SUPREME COURT OF INDIA

Kusumam Hotels (P) Ltd.

Vs.

Kerala State Electricity Board

C.A.No.101 of 2007

(S.B. Sinha and Lokeshwar Singh Panta JJ.)

16.05.2008

JUDGMENT

S.B. SINHA, J.

1. These appeals involving similar questions of facts and law were taken up for hearing together and are being disposed of by this common judgment.

2. Appellants herein are owners of hotels situated at different parts of the State of Kerala. By reason of a policy decision adopted by the Central Government, `tourism' was declared to be an `industry'. The State of Kerala adopted the said policy of the Central Government. Pursuant to declared that "Tourism" will be treated as an `Industry' and the concessions available to the' tourism industry' were:

> "(i) Subsidy for preparation of feasibility/project report.
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> (ii) Investment subsidy limited to 10% thereof.
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> (iii) Incentive for training local manpower.
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> (iv) Augmenting availability of funds from State Financial Corporations.
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> (v) Concession in electricity and water charges.
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> (vi) Allocation of land at concessional rate.
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> (vii) Exemption from building tax levied by the Revenue Department. (Action to amend the *Kerala Buildings Tax Act 1975* will be taken separately)."

3. Apart from the concession in electricity and water charges and payment of building tax to be levied by the Revenue Department which was open ended in nature, other concessions were to be granted on a one time measure.

4. A new policy for grant of investment subsidy was also floated. Classified hotels (One to Five Stars) came within the purview thereof. In terms of the said policy decision, the Kerala State Electricity Board (the Board) was directed to grant tariff concessions to the classified hotels and motels consequent on the said declaration of Government of Kerala and Government of India. The concessions to be granted thereby were:

> "(1) The electricity tariff applicable to the categories listed above will be ht i industrial tariff/l.t. Iv industrial tariff depending on the type of supply from 1.4.1987
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> (2) The tariff as indicated above will be applied to the institutions either on production of proper certificate from the Director of Tourism or based on list of institutions eligible for the concessional tariff furnished by the director of tourism to the Secretary, Kerala Electricity Board. The certificates/ communications should be given by the Director of Tourism himself.
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> (3) In the case of institutions in the above categories applying for power connection hereafter tariff as above will be applied by the Kerala State Electricity Board on receipt of necessary certificate from the Director of Tourism.
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> (4) Regarding the admissibility of the concession to any particular unit the matter will be referred to the Director of Tourism and the report on the matter will be accepted by the Kerala State Electricity Board."

5. Indisputably, the appellants had set up or upgraded their hotels and motels. The Government of Kerala classified the hotels in question in several categories for which they became entitled to from the year 1990.

> The Board, allegedly, had been suffering losses. The Government of Kerala, however, issued a Government Order on or about 25.8.1997 adopting the mode of grant of subsidy, inter alia, to the industrial sector, the relevant portions whereof read as under:
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> "In the Government order read as first paper above it was ordered that the actual cost of electricity concessions allowed to Industries in the State, as part of Industrial policy will be reimbursed to Kerala State Electricity Board to the extent necessary to reach 3% Rate of Return (ROR) starting with the accounting year 1986- 87, by adjusting the amount of concession against the dues payable to Government by Kerala State Electricity Board.
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> 2. The Chairman, Kerala State Electricity Board in his letters read above has reported that the loss sustained by the Kerala State electricity Board due to concessional electricity tariff allowed to Industries during the last ten years comes to Rs.60.3 crores and that the loss for the year 1995-96 alone is Rs.24 crores.

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4. Having considered the entire issue in detail, Government is pleased to issue the following orders:

(i) The Industries and the Agricultural Departments in Government will find the funds from their respective Budget required for giving subsidy to Industries and farmers for the year 1997-1998 by re-appropriation. The above departments will also provide required amounts in their department budget from the financial year 1998-99 onwards.

(ii) The subsidy for electricity tariff admissible to Industrial consumers and farmers will be disbursed to the beneficiaries by the concerned Departments from the financial year 1998-99 onwards."

