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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 21st May, 2021
Date of decision: 22nd July, 2021

\+ **W.P.(C) 8956/2020**

NAJMA ..... Petitioner

Through: Mr. Gaurav Jain, Advocate.

versus

GOVT. OF NCT OF DELHI ..... Respondent

Through: Mr. Rahul Mehra, Sr. Advocate with Mr. Gautam Narayan, ASC, GNCTD and Mr. Adithya Nair, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The saying *`Promises are meant to be broken'* is well known in the social context. However, law has evolved the doctrines of legitimate expectation and promissory estoppel to ensure that promises made by the Government, its officials and other authorities are not broken and are, in fact, judicially enforceable, subject to certain conditions.

2. The present petition has been filed by the Petitioners to seek enforcement of the promise made by the Chief Minister of Delhi (*hereinafter, "CM"*) on 29th March, 2020. Petitioner Nos. 1 to 3, 5 and 6 are daily wage labourers/ workers, who claim to be tenants who are unable to pay their monthly rent, and Petitioner No.4 is stated to be a landlord who hasn't been able to receive the monthly rent from his tenant. Both sets of

Petitioners seek recovery/payment/refund of the monthly rental amount, as per the promise made by the CM.

3. The case of the Petitioners is that the CM gave a press conference on 29th March 2020, in the wake of the COVID-19 pandemic, in which he requested all landlords to postpone the demand/collection of rent from those tenants who are poor and poverty stricken. In the backdrop of instances of landlords forcing tenants to make payments of their rent, while requesting landlords to talk to their tenants and postpone the collection of rents, it is alleged that the CM, in the press conference, had made a clear promise that if any tenant is unable to pay the rent due to poverty, the Government would pay his/her rent on their behalf. According to the Petitioners, a solemn assurance was given that the Government would take care of the tenants. The transcript of the press conference held by the CM is annexed to the petition and reads as under:

> *"मकान मालिकों को मैंने कहा था कुछ दिन पहले कि अगर आप मकान मालिक हैं, आपका किरायेदार गरीब है वो किराया नहीं दे पा रहा, उसका किराया दो-तीन महीने के लिए postpone कर देना, अभी उससे किराया मत लेना।*
>
> *आज मैं आपसे, सारे दिल्ली के मकाल मालिकों से अपील कर रहा हूँ -अगर आप मेरे को अपना बेटा मानते हो, अगर आप मेरे को अपना भाई मानते हो, तो आज जितने मकान मालिक हैं, सब लोग अपने-अपने किरायेदारों से बात करना और उनको कहना कि चिंता*

मत करो, हम आपके साथ है। हम आपको किराया देने के लिए मजबूर नहीं करेंगे। सब लोग जाके आज उनको आश्वासन देना।

कहीं-कहीं से ये खबर आ रही है कि कुछ मकान मालिक उनको जबरदस्ती कर रहे हैं इसलिए वो छोड़-छोड़ के जा रहे हैं। उनसे बिलकुल जबरदस्ती मत करना। आपका किराया आप postpone कर दो।

<u>महीने-दो-महीने के बाद जब ये कोरोना से, मान लो, जब ये सारा झंझट खतम हो जायेगा, उसके बाद मैं आपको, अगर कोई किरायेदार गरीबी के वजह से आपका किराया नहीं दे पा रहा, मैं आपको आश्वासन देता हूँ सरकार उसका भुगतान करेगी। जितने किरायेदार हैं, अगर जो-जो किरायेदार गरीबी की वजह से थोड़ा बहुत किराया नहीं दे पायेंगे, उनके बारे में मैं कह रहा हूँ।</u>

लेकिन अभी कोई मकान मालिक जबरदस्ती नहीं करेगा, और अगर कोई जबरदस्ती करेगा, मकान मालिक तो फिर सरकार सख्त action भी लेगी उनके खिलाफ।"

The translation of the speech that was annexed by the Petitioners, at Annexure P-1 of the Writ Petition, was not accurate. Accordingly, this court called for an official translation of the said speech from the Delhi

High Court (Translation branch). The Official translation of the speech given by the CM in the press conference, reads as under:

> *"A few days ago, I had asked the landlords to postpone the rent of impoverished tenants unable to pay rent for 2-3 months and not take immediate payment.*
>
> *Today, I am appealing to you and the landlords of entire Delhi- if you consider me your son or brother then all the landlords must talk to their tenants and ask them to rest assured that you are with them and won't force them to pay rent. Today, all of you must go and give assurance to them.*
>
> *There has been news from some places that a few landlords are forcing their tenants due to which they are evacuating and leaving. Please don't force them. Kindly postpone their rent.*
>
> *In a month or two when this Corona and let's assume after this entire mess is over, if a tenant has been unable to pay rent due to poverty, I assure you the Government will pay for it. I am talking about those tenants who may be unable to pay some of their rent due to lack of means.*
>
> *However, no landlord will force them right now and if they do so then the Government will take strict action against them."*

It is this assurance that the Petitioners are seeking to judicially enforce through this writ petition, as the CM has allegedly failed to deliver on the said assurance/promise made in the press conference.

