2009 eGLR_HC 10006467

Before the Hon'ble MR K S JHAVERI, JUSTICE

BHARAT MOHANLAL TRIVEDI Vs. UNION OF INDIA AND 2 - RESPONDENT(S)

SPECIAL CIVIL APPLICATION No: 4404 of 2007 , Decided On: 20/11/2009

Percy Kavina, B.A.Vaishnav, Sadik Ansari, H.R.Prajapati, vimal Patel, Nanavati Associates, P.S.Champaneri, Amee Yagnik, archana U.Amin, Nirav C.Thakkar, V.D.Parghi, Sunil Patel, manish R.Bhatt, Mauna M.Bhatt

MR.JUSTICE KS JHAVERI

1.0 As common questions of fact and law are involved in these petitions, they all are heard together and disposed of by this common judgement.

2.0 The petitioners in these petitions are land owners who have given their lands on lease to respondent IBP Company Limited (hereinafter referred to as the Respondent Oil Company).

2.1 The Government of India, in order to remove the petroleum sector from Administered Pricing Mechanism regime and with a view to provide commercial freedom, permitted Public Sector Oil Marketing Companies to formulate their own policy and procedure for operating oil retail outlets including selection of retail outlet dealers. The respondent company was, in accordance with this policy, permitted to identify suitable sites all over India and procure the same on long lease.

2.2 It is required to be noted that the policy of selection of dealerships through Dealer Selection Board came to be discontinued prior to 1.4.2002 and the Ministry of Petroleum and Natural Gas subsequently provided for norms for selection of dealership vide communication dated 19th September 2003. In other words, during the period between 1st April 2002 and 19th September 2003, to meet with the challenges posed by private players, with the knowledge and consent of the respondent Ministry of Petroleum and Natural Gas, all the Oil Marketing Companies were allowed to evolve a system and/or procedure to block/procure various suitable sites and commission the retail outlets by offering dealerships in favour of the petitioners - land owners or their nominees.

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2.3 In furtherance of the above system/guidelines evolved for award of dealerships in favour of land owners, the Oil Marketing Companies had identified and procured various lands at highly concessional rates by approaching the land owners for securing direct offers wherever lands were found by the Oil Company officials as suitable and commercially viable.

2.4 Accordingly the petitioners were approached and the petitioners offered land at concessional rents on lease to the respondent Company. Administrative Instructions/Guidelines were issued wherein four categories were created for retail outlet dealership. The petitioners were assured that on completion of all formalities, the land owner/his or her nominee will be appointed as a dealer and the retail outlet commissioned. A lease deed was entered into wherein it was agreed as under:

[a] To charge meager rent compared to the prevailing market rent;

[ii] lease for at least 15 years with an option for renewal for further periods of 15 years.

[iii] To provide office building, compound wall,leveling of plot, rubber soiling, metaling of drive way, 15 HP power connection, Tubewell/Water connection at the cost of the petitioner

[iv] obtaining of statutory permissions and clearances from the District Magistrate.

2.5 According to the petitioners the lease deed was entered into on terms and conditions as aforesaid in good faith on the basis of a representation and a reciprocal promise that the petitioners or their nominees shall be awarded dealership but in spite of various representations the respondent company did not regularize the petitioner as a dealer as assured by the respondents. It is under such circumstances that the above petitions have been filed praying for a direction to the concerned respondent to appoint the petitioner as Dealer of retail outlet being managed by the petitioner in accordance with the Governments policy/Circular dated 14.11.2002.

3.0 Mr. Percy Kavina, learned Senior Advocate appearing for the petitioners submitted that in view of letter of comfort the petitioners are entitled to be considered as a special class being land owners and also in view of the promise given by the respondent company. According to him, once an agreement is entered into, the respondent authority cannot back out of the same in which case the principle of promissory estoppel will come into play.

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3.1 According to him, the lands were procured on long term lease basis and the respondents have entered into a lease agreement of 15 to 30 years period with a specific understanding that as and when the Company decides not to operate the outlet as a COCO (Company Owned Company Operated) Retail Outlet (RO) and decide to operate the same through a dealer, it will first make an offer to the land owner or his or her nominee for dealership or M & H Contractor. It is therefore submitted that it is not now open to the respondents to back out from the promise already given to them

3.3 Learned Advocate for the petitioners further submitted that the maintenance and handling contractors are their nominees and therefore as and when they decided to convert Company Owned Company Operated (COCO) into a retail agency the petitioners case is to be considered as Retail Dealer.

3.4 It was submitted that in accordance with the assurance given earlier and the policy/circular dated 14.11.2002, the land was procured on lease from the petitioners on a meager rent with a commitment and assurance that the petitioners or their nominees will be appointed as a dealer or retail outlet. The petitioners had entered into such agreement and parted with possession of prime piece of land abutting on the National Highway/State Highway, which otherwise, would have fetched substantial amount of money to the petitioners, in favour of the respondent no.2 company hoping that ultimately the company would honour its commitment and appoint the petitioners or their nominees as a dealer. However, the respondent company is acting in an unjust and unfair manner denying the appointment as a dealer.

3.5 According to the petitioners, on reading policy dated 4.11.2002, it is apparent that a specific and explicit understanding was reached by and between the petitioners and the respondent company that retail outlet on a dealership basis shall be offered to the petitioners. At the time when the said agreement was executed between the petitioners and the respondent company, no reservation policy was in existence nor was it being contemplated. However, a vested legal right of the petitioners is now sought to be taken away under the guise of operating the communication dated 4th November 2002.

3.6 It was contended that the action of respondents in seeking to terminate the M & H Contract and resiling from allotment of dealership to the petitioners and further proceeding to COCO retail outlet in accordance with the communication dated 6.9.2006 amounts to an act of terminating such COCO retail outlet which is not in public interest but for a collateral purpose in a manner contrary to Article 14 of the Constitution of India.

