. This plea was accepted by the court relying on the observations of Denning, J. in High Trees case ((1947) 1 KB 130 : (1956) 1 All ER 256 (KBD)). The later decision of the House of Lords in Howell case (1951 AC 837 : (1951) 2 All ER 278 : (1951) 2 TLR 151) which disapproved Lord Denning's judgment was not brought to its notice.

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

> (1) The plea of promissory estoppel is not available against the exercise of the legislative functions of the State.
>
> (2) The doctrine cannot be invoked for preventing the government from discharging its functions under the law.
>
> (3) When the officer of the government acts outside the scope of his authority, the plea of promissory estoppel is not available. The doctrine of ultra vires will come into operation and the government cannot be held bound by the unauthorised acts of its officers.
>
> (4) When the officer acts within the scope of his authority under a scheme and enters into an agreement and makes a representation and a person acting on that representation puts himself in a disadvantageous position, the court is entitled to require the officer to act according to the scheme and the agreement or representation. The officer cannot arbitrarily act on his mere whim and ignore his promise on some undefined and undisclosed grounds of necessity or change the conditions to the prejudice of the person who had acted upon such representation and put himself in a disadvantageous position.
>
> (5) The officer would be justified in changing the terms of the agreement to the prejudice of the other party on special considerations such as difficult foreign exchange position or other matters which have a bearing on general interest of the State.

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

42. With respect, we are in complete agreement with the law as stated above but we find the judgment is not in accordance with the view consistently taken by this Court in some respects. We have read the judgment of Bhagwati, J. with considerable care and attention which it deserves. Firstly, with great respect we are unable to construe the decision in Union of India v. Indo-Afghan Agencies Ltd. case ((1968) 2 SCR 366 : AIR 1968 SC 718 : (1968) 2 SCJ 889) in the manner in which it has been done. As pointed out by us, all that the case purports to lay down is that the court can enforce an obligation incurred by an authority on which another has acted upon and put himself in a disadvantageous position, when the authority resiles arbitrarily or on mere whim or on some undefined and undisclosed grounds of necessity.

43. With respect, we feel we are unable to agree with the interpretation put by Bhagwati, J. Bhagwati, J. states : (SCC p. 441, para 22)

The defence of executive necessity was thus clearly negatived by this Court and it 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.

The same view has again been reiterated at page 682 where it is stated : (SCC p. 442, para 24)

The law may, therefore, now be taken to be settled as a result of this decision that where the government makes a promise knowing or intending that it would be acted on by the promise and, in fact, the promisee, acting in reliance on it, alters his position, the government would be held bound by the promise and the promise would be enforceable against the government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution.

These observations would be right if they are read with the qualifications, laid down in the Indo-Afghan Agencies case ((1968) 2 SCR 366 : AIR 1968 SC 718 : (1968) 2 SCJ 889) and other cases.

44. The further observations of the learned Judge that : (SCC p. 442, para 24)

Every one is subject to the law as fully and completely as any other and the government is no exception. It is indeed the pride of constitutional democracy and rule of law that the government stands on the same footing as a private individual so far as the obligation of the law is concerned : the former is equally bound as the latter.

Again : (SCC p. 442, para 24)

But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the government should not be compelled to make good such promise like any other private individual,do not appear to convey the true effect of the decision.

The decision of this Court in Century Spinning and Mfg. Co. Ltd. v. Ulhasnagar Munpl. Council (Century Spinning & Mfg. Co. Ltd. v. Ulhasnagar Munpl. Council, (2970) 3 SCR 854 : (1970) 1 SCC 582 : AIR 1971 SC 1021) was understood by Justice Bhagwati as refusing to make a distinction between the private individual and public body so far as the doctrine of promissory estoppel is concerned. These observations would be correct only if they are read with the exceptions recognised by Justice Bhagwati himself elsewhere in his judgment along with other restrictions imposed by judgments of this Court.

