Indian Aluminium Company Limited and another

Vs

Karnataka Electricity Board and others

Civil Appeal No. 1841 of 1988

(G. N. Ray, N. M. Kasliwal JJ)

13.05.1992

JUDGEMENT

G.N. RAY, J.:-

1. This Civil Appeal arising out of Special Leave Petition (Civil) No. 5890 of 1988, is directed against the judgment passed by the Division Bench of Karnataka High Court on April 19, 1988 in Writ Petition No. 6257 of 1981. The appellants prayed for a Writ in the nature of certiorari for directing the respondents to withdraw the letter dated July 3, 1980 (Annexure-G to the Writ Petition) and Notification dated June 30, 1980 and for appropriate writs and directions commanding the respondents to refund a sum of Rs. 60,28,175.08 collected by the respondents illegally. There was also a prayer for appropriate writs and directions on the respondents to withdraw the supplementary electricity bills for the months of November and December, 1980 and also the bills of January, 1981 and February, 1981 respectively (being Annexures CC, Y, X and GG) and for a direction to refund a sum of Rupees 18,40,800.58 collected by the respondents on account of the electricity bills. There was also a prayer for appropriate directions restraining the respondents from collecting energy charges in any manner other than on the basis of supply agreement and also restraining them from disconnecting the supply of electricity to the factory of the appellant No. 1, Indian Aluminium Company Limited at Belgaum. The appellants also prayed for directing the respondent No. 1, the Karnataka Electricity Board to exercise its powers under Section 49(3) of the Electricity (Supply) Act by either framing regulations in the tariff or by entering into an agreement providing for appropriate protective claims.

2. The essential facts concerning the writ volved in the instant Civil Appeal may be stated as follows:

The Indian Aluminium Company Limited registered under the Companies Act and one shareholder, namely, Shri K. Ghosh, were the Writ Petitioners and the respondent No. 1 is the Karnataka Electricity Board, a Body Corporate constituted under the Electricity (Supply) Act, 1948 and respondents Nos. 2, 3 and 4 are respectively the Executive Engineer (Electrical), O and M Division, Karnataka, the Chief Engineer (General) and the Accounts Officer, O and M Division, all of the Karnataka Electricity Board. Respondent No. 5 is the State of Karnataka through the Secretary, Department of Public Works Department and the respondent No. 6 is Union of India through the Secretary, Ministry of Energy, Government of India. The case of the appellants was inter alia that in 1966 the Government of Karnataka had undertaken the Sharvathy Valley Hydro Electric Proiect in the State of Karnataka. It had planned for constructing a hydro- electric generating system to generate a large quantity of electric power. The State was anticipating the generation of large surplus power. The aluminium industry particularly the smelter plant requires a large quantity of

power for manufacturing operation. The Karnataka State Electricity Board), (hereinafter referred to as Board) and the State of Karnataka (hereinafter referred to as State) had invited the Indian Aluminium Company Limited (hereinafter referred to as the Company) to establish its aluminium smelter plant within the State of Karnataka by assuring that uninterrupted supply of electricity would be given to the smelter plant. Accordingly the Company established a factory with its smelter plant at Belgaum.

3. There was a tripartite agreement entered into between the Company, the Board and the State on March 26, 1966. Later on, a fresh tripartite agreement was entered into between the parties in modification of the aforesaid tripartite agreement and the latter agreement was entered into on August 7,1976. In the said tripartite agreements several clauses were incorporated to ensure uninterrupted supply of power and there were also provisions for supply of power at concessional rates.

4. The State promulgated the Electricity Supply Karnataka (Amendment) Ordinance, 1980 purporting to amend Section 49 of the Electricity (Supply) Act, 1948. Such Ordinance was replaced by the Karnataka Act 33 of 1981. Before the promulgation of the Ordinance which was replaced by the said Act, the Board increased the power rate in July, 1980 far beyond the rate prescribed in the agreement. After promulgation of the Ordinance since replaced by the Act on February 1, 1981, the Board further increased the tariff rates.

5. The Aluminium Control Order was issued by the Central Government in 1970 to control the price of aluminium ingots, wire bars, billets etc. On July 15, 1975, the Central Government notified the aluminium policy. It as indicated in the said policy that the proposed new rate for aluminium should remain in force for five years and such rates should be periodically revised and revision, if any, snould be made only after consultation with the Central Government which was controlling the price of aluminium. In July, 1975 the rate of tariff was 7 paise per unit. The second tripartite agreement in supersession of the earlier one was entered on August 7, 1976 between the Writ Petitioners and the respondent No. 4 and such agreement inter alia provided that whenever the Board wants to increase its power rates, it must give at least six months notice to the Company to approach the Central Government so that corresponding increase in retention price of aluminium was effected to absorb the increased power rate. It was however provided that if the Central Government would not increase the price within the period of six months, the increased tariff rates would become effective. On January 22, 1980, the Board issued a letter to the Company calling upon the Company to contact the Executive Engineer for executing a supplementary agreement relating to certain changes in the tariff rate proposed in the letter. The Company by its letter dated February 25,1980 requested the Government of Karnataka for arranging a meeting for discussion of the situation arising out of the proposed change in the tariff rate. It is contended that no positive result came out of the discussion held between the parties. On July 15, 1980 the Government of India issued a notification inter alia refixing the retention price. On July 8, 1980, the Company received letter dated July 3,1980 from the Board indicating that additional surcharge of 2 paise per unit had been enforced. On August 5, 1980 the Company, by way of abundant caution, had Comapplied to the Central Government for increasing the retention price. The request made by the Company not to increase the tariff rate for the supply of power to its smelter plant, however, was not acceded to by the Board. The power rate was increased to 19.59 paise per unit in 1980. The Board had also imposed surcharge of 10 paise per unit on June 30, 1980, and such surcharge was made effective from June 1,1980. The Company contended that the Board had not given six months' notice for the surcharge and in the Writ Petition such change of surcharge effective from June 1, 1980 had also been challenged and the legality and validity of imposition of surcharge for the period

between July 1,1980 to November 1,1980 before the promulgation of the said Ordinance, were challenged in the Writ Petition. On November 21,1980, the State of Karnataka promulgated Electricity Supply (Karnataka Amendment) Ordinance for amending Section 49 of the Electricity (Supply) Act which as aforesaid was replaced by Act 33 of 1981. The effect of such amendment of Section 49 of the Electricity (Supply) Act is that it has empowered the Board to increase tariff rates notwithstanding any agreement with the consumers. On February 2, 1981, the Board increased the tariff rate to 25.93 per unit. Being aggrieved by increase of tariff rates and consequential demands for payment of bills on the basis of increased tariff in complete disregard of the said agreement of 1976, the Company and one of its shareholders moved the said Writ Petition No. 6257 of 1981 for the reliefs indicated hereinbefore.