6. By an order dated 11.10.1999, the industrial tariffs granted to the hotels in the State stood cancelled w.e.f 15.10.1999. It was ordered that industrial tariff already granted by various officers of the Board from 15.5.1999 would be suspended by an order dated 8.11.1999, stating:

"The Board hereby orders that the institutions which were already enjoying industrial tariff prior to 15.5.99 on the strength of certificate issued by Director of Tourism shall continue to be charged at the industrial tariff until further orders. This is subject to the final decision of the Government on payment of subsidy. From 15.5.99 new applications for granting industrial tariff will not be sanctioned to such institutions. The field officers of the Board shall not grant industrial tariff from 15.5.99 to the institutors certified by Director of Tourism."

7. The hotels of the appellants were reclassified in the year 1999 keeping in view the investment made by them. Appellants, however, were served with demand-cum-disconnection notices on the basis of bills raised on commercial tariffs on or about 9.4.2000.

8. A writ petition was filed thereagainst. In the meantime, the State of Kerala issued a Government Order on or about 26.9.2000 stating that the concession on electricity tariff shall be limited only to five years by the Department of Tourism, Government of Kerala. The concession was not to be extended for any further period. Clause (3) of the said GO reads, thus:

"These orders will be operative from 15.5.1999, the effective date from which Kerala State Electricity Board has withdrawn the concessional tariff offered to tourism units. The tourism units, which have received certificate of eligibility for tariff concession from Director, Department of Tourism, have to produce a certificate from the Kerala State Electricity Board regarding the total period for which they have enjoyed the concessional tariff. They will be eligible for concessional tariff only for a period of five years including the period for which already enjoyed the concession. i.e., if the

tourism unit has already enjoyed tariff for a period of three years prior to 15.5.1999, they will be eligible for concessional tariff for a further period of two years only. This period will be counted from the effective date originally certified by the Director of Tourism, Government of Kerala for granting concessional tariff for three years. If any tourism unit has already enjoyed concessional tariff for a period of five years or more prior to 15.5.1999, it will not be eligible for any extension of the period of concession."

9. The writ petition filed by the appellants was disposed of by an order dated 4.8.2004 directing that commercial tariff may be charged w.e.f. 15.5.1999 onwards. After the aforementioned Government Order dated 26.9.2000 was issued, demand-cum-disconnection notices were issued again. Representations were made by the appellants which were rejected.

10. They preferred an intra court appeal.

> “Fresh writ petitions were filed, inter alia, praying for quashing of the bill and the said Government Order as also for further classification of the hotel, as industrial units.
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> By reason of a judgment and order dated 16.2.2005, the said writ petition was disposed of directing that 18% interest instead of 24% would be charged, if the demanded amount is paid till 31.5.2005.”

11. Intra court appeals were preferred thereagainst and by reason of the impugned judgment, the same have been dismissed.

12. Mr. Patwalia, Mr. Venkataramani and Mr. Krishnamoorthy, learned senior counsel appearing on behalf of the appellants, would submit :

> “(i) The concessions granted to the appellants should not have been withdrawn from an anterior date.
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> (ii) The Board could not have directed application of commercial tariff despite the fact that the hotels are still considered to be an industry.
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> (iii) In view of the provisions in sub-section (2) of Section 56 of the Electricity Act, 2003, no bill could have been raised after a period of two years.”

13. Mr. George, learned counsel appearing on behalf of the State Electricity Board and Mr. Sathish, learned counsel appearing on behalf of the State of Kerala, would submit :

> “(a) 2003 Act is not applicable in relation to the bills raised under the *Electricity (Supply) Act, 1948*.

(b) The impugned order dated 26.9.2000 is not retrospective in operation. In any event, the State has the requisite jurisdiction to stop grant of concession even with retrospective effect.

(d) No foundational fact having been laid to establish the plea of promissory estoppel, the same is not available to the appellants particularly when they had entered into a contract with the Board for which the bills were to be raised on the basis of commercial tariff.

(e) Appellants having filed writ petitions after a long time, the impugned judgment should not be interfered with."