3.7 The further contention of the petitioners is that once having entered into an agreement, the respondent company cannot be permitted to act so as to defeat the legitimate expectation of the petitioners without any reason. The doctrine of "legitimate expectation" imposes and assigns a duty on the public authority to act fairly, and, by effecting a change in its stand, the

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respondent company has acted in conspectus and by resiling duties form the policy as it existed from the time of agreement.

3.8 Mr. Kavina for the petitioner has relied upon the letter issued by the respondent company which reads as under:

"The Company (IBP Company Limited) wanted to put a Company Owned Company Operated (COCO) Outlet at PIPLOD - Surat in the District of Surat of Gujarat State and for that purpose had entered into a lease agreement with you for lease of the part of land at R S NO.72 of Village PIPLOD of Surat City TPS No.06, FP No.37, 38, 39 paiki for a period of 20 years commencing from 29.06.2002 which will be renewed for a further period as provided in the lease deed.

In furtherance of the above lease deed, the Company states that in the event of the Company deciding not to operate the outlet as a "COCO" and decides to operate the outlet through a dealer, the Company will make an offer to the Landlords, provided all the terms and conditions of the Company prevailing at that time are fulfilled.

The offer made to the landlords cannot be assigned/transferred to any third person and the landlords alone have the right to accept/refuse the offer, which right the landlords shall exercise within a period of 30 (thirty) days, failing which the Company will be entitled to offer the dealership to any third party."

3.9 According to Mr. Kavina, if the said letter is closely read, especially the last portion, it is very clear that policy prevailing on the date on which the company took decision to convert COCO into Dealership outlet, at that time the petitioner will be offered on the basis of the policy which was prevailing at the relevant time. In support of his submissions, he has relied upon the observations made by the Delhi High Court and also relied upon the following decisions of the Apex Court.

4.0 In the case of Union of India and others Vs. Godfrey Philips India Ltd, reported in AIR 1986 SC 806 wherein it is held as under:

"The doctrine of promissory estoppel is applicable against the Government in the exercise of its governmental, public or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel. Of course, there can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can the government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or a public

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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. The doctrine of promissory estoppel being an equitable doctrine, it must yield when the enquiry so requires, if it can be shown by the Government or public authority that having regard to the facts as they 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 should be held bound by the promise or representation made by it."

4.1 In the case of Amrit Banaspati Co. Ltd. and another V. State of Punjab and another, reported in (1992)2 Supreme Court Cases 411 wherein it is held as under:

"The representation coming from the Industries Secretary and the Director of Industries in pursuance of Government policy cannot be held to be unauthorised or beyond the scope of authority. The argument for the State of Punjab, that in absence of any assurance by a competent authority on behalf of the State the promise if any, was incapable of giving rise to any equity, cannot be accepted in absence of any positive material to show that the Government either disassociated itself from the letter sent by the Secretary or Director of Industries or acted contrary to what was alleged to have been represented or assured by them. On the other hand the notings of the Secretary show that the authorities were not only assuring the appellant but were making every effort that the unit be established in consonance with the policy of Government as it would result in industrialization and development of the State. Such painstaking effort of responsible and senior officers of the State was neither unauthorised nor beyond scope of their authority. The Government functions through its officials and so long they are acting bona fide in pursuance of Government policy the Government cannot be permitted to disown it as a citizen can have no means to know if what was being done was with tacit approval of the Government. And if it is found that the representation made by the official concerned was such that any reasonable person would believe it to have been made on behalf of the Government then unless such representation is established to be beyond scope of authority it should be held binding on the Government."

4.2 In the case of State of Punjab V.Nestle India Ltd. and another reported in (2004)6 Supreme Court Cases 465 in para 32 it is held as under:

"32. An apparently aberrant note was struck in Jit Ram Shiv Kumar V. State of Haryana whre despite all the factors of promissory estoppel being established, the court held: (SCC p.17, para 6):

"The plea of estoppel is not available against the State in exercise of its legislative or statutory functions".

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Para 44 thereof reads as under:

"44. Of course, the Government cannot rely on a representation made without complying with the procedure prescribed by the relevant statute, but a citizen may and can compel the Government to do so if the factors necessary for founding a plea of promissory estoppel are established. Such a proposition would not "fall foul of our constitutional scheme and public interest". On the other hand, as was observed in Motilal Padampat Sugar Mills case and approved in the subsequent decisions: (SCC p.442, para 24).

"It is indeed the price of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppeal."

4.3 In the case of Mahabir Vegetable Oils (P) Ltd and Another V. state of Haryana and others, reported in (2006) 3 SCC 620 in para 25 it is stated as under:

"It is beyond any cavil that the doctrine of promissory estoppel operates even in the legislative filed. Whereas in England the development and growth of promissory estoppel can be traced from Central London Property Trust Ltd. V. High Trees House Ltd. in India the same can be traced from the decision of this Court in Collector of Bombay V. Municipal Corpn. of the City of Bombay. In that case the Government made a grant of land (which did not fulfill requisite statutory formalities) rent free. It, however, claimed rent after 70 years. The Government, it was opined, could not do so as they were estopped. It was further held therein that there was no overriding public interest which would make it inequitable to enforce estoppel against the State as it was well within the power of the State to grant such exemption."

4.4 In the case of MRF Ltd. Kottayam V. Asstt. Commissioner (Assessment) Sales Tax and others, reported in (2006) 8 SCC 702 in paras 30 and 35 it is observed as under:

"30. The High Court in its judgment has recorded a finding that the notifications being statutory "no plea of estoppel will lie against a statutory notification". This finding of the High Court is erroneous. The doctrine of promissory estoppel has been repeatedly applied by this Court to statutory notifications. Reference may be made to Pournami Oil Mills V. State of Kerala. In the said case the Government of Kerala by an order dated 11-4-1979 invited small-scale units to set up their industries in the State of Kerala and with a view to boost industrialization, exemption

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from sales tax and purchase tax was extended as a concession for a period of five years, which was to run from the date of commencement of production. By a subsequent notification dated 29-9-1980, published in the gazette on 21-10-1980, the State of Kerala withdrew the exemption relating tot he purchase tax and confined the exemption from sales tax to the limit specified in the proviso of the said notification. While quashing the subsequent notification it was observed: (SCC pp.732-33, paras 7-8).