45. We find ourselves unable to ignore the three decisions of this Court, two by Constitution Benches in M. Ramanatha Pillai v. State of Kerala ((1974) 1 SCR 515 : (1973) 2 SCC 650 : 1973 SCC (L&S) 560 : AIR 1973 SC 2641) and State of Kerala v. Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. ((1974) 1 SCR 671 : (1973) 2 SCC 713 : AIR 1973 SC 2734) and the third by a Bench of four Judges of this Court in Excise Commr., U.P., Allahabad v. Ram Kumar (1976 Supp SCR 532 : (1976) 3 SCC 540 : 1976 SCC (Tax) 360) on the ground that the observations are in the nature of obiter dicta and that it cannot be insisted as intending to have laid down any proposition of law different from that enunciated in the Indo-Afghan Agencies case ((1968) 2 SCR 366 : AIR 1968 SC 718 : (1968) 2 SCJ 889). It was not necessary for this Court in the cases referred to above to refer to Union of India v. Indo-Afghan Agencies Ltd. ((1968) 2 SCR 366 : AIR 1968 SC 718 : (1968) 2 SCJ 789), for, if properly understood, it only held that the authority cannot go back on the agreement arbitrarily or on its mere whim. We feel we are bound to follow the decisions of the three Benches of this Court which in our respectful opinion have correctly stated the law. We are also unable to read the case of the House of Lords in Howell v. Falmouth Boat Construction Co. Ltd. (Falmouth Boat Constn. Ltd. v. Howell, (1950) 1 All ER 538, 542) as not having overruled the view of Denning, J., and as not having expressed its disapproval of the doctrine of promissory estoppel against the Crown nor overruled the view taken by Denning, J. in Robertson v. Minister of Pensions ((1949) 1 KB 227 : (1948) 2 All ER 767 : 1949 LJR 323) that "the Crown cannot escape the obligation under the doctrine of promissory estoppel".

46. We find ourselves unable to share the view of the learned Judge that the Constitution Bench of this Court in Ramanatha Pillai case ((1974) 1 SCR 515 : (1973) 2 SCC 650 : 1973 SCC (L&S) 560 : AIR 1973 SC 2641) heavily relied upon the quotation from the AMERICAN JURISPRUDENCE, para 123, p. 873 of Vol. 28. Again we feel to remark that "unfortunately this quotation was incomplete and had overlooked perhaps inadvertently" is unjustified.

47. We feel we are in duty bound to express our reservations regarding the "activist" jurisprudence and the wide implications thereof which the learned Judge has propounded in his judgment. The first part of the judgment relates to the development of law relating to promissory estoppel in England following the High Trees case ((1947) 1 KB 130 : (1956) 1 All ER 256 (KBD)). As pointed out by us earlier the doctrine of promissory estoppel is not very helpful as we are governed by the various provisions of the Indian Contract Act. Sections 65 and 70 provide for certain reliefs in void contracts and in unenforceable contracts where a person relying on a representation has acted upon it and put himself in a disadvantageous position. Apart from the case in Robertson v. Minister of Pensions ((1949) 1 KB 227 : (1948) 2 All ER 767 : 1949 LJR 323), the House of Lords in Howell case (1951 AC 837 : (1951) 2 All ER 278 : (1951) 2 TLR 151) and the Privy Council in Antonio Buttigieg case (AIR 1947 PC 29 : 229 IC 80) and the other English authorities do not agree

with the view that the plea of promissory estoppel is available against the government. Further we have to bear in mind that the Indian Constitution as a matter of high policy in public interest, has enacted Article 299 so as to save the government liability arising out of unauthorised acts of its officers and contracts not duly executed.

48. The learned Judge has considered at some length the doctrine of consideration and how it thwarted the full development of the new equitable principle of promissory estoppel. After discussing the American law on the subject; he has observed that the leading textbook writers view with disfavour the importance given to "consideration". The learned Judge proceeds to observe that : (SCC p. 430, para 12)

Having regard to the general opprobrium to which the doctrine of consideration has been subjected to by eminent jurist, 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 justice device for preventing injustice.