6. It may be indicated here that existing rate of electricity was Rs. 22.5 per unit and Rs. 22/ - per KVA on 27-5-1981. The Board had thereafter increased the rate periodically from time to time as follows:

20. 8.81 Rs. 30.18

1.11.83 Rs. 38.30

10.11.83 Rs. 41.30

1. 1.84 Rs. 41.38

27. 9.85 Rs. 58.01

1. 9.86 Rs. 68.01

The Company contended that the increased tariff was not enforceable against the company in view of the agreement between the parties.However, without prejudice to the rights and contentions, cheques were sent to cover the bill. The Writ Petitioners contended inter alia that the agreement dated August 1, 1976 between the Company and the Board and the State Government was binding on the parties and the tariff for supply of electricity has to be fixed only on the basis of the terms of the said agreement. Consequently, excess amount paid by the Company under protest should be refunded. The Writ Petitioners further contended that in the first agreement dated March 26, 1966, the then Mysore State Electricity Board had agreed to supply electric power to the smelter plant of the Company located at Belgaum. Elaborate provisions were made to cover several situations which were likely to arise in the course of supply of power and utilisation of the same by the Company. The supply of power under the said agreement commenced from October 22, 1969. The said agreement was replaced by the agreement dated August 7, 1976 (Annexure-B to the Writ Petition). Such agreement of 1976 was made in view of the industrial policy of the Government of India and the guidelines stated by the Government of India in the matter of electricity tariff to be applied to the aluminium plants.

7. The Writ Petitioners contended that the smelter plant of the Company is fully dependent on power and for every tonne of aluminium produced, about 19000 units of electric energy are consumed by the said Smelter plant. It is the specific case of the Writ Petitioners-appellants that production in the smelter vlant depends mainly on the supply of uninterrupted electrical power and unlike in other industries where electricity is used as a motive power, in the smelter plant of the Company the electricity is not only a motive power but also an important raw material. Uninterrupted supply of power at a very high degree is essentially necessary for breaking the

chemical bond for aluminium oxygen in the compound of aluminium oxide. The process of manufacture of primary alumina is done at two stages - first, alumina i.e. pure oxide of aluminium is extracted from its ore, bauxite by a chemical process. Such alumina is further processed in the smelter plant. In this smelter plant, the alumina is treated with the help of electrolytic cells. In the smelter plant at Belgaum, there are three lines with 492 installed electrolytic cells. Alumina is charged into the molten cryolite in which it gets dissolved and direct electric current is passed through it continuously. By the passage of electric current the alumina gets split into aluminium and oxygen. The cryolite is kept at a temperature of about 970 degree C. The melting point of aluminium is less than this temperature. The aluminium formed bv the splitting up of the alumina is molten at this -temperature and then it settles down at the bottom of the cells from which it is periodically siphoned out in the molten form for casting into different forms like ingots, slabs, etc. It is contended that if the electric Supply is curtailed or interrupted, the temperature of the cryolite bath will come down and if the interruption period is more than 2 hours the bath will cool down and solidify. Once the cryolite bath gets solidified, it will not be able to pass electric current through the cell and even if the power supply is restored, after solidification of cryolite bath, the cells cannot be restarted. Once the solidification of cryolite bath takes place, the cells can be restarted only by a complicated procedure. The entire cryolite bath will have to be dug out, powdered and charged back. The same has taken to be melted again using abnormally high amount of electric power, and such process entails a very high cost. The cathode carbon which will cost more than Rs. 1 lakh per cell will also get severely damaged with the thermal shock of cooling and heating. It is contended that apart from the time factor and the large amount of energy required to be consumed, in the process of restarting, the cost of restarting each cell is over Rs. 60,000/ -. Besides, the financial loss, there will be production loss and it may take about two months before normalcy of operations can be resumed after the restart operations. It is also contended that any change or fluctuations such as power cuts or interruptions in supply of power has severe adverse costs implication for the production of aluminium quite apart from production loss of aluminium metal itself.

8. It is also a specific case of the Writ retitioners-appellants that manufacturing process in the smelter plant has special charateristics and such manufacturing process is distincitively different in metallurgical-cum-electrolytic process and the same cannot be compared with most of the other industries including power intensive industries where curtailments or interruptions of supply of power only affect the production during the interrupted period and not after the full Power is resumed. Moreover, unlike in other industries, the power is itself a very important raw material for production of aluminium in the smelter plant. Accordingly, the smelter plant is not only a high power sensitive plant but it is absolutely dependent on power being its essential and primary raw material. It contended that all over the world, aluminum has been given a special status with regard to tne power and'firm power'concept is the key note in this industry. Since aluminium industry requires a large amount of power not comparable with any other industry, cost of power is the most important element in the cost of production of aluminium. At the relevant time when the Writ Petition was presented the cost of power formed about 38% of the total cost of production and it is very strongly contended that in no other injustry such large amount of power is required and consequently power cost element in the cost of production in other industries is substantially lower. In the aluminium policy notified by the Government of India in 1975, it was indicated that the production of aluminium metal had declined considerably since 1971-72 in spite of the fact that installed capacity had been going up. It was also indicated that such decline was primarily due to the restrictions on power supply to the aluminium producers. It was further indicated that the rates at which Electricity Board had contracted in the past for supply of power the aluminium industry, proving to be unremunerative for the Boards has also been responsible for this situation, and the

Electricity Boards were the largest users of aluminium. Government of India, therefore, considered it imperative that power tariffs need to be revised in a way which would be fair to the Electricity Boards but which would not result in rising of the price of aluminium.

9. The Writ Petitioners have contended that under clause 5 of the agreement of 1976 the payment for supply is to be made at the rate at which power is being drawn and no payment Is to be made with reference to the units of electrical energy consumed in any particular period and the method will operate reasonably. Provisions were made for a formula to find out arrange from the demands for all the half hours during the month in which the cut or interruption took place (sic). By such provision the consumer, namely, the Company was given the benefit of a reduced consumption of the demand during the period where there may have been a power cut or interruption in supply.