"If in response to such an order and in consideration of the concession made available, promoters of any small-scale concern have set up their industries within the State of Kerala, they would certainly be entitled to plead the rule of estoppel in their favor when the State of Kerala purports to act differently. Several decisions of this Court were cited in support of the stand of the appellants that in similar circumstances the plea of estoppel can be and has been applied and the leading authority on this point is the case of M.P. Sugar Mills. On the other hand, reliance has been placed on behalf of the State on a judgment of this Court in Bakul Cashew Co. V. STO. In Bakul Cashew Co. case this Court found that there was no clear material to show any definite or certain promise which had been made by the Minister to the persons concerned and there was no clear material also in support of the stand that the parties had altered their position by acting upon the representations and suffered any prejudice. On facts, therefore, no case for raising the plea of estoppel was held to have been made out. This Court proceeded on the footing that the notification granting exemption retrospectively was not in accordance with Section 10 of the State Sales Tax Act as it then stood, as there was no power to grant exemption retrospectively. By an amendment that power has been subsequently conferred. In these appeals there is no question of retrospective exemption. We also find that no reference was made by the High Court to the decision in M.P. Sugar Mills case. In our view, to the facts of the present case, the ratio of M.P. Sugar Mills case directly applies and the plea of estoppel is unanswerable.

... Such exemption would continue for the full period of five years from the date they started production. New industries set up after 21-10-1980 obviously would not be entitled to that benefit as they had notice of the curtailment in the exemption before they came to set up their industries."

"35. Besides, a plea of promissory estoppel is in the nature of an equitable plea and must be determined in the facts and circumstances of each case where it is raised. In Rom Industries the deciding factor was that the exemption notification in question had been itself held to be unconstitutional in an earlier case as violative of Articles 301 and 304 of the Constitution of India and, therefore, could not form the basis of any right. The observation made in para 8 of that judgement has to be read in that context. Besides, the State Government in that case had no option except to withdraw the notification. It is observed in that judgement in para 9: (SCC p.352)

"The State Government, in view of the decision of this Court had no other option but to place edible oils in the Negative List. The questions whether Shri Mahavir Oil Mills has been

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rightly decided or not and whether it is in conflict with the principles enunciated in Video Electronics are moot. But while the decision stands, the State Government is bound to comply with it."

4.5 In the case of Ahmedabad Cotton Mafg. Co. V. Union of India, reported in 18 GLR 714 in para 11 it is observed as under:

"A bare perusal shows that this fetter is not attracted to a petition for enforcement of fundamental rights falling under Art. 226(1)(a) as it is restricted to sub-clauses (b) and [c] only. The second feature which must be borne in mind is that this is a fetter to the entertainment of the petition itself because now the writ jurisdiction for the specified purpose in clauses (b) and [c] of Art.226(1) has to be exercised if there is no other remedy for such redress provided for by or under any other law for the time being in force. Even though the words "any other remedy" had been used, it is obvious that "any other remedy" has to be for redress of the injury for which this writ jurisdiction is conferred and, therefore, it must be equally adequate or efficacious so that qualitatively and quantitatively the same relief would be given for redress of the injury to the petitioner. This alternative remedy therefore, could never be the general remedy of a civil suit which is by way of a collateral attack and which would be available in every case for ultra vires orders unless it is specifically excluded. The amplitude of this fetter is made dependent on the existence of the other effective alternative remedy which is in terms provided whether by the specific law or under the subordinate legislation of such law. One thing is certain that such alternative remedy must be specifically provided for. Therefore, the amplitude of the fetter would depend on the amplitude of such alternative remedy which is provided for direct attack by or under the other law in question and not on any general remedy of a civil suit by way of a collateral attack."

4.5 In Mahabir Auto Stores and others V. Indian Oil Corporation and others, reported in (1990) 3 SCC 752, in paras 12 and 20 the Apex Court observed as under:

"12. It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court in Radha Krishna Agarwal V. State of Bihar. It appears to us, at the outset, that in the facts and circumstances of the case, the respondent company IOC is an organ of the State or an instrumentality of the State as contemplated under Article 12 of the Constitution.

The State acts in its executive power under Article 298 of the Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercises of power. Therefore, the action of State organ under Article 14 can be checked. See Radha Krishna Agarwal V. State of Bihar at p.462, but Article 14 of the Constitution cannot and has not been construed as a charter for judicial review of State action after the contract has been entered into, to call upon the State to account for its actions in its

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manifold activities by stating reasons for such actions. In a situation of this nature certain activities of the respondent company which constituted State under Article 12 of the Constitution may be in certain circumstances subject to Article 14 of the Constitution in entering or not entering into contracts and must be reasonable and taken only upon lawful and relevant consideration; it depends upon facts and circumstances of a particular transaction whether hearing is necessary and reasons have to be stated. In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. In this connection reference may be made to E.P. Royappa V. State of Tamil Nadu, Manek Gandhi V.Union of India, Ajay Hasia V. Khalid Mujib Sehravardi, R.D. Shetty V. International Airport Authority of India and also Dwarkadas Marfatia and sons V. Board of Trustees of the Port of Bombay. It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights,t he manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non- discrimination in the type of the transactions and nature of the dealing as in the present case.

"20. Having regard to the nature of the transaction, we are of the opinion that it would be appropriate to state that in cases where the instrumentality of the state enters the contractual field, it should be governed by the incidence of the contract. It is true that it may not be necessary to give reasons but, in our opinion, in the field of this nature fairness must be there to the parties concerned, and having regard to the large number or the long period and the nature of the dealings between the parties, the appellant should have been taken into confidence. Equality and fairness at least demands this much from an instrumentality of the State dealing with a right of the State not to treat the contract as subsisting. We must, however, evolve such process which will work."