Submissions on behalf of the Petitioners

4. The submission of Mr. Jain, ld. Counsel appearing for the Petitioners, is that the assurances were made during a press conference by the CM, on behalf of the Government of Delhi of which he is the highest

functionary. He submits that when such a promise/assurance is given by the Government, citizens are entitled to seek enforcement of such promises on the basis of the doctrine of legitimate expectation. He further submits that the conduct of the Government cannot be contrary to the promise made by the CM, in view of the doctrine of promissory estoppel.

5. Ld. Counsel submits that the assurance given is so clear and categorical that the same would bind the Government, and hence, persons like the Petitioners are entitled to seek payment of their rent for the period of the lockdown or for reimbursement thereof. Insofar as the landlords are concerned, it is submitted that if the tenants do not pay the rent, the landlords are also entitled to reimbursement of the rent from the Government.

6. Insofar as the question of maintainability of this writ petition is concerned, Mr. Jain, ld. Counsel submits that it is the settled position in law that a policy decision is not needed in order for the writ petition to be maintainable. Being the head of the Government, the statements made by the CM can be held to be binding on himself as also the Government. A formal policy decision would only be a ministerial act after the statement has already been made by the CM. The submission, in effect, is that the statement made by the CM would itself not lose its significance in the absence of a policy decision. Mr. Jain, ld. Counsel relies on the judgment of the Supreme Court in ***The State of Jharkhand & Ors. v. Brahmaputra Metallics Ltd., Ranchi & Anr., 2021 (1) SCJ 131.,*** to support this submission.

7. It is further submitted on behalf of the Petitioners that the CM himself was impleaded as Respondent No.2 in the present petition.

However, upon an objection having been raised by Respondent No.1-GNCTD, the Respondent No.2- CM, was deleted from the array of parties, as the relief being sought is not personal in nature but against the Government of Delhi, on behalf of which, the CM had given the assurance in the press conference.

8. Mr. Jain, ld. counsel, submits that Right to Shelter is a fundamental right and the Government, having made a clear representation to the citizens, would be bound by the said representation. Furthermore, it is submitted that the trust which was reposed on the constitutional functionary i.e., the CM, by the citizens is completely breached if the Government is not held to the promise made on its behalf by its highest functionary. The promise, according to Mr. Jain, was itself two pronged in nature i.e. (i) in favour of the tenants and (ii) in favour of the landlords. This writ petition seeks to enforce both the said rights.

9. It is finally submitted by Mr. Jain, ld. counsel on behalf of the Petitioners, that for the period of the lockdown, the Government should be directed to reimburse the rental amounts that the Petitioners have incurred.

10. Reliance is placed by Mr. Jain, ld. counsel, on the following judgments, to canvas the above propositions:

i. ***Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh and ors., AIR 1979 SC 621***

ii. ***State of Punjab v. Nestle India Ltd. and ors., (2004) 6 SCC 465***

iii. ***Brahmaputra Metallics (supra)***

<u>Submissions on behalf of the Respondents</u>

11. Mr. Rahul Mehra, ld. Sr. Counsel along with Mr. Gautam Narayan, ld. ASC, appearing for the GNCTD have submitted that there are two main

questions that arise in this petition. Firstly, whether the doctrine of legitimate expectation can be invoked in the absence of a clear governmental policy and secondly, whether in light of the judgment of the ld. Division Bench of this Court in ***Gaurav Jain v. Union of India & Anr. [W.P.(C) 3519/2020, decided on 15th June, 2020],*** the present writ petition itself would be maintainable.

12. On the question of whether a political statement can be treated as a policy of the government, and whether the doctrine of legitimate expectation can arise on the basis of a political statement made by the CM, Mr. Rahul Mehra, ld. Senior Counsel, submits that the doctrine of legitimate expectation can only be based on actual governmental policy or a governmental notification or an executive decision, and not on a mere political statement.

13. He relies upon the judgment of the Supreme Court in ***Brahmputra Metallics (supra)***, specifically paragraphs 3, 6, 8, 9, 10 and 21, to argue that in the said case, insofar as reduction of 50% towards accessed electricity duty was concerned, it was not based on any oral promise by any political personality, but was on the basis of a clear industrial policy which was introduced by the State in 2012. He relies upon the various observations in the said judgment to distinguish the said case from the present case. The crux of his submission is that that unless and until there is an actual Governmental policy which has been formally issued, a promise cannot be the mere basis of a claim based on the doctrine of legitimate expectation. Mr. Mehra further places reliance upon the judgments of the Supreme Court in ***State of Bihar v. Kalyanpur Cement (2010) 3 SCC 274*** and ***Manuelsons Hotels Private Limited v. State of Kerala (2016) 6 SCC***

766 to canvas the proposition to the effect that legitimate expectation can only be based on governmental policy and without a policy, no enforceable right can be agitated.