14. Indisputably, by reason of the impugned Government Order, the benefit of one of the concessions made available to the appellants by reason of the Government Order dated 11.7.1996 had been taken away. The core question which arises for our consideration is whether the said Government Order dated 26.9.2000 is reasonable having been given retrospective effect and retroactive operation.

15. Tourism was declared to be an industry. The wide range of concessions as noticed hereinbefore, inter alia, covered electricity and water charges. It is not a case where some exemptions or concessions were to be given for a specific period or as a one time measure. No time limit was fixed for applicability in respect of the policy decisions. Pursuant thereto long term investments might have been made. It is not based on a principle of giving benefit with a view to facilitate the initial growth of the industry. It was not based on any formula or criteria to evaluate the realization of the object of grant of such concession over a period. It was an open ended offer. It must, therefore, be held that the Government was satisfied that the need was to grant concession if not permanently, at least for a long time.

16. There cannot be any doubt whatsoever that a policy decision can be reviewed from time to time. It is also beyond any doubt that the concessions granted can be withdrawn in public interest.

"Indisputably, the State is also entitled to change or alter the economic policies. Appellants do not have any vested right to enjoy the concessions granted to them forever, particularly when the Board is constituted and incorporated under the provisions of *Electricity (Supply) Act, 1948*. Any policy decision adopted by the State would not be binding on the Board, save and except provided for in the Act. The Board being an independent entity, the duties and functions of the Board vis-`-vis the State are enumerated in the Act. The Board, however, would be bound by any direction issued by the State Government on questions of policy. A dispute which may arise as to whether a question is or not a question of policy involving public interest, Central Government is the final arbiter. The policy decision adopted by the State on the basis whereof the Board felt obligated to grant electrical connection in favour of the appellants on the basis of industrial tariff must, therefore, be understood in the context of Section 78A of the 1948 Act. What is binding on the Board is the

> policy of the State. The direction of the State was to apply a particular category of tariff to the appellants. Such directions could have been withdrawn while making another tariff. The State indisputably has the power to grant subsidy from its own coffer instead of directing the Board to grant concession."

17. It is now a well settled principle of law that the doctrine of promissory estoppel applies to the State. It is also not in dispute that all administrative orders ordinarily are to be considered prospective in nature. When a policy decision is required to be given a retrospective operation, it must be stated so expressly or by necessary implication. The authority issuing such direction must have power to do so. The Board, having acted pursuant to the decision of the State, could not have taken a decision which would be violative of such statutorydirections. 15.5.1999 was fixed as the cut off date by the Board. It, by itself, could not have done so. But the State for issuing the GO dated 26.9.2000 could have fixed the said cut off date on its own. We although do not agree that by granting retrospectivity to the said order, the entirety of the Government Order should be set aside the same or per se would be held to be unreasonable, but what we mean to say is that it could be given effect to only from the date of the order, i.e., prospectively and not from an anterior date, i.e., retrospectively.

18. It was held in *Lohia Machines Ltd. and Anr. v. Union of India (UOI) and Ors.*[1]:

> "On the other hand it is quite clear that if the relief granted is to be withdrawn with retrospective operation from 1972 the assessees who have enjoyed the relief for all those years will have to face a very grave situation. The effect of the withdrawal of the relief with retrospective operation will be to impose on the assessee a huge accumulated financial burden for no fault of the assessee and this is bound to create a serious financial problem for the assessee. Apart from the heavy financial burden which is likely to upset the economy of the undertaking, the assessee will have to face other serious problems. On the basis that the relief was legitimately and legally available to the assessee, the assessee had proceeded to act and to arrange its affairs. If the relief granted is now permitted to be withdrawn with retrospective operation, the assessee may be found guilty of violation of provisions of other statutes and may be visited with penal consequences..."

Yet again in *M/s. Indian Metals and Ferro Alloys Ltd. & Anr. v. State of Orissa & Ors.*[2], it was opined:

> "25...we hold that the High Court was not right in observing that the orders under Section 22-B of the Act imposing restrictions on consumption of power could not legally and validly be passed by the Government "with retrospective effect" in the middle of a water year. But the position regarding disallowance of clubbing stands on an entirely different footing. If a consumer had been allowed the benefit of clubbing previously, that benefit cannot be taken away with retrospective effect thereby saddling him with heavy financial burden in respect of the past period where he had drawn and consumed power on the faith of the orders extending to him the benefit of clubbing..."