4.6 In the case of Kumari Shrilekha Vidyarthi and others V. State of U.P. and others, reported in (1991)1 SCC 212, in para 34 it is held as under:

"34. In our opinion, the wide sweep of Article 14 undoubtedly takes within its fold the impugned circular issued by the State of U.P. in exercise of its executive power, irrespective of the precise nature of appointment of the Government Counsel in the districts and the other rights, contractual or statutory, which the appointees may have. It is for this reason that we base our decision on the ground that independent of any statutory right, available to the appointees, and assuming for the purpose of this case that the rights flow only from the contract of appointment,

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the impugned circular, issued in exercise of the executive power of the State, must satisfy Article 14 of the Constitution and if it is shown to be arbitrary, it must be struck down. However, we have referred to certain provisions relating to initial appointment, termination or renewal of tenure to indicate that the action is controlled at least by settled guidelines, followed by the State of U.P. for a long time. This too is relevant for deciding the question of arbitrariness alleged in the present case."

4.7 In the case of Bharat Petroleum Corpn. Ltd. V. Great Eastern Shipping Co. Ltd., reported in AIR 2008 SC 357 in para 19 it is held as under:

"19. It is, no doubt, true that the general rule is that an offer is not accepted by mere silence on the part of the offeree, yet it does not mean that an acceptance always has to be given in so many words. Under certain circumstances, offerees silence, coupled with his conduct, which takes the form of a positive act, may constitute an acceptance - an agreement sub silentio. Therefore, the terms of a contract between the parties can be proved not only by their words but also by their conduct."

4.8 In the case of Kuldeep Singh V. Govt of NCT of Delhi, reported in AIR 2006 SC 2652 it is held as under:

"15. The Appellants filed applications for grant of licence pursuant to the policy-decision adopted by the State. They might have invested a huge amount, but did not thereby derive any accrued or vested right. The matter relating to grant of licence for dealing in liquor is within the exclusive domain of the State. If the State had the right to adopt a policy-decision, they indisputably had a right to vary, amend or rescind the same. The effect of a policy-decision taken by the State is to be considered having regard to the provisions contained in Article 47 of the Constitution of India as also its power of regulation and control in respect of the trade in terms of the provisions of the Excise Act."

"25. It is, however, difficult for us to accept the contention of the learned Senior Counsel Mr. Soli J. Sorabjee that the doctrine of legitimate expectation is attracted in the instant case. Indisputably, the said doctrine is a source of procedural or substantive right. (See R. V.North and East Devon Health Authority, ex parte Coughlan 2001 Q.B.213). But, however, the relevance of application of the said doctrine is as to whether the expectation was legitimate. Such legitimate expectation was also required to be determined keeping in view the larger public interest. Claimants perceptions would not be relevant therefor. The State actions indisputably must be fair and reasonable. Non-arbitrariness on its part is a significant facet in the field of good governance. The discretion conferred upon the State yet again cannot be exercised whimsically or capriciously. But where a change in the policy decision is valid in law, any action taken pursuant thereto or in furtherance thereof, cannot be invalidated."

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4.9 In the case of PTR Exports (Madras) P. Ltd. V. Union of India, reported in AIR 1996 SC 3461 in para 5 it is held as under:

5. It would, therefore, be clear that grant of licence depends upon the policy prevailing as on the date of the grant of the licence. The Court, therefore, would not bind the Government with a policy which was existing on the date of application as per previous policy. A prior decision would not bind the Government for all times to come. When the Government are satisfied that change in the policy was necessary in the public interest, it would be entitled to revise the policy and lay down new policy. The Court, therefore, would prefer to allow free play to the Government to evolve fiscal policy in the public interest and to act upon the same. Equally the Government is left free to determine priorities in the matters of allocations or allotments or utilisation of its finances in the public interest. It is equally entitled, therefore, to issue or withdraw or modify the export or import policy in accordance with the scheme evolved. We, therefore, hold that the petitioners have no vested or accrued right for the issuance of permits on the MEE or NQE, nor
the Government is bound by its previous policy. It would be open to the Government to evolve the new schemes and the petitioners would get their legitimate expectations accomplished in accordance with either of the two schemes subject to their satisfying the conditions required in the scheme. The High Court, therefore,w as right in its conclusion that the Government are not barred by the promises or legitimate expectations from evolving new policy in the impugned notification."

4.10 In the case of Bannari Amman Sugars Ltd. V. Commercial Tax Officer and others, reported in (2005)1 SCC 625 in paras 19 and 20 it held as under:

"19. In order to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and bald expressions without any supporting material to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. The courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must for ever be present in the mind of the court.

20. In Shrijee Sales Corpn. V. Union of India it was observed that once public interest is accepted as the superior equity which can override individual equity the principle would be applicable even in cases where a period has been indicated for operation of the promise. If there is a supervening public equity, the Government would be allowed to change its stand and has the power to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal. Moreover, the Government is competent to rescind from the promise even if there is no manifest public interest involved, provided no one is put in any adverse situation which cannot be rectified. Similar view was expressed in Pawan Alloys and Casting (P) Ltd. V. U.P. SEB and in STO V. Shree Durga Oil Mills and it was further held that the Government could change its industrial policy if the situation so warranted and merely because the resolution was announced for a

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particular period, it did not mean that the Government could not amend and change the policy under any circumstances. If the party claiming application of the doctrine acted on the basis of a notification it should have known that such notification was liable to be amended or rescinded at any point of time, if the Government felt that it was necessary to do so in public interest."

4.11 In the case of Punjab Communications Ltd. V. Union of India, reported in AIR 1999 SC 1801 in paragraphs 27 and 45 it is held as under:

"27. The basic principles in this branch relating to "legitimate expectation" were enunciated by Lord Diplock in Council of Civil Service Unions V. Minister for the Civil Services, 1985 AC 374 (408- 409). It was observed in that case that for a legitimate expectation to arise, the decisions of the administrative authority must affect the person by depriving him of some benefit or advantage which either (I) he had in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. The procedural part of it relates to a representation that a hearing or other appropriate procedure will be afforded the decision is made. The substantive part of the principle is that if a representation is made that a benefit of a substantive nature will be granted or if the person is already in receipt of the benefit that it will be continued and not be substantially varied, then the same could be enforced. In the above case, Lord Frasser accepted that the civil servants had a legitimate expectation that they would be consulted before their trade union membership was withdrawn because prior consultation in the past was the standard practice whenever conditions of service were significantly altered. Lord Diplock went a little further,when he said that they had a legitimate expectation, that they would continue to enjoy the benefits of the trade union membership. The interest in regard to which a legitimate expectation could be had must be one which was protectable. An expectation could be based on an express promise or representation or by established past action of settled conduct. The representation must be clear and unambiguous. It could be a representation to the individual or generally to a class of persons."