14. The judgment of the Supreme Court in ***Nestle India (supra)*** which is relied upon by ld. counsel for the Petitioner, is sought to be distinguished by Mr. Mehra by placing reliance on the fact that though the policy in the said case, which was meant for abolishing purchase tax on milk, originated from the speech of the Chief Minister, the same was thereafter reiterated by the Finance Minister in the budget speech, by the Finance Commissioner, and thereafter a circular to the effect of that policy was issued to the Excise Taxation Commissioners and the Deputy Directors of the State. He submits that it was on the basis of all these documents that when the Government sought to withdraw the said policy, the Supreme Court passed its decision on the application of the doctrine of promissory estoppel.

15. Finally, reliance is placed on two other judgments, namely, ***Bacchittar Singh v. State of Punjab, AIR 1963 SC 395*** and ***State of Bihar v. Kripalu Shankar, AIR 1987 SC 1554*** by Mr. Mehra. In ***Bacchittar Singh (supra),*** he relies upon paragraph 9 to argue that the said judgment clearly recognizes the proposition that until and unless there is a formal order modifying the decision or introducing a decision by the Government, the same cannot give rise to application of the doctrine of legitimate expectation. Relying on ***Bacchittar Singh (supra),*** it is urged that the cabinet form of government and the collective responsibility thereto, would mean that merely a statement of the *Rajpramukh* cannot have a binding nature on the government and its policy decisions. In ***Kripalu Shankar (supra),*** it has been laid down that internal notes are privileged documents

and even if internal notes may violate an order, until and unless the said decision is authenticated by the Government and communicated to the public, it does not have a binding nature.

16. Mr. Mehra, ld. Senior Counsel, has also placed reliance on the judgment in ***State of Bihar v. Sachindra Narayan & Ors., (2019) 3 SCC 803*** to argue that it is settled that the pious hope of a citizen cannot be the basis for a claim based on the doctrine of legitimate expectation. He submits that a moral obligation cannot be the basis of legitimate expectation, until and unless there is a crystalized right that exists.

17. Finally, the statement of the CM, which is relied upon by the Petitioners, and the transcript thereof of the CM's speech dated 29th March, 2020, is placed on record to show that the said statement has four to five components. Mr. Mehra submits firstly that according to the statement, it was expected that COVID-19 as a disease would be tided over in a period of one or two months. It is on the basis of that presumption that the CM made a statement that if, because of poverty, anyone is unable to pay their rent, an assurance/ *आश्वासन* is given that the government would pay a part of the said rental amounts to the landlords. This statement according to Mr. Mehra could at best be construed as an assurance by a CM, and if the same is not carry forward in the form of a formal policy, it would not result in rights being canvassed in favour of the Petitioners. However, political accountability could at best lead to citizens expressing their disappointment whenever elections are called for next. He submits that in no case, would such a statement give rise to a right to the Petitioner to enforce this statement in a Court of law, by way of a writ petition.

18. Mr. Mehra, has also raised an objection in respect to non-compliance of the order dated 25th February, 2021, passed by this Court, by the Petitioner. A comparison of the earlier rejoinder, which was directed to be amended, and the amended rejoinder has been made, to show that the statements made in the amended rejoinder have, in fact, compounded the original objection which was raised by GNCTD. The amended rejoinder as also the original rejoinder have made objectionable statements against constitutional functionaries, without any basis. Accordingly, on the basis of the above submissions it is prayed by the Respondents that the present writ petitions does not deserve to be entertained by this court and ought to be dismissed.

Rejoinder submissions on behalf of the Petitioners

19. In rejoinder, Mr. Jain, ld. counsel submits that, insofar as the ld. Division Bench's judgment in ***Gaurav Jain (supra)*** is concerned, paragraph 9 of the said judgment makes it clear that in general, a lump sum submission could not be entertained in a PIL, however the Court had also clearly allowed individuals to approach the Court. Thus, it is submitted that the doctrine of legitimate expectation and the doctrine of promissory estoppel are applicable to the present case and the ld. Division Bench has categorically permitted individual persons to canvass their case in accordance with law before the court. Accordingly, he submits that the present petition is clearly maintainable.

20. Mr. Jain, ld. Counsel, further submits that the promise, which was made by the CM was not merely as the CM or a political personality, but rather as the head of a government. It was not a political statement but rather a statement made in the context of COVID-19, where the intent was

to prevent the mass migration of labourers, who were leaving the city, which would create a much bigger issue for the government. In lieu thereof, a promise that a part of their rent would be paid by the Government to the landlords, on behalf of the tenants, was made by the CM.

21. It is thereafter urged by Mr. Jain that the doctrine of legitimate expectation does not even need a promise, it can even be passed on the basis of an established past practice, and therefore in the present case, the doctrine would be fully applicable as it is based on express promise made by the CM of the Government. Reliance is placed on paragraph 48 of the judgment of the Supreme Court in ***Madras City Wine Merchants' Association and ors. v. State of T.N. and ors., (1994) 5 SCC 509***, to canvass this proposition.

22. The difference between legitimate expectation and promissory estoppel is also urged to the effect that in the present case, it is not merely the doctrine of legitimate expectation that is applicable, but also the doctrine of promissory estoppel, inasmuch as, based on the statement of the CM, the Petitioners have altered their position and have continued to live in Delhi, instead of migrating to their home towns.