10. Clause 10 of the agreement provides for relieving the Company from the obligation of taking and paying for supply of power if the Company was prevented from taking electric power. It has been contended that if reference is made to various provisions in the agreement of 1976 it will be evident that the State Government and the Board having fully appreciated the absolute necessity of uninterrupted supply of power and the impact of the tariff rate for the supply of power to the smelter plant agreed to various clauses ensuring smooth and uninterrupted supply of electricity at the rates agreed upon by the parties. In view of such facts the Board could not revise the tariff according to its fancies and the Board being squarely bound by the agreement could not repudiate the same under the cover of the amendment of Section 49 of the Electricity (Supply) Act. It was contended by the Writ Petitioners before the High Court that since this smelter plant was installed at Belgaum on the invitation by the State of Karnataka and Electricity Board by clearly assuring the Company that uninterrupted supply of electricity would be made at a reasonable rate and on the basis of the understanding between the parties as embodied in the first and the second agreement, the principle of promissory estoppel was squarely attracted in the facts of the case and any demand of tariff for electric supply to the smelter plant of the Company at Belgaum contrary to the existing agreement of 1976 is wholly illegal and inoperative. It was also contended that in the aforesaid circumstances amendment of Section 49 of the Electricity (Supply) Act, applicable to the Board and its consumers, was not applicable to the Cornpany and the Company despite such amendmerit was entitled to enjoy the privileges emanating from the agreement of 1976. The validity of the amending Act was challenged by the Writ Petitioners before the High Court.

11. It was contended by the Writ Petitioners before the High Court that the amending Act does not affect the existing agreement of 1976 inter alia on the following grounds:

(a) The agreement is a tripartite agreement hot contemplated by the amending Act but the agreement.envisaged under the amending Act is a bipartite agreement between the consumer and the Board.

(b) The tripartite agreement was the result of aluminium policy of the Government of India and such governmental policy cannot be negatived by the amending Act.

(c) The Board is estopped from claiming any higher tariff not contemplated by the agreement.

(d) The amending Act is ultra vires inas much as;

(i) It treats, all consumers at par irrespective of the special features of each class of

consumers and therefore arbitrary offending Article 14 of the Constitution.

(ii) The increase of tariff by virtue of the amending Act directly hits at the price of aluminium fixed under the,Aluminium Control Order issued by the Central Government and hence illegal and ultra vires.

(iii) Aluminium industry is a scheduled industry under the control of the Government of India as declared by Industries Development and Regulation Act and hence falls under Entry 52 of List I of Vllth Schedule of the Constitution. Therefore the policy of the Government of India is direction issued to the State Governments which they are bound to obey. Consequently the agreement of 1976 is an agreement protected by a law comng under Entry 52 of List I, terms of which cannot be varied by a law enacted by a State by virtue of the power conferred by the Concurrent List (List III of VIlth Schedule). The amending Act should be construed in such a way as not to impinge on or detract from the law, statutory order or constitutional direction of the Central Government, otherwise the said amending Act will lack legislative competence.

The respondents opposed the contentions of the Writ Petitioners and the contentions of the respondents as advanced before the High Court may broadly be indicated as follows:

(i) The remedy of writ petition to enforce the contractual rights under the agreement was not available.

(ii) State did not invite the petitioner to establish the factory at Belgaum; it only agreed to make available the necessary facilities.

(iii) Aluminium factory does not occupy any unique position and does not constitute a class of its own from the point of view of power requirement and/ or supply. Even if it is a class by itself, that would not confer any legal right on the petitioner to be accorded any preferential treatment among industries or consumers of electricity.

(iv) It is not correct to contend that the agreement entered into was by exercise of the statutory powers under Section 49(3) of the Act alone.

(v) The clauses in the agreement were included after mutual discussion and consensus of the concerned parties.

(vi) The clause relating to the giving of prior notice before revision of tariff is neither a condition precedent, nor constituted a fundamental term of the agreement. Similarly such a clause does not amount to a solemn assurance or representation on the part of the State Government. However, such a term in the agreement will not bind the Board to revise the tariff in exercise of its statutory powers.

(vii) Surcharge of 2 paise per unit was levied and collected by the Board, as applied to others.

(viii) In view of the Ordinance with effect from 22-11-1980 the tariff schedule -H.T. IA (Electrical Power Tariff of 1978, with all other charges like surcharge and additional surcharge etc.) is applicable and the petitioner is governed by that H.T. I A

Tariff Schedule, in supersession of the terms set out in the agreement. The Ordinance nullifies all the rates and the mode of billing envisaged in the supply agreement.

(ix) The plea of promissory estoppel put forward by the petitioner is untenable, since the amending Act is a legislative measure.

(x) The State Legislature has plenary powers to legislate on all matters pertaining to electricity and the powers of the State Legislature in this behalf, cannot be curtailed by any agreement entered into by the State with the petitioriers or any other person.

To appreciate the respective contentions of the parties on the question of legislative competence for the amending Act, the High Court referred the Entries 52 and 54 of List I of Vllth Schedule of the Constitution, Entries 26 and 27 of List II; Entries 33, 34 and 38 of List III of the Vllth Schedule. The High Court also referred to and relied on the discussion of this Court in the case of Tika Ramji v. State of U. P., AIR 1956 SC 676, where the concept of 'industry' as topic of legislation was explained. The legislative competence of the State of U.P. to regulate the supply and purchase of sugarcane by the impugned State Act of 1953 was raised by contending that 'sugar' being controlled industry under the Industries Development and Regulation Act, the topic of impugned legislation pertaining to sugarcane fall within the purview of Central Control under Entry 52 of List 1 and hence the subject is taken away from the field of legislation by the State. It was also contended that Sugar Control Order, 1955 promulgated by Central Government under the Essential Commodities Act, 1955 empowered the Central Government to regulate the movement of sugarcane and to fix its price. The observation of this Court at page 695 of the repot was copiously quoted by the High Court for holding that there was no question of lack of legislative competence for enacting the amending Act by the Karnataka Legislature.

12. The High Court referred to the observations of this Court to the following effect :-

"It is clear, therefore, that all the Acts and the notifications issued there under by the Centre in regard to sugar and sugarcane were enacted in exercise of the concurrent jurisdiction. The exercise of such concurrent jurisdiction would not deprive the Provincial Legislature of similar powers which they had under the Provincial Legislative List and there would, therefore, be no question of legislative incompetence qua the Provincial Legislatures in regard to similar pieces of legislation enacted by The latter.

The Provincial Legislature as well as the Central Legislature would be competent to enact such pieces of legislation and no question of legislative competence would arise. It also follows as a necessary corollary that, even though sugar industry was a controlled industry, none of these Acts enacted by the Centre was in exercise of its jurisdiction under Entry 52 of List I.