"45. It will be noticed that at one stage when the ADB loan lapsed, the Government took a decision to go ahead with the project on its own funds. But later it thought that the scheme regarding telephones in rural areas must cover not only the villages in Eastern UP but also in other backward rural areas in other States. The statistics given in the counter-affidavits of the Union of India to which we have already referred,show that there are other States in the country where the percentage of telephones is far less than what it is in eastern UP. The said facts are the reason for the change in the policy of the Government and for giving up the notification calling for bids for Eastern UP. Such a change in policy cannot, in our opinion, be said to be irrational or perverse according to Wednesbury principles. In the circumstances, on the basis of the clear principles laid down in Exp. Hargreaves (1997 (1) WLR 906) and Exp. Unilever (1996 (68) Tax Cas 205) the Wednesbury principle of irrationality or perversity is not attracted and the revised policy cannot be said to be in such gross violation of any substantive legitimate expectation of the appellant which warrants interference in judicial review proceedings. Point 2 is held against the appellant."

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4.12 In the case of Union of India V. Hindustan Development Corporation, reported in AIR 1994 SC 988 the Apex Court held as under:

"27. Of late the doctrine of legitimate expectation is being pressed into service in many cases particularly in contractual sphere while canvassing the implications underlying the administrative law. Since we have not come across any pronouncement of this Court on this subject explaining the meaning and scope of the doctrine of legitimate expectation, we would like to examine the same a little more elaborately at this stage. Who is the expectant and what is the nature of the expectation? When does such an expectation become a legitimate one and what is the foundation for the same? What are the duties of the administrative authorities while taking a decision in cases attracting the doctrine of legitimate expectation."

"28. Time is a three-fold present: the present as we experience it, the past as a present memory and future as a present expectation. For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However, earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense."

33-34 On examination of some of these important decisions it is generally agreed that legitimate expectation gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negativing a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightway from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words where a persons legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overriding public interest. Therefore even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice arose expectation which it would be within its powers to fulfill. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision taken

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by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the courts cannot interfere with a decision. In a given case whether there are such facts and circumstances giving rise to a legitimate expectation, it would primarily be a question of fact. If these tests are satisfied and if the court is satisfied that a case of legitimate expectation is made out then the next question would be whether failure to give an opportunity of hearing before the decision affecting such legitimate expectation is taken, has resulted in failure of justice and whether on that ground the decision should be quashed. If that be so then what should be the relief is again a matter which depends on several factors.

35. We find in Attorney General for New South Wales case (1990 (64) Aux LJR 327), that the entire case on the doctrine of legitimate expectation has been considered. We also find that on an elaborate and erudite discussion it is held that the courts jurisdiction to interfere is very much limited and much less in granting any relief in a claim based purely on the ground of "legitimate expectation". In Public Law and Politics edited by Carol Harlow, we find an article by Gabriele Ganz in which the learned author after examining the views expressed in the cases decided by eminent Judges to whom we have referred to above, concluded thus:

"The confusion and uncertainty at the heart of the concept stems from its origin. It has grown from two separate roots, natural justice or fairness and estoppel,but the stems have become entwined to such an extent that it is impossible to disentangle them. This makes it very difficult to predict how the hybrid will develop in future. This could be regarded as giving the concept a healthy flexibility, for the intention behind it is benign; it has been fashioned to protect the individual against administrative action which is against his interest. On the other hand, the uncertainty of the concept has led to conflicting decisions and conflicting interpretations in the same decision."

However, it is generally accepted and also clear that legitimate expectation being less than right operate in the field of public and not private law and that to some extent such legitimate expectation ought to be protected though not granted.

4.13 In Writ Petition No.1016 of 2007 and other allied matters between Shri Y.T. Narendra Bavu Vs. Union of India and others, in its decision rendered on 28th July 2009, the Karnataka High Court held as under:

"It is thus clear that the respondents were not under any compulsion at the instance of the Government of India to suspend allotment of dealerships between the period 1.4.2002 to 27.12.2004. The claim of the respondent-company as to there being a suspension of the policy of the year 2002 from February 2003 pending formulation of guidelines is hence not substantiated. If the E- mail communication relied upon by the respondent-Company were to be applied "all retail outlet expansion" was to be suspended - not merely the allotment of dealership. Hence, notwithstanding the changed policy guidelines in the allotment of dealerships in favour of land owners - it cannot be said that the petitioners were not induced by the policy, adopted by the

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respondent-Company at the relevant point of time, to offer their land on lease in the expectation of being allotted dealerships. The doctrine of promissory estoppel and of legitimate expectation would apply to the circumstances of the case."

4.14 Thus, the sum and substance of the aforesaid decisions is that once an agreement is entered into, the respondent authority cannot back out of the same in which case the principle of promissory estoppel will come into play.

5.0 Mr. M.R. Bhatt, learned Senior counsel appearing for the respondent company submitted that the transaction of leasing the land by the petitioner in favour of the company is a separate identifiable transaction having no nexus to the award of dealership. After having taken the land on lease, and the retail outlet having been commissioned, the company has awarded contract for maintenance and handling of its Company Owned Company Operated (COCO) outlet which also is a separate contract, only limited to maintenance and handling of the retail outlet. He submitted that the said contract does not give any assurance that dealership will be awarded. In fact the said maintenance and handling contract has been awarded to a person other than the petitioners. According to him the above two being two separate independent contracts, it is not open for the petitioners to interpolate the issue of grant of dealership. He submitted that in these set of circumstances the principles of legitimate expectation or promissory estoppels are not applicable.