23. It is also submitted by Mr. Jain, ld. Counsel that the judgment in ***Nestle India (supra)*** clearly shows that the statement of the Chief Minister was given effect to judicially, even when there was no formal notification which was passed by the government towards the said statement. He further submits that the same was the condition in the case of ***Motilal Padampat (supra)***.

24. Finally, it is argued that the powers under Article 226 of the Constitution, are extremely wide and expansive. The rights which are being

urged in the present case relate to preservation of the fundamental right to life of the citizens, which shall be seriously impinged if the landlords are to be paid by the Petitioners even in conditions of extreme poverty, and if the Respondent is allowed to not adhere to the assurance given by the CM in his speech. Therefore the Respondent ought to be directed to honour its promise and reimburse the rental amounts that the Petitioners have incurred.

Sur-rejoinder submission on behalf of the Respondents

25. At this stage, Mr. Narayan, ld. ASC, points out that there is no factual basis to the argument of the Petitioners that the Petitioners wanted to leave Delhi, and that they chose to stay back in Delhi owing to the promise made by the CM. He further submits that there are no averments to this effect in the pleadings of the Petitioners as well. Reliance is placed upon the representations made by the Petitioners to canvass this argument.

Analysis & Findings

26. The present writ petition was preferred in November, 2020 by four Petitioners namely Ms. Najma, Ms. Nirmala Savita, Ms. Rashidhan and Mr. Karan Singh. The Respondents arrayed in this petition were the GNCTD, through its Chief Secretary, and the CM, who was impleaded by his name. In the writ petition it is claimed that the Petitioners are either tenants or landlords to whom the CM had made a promise in the press conference held on 29th March, 2020, which was four days after the nationwide lockdown came into effect on 25th March, 2020. Vide order dated 17th December 2020, two more Applicants namely Ms. Rehana Bibi and Ms. Pooja were impleaded as Petitioner Nos. 5 and 6 in this writ petition.

27. In the writ petition, there are some examples that have been given of persons who were living in slum areas and were evicted by the landlords and some who vacated their rented premises voluntarily. It is also claimed that Petitioner No. 3 took a huge amount of loan through formal and informal channels to pay off her rental debt during the COVID-19 pandemic. Letters are claimed to have been written to the Chief Minister Public Grievances Redressal Help Desk on behalf of several tenants and landlords, including the Petitioners. However, apart from merely forwarding the said emails to the Principal Secretary, Home of GNCTD by the OSD to the CM, no further action was taken on the same. The representations sought to ask the CM to adhere to his promise and pay outstanding the rent. However, the only reply that was received is an email which forwarded the representation from the Office of the CM to the Office of the Principal Secretary, Home Department, GNCTD. The contents of the said email dated 22nd September 2020, are as under:

> "*Sir,*
> *This email, received at CM's official email ID is being forwarded for your kind perusal and appropriate necessary action at your end.*
> *Regards,*
> *Rajeev Gupta*
> *O.S.D. to Chief Minister, Delhi*"

28. It is claimed in the writ petition that not only have the Respondents not honoured the promise made by the CM in the press conference, but in fact none of the communications sent by the Petitioners and similarly situated individuals to the Government were even responded to.

Accordingly, the present writ petition has been filed by a few of the aggrieved landlord and tenants, with the following prayers:

> "*a. Pass an appropriate writ of mandamus or order directing the Government of NCT of Delhi (R1) to honour the promise made by its Chief Minister (R2) on 29.03.2020.*
>
> *b. Make the above writ or order, if in favour of the Petitioners, applicable to the people who have already written to R2, and other tenants and landlords placed in a situation similar to that of Petitioners."*

29. When the writ petition was initially listed on 25th November 2020, the Court had directed the Petitioners to satisfy the court on the question of maintainability of this petition. Vide order dated 17th December, 2020, the Chief Minister, who was impleaded as Respondent No.2, was deleted from the array of parties, and notice was issued to Respondent No. 1- GNCTD, subject to the objection of maintainability of the petition. Thereafter, vide order dated 11th January 2021, counter affidavit and rejoinder were called for, and the pleadings were completed in the matter. This court has heard ld. Senior Counsel and counsels for the parties from time to time, and detailed arguments have been advanced, both on the preliminary issue of maintainability, as also on merits.

<u>On Maintainability</u>

30. On the issue of maintainability, the submission of Mr. Gautam Narayan, ld. ASC appearing for the GNCTD is that in the absence of a clear governmental policy, the doctrine of legitimate expectation cannot be invoked. Secondly, in the light of ld. Division Bench judgment passed in case of ***Gaurav Jain (supra)*** the present petition is not maintainable, as the

Petitioner's counsel Mr. Jain was the PIL litigant in the said petition. The petition is thus not *bonafide* in nature.