19. It is not necessary for us to notice a large number of decisions on promissory estoppel as the principle thereof has recently been noticed by this Court in *Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector & Etio & Ors.*[3] wherein it was stated:

> "We are also unable to agree with Mr. Andhyarujina that exemption from tax is a mere concession defeasible by the Government anddoes not confer any accrued right to the receipient. Right of exemption with a valid notification issued gives rise to an accrued right. It is a vested right. Such right had been granted to them permanently. "Permanence" would mean unless altered by statute. Thus, when a right is accrued or vested, the same a be taken away only by reason of a statute and not otherwise. Thus, a notification which was duly issued would continue to govern unless the same is repealed."
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> It was further held:
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> "126. This Court distinguished its earlier decision in Kasinka Trading v. Union of India55 whereupon Mr Andhyarujina placed strong reliance, in the following terms:
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> "40. The case of Kasinka Trading v. Union of India cited by the appellant is an authority for the proposition that the mere issuance of an exemption notification under a provision in a fiscal statute such as Section 25 of the Customs Act, 1962, could not create any promissory estoppel because such an exemption by its very nature is susceptible to being revoked or modified or subjected to other conditions. In other words, there is no unequivocal representation. The seeds of equivocation are inherent in the power to grant exemption. Therefore, an exemption notification can be revoked without falling foul of the principle of promissory estoppel. It would not, in the circumstances, be necessary for the Government to establish an overriding equity in its favour to defeat the petitioner's plea of promissory estoppel. The Court also held that the Government of India had justified the withdrawal of exemption notification on relevant reasons in the public interest. Incidentally, the Court also noticed the lack of established prejudice to the promises when it said:
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> The burden of customs duty, etc. is passed on to the consumer and therefore the question of the appellants being put to a huge loss is not understandable.' (See also Shrijee Sales Corpn. v. Union of India56 and STO v. Shree Durga Oil Mills) We do not see the relevance of this decision to the facts of this case. Here the representations are clear and unequivocal"."
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> In *LML Ltd. v. State of U.P. & Ors.*[4], this Court opined:
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> "38. Those suppliers, who keeping in view of their capacity to supply uninterrupted electrical energy had made a representation and pursuant thereto the consumers had altered their position, cannot be permitted to take a different stand as the doctrine of promissory estoppel would apply against them. The said doctrine is premised on the

conduct of party making a representation to the other so as to enable him to arrange its affairs in such a manner as if the said representation would be acted upon. It provides for a cause of action. It need not necessarily be a defence."

Yet again in *U.P. Power Corporation Ltd & Anr. v. Sant Steel & Alloys (P) Ltd. & Ors.*[5], it was held:

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

In *State of Orissa & Ors. V. Mangalam Timber Products Ltd.*[6], a Three Judge Bench of this Court, held:

"... The State Government having persuaded the respondent to establish an industry and the respondent having acted on the solemn promiseof the State Government, purchased the raw material at a fixed price and also sold its products by pricing the same taking into consideration the price of the raw material fixed by the State Government and supplied; the State Government cannot be permitted to revise the terms for supply of raw material adversely to the interest of the respondent and effective from a back date and place the respondent in a situation which it will not be able to resolve. The respondent could not have revised its price from a back date and recovered it from innumerable consumers to whom its finished products were supplied at a fixed price."