5.1 Learned Advocate submitted that it was only during December 2002 that IBP came out with a policy and started awarding dealerships. This policy was put on hold in February 2003. Thus except for a short period of about two months the company was not having a policy to commission retail outlets by offering dealership to the land owners or their nominees. Admittedly the retail outlet, subject matter of the petition was not commissioned during this period of two months, when the policy was in vogue.

5.2 He submitted that so far as the location is concerned, the respondent company intends to continue the location as COCO outlet at this stage as per the guidelines of 6th September 2006 and therefore there is no question of allotting dealership in the present case.

5.3 According to the respondents the Retail Outlet was not a permanent COCO as claimed by the petitioners. It was categorized as temporary COCO for which dealership was to be awarded in due course of time. The Ministry has issued guidelines in the communication dated 6th September 2006 and the Company proposes to award dealership as suggested in those guidelines. The M & H Contract is awarded to the most eligible candidate after displaying a notice for selection of Contractors. No dealership rights are sought to be given even to the M & H contract. According to the learned counsel the petitioners or their nominees are not automatically entitled for the M & H contract. The land has been leased to the Company and the

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Company in its capacity as a Lessee is free to appoint a suitable Dealer. The ownership of the land will continue with the petitioners.

5.4 Learned Counsel further submitted that it is an accepted position that guidelines were issued by policy circular dated 14th November 2002 but they were put on hold in February 2003. The COCO was commissioned on 29th October 2002 prior to the issuance of the guidelines and as such these guidelines are not applicable for this COCO.

5.5 According to the learned counsel, no assurance of award of direct dealership was given to the petitioners and the company being bound by the government directives cannot award dealerships by violating such guidelines.

5.6 It was submitted that though the company is not the owner of the land, it has the right to use it for period specified in the lease deed as lessee. By awarding dealerships to LOI holders of other categories as advised in the Ministrys communications, the land is not being assigned to them as they will not get any title to the land. Dealership is only a Licence Agreement to conduct business as Agent/Dealer. The petitioners have no right to the dealership on any ground.

5.7 Learned Advocate submitted that in the present case the COCO was commissioned before the introduction of the policy and therefore the petitioners cannot claim the dealership.

6.0 Mr. P.S. Champaneri, learned Advocate appearing on behalf of Union of India submitted that there is no contract of any nature between the respondent no.1 and the petitioners and there is no privity of contract between them. According to him, if anything which is contrary to the policy, if at all agreed between the petitioners and the respondent company, it is not at all binding upon the respondent no.1. He submitted that if any one desires to deal with the petroleum products he is duty bound to follow the guidelines which is framed by way of policy by the Union of India.

6.1 Learned Advocate submitted that there was a change of policy with effect from 1st April 2002 whereby the administered pricing mechanism in the petroleum sector was dismantled and the entire selection process of dealers/distributors was conducted by Oil Marketing Companies themselves. The Union has no role to play in the selection process. The respondent companies had complete commercial freedom in the matter of marketing or distribution of petroleum products through their respective networks or retail outlet dealerships through petrol pumps etc.

6.2 He submitted that every Oil Marketing Company is duty bound to frame its own guidelines within the ambit and parameter of the guidelines so published by the Union of India

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and any guidelines so framed by the Oil Marketing Company if it is in direct conflict with the policy framed by the respondent no.1, the same would render it illegal and bad.

6.3 Learned Advocate submitted that in order to achieve the object of complete transparency in selection procedure, the respondent no.1 vide letter dated 27th December 2004 advised all oil marketing companies to temporarily suspend allotment of dealerships under "Land Owners Category" which was being undertaken by the Oil Marketing Companies without following even the basic requirement of a transparent procedure like giving public advertisements in newspaper so that public at large can know about such an action taken by the Oil Marketing Company and that the same would result into more transparency, proper procedure and more viability and right selection. He further submitted that vide communication dated 22nd February 2005 the respondent no.1 advised all Oil Marketing Companies to strictly adhere to the advertisement rule for selection of dealers and distributors to render complete transparency in matters of selection.

6.4 Learned Advocate submitted that all necessary procedural expenses such as taking No Objection Certificate and/or any clearance from any other authority under any law for the time being are also borne by Oil Marketing Companies. Therefore, a huge investment is made by Oil Marketing Companies in establishing a temporary COCO and therefore, appointment of regular dealer is imminently necessary. In order to frame a policy providing for broad parameters for phasing out temporary COCO outlets preferably within a period of one year, guidelines have been formulated by the respondent no.1. He therefore submitted that the petition deserves to be dismissed.

7.0 Learned Advocate for the respondent Oil Company has relied upon the following decisions:

7.1 In the case of Kuldeep Singh V. Govt. of NCT of Delhi, reported in AIR 2006 SC 2652, it is held that the expectation has to be legitimate and State rescinding its earlier excise policy to grant liquor licences to private parties is valid in law.

7.2 In the case of M/s Sethi Auto Service Station V. Delhi Development Authority reported in AIR 2009 SC 904, it is held as under:

"... Having bestowed our anxious consideration tot he facts in hand, in our judgement, the doctrine of legitimate expectation, as explained above, is not attracted in the instant case. It is manifest that even under the 1999 policy, on which the entire edifice of appellants substantive expectation of getting alternative land for resitement is built does not cast any obligation upon the DDA to re-locate the petrol pumps. The said policy merely laid down a criterion for re-allocation and not a mandate that under the given circumstances the DDA was obliged to provide land for the said purpose. Therefore, at best the appellants had an expectation of

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being considered for resitement. Their cases were duly considered, favourable, recommendations were also made but by the time the final decision making authority considered the matter, the policy underwent a change and the cases of the appellants did not meet the new criteria for allotment laid down in the new policy. We are convinced that apart from the fact that there is no challenge to the new policy, which seems to have been conceived in public interest in the light of the changed economic scenario and liberalised regime of permitting private companies to set up petrol outlets, the decision of the DDA in declining to to allot land for re-site of petrol pumps, a matter of largesse, cannot be held to be arbitrary or unreasonable warranting interference. Moreover, with the change in policy, any direction in favour of the appellants in this regard would militate against the new policy of 2003. In our opinion, therefore, the principle of legitimate expectation has no application to the facts at hand.