31. A perusal of the said judgment passed by the Division Bench of this court shows that the Petitioner in the said Public Interest Litigation (*hereinafter*, *"PIL"*) was the same person who is appearing as the counsel for the Petitioners in this petition. The said PIL before the Division Bench of this court sought various reliefs, including waiver of rent, non-eviction of tenants due to non-payment of rent etc. It also prayed for creation of a `Rent Auxiliary Fund' as also for the creation of a `Rent Resolution Commission' for payment of prompt compensation to landlords and tenants. In the said context, the ld. Division Bench held as under:

> "*3. Having heard the petitioner in person and looking to the facts and circumstances of the case, it appears that the petitioner is in search of:-*
>
> *(a) Waiver of Rent for all the tenants*
>
> *(b)Constitution of 'Rent Resolution Commission',*
>
> *(c) Constitution of 'Rent Auxiliary Fund'*
>
> *(d) Amendments in the Standard Operating Procedure as stated in prayer (f),*
>
> *(e) One time amnesty to the landlords or tenants, and*
>
> *(f) setting aside order dated 17th May, 2020 passed by respondent No.1/UOI.*
>
> *4. This petition, filed as a public interest litigation on behalf of the tenants resident in Delhi, is thoroughly misconceived and baseless.* ***The general prayer for waiver of rent, cannot be granted by this Court while exercising powers under Article 226 of the Constitution of India.*** *The payment of rent depends on*

a contractual arrangement between the tenant and the landlord. The prayer in the petition in essence asks landlords to forgo the consideration for their premises already retained by the tenant. The powers/discretion for waiving of such consideration (rent) vests first with the landlords, who are contractually entitled to the same. This Court will be extremely slow in interfering with the contractual terms which have been entered into by the parties to the contract. It is not the case of the petitioner that all such contracts were entered into under coercion, fraud, mistake, undue influence etc. nor was there any compulsion, on the part of tenant to enter into such contract with landlord. Although the prayer in the petition is not limited to a particular class of tenants, even assuming the petitioner intends to espouse the cause of the poorer sections of tenants, the prayer cannot be granted in a public interest litigation of this nature. ***Moreover, the persons who have to waive the payment of rent cannot be joined as party respondents when the petition is not confined to any specific cases.*** *Thus, in absence of all these landlords of the city of Delhi, on their behalf, this Court cannot waive the payment of rent while exercising powers under Article 226 of the Constitution of India. Hence, we see no reason to entertain the prayer for waiver of the rent. It ought to be kept in mind that Court cannot do charity at the cost of others.* ***Charity beyond law is an injustice to others.*** *If the landlord is entitled to receive the rent/consideration in accordance with law as per the contractual agreement entered between the parties concerned, then, the Court cannot, by a general order of the nature sought by the petitioner, waive such amount.*

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11. Looking at the averments made in this writ petition it appears that this is not a public interest litigation, but, it is publicity interest litigation. The petitioner,

> *who is a lawyer, has not considered the matter in the context of the role of the Courts in such proceedings, and has also not made out any arguable case in support of his prayers. The proposals made by him are ill conceived, as he does not appear to have thought about their practicability or their effect on other stakeholders.*"

Thus, the ld. Division Bench was of the opinion that the PIL was motivated and was not genuine in nature. Accordingly, the Petition was dismissed.

32. The ld. Division Bench, further, observed that if any individual approaches the Court with proper facts and averments, the same can be considered by the court. The observations to this effect are as under:

> "*9. The petition proceeds on the presumption that tenants alone are suffering from financial hardship, or from the economic consequences of the pandemic and consequent lockdown. However, it ought to be kept in mind that even the landlords can be financially dependent on the rent, e.g. when the rented premises is given by a widow or by a retired person having no other means of income and when they are solely dependent on the rent, for their livelihood. Similarly, there are several instances where rented premises are occupied by the tenants who are running shops, malls and doing other commercial activities. Without going through specific facts of each and every case, no dispute in relation to payment of rent and eviction thereof can be decided by the Court between tenants and landlord. Thus, whenever a landlord expects eviction of the premises on the basis of non-payment of the rent, in such eventuality, the Court has to appreciate the proved facts of that particular case. For canvassing an argument of waiver of rent, proof of facts is a must. There cannot be lumpsum/general submission and that too in a public interest litigation,*

> *that rent should be waived and there can be no eviction, on ground of non-payment of the rent for tenants who are poor. Hence, this writ petition is devoid of any merits as a public interest.* ***Nonetheless, as and when any individual approaches the Court, with proper facts and averments, the decision can be taken by the Court, in accordance with law, rules, regulations and government policies applicable to the facts and circumstances of that particular case****. It is in this regard that we see no reason to interfere with the order dated 17th May, 2020, passed by Respondent No. 1/UOI.*"

33. A perusal of the observations of ld. Division Bench of this court in ***Gaurav Jain (supra)***, as also the reasons for challenging the maintainability of this petition raised by the Respondent, show that though the same are raised as preliminary objections as to the maintainability of this petition, the same travel beyond being mere preliminary objections and would also require determination on merits.