20. Our attention, however, has been drawn to a decision of this Court in *Kasinka Trading & Anr. v. Union of India & Anr.*[7]. Therein the power of the State to change its policy decision in public interest was emphasized. It was held that the power which can be used for grant of concession, namely, Section 25(1) of the Customs Act itself is the source to rescind the earlier notification, stating :

"Since, the notification had been issued under Section 25(1) of the Act, the very same power was available to the authority for rescinding or modifying that notification and appellant ought to have known that the said notification was capable of or liable to be revoked, modified or rescinded at any time even before the expiry of 31.3.1981 if the

`public interest' so demanded. To hold that after the Government had issued the Notification No.66 of 1979 indicating that it was to remain operative till 31.3.1981, it could not be rescinded or modified before the expiry of that date would amount to prohibiting the Government from discharging its statutory obligation under Section 25(1) of the Act, if it was satisfied that it was in the `public interest' to withdraw, modify or rescind the earlier notification. The plain language of Section 25 of the Act is indicative of the position that it is the public interest and public interest alone which is the dominant factor. It is not the case of the appellants that the withdrawal of Notification No.66 of 1979 by the impugne notification was not in `public interest'. Their case, however, is that relying upon the earlier notifications they had acted and the Government should not be permitted to go back on its assurance as otherwise they would be pu to huge loss. The courts have to balance the equities between the parties and indeed the courts would bind the Government by its promise `to prevent manifest injustice or fraud'."

It was further held:

"23. The appellants appear to be under the impression that even if, in the altered market conditions the continuance of the exemption may not have been justified, yet, Government was bound to continue it to give extra profit to them. That certainly was not the object with which the notification had been issued. The withdrawal of exemption "in public interest" is a matter of policy and the courts would not bind the Government to its policy decisions for all times to come, irrespective of the satisfaction of the Government that a change in the policy was necessary in the "public interest". The courts do not interfere with the fiscal policy where the Government acts in "public interest" and neither ny fraud or lack of bona fides is alleged much less established. The Government has to be left free to determine the priorities in the matter of utilisation of finances and to act in the public interest while issuing or modifying or withdrawing an exemption notification under Section 25(1) of the Act."

21. We are not concerned with the exercise of a statutory power in this case. We are concerned with issuance of a direction by the State which is binding on the Board as also how and to what extent it can be rescinded.

22. We may, however, notice that in *Motilal Padampat Sugar Mills v. State of U.P.*[8], this Court held:

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

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

representations made by it relying upon which a citizen has altered his position to his prejudice."

23. Another Bench in *Jit Ram v. State of Haryana*[9] took a different view. Jit Ram was overruled in *Union of India v. Godfrey Philips India Ltd. Ltd.*[10].

24. If the doctrine of promissory estoppel applies for the purpose of enforcing the concession granted in favour of entrepreneurs, it can be withdrawn, inter alia, in public interest. Despite absence of an overriding public interest, however, although a different policy decision can be taken but therefor adequate notice should be given. It was so held in *Shrijee Sales Corporation & Anr. v. Union of India*[11] in the following terms:

"Once public interest is accepted as the superior equity which can override individual equity, the principle should be applicable even in cases where a period has been indicated. The Government is competent to resile from a promise even if there is no manifest public interest involved, provided, of course, no one is put in any adverse situation which cannot be rectified. To adopt the line of reasoning in Emmanuel Ayodeji Ajay v. Briscoe quoted in M.P. Sugar Mills even where there is no such overriding public interest, it may till be within the competence of the Government to resile from the promise on giving reasonable notice which need not be a formal notice, giving the promise a reasonable opportunity of resuming his position, provided of course, it is possible for the promise to restore the status quo ante. If, however, the promise cannot resume his position, the promise would become final and irrevocable."

The same principle was reiterated in *Sales Tax Officer & Anr. v. Shree Durga Oil Mills & Anr.*[12].

25. In *Pawan Alloys & Casting Pvt. Ltd. v. U.P. State Electricity Board & Ors.*[13], it was held:

"60. So far as Point No. 3 is concerned the appellants are on a weaker footing. It is true that by earlier notifications dated 29-10-1982, 13-7-1984 and 28-1-1986 the scheme of incentives by way of development rebate of 10% was continued to be offered to new industries to be established in the plains of State of U.P. Identically worded Item 9 in the earlier notifications and Item 8 in the last notification dated 28-1-1986 had continued the said incentive scheme. By virtue of the last notification of 28-1-1986 it was clearly laid down by the Board that all new industries which might be established on and after 28-1- 1986 will earn this development rebate for the three years' period from the date of commencement of supply of electricity. It was also provided that all the existing new industries which might have earlier been established before 28-1-1986 and which had still some part of unexpired period of three years of development rebate available with them also ere given the continued benefit of he development rebate for the unexpired period from 1-2-1986. What the impugned notification of 31-7-1986 sought to do was to delete this first para of Item 8 of the