Industry in the wide sense of the term would be capable of comprising three different aspects (1) raw materials which are an integral part of the industrial rocess, (2) the process of manufacture or production, and (3) the distribution of the products of the industry. The raw materials would be goods which would be comprised in Entry 27 of List II. The process of manufacture or production would be comprised in Entry 24 of List II except where the industry was a controlled industry when it would fall within Entry 52 of List I and the products of the industry would also be comprised in

> Entry 27 of List II except where they were the products of the controlled industries when they would fall within Entry 33 of List III.
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> This being the position it cannot be said that the legislation which was enact ed by the Centre in regard to sugar and sugarcane could fall within Entry 52 of List I. Before sugar industry became a controlled industry, both sugar and sugarcane fell within Entry 27 of List II but, after a declaration was made by Parliament in 1951 by Act 65 of 1951 sugar industry became a controlled industry and the product of that industry viz. sugar was comprised in Entry 27 of List II. Even so, the Centre as well as the Provincial Legislatures had concurrent jurisdiction in regard to the same.
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> In no event could the legislation in regard to sugar and sugarcane be thus included within Entry 52 of List I. The pith and substance argument also cannot be imported here for the simple reason that, when both the Centre as well as the State Legislatures were operating in the concurrent field, there was no question of any trespass upon the exclusive jurisdiction vested in the Centre under Entry 52 of List I, the only question which survived being whether, putting both the pieces of legislation enacted by the Centre and the State Legislature together, there was any repugnancy, a contention which will be dealt with hereafter."

The High Court also noted that amending Act was placed before the President and consent was obtained. Hence by virtue of Article 254(2) of the Constitution the State Legislation will prevail even if there is any repugnancy. The High Court also held that the Writ Petitioners specifically pleaded that in the smelter plant electricity was a raw material for aluminium or 'relatable article' to the industry. Hence in the absence of any notification under Section 18G of the Industries Development and Regulation Act there was no question of any repugnancy on the score of tariff of electricity fixed by the amending Act. The High Court also relied on the observation of this Court in Tika Ramji's case (AIR 1956 SC 676) at pages 701 and 703 of the report to the following effect:-

> "Sugar industry being one of the scheduled industries, it was contended for the petitioners that sugarcane was an article relatable to the sugar industry and was, therefore, within the scope of S. 18G and the Central Government was thus authorised by notified order to provide for regulating the supply and distribution thereof and trade and commerce therein. "
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> Even assuming that sugarcane was an article or class of articles relatable to the sugar industry within the meaning of S. 18G of Act of 1951, it is to be noted that no order was issued by the Central Government in exercise of the powers vested in it under that section and no question of repugnancy could ever arise because, as has been noted above, repugnancy must exist in fact and not depend merely on a possibility. The possibility of an order under S. 18G being issued bv the Central Government would not be enough. The existence of such an order would be the essential prerequisite before any repugnancy could ever arise."

It may be noted here that for the purpose of finding that electricity was a raw material for the smelter plant, the High Court referred to relevant pleadings of the Writ Petitioners and also referred to the decision of this Court concerning the petitioner company itself in Indian Aluminium Co. v. Kerala State Electricity Board, AIR 1975 SC 1967, wherein this Court referring to the process of manufacture of aluminium from alumina has held that electricity is a raw material for such

manufacturing protss. Similar view was also expressed by this Court in the decision of Delhi Cloth and General Mills Co. Ltd. v. Rajasthan State Electricity Board, AIR 1986 SC 1126, while considering electro chemical and PVC and other allied industrial products in a poweroriented industry.

13. The High Court also negatived the contention of the Writ Petitioners that when Parliament has evinced interest in Aluminium industry, the entire field of legislation touching all aspects of the said industries vests in the Parliament and State Legislature has lost its competence as the field of legislation will be only under Entry 52 of List I.

14. The High Court has held that mere declaration by Parliament that a particular industry is a controlled industry under the Industries Development and Regulation Act is by itself not sufficient to exclude the competence of State Legislature to enact a law over a subject which otherwise falls within the field of legislation. The High Court referred to the decision of this Court in the case of State of Uttar Pradesh v. Synthetics and Chemical limited, AIR 1980 SC 614. It was contended at the denatured spirit or industrial alcohol comes within the purview of the control of the Central Government and hence Central Government alone was empowered to provide for regulating the distribution, transport, disposal, acquisition etc. Referring to the order of the Central Government issued as Ethyl Alcohol (Price Control) Order, 1971, this -court held to the following effect (at p. 622) para 25 of AIR):-

> "..... We are unable to read the Ethyl Alcohol (Price Control) Orders as explicitly or impliedly taking away the power of the State to regulate the distribution of intoxicating liquor by collecting a levy for parting away with its exclusive rights. If the powers of Parliament and the State Legislature were confined to Entry 52 in List I and the Entry 24 in List II, Parliament would have had exclusive power to legislate in respect of industries notified by Parliament. The power of the State under Entry 24, List II is subject to the revisions of Entry 52 in List I. But we have to take into account Entry 26 in List II and Entry 33 in List III for determining the scope of legislative power of the Parliament and the State. Entry 26 in List II is as follows:
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> 'Trade and commerce within the State subject to the provisions of Entry 33 of List ,III

15. In the said case, this Court relied on the decision in Tika Ramji's case (AIR 1956 SC 676). The High Court also referred to the decision of this Court in the case of Hoechst Pharmaceuticals Ltd. v. State of Bihar, AIR 1983 SC 1019. It was contended in the said case that levy of surcharge of sale tax imposed by the State Legislature was without legislative competence as it impinged or affected the price of drugs fixed under Drugs (Price Control) Order, 1979 issued by the Central Government under the Essential Commodities Act. This Court has held in the said decision (paras 41 and 42 of AIR):

> "In the case of a seeming conflict between the Entries in the two lists, the Entries should be read together without giving a narrow and restricted sense to either of them. Secondly, an attempt should be made to see whether the two Entries cannot be reconciled so as to avoid a conflict of jurisdiction. It should be considered whether a fair reconciliation can be achieved by giving to the language of the Union Legislative List a meaning which, if less wide than it might in another context bear, is yet one that can properly be given to it and equally giving to the language of the State

> Legislative List a meaning which it can properly bear. The non obstante clause in Article 246(1) must operate only if such reconcilation should prove impossible. Thirdly, no question of conflict between the two lists will arise if the impugned legislation, by the application of the doctrine of 'pith and substance' appears to fall exclusively under one list, and the encroachment upon another list is only incidental. Union and State Legislatures have concurrent power with respect to subjects enumerated in List Ill, subject only to the provision contained in Cl. (2) of Article 254 i.e., provided thhe provisions of the State Act do not conflict with those of any Central Act on the subject. However, in case of repugnancy between a State Act and a Union Law on a subject enumerated in Listlll, the State law must yield to the Central law unless it has been reserved for the assent of the President and has received his assent under Article 254(2). ,The question of repugnancy arises onl when both the Legislatures are competent to legislate in the same field i.e., when both the Union and the State laws relate to a subject specified in List III and occupy the same field."