7.3 In the case of M.P. Mathur V. D.T.C., reported in AIR 2007 SC 414 it is held that the promissory estoppel is based on equity or obligations, it is not based on vested right and in equity the court has to strike a balance between individual rights on one hand and the larger public interest on the other hand.

7.4 In the case of Bannari Amman Sugars Ltd. V. CTO, reported in (2005) 1SCC 625 the Apex Court held that while considering the question of promissory estoppel the Court should consider all aspects including result sought to be achieved and public good at large keeping in mind the fundamental principles of equity.

7.5 In the case of Badri Prasad Soni and another Vs. Union of India, in Writ petition No.5100 of 2006 and other allied matters the High Court of Madhya Pradesh , Jabalpur held as under:

"7. Likewise the policy dated 1-11-2004 of the Corporation relied upon by petitioners regarding selection of retail outlet dealers does not help them in any manner. Clause 2[c] of the policy merely provides that the award of direct dealerships to persons having suitable land can be considered through direct offer without route of advertisement. This clause only gives an option to the Corporation for considering the award of direct dealerships to persons having suitable land without route of advertisement. It does not, in any manner, prevent the Corporation from taking the impugned policy decision for reserving all its COCO retail outlets for dealership for those eligible under the Operation Vijay (Kargil), discretionary quota and other corpus fund beneficiaries like SC/ST, War Widows and unmarried women above 40 years of age without earning parents."

7.6 In the case of Smt.Shakuntala Mantri and Another Vs. Union of India, in Writ Appeal No.599 of 2007 the High Court of Judicature at Jabalpur has held as under:

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"13. Another aspect has been highlighted by Mr. Shrivastava, learned counsel for the appellants that no prudent man would give his prime land on lease but the appellant had given because he was to get the dealership. It is also canvassed that a lessee cannot create a third party interest and oust the owner from the land. This aspect should have been thought of by the lessor before he entered into the lease agreement. The lease deed permits the lessee to licence or submit the demised premises or any part thereof for use for all or any of the purposes mentioned in the lease deed without the consent of the lessor. Once such a categorical consent has been given, the lessor cannot take a somersault and contend that a third party interest is created by the Corporation on the land of the lessor. The lessor has the only right to determine the lease and he may do so as per law and as per the terms of the lease. Beyond that, there is no further right conferred on him. The stand and stance that a right has been conferred as per letter of appointment dated 9.7.2004, in our considered view, is sans substance and in fact an attempt has been made, if we permit ourselves to say so, a castle in Spain."

7.7 The Andhra Pradesh High Court, in Writ petition No.5351 of 2007 and other allied matters it is held as under:

"69. The respective stands taken by the parties already had been referred to supra. The terms and conditions of the lease deeds placed before this Court, being self explanatory, need not be further elaborated. The Deputy Secretary to the Government of India in the guidelines dated 6the September 2006 referred to above, specifically specified that OMC framed their detailed guidelines on the basis of the above broad parameters and with the approval of their respective Board of Directors, and without further loss of time, as this has been long overdue, a copy of those guidelines after formulation had been forwarded to the ministry in this regard. It is stated that while laying down detailed guidelines, OMCs must ensure objectivity and transparency in the matter, and, as far as possible, there should also be given wide publicity by way of showing on the websites of the OMCs, etc.

70. In pursuance of the same, the concerned Oil Companies had taken the present action and the said action had been challenged by the respective petitioners in this batch of writ petitions on the ground that he changed policy or revised policy cannot be applied retrospectively, further on the ground of promissory estoppel and also on the ground of legitimate expectation. No doubt, the further grounds of arbitrariness and discrimination also had been argued in elaboration. In the light of the settled principles of law in relation to the power of judicial review in interfering with such policy decisions, it is needless to say that writ courts are expected to be slow in interfering with such policy decisions. These are cases where parties are bound by the terms and conditions of the respective lease deeds. The change in policy is a uniform policy and, no doubt, in the broad policy laid down by the Union of India, the modalities or the details had not been elaborated but the fundamentals of the policy had been clearly s pelt out and in pursuance thereof, the Oil companies had adopted the present policy, which cannot be said to be either arbitrary or discriminatory. Further, the applicability of the promissory estoppel or the legitimate expectation also would not arise. At any rate, this court is thoroughly satisfied that this uniform policy had been adopted only in public interest. Hence, in the light of the clear guidelines which had been specified above, and also the clear stands taken by the Union of India and also the respective Oil Company is which had been referred to above, this court is

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thoroughly satisfied that these Writ petitions are devoid of merit and the same are liable to be dismissed."

8.0 From the perusal of the record, it is apparent that the basic premises of filing of the petition is that the petitioners herein had entered into a lease deed with the respondent Oil Company in respect of the respective lands. Various terms and conditions have been incorporated in the lease deed. According to the petitioner the lease deed in question was entered into upon assurance given by the respondent Oil Company that after a period of 180 days the petitioner would be given dealership of petrol pump in question. At the relevant time the petrol pump in question was being run as Company Owned and Company Operated (COCO) Petrol Pump. There is another agreement wherein it was agreed by the respondent Company that it would appoint the dealer as its dealer for the retail sale or supply of the premises of certain petroleum product on the terms and conditions mentioned therein. In pursuance of the said dealership agreement, the petitioner executed the aforesaid lease deed and it was contended that specific assurance was given that dealership would be granted within a period of 180 days. It was also agreed that in case the Corporation decides to operate out-let through a dealer, the respondent Company would first offer the petitioners provided all the terms and conditions and the policies prevailing at that time are fulfilled.