notification of 28-1-1986. The result was that from 1-8-1986 whatever unexpired period for getting development rebate of 10% was available with the new industries covered by the sweep of the said notification, got withdrawn. It could not be said and it is also not the case of the respondent-Board that in the light of the notification of 31-7-1986 whatever development rebate was granted to these new industries earlier as per the then existing scheme would stand withdrawn or any recovery would be effected against them for the said amount. The case of the Board is that despite any unexpired period for earning the incentive rebate of 10% was available to the existing new industries on 31-7-1986, they would lose that benefit of development rebate for the rest of the unexpired period with effect from 1-8-1986 onwards. Hence it is not possible to agree with the contention of learned counsel for the appellants that the said notification had any retrospective effect. It was purely prospective and had resulted into two consequences -- (i) any new industry which entered into an agreement with the Board for supply of electricity for the first time on and after 1-8- 1986 could not get the benefit of incentive of 10% development rebate; and (ii) all existing new industries which were armed with the guarantee of 10% development rebate under the earlier notifications and had unexpired period out of the three years from the date of earlier commencement of supply of electricity to their concerns lost the benefit for that unexpired period which otherwise would have been available to them from 1-8-1986 onwards till the entire three years' period which had already commenced would have been over. Both these effects of the notification of 31-7-1986 were purely prospective in character and had no retrospective effect. Consequently it cannot be said that the said notification was liable to be struck down on the score of being retrospective in nature. The third point for consideration, therefore, is answered in the negative."

Similar view has been taken in *Bannari Amman Sugars Ltd. v. Commercial Tax Officer & Ors.*[14]*; Kuldeep Singh v. Govt. of NCT of Delhi*[15]*; and M.P. Mathur & Ors. v. DTC & Ors.*[16]."

26. The law which emerges from the above discussion is that the doctrine of promissory estoppel would not be applicable as no foundational fact therefor has been laid down in a case of this nature. The State, however, would be entitled to alter, amend or rescind its policy decision. Such a policy decision, if taken in public interest, should be given effect to. In certain situations, it may have an impact from a retrospective effect but the same by itself would not be sufficient to be struck down on the ground of unreasonableness if the source of power is referable to a statute or statutory provisions. In our constitutional scheme, however, the statute and/or any direction issued thereunder must be presumed to be prospective unless the retrospectively is indicated either expressly or by necessary implication. It is a principle of rule of law. A presumption can be raised that a statute or statutory rules has prospective operation only.

27. The State of Kerala in this case did not grant any concession by itself. The Central Government took a larger policy of treating the tourism as an industry. A wide range of concessions were to be granted by way of one time measure; some of them, however, had a

recurring effect. So far as grant of benefits which were to be recurring in nature, the State exercises its statutory power in the case of grant of exemption from payment of building tax wherefor it amended the statute. It issued directions which were binding upon the Board having regard to the provisions contained in Section 78A of the 1948 Act. The Board was bound thereby. The Board, having regard to its financial constraints, could have brought its financial stringency to the notice of the State. It did so. But the State could not have taken a unilateral decision to take away the accrued or vested right. The Board's order dated 11.10.1999 in law could not have been given effect to. The Board itself kept the said notification in abeyance by reason of order dated 8.11.1999.