16. The High Court also referred to the decision of a Constitution Bench of this Court in Ishwari Khetan Sugar Mills Ltd. v. State of U.P., AIR 1980 SC 1955. It has been held by this Court in the said decision that the question arose for decision in the said case about the validity of law acquiring undertakings involved in manufacturing sugar by the State Legislature. The contention was sugar as a topic of legislation was under Entry 52 of List I by virtue of it being declared as an industry control of which vested in the Union as declared by Industries Development and Regulation Act. The majority view of this Court in the said case at page 1961 of the report was quoted by the High Court to the following effect:

> "The legislation enacted pursuant to the power to legislate acquired by declaration must be for assuming control over the industry and the declaration has to be made by law enacted, of which declaration would an integral part, legislation for assuming control containing the declartion will spell out the limit of control so assumed by the declaration. Therefore, the degree and extent of control that would be acquired by Parliament pursuant to the declaration would necessarily depend upon the legislation enacted spelling out the degree of control assumed. A mere declaration unaccompanied by law is incompatible with Entry 52, List I. A declaration for assuming control of specified industries coupled with law assuming control is a prerequisite for taking legislative action under Entry 52, List I. The declaration and the legislation pursuant to declaration to that extent denude the power of State Legislature to legislate under Entry 24, List II. Therefore, the erosion of the power of the State Legislature to legislate in respect of declared industry would not occur merely by declaration but by the enactment consequent on the declaration prescribing the extent and scope of control."

17. The High Court also referred to few more decisions of this Court for the purpose of appreciating the contention whether the supply of electricity and tariff rates were controlled by Entry 52 of List I, thereby taking away legislative competence of the State Legislature and whether or not the Notification issued by the Central Government fixing the aluminium policy and also indicating the tariff affecting the aluminium industry became repugnant to the impugned provisions under the amending Act of State Legislature. The High Court by giving a long reasoning has come to the finding that the impugned legislation was quite valid and did not suffer either from the want of legislative competence or on the score of repugnancy between the Central and the State legislation.

18. The High Court also negatived the contention of the Writ Petitioners that aluminium industry is special class of its own and thus cannot be categorised with other industries. It was indicated by the High Court that if a microscopic analysis is to be done almost every industry will have its own special features. Such an analysis is outside the scope of Article 14. Classification is based on broad principles, to be connected reasonably with the object to be achieved. It has been held by the High Court that the Scheme of Section 49 of the Electricity Supply Act indicates that uniformity will be the basis of tariff and since all power intensive industries have been treated alike in view of the amended provision of Section 49 in supersession of agreements between the consumers and the Board, the High Court held that no discriminatory treatment was meted out to the Writ Petitioners. The High Court has also held that the contention that Kudremukh Iron and Steel Industries have been treated favourably resulting in a discriminatory treatment to the petitioner-Company should not be accepted by indicating the special consideration relating to Kudremukh Industry and also noting the submission made by the learned.,kdvocate General that enforceability of the agreement with Kudremukh Iron and Steel Industry was also under active consideration in the light of the impugned amendments.It has been held by the High Court that since the Company was not comparable with the Kudremukh Iron and Steel Industry the contention of discrimination was not to be accepted. The High Court also rejected the contention that price hike for the power supply imposes an unreasonable restriction on the right of the petitioner-Company to carry on its industry, thereby infringing Article 19(1)(g) of the Constitution. It has been indicated by the High Court that the price hike will have its impact on the cost of production but such increase in the cost of production cannot be avoided. It has been held that the price of aluminium control order itself provides for restructure of aluminium for which thepetitioner-Company has to approach the Central Government.

19. Coming to the question of promissory estoppel raised by the petitioners, the High Court referred to paragraphs 91 and 92 of the Writ Petition where the pleading of promissory estoppel was made by the Writ Petitioners. The High Court has accepted the contention of the respondents as advanced by the learned Advocate-General appearing for the respondents; that the doctrine of promissory estoppel is not attracted in the sphere of statutory power and since the impugned action was a consequence of the amended provision of Section 49, the question of promissory estoppel did not arise. The reference was made to the decision of this Court,in Excise Commissioner, U.P. v. Ram Kumar, AIR 1976 SC 2237, wherein it was observed by this Court to the following effect (para 19):-

> "It is now well settled by a catena of , decisions that there can be no question of estoppel against the Government in the exercise of its legislative, sovereign or executive powers."

20. Reference was also made to another decision of this Court in Union of India v. Godfrey Phillips India Ltd., AIR 1986 SC 806. The observation of this Court appearing at para 14 was referred to by the High Court to the.following effect:

> "... It is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires, if it can be shown by the Government or public authority that having regard to the facts asthey have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the

> Court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it."

21. The High Court has held that Seetion49(5) of the Act as introduced by the impugned amendment by the very language of it overrides any other agreement or law. It has been held that question of categorisation under Section 49(5) is to compel the consumer to pay for the electricity consumed according to the uniform tariff applicable to the category to which it belongs. The High Court has held the petitioner's contention should not be accepted that the Board is bound to treat the petitioner as a special category for which the tariff applicable was to be regulated by the agreed formula. The High Court has also held that factually also it is not possible to conclude on the existing material that a special promise was held out to the petitioner Company that a particular formula will be applied in the case of the consumption of electricity by the Writ Petitioners. The High Court has come to the finding that it will not be possible to hold that there was a promise which was held out for the benefit of the petitioners but the invitation to start the industries in the State, if at all, was the motive force for the petitioner and other industries to establish various factories in the State to avail the advantages of the prevailing conditions in the State. The contentions of the Writ Petitioners that the bills containing the revised.tariff even before the promulgation of ordinance amending Section 49 was illegal and unjustified, had not been gone into by the High Court in view of the specific statement by the learned Counsel for the Board before the High Court that the Writ Petitioners should approach the Board with particulars in support of their contentions and the Board was prepared to revise the bills if there had been any error or omission on the part of the Board. Save as aforesaid, all other reliefs claimed by the petitioners in the Writ Petition were disallowed by the High Court and the Writ Petition was accordingly dismissed.

22. Mr. Parasaran, the learned Senior Counsel appearing for the appellants in his usual fairness has indicated that detailed arguments had been advanced before the High Court of Karnataka at the hearing of the writ proceeding on the question of vires of the amending Act. on the score of legislative competence and also on the ground of arbitrary action in revising the tariffs without justification and unjust classification of the smelter plant in the category of other power intensive industries included in the category of H.T.- 1 A without appreciating the peculiar features of the productive mechanism in a smelter plant thereby offending Article 14 of the Constitution. He has submitted that as he intends to advance the same contentions raised before the High Court on the question of vires for appropriate consideration by this Court he does not intend to elaborate the same once more. It is precisely for the aforesaid reason, we have indicated in detail the reasonings of the High Court in dispelling the contentions of the Writ Petitioners that the amending Act is ultra vires.