34. Firstly, the question as to whether the doctrine of legitimate expectation can be applied in the present case itself is an issue which is to be determined on merits. Secondly, the case of the six Petitioners, who are individuals that have approached this Court, would have to be considered in the light of the observations made in paragraph 9 of the judgment rendered by the Division Bench of this court. Since both these issues, would require examination of the matter on merits, this Court has heard the parties concerned on the merits of the dispute itself. The present writ petition cannot be rejected at the outset without a deeper examination. Accordingly the present petition would not be liable to be dismissed as being non-maintainable.

On Merits

35. This court has considered the rival submissions of the parties on merits, and the applicability of the doctrine of legitimate expectation as also the doctrine of promissory estoppel to the facts of the present case. However, before dealing with the merits of this case, it is necessary to consider the legal position relating to the said two doctrines.

UK Judgments

36. There are a catena of judgments in the United Kingdom that have elucidated the principles of the doctrine of promissory estoppel and legitimate expectation. One of the foundational decisions in this regard is the decision in ***R. v. Liverpool Corporation, ex parte Liverpool Taxi Fleet Operators Association, [1972] 2 All ER 589.*** In the said case, the Court of Appeal, Civil Division in the UK was dealing with licenses for taxi cabs that were given by the Liverpool Corporation. The taxi cab owners wanted a limit on the number of licenses that were given, but the cab drivers sought an increase, in order to deal with the competition with unlicensed private cars. When the Corporation proposed to increase the number of licenses, an assurance was given by the Town Clerk that all interested parties will adequately be consulted before a decision is taken on the same. This assurance was the gravamen of the dispute.

37. The Court of Appeals held that the authorities, while considering applications for hackney carriage licenses, had a duty to act fairly, after giving due regard to all conflicting interests of the stakeholders. The Court was required to intervene in order to secure fairness in the conduct of the authorities. Since the association was assured of being afforded a hearing,

and was not given one, the Court of Appeal held in favour of the association. Finally, the Court held that the authority would stand restrained from granting any further licenses without hearing the interested stakeholders, including the members of the association. The basis of the Court's judgement was that the Town Clerk's assurance was one which meant that the authority had to act fairly in the discharge of its duties, and any action incompatible with the assurance that was given would be unfair. A public authority had to honour the assurance that was given. To this end, the Court observed as under:

> *"The other thing I would say is that the corporation were not at liberty to disregard their undertaking. They were bound by it so long as it was not in conflict with their statutory duty. It is said that a corporation cannot contract itself out of its statutory duties. In Birkdale District Electric Supply Co Ltd v Southport Corpn, [1926] AC 355 at 364, the Earl of Birkenhead said that it was --*
>
> > *'a well-established principle of law, that if a person or public body is entrusted by the Legislature with certain powers and duties expressly or impliedly for public purposes, those persons or bodies cannot divest themselves of these powers and duties. They cannot enter into any contract or take any action incompatible with the due exercise of their powers or the discharge of their duties.'*
>
> *But that principle does not mean that a corporation can give an undertaking and break it as they please. So long as the performance of the undertaking is compatible with their public duty, they must honour it. And I should have thought that this undertaking was so*

compatible. At any rate they ought not to depart from it except after the most serious consideration and hearing what the other party has to say; and then only if they are satisfied that the overriding public interest requires it. The public interest may be better served by honouring their undertaking than by breaking it. This is just such a case. It is better to hold the corporation to their undertaking than to allow them to break it. Just as it was in Robertson v Minister of Pensions, and Lever (Finance) Ltd v Westminster Corpn.

Applying these principles, it seems to me that the corporation acted wrongly at their meetings in November and December 1971. In the first place, they took decisions without giving the owners' association an opportunity of being heard. In the second place, they broke their undertaking without any sufficient cause or excuse.

The taxi cab owners' association come to this court for relief and I think we should give it to them. The writs of prohibition and certiorari lie on behalf of any person who is a 'person aggrieved', and that includes any person whose interests may be prejudicially affected by what is taking place. It does not include a mere busybody who is interfering in things which do not concern him; but it includes any person who has a genuine grievance because something has been done or may be done which affects him."

38. In ***the Attorney General v. Ng Yuen Shiu also known as Ng Kam Shing (and Cross-appeal), [1983] 2 AC 629***, an appeal was filed before the Privy Council arising from a judgement of the Court of Appeal in Hong Kong. The question under consideration was whether aliens (immigrants) who had entered Hong Kong in contravention of the local laws, were

entitled to a hearing and fair inquiry, by the Hong Kong authorities before being repatriated. The case involved thousands of immigrants who had moved from mainland China. The Director of Immigration had powers under Section 19 of the Immigration (Amendment) (No.2) Ordinance, 1980, to order the removal of illegal immigrants. The immigrant concerned in this case was born in China and was taken to Macau at the age of 3 years. He entered Hong Kong illegally in 1967, but was noticed by the authorities only in 1976. A removal order was passed against him in March, 1976, however in April, 1976, he had re-entered Hong Kong. He then set up a small garment factory and was involved with the same.