Here again we have to bear in mind that the Indian Contract Act regulates the right of parties, and expressly insists on the necessity for lawful consideration which cannot be dispensed with by invoking some equitable doctrine. Section 10 of the Contract Act provides :

> All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

It will be seen that for a contract to be valid, it should be for a lawful consideration. Section 25 of the Contract Act provides that an agreement make without consideration is void unless it satisfies one of the conditions mentioned in this section.

49. The learned Judge has held that if the government is to resist its liability it will have to disclose to the court what are the facts and circumstances on account of which the government claims to be exempted from the liability and it would be for the court to decide whether these facts and circumstances are such as to render it inequitable to enforce the liability against the government. This statement will have to be read with the exceptions stated by the learned Judge himself and those recognised by the decisions of this Court. In C. Sankaranarayanan v. State of Kerala ((1971) 2 SCC 361) it was held that the power of the government under Article 309 to make rules regulating the conditions of service of government employees or of teachers of aided schools cannot in any way be effected by any agreement. Rule of estoppel against government cannot be invoked in such cases. In Narinder Chand Hem Raj v. Lt. Governor, Administrator, U.T., H.P. ((1972) 1 SCR 940 : (1971) 2 SCC 747 : 29 STC 169), this Court has laid down that the power to impose tax is undoubtedly a legislative power and that no court can issue mandate to a legislature to enact a particular law and similarly no court can direct a subordinate legislative body or enact or not to enact a law which it may be competent to enact. Again in State of T.N. v. S. K. Krishnamurthi ((1972) 3 SCR 104 : (1972) 1 SCC 492 : AIR 1972 AIR 1972 SC 1126) this Court held that the policy of State to nationalise textbooks cannot be challenged by the publishers on the ground that the rules were in derogation of their rights. It was held that the rules were in the nature of departmental instructions and do not confer any right on the publishers nor are they designed to safeguard the interest of publishers and that the policy of nationalisation was conceived in public interest and as the government is at liberty to change the textbooks and delete from and add to the list of approved textbooks the publishers can have no grievance. In Andhra Industrial Works v.

Chief Controller of Imports ((1975) 1 SCR 321 : (1974) 2 SCC 348), a four Judges' Bench of this Court held that an applicant for a permit under import trade policy has no absolute right to the grant of import licence and that the applicant cannot complain that the existing instructions or orders made in pursuance of the Import and Export Control Act place "unreasonable restrictions" on the petitioners' right to carry on trade or business. These restrictions obviously have been imposed in the interests of the general public and national economy and with the development of imports, regulating foreign exchange have necessarily to be appropriately controlled and regulated.

50. Professor S. A. De Smith in his JUDICIAL REVIEW ON ADMINISTRATIVE ACTION, 3rd Edn., p. 279, sums up the position thus :

> Contracts and covenants entered into by the Crown are not to be construed as being subject to implied terms that would exclude the exercise of general discretionary powers for the public good : On the contrary they are to be construed as incorporating an implied term that such powers remain exercisable. This is broadly true of other public authorities also : But the status and functions of the Crown in this regard are of a higher order : The Crown cannot be allowed to tie its hands completely by prior undertakings is as clear as the proposition that the courts cannot allow the Crown to evade compliance with ostensibly binding obligations whenever it thinks fit : If a public authority lawfully repudiates or departs from the terms of a binding contract in order to exercise its overriding discretionary powers, or if it is held never to have been bound in law by an ostensibly binding contract because the undertakings would improperly fetter its general discretionary powers, the other party to the agreement has no right whatsoever to damages or compensation under the general law, no matter how serious the damages that party may have suffered.

Professor H. W. R. Wade in ADMINISTRATIVE LAW, 4th Edn., pp. 329-330, has pointed out that the doctrine of estoppel cannot be allowed to impede the proper exercise of public and statutory functions by the State and public authorities. In Public Law the most obvious limitation on the doctrine of estoppel is that it cannot be invoked so as to give an authority powers which it does no in law possess. In other words, no estoppel can legitimate action which is ultra vires. As has been amply illustrated the court is normally extremely careful to prevent any legal doctrine from impeding the exercise of statutory discretion in the public interest.