23. We have given our anxious consideration to the contentions raised for challenging the vires of the amending Act but we are unable to accept the contentions that the Act suffers from any infirmity affecting its vires either on the score of legislative competence or for offending Articles 19(1)(g) or Article 14 of the Constitution. It appears that the High Court has given cogent reasons for upholding the vires of the amending Act and for dispelling the contentions raised by the Writ Petitioners and we endorse the view taken by the High Court. We may only indicate here that in deciding the question of legislative competence one must bear in mind that the Constitution is not to be construed with a narrow or pedantic approach and it is not to be construed as a mere law but as a machinery

by which laws are made. Such interpretation should be made broadly and liberally. The entries in the Constitution only demarcate the legislative fields of the respective legislature and do not confer legislative power as such.

24. In examining the allegations of hostile discriminatory treatment, what is looked into is not its phraseology but the real effect provisions. Decisions of this Court have permitted the legislature to exercise an extremely wide discretion in classifying items tor collection of revenue so long as it refrains from clear and hostile discrimination against particular persons or classes. It however should be borne in mind that with all.these latitudes certain irreducible consideration ot equality shall govern the differential treatment even in fiscal legislation.

25. The test could only be of palpable arbitrariness in the context of felt needs of the time and social exigencies informed by experience. There cannot be any precise or set formulae or doctrinaire tests or precise scientific principles of exclusion or inclusion.

26. Mr. Parasaran in his fairness has submitted that under the Electricity (Supply) Act the Board is empowered to revise tariffs but he has contended that such revision cannot be made arbitrarily and capriciously. He has submitted that since the Board is the licencee for supply of electrical energy to various consumers in a particular area, the Board, as a matter of fact enjoys the privilege of monopoly to some extent. It is therefore necessary to consider whether in the exercise of revision of tariffs, the Board has. actel reasonably and fairly and the action is well informed by reasons. He has also contended that the smelter plant has some special and p eculiar features in its manufacturing mechanism of aluminium from alumina. He has drawn our attention to the pleadings in the Writ Petition where such mechanism and the key role of electricity have been elaborately high-lighted. Mr. Parasaran has also drawn our attention to the accepted position all over the world about the very important and key role of electricity in the electrolytic process in manufacture of aluminium in a smelter plant and its impact as a basic raw material with a very high implication in the cost of manufacture. In the aforesaid context, Mr. Parasaran has contended that it is only unjust and improper to classify the smelter plant in the general group of power intensive industries. To classify the smelter plant only as a power intensive industry like various other power intensive industries, will not be proper classification. The very distinctive and unique features of smelter plant are well known to the State and the Board. He has drawn the attention of the Court to various clauses of the agreement of 1976 for the purpose of showing that the State and the Board were fully aware of the role of electricity in the manufacturing mechanism in a smelter plant and the extreme need of uninterrupted supply of energy to the plant of the petitionercompany at Belgaum. Mr. Parasaran has submitted that as the State and the Board were fully aware of the implication of tariff of electricity in the smelter plant, special provisions were made in the agreement for billing and rates to be charged in the event of interruption of supply. Mr. Parasaran has contended that as the agreement was tripartite it could not have been annulled by taking recourse to the amended provision of Section 49 of the Electricity (Supply) Act, the Board has unjustly repudiated the agreement by treating the smelter plant as only a power intensive industry and revising the tariff exhorbitantly and making it applicable to the petitioner-company on the plea that all the power intensive industries including the plant of the petitioner-Company have been placed at par and have been subjected to same tariff for the supply of electricity.

27. Mr. Parasaran has contended that even if the amending Act is intra vires thereby empowering the Board to annul all existing agreements with the consumers and requiring the Board to charge uniform tariff to the consumers categorised in a particular group or class, there was no justification to treat the smelter plant in the same category as in the case of other power intensive industries.

28. Mr. Parasaran has referred to specific pleadings in the Writ Petition wherein a case of promissory estoppel binding the State and Board in the matter of adhering to the terms of agreement of 1976 have been made out by the petitioner-Company. He has submitted that the foundation of promissory estoppel lies in the legitimate expectation a person may have of being treated in a certain way by administrative authority. In this connection, Mr. Patasaran has referred to paragraph 81 at page 151 of Volume 1(1) of Halsbury's Laws of England, Fourth Edition (Re-issue) dealing with "Legitimate Expectation". It has been indicated in the treatise that a person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority including an implied representation or from consistent past practice. The existence of a legitimate expectation may have a number of different consequences and one of such consequences is that the authority ought not to act so as to defeat the expectation without some over riding reason of public policy to justify its doing so. It may also mean that if the authority proposes to defeat a person's legitimate expectation it must afford him an opportunity to make representations in the matter. In this connection, Mr. Parasaran has referred to the decision of House of Lords in Council of Civil Service Union v. Minister for the Civil Service, (1984) 3 All ER 935. It has been held in the said decision that an aggrieved person was entitled to invoke judicial review if he could show that a decision of public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on these reasons. Mr. Parasaran has also referred to a decision of Court of appeal in R. v. Secretary of State for Home Department, (1985) 1 All ER 40 wherein the right of being heard by a person having a reasonable expectation if likely to be affected by a decision to be taken by an authority has been indicated. Mr. Parasaran also relied on a decision of Queen's Bench Division in R. v. Secretary of State for Home Department ex parte Ruddock, (1987) 2 All ER 518. It has been indicated in the said decision that the doctrine of legitimate expectation imposed in essence a duty to act fairly and was not restricted to cases that party having expectation was to be consulted or to be given the opportunity to make representations before a decision was made. Where ex hypothesi there was no right to be heard, it could be more important to fair dealing that a promise or undertaking given by a Minister as to how he would proceed should be kept. Mr. Parasaran has also submitted that the Courts in India including this Court have also taken note of the case of promissory estoppel and obligation on the part of the promissor to honour the commitment or the representation on the basis of which the other party has altered its position financially, Mr. Parasaran has referred to some of the decision of this Court including the decision in M/s. Motilal Padampat Sugar Mills Company (Private) Limited v. State of Uttar Pradesh, (1979) 2 SCR 641 : (AIR 1979 SC 621) and the decision in Delhi Cloth and General Mills Ltd. v. Union of India, (1988) 1 SCR 383 : (AIR 1987 SC 2414). In the latter decision, it has been indicated by the Supreme Court that if one of the representations induced a party to alter his position, a case of promissory estoppel is attracted. He has contended that before annulling the agreement and making unjust demand of high tariff, the Board ought to have given reasonable opportunity to the petitioner-Company to establish that there was no occasion to resile from the obligation under the agreement. Mr. Parasaran has further submitted that if the Court comes to the finding that the action of the Board and the State are unjust and the Board has an obligation to abide by the agreement of 197b in view of the promissory estoppel, there will be no difficulty in issuing appropriate writs for giving the reliefs claimed in the Writ Petition.