39. Due to a new policy being introduced in 1980 by the then government of Hong Kong, illegal immigrants from China were liable to be repatriated. Insofar as illegal immigrants from Macau are concerned, the Governor of Hong Kong had made a representation, as part of a Q&A, to the effect that illegal immigrants from Macau would be interviewed in due course, and that there was no guarantee that they would not subsequently be removed. The relevant Q&A reads as under:

> "*Q. Will we be given identity cards?*
>
> *A. Those illegal immigrants from Macau will be treated in accordance with procedures for illegal immigrants from anywhere other than China. They will be interviewed in due course. No guarantee can be given that you may not subsequently be removed. Each case will be treated on its merits."*

40. At the time when the said representation above, was made by the Governor, the claimant was not personally present. However, when the immigration office called him for an enquiry, he was detained and

thereafter, a removal order was passed against him. The said order of removal was challenged before the Immigration Tribunal and was finally heard by the Full Bench of the High Court. The High Court firstly held in favour of the immigration authority. However, on an appeal before the Court of Appeal, the said court allowed the appeal in part, in effect, restraining the authority from repatriating the claimant before an opportunity could be given to him for placing all the factual circumstances before the Director of Immigration. It is this order which reached the Privy Council in appeal.

41. The Privy Council, in its judgment dated 21st February 1983, referred to the ***Liverpool Corporation (supra)*** case, and held that an alien is as much entitled to be heard by the authorities as is a British subject. If the public authority has to follow a certain procedure, and has assured to that extent, it has to act fairly and implement its promise. The observations of the Privy Council read as under:

> "*Their Lordships see no reason why the principle should not be applicable when the person who will be affected by the decision is an alien, just as much as when he is a British subject. The justification for it is primarily that, when a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, so long as implementation does not interfere with its statutory duty. The principle is also justified by the further consideration that, when the promise was made, the authority must have considered that it would be assisted in discharging its duty fairly by any representations from interested parties and as a general rule that is correct.*"

Accordingly, the appeal by the Attorney General was dismissed and an order of *certiorari* was issued quashing the removal order against the claimant.

42. In ***the Queen (on the application of Asif Mahmood Khan) v. the Secretary of State for the Home Department Ex Parte, [1984] 1 WLR 1337, [1984] EWCA Civ 8***, the Supreme Court of UK was considering the case of a Pakistani migrant in the UK, who was given amnesty in 1975. Since the migrant and his wife could not have children, they desired to adopt the child of a relative. When they sought advice from the Bureau in respect of adoption of the said child, they received a reply which primarily stated that no child could be brought into UK for adoption, however, the Home Secretary had discretion in this regard to allow a child to be brought into UK as an exception, subject to certain conditions being fulfilled. The procedure of adoption was also set out in the said letter received from the Bureau. The claimant then applied for an entry clearance in the immigration section at the Islamabad Embassy and completed the requisite documentation. A report was sent by the Embassy and the same was referred to the Home office. Once again, the Home office gave the procedure which would be followed after receipt of the report, however, the said procedure was not initiated. Finally, the adoption was refused by the Home office. In the said refusal order, it was mentioned that the Secretary of State was not satisfied that there were any exceptional, serious or compelling circumstances to depart from the usual rule of not allowing the child to be brought into UK for adoption. It was this communication, which in its conclusion refused the adoption, by stating that there were no exceptional circumstances for exercise of discretion, that was challenged

before the Court. The Court again considered as to whether there was any assurance or promise made by the authorities and whether it resulted in a legitimate expectation in favour of the claimant.

43. The Supreme Court, by a 2:1 majority, came to the conclusion that the letter did afford a legitimate expectation to the extent that the procedures that were provided within would be followed, and if upon implementation of the said procedures, the Secretary of the State would be satisfied, then a temporary clearance would be issued. The refusal to give entry was accordingly quashed and the authority was directed to follow the procedure that was given and provide a full opportunity to the applicant to make a representation before the Secretary of State. The observations of the Court are as under:

> *"I have no doubt that the Home Office letter afforded the appellant a reasonable expectation that the procedures it set out, which were just as certain in their terms as the Question and Answer in Mr. Ng's case, would be followed; that if the result of the implementation of those procedures satisfied the Secretary of State of the four matters mentioned, a temporary entry clearance would be granted and that the ultimate fate of the child would then be decided by the adoption court of this country. I have equally no doubt that it was considered by the department at the time the letter was sent out that if those procedures were fully implemented they would be sufficient to safeguard the public interest. The letter can mean nothing else. This is not surprising. The adoption court will apply the law of this country and will thus protect all the interests which the law of this country considers should be protected. The Secretary of State is, of course, at liberty to change the policy but in my view, vis-à-vis the recipient of such a letter, a new policy can*

> *only be implemented after such recipient has been given a full and serious consideration whether there is some overriding public interest which justifies a departure from the procedures stated in the letter."*