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

52. In a fervent plea for the doctrine to speak in all its activist magnitude the learned Judge observes. ((1979) 2 SCR 641 : (1979) 2 SCC 409 : 1979 SCC (Tax) 144) (SCC pp. 430-31, para 13)

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 the activist magnitude, so that it may fulfil the purpose for which it was conceived and born.

It is no doubt desirable that in a civilised society man's word should be as good as his bond and his fellow men should be able to rely on his promise. I may be an improvement if a cause of action would be based on a mere promise without consideration. The law should as far as possible accord with the moral values of the society, and efforts should be made to bring the law in conformity with the moral values. What are the moral values of the Society ? This is a very complex question because the concept of moral values amongst different persons and classes of persons is not always the same. The concept of moral values is not a static one. It differs from time to time and from society to society. It is hazardous for a court to attempt to enforce what according to it is the moral value, as pointed out by Roscoe Pound :

> It leads to an attempt to enforce overhigh ethical standards and to make legal duties out of moral duties which are not sufficiently, tangible to be made effective by the machinery of the legal order. A more serious difficulty is that the attempt to identify law and morals gives too wide a scope to judicial discretion.

The question is how should it be brought about. The learned Judge says that it should be the constant endeavor of the courts and the legislature to close the gap between the law and morality and bring about as near an approximation between the two as possible. Lord Denning might have exhorted the judges not to be timorous souls but to be bold spirits, ready to allow a new cause of action if justice so requires. These are lofty ideals which one should steadfastly pursue. But before embarking on this mission, it is necessary for the court to understand clearly its limitations. The power of the court to legislate is strictly limited. "Judges ought to remember that their office is jus dicere and not jus dicere to interpret law, and not to make law or give law". Chandrachud, C.J. speaking for a Constitution Bench in Gurbaksh Singh Sibbia v. State of Punjab ((1980) 2 SCC 565 : 1980 SCC (Cri) 465), has clearly pointed out the limited powers of the courts to make laws in construing the provisions of the statutes. The learned Chief Justice has observed : (SCC p. 580, para 13)

The true question is whether by a process of construction, the amplitude of judicial discretion which is given to the High Court and the Court of Session, to impose such conditions as they may think fit while granting anticipatory bail, should be cut down by reading into the statute conditions, which are not to be found therein .... Our answer, clearly and emphatically, is in the negative.

Again the learned Chief Justice warned : (SCC p. 581, para 15)

Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions. And it will be strange if, by employing judicial artifices and techniques, we cut down the discretion so wisely conferred upon the courts, by devising a formula which will confine the power to grant anticipatory bail within a strait-jacket .... Therefore, even if we were to frame a 'code for the grant of anticipatory bail', which really is the business of the legislature, it can at best furnish broad guide-lines and cannot compel blind adherence.

53. The courts by its very nature are most ill-suited to undertake the task of legislating. There is no machinery for the court to ascertain the conditions of the people and their requirements and to make laws that would be most appropriate. Further two judges may think that a particular law would be

desirable to meet the requirements whereas another two judges may most profoundly differ from the conclusions arrived at by two judges. Conscious of these handicaps, the law requires that even an amendment of the Supreme Court Rules which govern the procedure to be adopted by it for regulating its work, can only be effected by the whole Court sitting and deciding.

54. The result is that so far as the recommendation of the municipal committee to the government to levy octroi duty, is concerned though it is contrary to the representation it made to the buyers of the sites in the mandi, the municipality is not estopped as the representation made by it was beyond the scope of its authority. The levy of tax being for a public purpose i.e. for augmenting the revenues of the municipality as laid down in Ram Kumar case (1976 Supp SCR 532 : (1976) 3 SCC 540 : 1976 SCC (Tax) 360), the plea of estoppel is not available. The order of the government directing the levy of octroi in pursuance of the resolution of the municipality cannot also be challenged as it is in the exercise of its statutory duty.

55. The result is both the appeals fail and are dismissed with costs of one set to be borne equally by the two appellants.

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