29. Mr. Parasaran has submitted that even if it is accepted that in view of amendment of Section 49 of the Electricity (Supply) Act, the Board has required to charge tariff at uniformrate to all the

consumers placed in a particular category, such amendment does not stand in the way of giving special privilege to the petitioner-Company in the matter of tariff for the supply of electricity in view of the fact that the smelter plant cannot be equated with other power intensive industries placed in the category HT 1A and Section49(3) of the Electricity (Supply) Act still empowers ttie Board to fulfil its obligation in terms of the agreement of 1976. Mr. Parasaran, in his fairness, has stated that promissory estoppel cannot operate in violation of the statutory provisions but Section49(3) of the Act empowers the Board to fix tariff in conformity with the promise held out to the petitioner-Company because the petitioner Company was entitled to be treated altogether differently for the reasons indicated hereinbefore. In view of such enabling provision under Section 49(3), Mr. Parasaran has submitted, that the obligation to abide by the agreement consistent with the case of promissory estoppel still survives. He has also submitted that there has been clear non-application of mind by the Board in not considering the manufacturing process in the smelter plant in its proper perspective and because of such non-application of mind an attempt has been made to treat an unequal with equals, Mr. Parasaran has also contended that before purporting to annul the agreement by taking recourse to the amended provisions of Section 49, the Board should have given proper opportunity to the petitioner-Company to substantiate that there had been a clear case of promissory estoppel and such promissory estoppel survived even on the face of the amended provisions. He has, therefore, submitted that the Board should be directed to give a fresh look to the question of abiding by the agreement of 1976 by taking into consideration of the relevant aspects of the manufacturing mechanism in the smelter plant of the petitioner-company in a proper perspective Mr. Parasaran has submitted that unfortunately, the High Court concentrated more on the question of vires and attack of the amending Act or the score of legitimate competence. The High Court has failed to note that a clear case of promissory estoppel was made out by the petitionerCompany and such promissory estoppel was still applicable without offending the statutory provisions, namely, the amended provisions of Section 49 of the Electricity (Supply) Act.

30. Mr. Narasimhamurthy, learned counsel appearing for the respondent-Board has submitted that the amending Act does not suffer from any vice either on the score of legislative competence or on the score of arbitrary or capricious action and/or on account of offending Articles 14 and 19(1)(g) of the Constitution. He has also submitted that the High Court has discussed the contentions raised by the parties at the hearing of the writ petition at length and has not accepted tne contentions that the amending Act was ultra vires on any account. He has submitted that the reasonings of the High Court should be accepted and the contentions on the question of the vires of the Act sought to be reiterated in this Appeal should be discarded by this Court.

31. We have already indicated that decision of the High Court in upholding the vires of the amending Act should be accepted and we have endorsed the reasonings given by the High Court in that regard which we have referred to in some details.

32. Mr. Narasimhamurthy has submitted that there is no conflict with the proposition hat if a strong case of promissory estoppel is made out by a party and such promissory estoppel does not come in conflict with any statutory provision, the party having reasonable expectation flowing from a promise or representation may ask for enforcement of such legitimate expectation founded on representations or assurances on the part of the administrative body in appropriate cases. But . in the instant case, the very foundation of promissory estoppel is absent and as such consideration of the question of promissory estoppel does not arise. In this connection, he has drawn the attention of this Court to the Preamble of the first agreement of 1966. He has submitted that if a reference is made to the preamble of the agreement and other clauses it is quite apparent and evident that the same do not indicate that on the invitation by the Electricity Board or the State Government, the smelter plant of

the petitioner-Company had been established at Belgaum. It is quite evident that on coming to know that the State and the Board were in a position to supply electric energy without any interruption according to the need of the smelter plant the petitioner-Company became interested in establishing its smelter plant at Belgaum and thereafter negotiations were made between the parties and an agreement under Section 49(3) of the Electricity (Supply) Act was entered into. He has contended that later on in view of changed circumstances a new agreement was entered into between the parties in 1976 for the purpose of getting uninterrupted supply of electricity on agreed rate and in a particular manner. Both the said agreements of 1966 and 1976 were the outcome of usual bargaining between the parties on terms and counter terms and it is not a case that the terms were offered unilaterally by the State or the Board to induce the Company to set up its smelter plant in the State of Karnataka and the Company being induced by a representation by the State or the Board that if the Company would set up a smelter plant in the State of Karnataka then in the smelter plant of the Company, concessional rates would be offered for supply of electricity for all times to come and the smelter plant would be treated altoghter in a different manner. He has also submitted that in the first agreement of 1966 there was no provision relating to the revision of rates but in the agreement of 1976, there is a specific provision for revision of the rates of tariff of electricity to be supplied to the smelter plant. Mr. Narasimhamurthy has drawn the attention of the Court to the correspondence between the parties starting from 1964 for the purpose of showing that such correspondence unmistakably point out a normal case of bargaining between the parties for getting uninterrupted support of electricity in the proposed factory of the Company. In this connection, Mr. Narasimhamurthy has also referred to a decision of the High Court of Orissa in the case of Indian Aluminium Company v. Orissa State Electricity Board, AIR 1975 Orissa 100, where the Division Bench of the Orissa High Court has considered when the principle of prornissory estoppel can be invoked. It has been held in the said decision that the State Electricity Board may revise the tariff fixed under the binding contract by relying on Sections 49 and 59 of the Electricity (Supply) Act. It has been held by the Division Bench that simply because the State Government had held out the assurance to the Company to supply hydro-power fixed at low rate, a case of promissory estoppel is not made out. It has been held that if the agreement was the result of negotiations between the parties indicating that the Company was as much desirous of being supplied with electric power as the supplier was anxious and willing to supply the same, there is no case of promissory estoppel. Mr. Narasimhamurthy has submitted that facts and circumstances in the instant case clearly reveal that the State Government was eager to have industries established in the State and for that purpose took steps to supply sufficient electric energy to various industries including the petitioner-Company. The petitioner-Company was also equally anxious to establish its smelter plant in the State of Karnataka in view of the facilities made available in the State, and both the parties thereafter entered into negotiations and on such negotiations terms and conditions were arrived at. The agreement was made in accordance with the Section 49(3) of the Electricity (Supply) Act. It is not the case that there was no occasion to enter into any negotiation for settling the terms but clearly unilateral assurance were given by the State and the Board to give uninterrupted supply of electricity on the specific conditions and on agreed rate promised to the Company and only on the basis of such promises held out to the petitioner-Company, the said smelter plant was established and the agreement is only embodiment of the terms and conditions unilatrally held out by the State and the Board. Mr. Narasimhamurthy has, therefore, contended that the very foundation of promissory estoppel is absent in the case and the High Court was justified in not accepting the case of promissory estoppel.