8.1 The petitioners have specifically relied upon letter dated 5th September 2002 which reads as under:

"The Company (IBP CO. Limited) wanted to put a Company Owned Company Operated (COCO) outlet at Piplod - Surat in the District of Surat of Gujarat State and for that purpose had entered into a lease agreement with you for lease of the part of land at R.S. No.72 of village Piplod of Surat City TPS No.06, FP No.37, 38, 39 paiki for a period of 20 years commencing from 29.06.2002 which will be renewed for a further period as provided in the lease deed. In furtherance to the above lease deed, the Company states that in the event of the company deciding not to operate the outlet as a "COCO" and decides to operate the outlet through a dealer, the Company will make an offer to the Landlords, provided all the terms and conditions of the Company prevailing at that time are fulfilled. (Emphasis supplied)

The offer made to the landlords cannot be assigned/transferred to any third person and the landlords alone shall have the right to accept/refuse the offer, which right the landlords shall exercise within a period of 30 (thirty) days, failing which the Company will be entitled to offer the dealership to any third party."

8.2 Thus, from the above it is clear that the negotiation for setting up retail outlet on the land of the petitioner was held between the petitioners and the respondent Companies. Thereafter the lease deed was executed and entered into between the parties. By communication dated 4th February 2005 the respondent Oil Company has stated that the petitioners would be

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offered dealership in case the Oil Company decides to run retail outlet as COCO, provided the terms and conditions and the Corporations policies prevailing at that time are fulfilled. It is based upon the aforesaid representation by the respondent Company the lease deed was entered into. It is also required to be noted that in pursuance of the negotiations the petitioners have incurred huge expenditure for development of the land so as to make it conducive for use for the petrol pump. Therefore the respondent Company has specifically stated that the petitioners would be given the offer first in case they decide to operate the pump through a dealer.

8.3 Though a contention has been raised that the specific clauses are not referred to in the Lease Deed, both the parties have acted on the basis of Comfort Letter.

8.4 In view of the fact that the respondent Oil Company has stated that the petitioners would be offered dealership first, it clearly shows that the principle of promissory estoppel would come into play. In view of the settled law and as per the ratio laid down by the Apex Court in the judgements cited herein above, the contentions in this behalf of the petitioner deserve to be accepted and it is to be held that the respondents are duty bound to offer the dealership to the petitioners in case they decide to operate the pump through a dealer.

8.5 However, it is also required to be noted that the aforesaid letter dated 5th September 2002 also stipulates as under:

In furtherance to the above lease deed, the Company states that in the event of the Company deciding not to operate the outlet as a "COCO" and decides to operate the outlet through a dealer, the Company will make an offer to the Landlords, provided all the terms and conditions of the Company prevailing at that time are fulfilled. (Emphasis supplied).

8.6 The contention of the petitioners is that if the words "Corporations policies prevailing at that time" are used to mean "the Corporations policies prevailing at the time of taking decision" then the same would frustrate the purpose of the document entered into between the parties. According to the petitioners, the words ought to have been "Corporations policies prevailing at the time of taking decision" or "the Corporations policies which may change from time to time". This is not the case in the present one.

8.7 A plain reading of the language of the aforesaid words cannot be interpreted in the manner suggested by the petitioners. The words "at that time" are required to be interpreted to mean that "at the time when the company decides to change their decision to convert COCO to RO". Therefore, the interpretation canvassed on behalf of the petitioners that it should be interpreted that the terms and conditions of the policies at the time when the agreement was entered into was prevailing may be accepted.

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8.9 In view of the aforesaid decisions, the principle of promissory estoppel may be attracted, but at the same time the entitlement to grant of dealership shall be subject to the policy decision that will be existing at the relevant point of time. The petitioners right for consideration for dealership are first subject to rules which are prevailing at the relevant time. It can be said that the rights of the petitioners accrue on the date the decision is taken to convert COCO into Retail Outlet. If the interpretation as canvassed by the petitioner is accepted, then the COCO could be given in the contract itself. From an overall perusal of the records, it can be said that the so called special class of landlords was actually only for selection of sight of petrol pump and temporary contract to attract people to meet with the immediate needs which had arisen at that time for which they were given offer of M & H contract of their choice.

9.0 It is required to be noted that the Government of India has issued guidelines in the communication dated 6th September 2006 and the respondent Companies are bound by the guidelines issued by the Government of India. In the said communication it has been decided to lay down broad parameters on the basis of which Oil Marketing Companies may finalize their guidelines for operation of COCO retail outlets. The said communication inter alia states that Oil Marketing Companies should stop job contracting or adhoc dealership for operating permanent COCO retail outlets and follow the model as stated in the said communication or shift their such Retail outlets into the category of Temporary COCO outlets within a period of one month. In pursuance of the said communication the respondent no.2 company decided to stop operation of job contracting of the petitioner under the guise of implementing and operating the communication dated 6th September 2006. It is under these circumstances that the respondent Oil Company decided to discontinue from awarding dealership to the petitioners in accordance with the policy as existed at the time when the petitioners land was assigned to the respondent Oil Company and Company has decided to assign the land to the categories mentioned in the said communication dated 6th November 2006.

9.1 Once the said guidelines have come into operation the dealership has to be awarded on the terms and conditions as stated in the said policy decision. The comfort letter clearly points out that the company will make offer to the landlords provided all the terms and conditions of the Company prevailing at that time are fulfilled. The respondent Oil Company cannot deviate from the guidelines issued by the Government of India.

9.2 In conclusion, I am of the view that as per the comfort letter it is evident that the petitioners are entitled to get an offer from the Oil Company provided all the terms and conditions of the Company prevailing at that time are fulfilled. As and when the respondent Corporation decides to run petrol pump as being owned and being operated petrol pump, first offer has to be given to the petitioner subject to the terms and conditions as well as Corporations policies prevailing at the time of offer made to the landlords.

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10.0 In the premises aforesaid it is held and declared that the petitioners or their nominees are entitled to be appointed as Dealers of retail outlets being managed by the petitioners provided all the terms and conditions of the Company prevailing at the time of taking decision to convert COCO into Retail Outlet are fulfilled. Rule is made absolute to the aforesaid extent in each petition with no order as to costs.

Appeal dismissed

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