> Appellants, indisputably, continued to derive the benefits in terms of the original order. They obtained certificates of classification. It is on the aforementioned context, the question as regards construction of the impugned notification dated 26.9.2000 arises. Ex facie, the said policy decision could not be given a retrospective effect or retroactive operation. The State was not exercising the power under any statute to grant or withdraw the concession. It was exercising its statutory power of issuing direction. It is, therefore, a statutory authority. The 1948 Act does not authorize the State to issue a direction with retrospective effect. The Board, therefore, could only give prospective effect to such directions in absence of any clear indication contained therein. By reason of withdrawal of concession with retrospective effect, the accrued right of the appellants had been affected. In *Kuldeep Singh v. Govt. of NCT of Delhi.*[17], this Court held:
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> "In a case of this nature, where the State has the exclusive privilege and the citizen has no fundamental right to carry on business in liquor, in our opinion, the policy which would be applicable is the one which is prevalent on the date of grant and not the one, on which the application had been filed. If a policy decision had been taken on 16.9.2005 not to grant L-52 licence, no licence could have been granted after the said date." We, however, are not concerned with a similar situation."

28. However, in *Ramchandra Murarilal Bhattad & Ors. v. State of Maharashtra & Ors.*[18], it was held:

> "64. It is not a case where the court is called upon to exercise its equity jurisdiction. It is also not a case where ex facie the policy decision can be held to be contrary to any statute or against a public policy. A policy decision may be subject to change from time to time. Only because a change is effect, (sic) the same by itself does not render a policy decision to be illegal or otherwise vitiated in law."

29. We, therefore, are of the opinion that the impugned GO dated 26.9.2000 must be held to have a prospective operation and not a retrospective operation. That view would save it from being vulnerable to the challenge of being hit by Article 14 of the Constitution of India.

30. We, however, are not in a position to accept the contention that the Bills could not have been issued having regard to sub-section (2) of Section 56 of the Act. Appellants herein have incurred liabilities.

Sub-section (5) of Section 185 of the Electricity Act, 2003 reads, thus:

"(5) Save as otherwise provided in sub-section (2), the mention of particular matters in that section, shall not be held to prejudice or affect the general application of section 6 of the *General Clauses Act, 1897* (10 of 1897), with regard to the effect of repeals. Whereas the bills are issued only in respect of the dues arising in terms of the law as was applicable prior to the coming into force of 2003 Act. Sub-section (2) of Section 56 shall apply after the said Act came into force. The Board could have even framed a tariff in terms of the provisions appended to Section 61 of the Act. Appellants incurred liability to pay the bill. The liability to pay electricity charges is a statutory liability. The Act provides for its consequences. Unless, therefore, the 2003 Act specifically introduced, the bar of limitation as regards the liability of the consumer incurred prior to coming into force of the said Act. In our opinion, having regard to Section 6 of the General Clauses Act, the liability continues. [See *Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector and E.T.I.O. and Ors.*[19]]

31. We, therefore, are of the opinion that the High Court was not correct in its view to the aforementioned extent. The judgment of the High Court is, thus, set aside to the aforementioned extent. The appeals are allowed with costs. Counsels fee assessed at 25,000/- (Rupees five thousand only) in each appeal.

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32. Board has preferred this appeal only against grant of instalments in favour of the respondents. The contention of Mr. George that the High Court could not have waived the provisions of interest on the delayed payment under the tariff cannot be accepted. In all other cases, the High Court directed that 18% interest would be payable following the decision of the Court in *Kerala State Electricity Board through its Special Officer (Revenue) & Anr. v. M.R.F. Ltd.*[20]. The same principle would apply in this case also but the bill having been raised only in 2003, the question of charging any interest thereupon from a retrospective date would not arise.

33. This appeal is, thus, dismissed. However, there shall be no order as to costs.

[1](1985) 2 SCR 686 *[2](1987) 3 SCC 189* *[3](2007) 5 SCC 447* *[4]2007 (14) SCALE 469*
[5]2007 (14) SCALE 36 *[6](2004) 1 SCC 139* *[7](1995) 1 SCC 274* *[8](1979) 2 SCR 641*
[9](1980) 3 SCR 689 *[10](1985) 4 SCC 369* *[11](1997) 3 SCC 398* *[12](1998) 1 SCC 572*
[13](1997) 7 SCC 251 *[14](2005) 1 SCC 625* *[15](2006) 5 SCC 702* *[16](2006) 13 SCC 706*
[17](2006) 5 SCC 702 *[18](2007) 2 SCC 588* *[19](2007) 5 SCC 447* *[20](1996) 1 SCC 597*