33. Mr. Narasimhamurthy has submitted that sub-sections (1) and (2) Section 49 of the Electricity (Supply) Act envisage supply of electric energy to different consumers at uniform tariffs. It,

however, empowers the Board to charge a different tariff in appropriate case under Section 49(3) of the Act. by the amending Act, Section 49 of the Electricity (Supply) Act has been amended in its application in the State of Karnataka. Subsection (5), sub-section (6) and sub-section (7) to Section 49 have been inserted after sub-section (4) of Section 49 of the Electricity (Supply) Act. Sub-sections (5) and (6) of Section 49 of the Electricity (Supply) Act as applicable to Karnataka in view of the aforesaid amendment are to the following effect :

> "(5) The party to an agreement or any other arrangement entered into prior to the commencement of the Electricity (Supply) (Karnataka Amendment) Act, 1981 and providing for supply of electricity by the Board shall, notwithstanding anything contained in the instrument of agreement or other arrangement or in any law including this Act, in force at such commencement, pay in respect of electricity so supplied after such commencement, price (by whatever name called) calculated in acccordance with the uniform tariff framed or modified from time to time, under sub-section (1) and applicable to the category to which such party belongs.
>
> (6) The party to any such agreement or arrangement entered into after the commencement of the Electricity (Supply) (Karnataka Amendment) Act,1981, shall, not - withstanding anything contained in this Act, or in such agreement or other arrangement, pay, in respect of electricity supplied by the Board, price (by whatever name called) calculated in accordance with the uniform tariff framed or modified from time to time under sub-section (1) and applicable to the category to which such party belongs."

34. Mr. Narasimhamurthy has contended that the smelter plant of the petitioner-Company had always been categorised by the Board as industries included in HT- 1A. He has drawn the attention of the Court to tariff rates of 1974 and 1978. It appears that for 1978 tariff rates, the plant of the petitioner Company was included in HT-1 A category. Mr. Narasimhamurthy has contended that such categorisation by the Electricity Board made as far back as in 1978 is not under challenge, and no protest had been made by the petitioner-Company for categorising the plant of the petitioner-Company in HT-IA. Mr. Narasimhamurthy has also contended that industries may have some distinctive features but still then a broader classification is possible taking into consideration, the power intensive nature of various industries. The Board has taken into consideration such power intensivity in the manufacturing process and has made a broad based categorisation. The smelter plant has been included in HT-1A not only for the first time for the purpose of applying the amended provisions of Section 49 of the Act but such categorisation was made long back. Even in 1978 such categorisation was made without any protest from the petitioner-Company. If such categorisation has a rational basis and not arbitrary, capricious or illusory, no exception need be made to such categorisation. Accordingly, sub-sections (5) and (6) of Section 49 are squarely applicable to the petitioner Company and the Board is justified in treating the agreement as annulled and subiecting the petitioner-Company to the uniform tariff rate applicable to all the industries categorised as HT- 1A. He has submitted that if in terms of the statutory provision, an uniform rate of tariff is applicable to the petitioner-Company on the basis of category of the industry to which it belongs, and the agreement of 1976 stands annulled in view of the amended provision, there cannot be any question of promissory estoppel against statute even if it is assumed that in the facts of the case, a case of promissory estoppel has otherwise been made out. He has, therefore, submitted that there is no occasion to interfere with the judgment under appeal and the appeal should be dismissed with costs.

35. After giving our anxious consideration to the respective contentions of the learned counsel for the parties, it appears to us that the agreement of 1966 and 1976 were not the outcome of any unilateral promise or assurance held out by the State or the Board to the petitioner-Company. Such agreement was the result of negotiations between the parties and on such negotiations, the terms and conditions were agreed upon between the parties. Accordingly the foundation of promissory estoppel is absent and the case of promissory estoppel as sought to be made out by the petitioner-Company cannot be accepted. In our view Mr. Narasimhamurthy is justified in his contention that since the agreements stood annulled in view of the amended provisions of Section 49 of the Act, the Board was empowered to ask for uniform tariff rate from the industries classified under one category. It is true that the smelter plant has distinctive features in its manufacturing mechanism and in the process of electrolytic operation. It also appears to us that the smelter plant is not only power intensive industry but the power assumes a very significant role and constitutes one of the important raw materials in the productive process. But it does not appear to us that categorisation of the smelter plant a high power intensive industry by itself is illegal or perverse, or without any basis and wholly unjustified. In the broader classification, the smelter plant is certainly a high power intensive industry and such categorisation was made by the Board not for the purpose of enforcing the amended Section 49 with an object to annul the agreement but such categorisation was made even in 1978. In the circumstances, we are unable to accept the contention that the broader categorisation of the smelter plant is arbitrary, capricious and unreasonable resulting in treating the unequal as equal thereby offending Article 14 of the Constitution. We, therefore, find no justification to interfere with the impugned decision of the High Court and the appeal, therefore, fails but in the facts of the case, there will be no order as to costs.

36. Before we part with this matter, it appears to us that the question of tariff for the supply of electricity to the smelter plant requires a sympathetic consideration. In 1975 policy of the Central Government regarding the aluminium industry, it was highlighted that despite the increase in the productive capacity of the aluminium plants in India, the production as a whole decreased for various factors particularly in view of irregular supply of electricity to the plants. It was also noted in the said policy that the costs for generating the power and transmission of power to the plants had increased over the years and it was not possible for the Boards to stick to rates agreed earlier for supply of electricity to the aluminium plants. The Central Government felt the necessity to strike a balance so that the Boards do not suffer and the plants for aluminium get proper supply of electricity at reasonable rates. It was noted that high rate of tariff and consequential increase in the price of aluminium caused prejudice to the Boards because the Boards were consumers of aluminium to a considerable extent. It appears to us that it is only desirable that interest of both the Boards and the aluminium industry are to be reconciled with a pragmatic approach and the Central Government, the concerned State Governments and the Boards should try to evolve a more realistic policy by which the interest of both the Boards and the aluminium industry are safeguarded to the extent practicable. We have no manner of doubt that if a joint venture is made, an effective policy may be evolved which will enure to the benefit of both the supplier and the consumers in the field of production of aluminium, in the national interest as a whole.

Order accordingly.

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