44. In ***the Queen (on the application of Manik Bibi and Ataya Al-Nashed) v. The London Borough of Newham [2002] 1 WLR 237, [2001] EWCA Civ 607***, the Supreme Court of Judicature, Court of Appeal (Civil Division) was dealing with housing for homeless persons. The High Court had held that the two families of the applicants, were bound to be given suitable accommodation on a secure tenancy basis, as they were homeless and in priority need. The families of the Applicants had relied upon the provisions of the Housing Act, 1985, as also the promise made by the authority, that they would provide legally secured accommodation to homeless people within 18 months, in the early 1990s. The authority had failed to fulfil the promise and it sought to renege on the same. The claim of the authority was that it was under an erroneous assumption at the time when it made the promise, that the Housing Act, 1985 had imposed a duty on it to provide such an accommodation to the homeless people. The two families of the Applicants, on the other hand, claimed that since the promises were made by the authority, it was under a statutory duty to provide the said accommodation. The Single Judge had upheld the claim in favour of the Applicants on the ground of there being a legitimate expectation. In the appeal proceedings, the Court of Appeal considered the following issues.

> "*8. Was there an expectation held by the beneficiary of the statutory duty as to the method by which the duty*

> *would be fulfilled? Was that expectation generated by a representation made by the statutory authority (or service provider)? Was the expectation "legitimate"? Would it be unfair to the beneficiary of the duty to allow the statutory authority to resile from its representation? If it would be unfair, is there an over-arching policy consideration which should prevail to enable the statutory authority to resile notwithstanding the consequent unfairness?"*

45. Upon considering the decision in ***Ng Yuen Shiu (supra)***, the Court observed that the following questions arise:

> "*19. In all legitimate expectation cases, whether substantive or procedural, three practical questions arise. The first question is to what has the public authority, whether by practice or by promise, committed itself; the second is whether the authority has acted or proposes to act unlawfully in relation to its commitment; the third is what the court should do. This formulation of the questions is we think a more helpful way of approaching the problems in this type of case than the fivefold question adopted during argument."*

46. On the first question, i.e., *what has the public authority, whether by practice or by promise, committed itself*, the Court held that the authority did give a promise and commit itself to the said promise. On the second and third questions i.e., *whether the authority has acted or proposes to act unlawfully in relation to its commitment*, and *what the court should do,* the Court held that the precedents in the context of legitimate expectation should act as a guide and not as a cage. It held that the Wednesbury categories of abuse of power were not exhaustive in nature. It further observed that a large number of public authorities are unable to deliver on

the promises which they make if they later feel that it was unwise of them, however should the authority be held to its promise or not, is the question that was to be answered. Considering that within 18 months the authority did not have adequate housing to provide for all families who required the same, which may have been due to a lack of funding or otherwise, the Court observed that if the authority acts in breach of a promise having given rise to a legitimate expectation, and decides to adopt a different course of action, it could amount to an abuse of power, however the same was required to be examined in light of the facts. The Court then observed that the two questions that were to be considered by the court then, would be as under:

> *"40. The court has two functions - assessing the legality of actions by administrators and, if it finds unlawfulness on the administrators' part, deciding what relief it should give. It is in our judgment a mistake to isolate from the rest of administrative law cases those which turn on representations made by authorities. The same constitutional principles apply to the exercise by the court of each of these two functions.*
>
> *41. The court, even where it finds that the applicant has a legitimate expectation of some benefit, will not order the authority to honour its promise where to do so would be to assume the powers of the executive. Once the court has established such an abuse it may ask the decision taker to take the legitimate expectation properly into account in the decision making process.*
>
> *42. Only part of the relevant material upon consideration of which any decision must be made is before the court. Because of the need to bear in mind more than the interests of the individual before the court, relevant facts are always changing. As Lord*

Bingham said in R v Cambridge Health Authority, ex parte B [1995] 2 All ER 129:

> *"...it would be totally unrealistic to require the authority to come to the court with its accounts and seek to demonstrate that if this treatment were provided for B then there would be a patient, C, who would have to go without treatment. No major authority could run its financial affairs in a way which would permit such a demonstration."*

43. While in some cases there can be only one lawful ultimate answer to the question whether the authority should honour its promise, at any rate in cases involving a legitimate expectation of a substantive benefit, this will not invariably be the case."

47. The Court factually concluded that neither of the families in the said case had altered their positions, or suffered an detriment on the strength of the expectation arising out of the policy. However, the same was held to not affect the court's approach towards legitimate expectation, given that the mere fact that someone has not changed his position after a promise has been made to him does not mean that he has not relied on the promise. The Court thereafter observed as under:

> "*55. The present case is one of reliance without concrete detriment. We use this phrase because there is moral detriment, which should not be dismissed lightly, in the prolonged disappointment which has ensued; and potential detriment in the deflection of the possibility, for a refugee family, of seeking at the start to settle somewhere in the United Kingdom where secure housing was less hard to come by. In our view these things matter in public law, even though they might not found an estoppel or actionable*

> *misrepresentation in private law, because they go to fairness and through fairness to possible abuse of power. To disregard the legitimate expectation because no concrete detriment can be shown would be to place the weakest in society at a particular disadvantage. It would mean that those who have a choice and the means to exercise it in reliance on some official practice or promise would gain a legal toehold inaccessible to those who, lacking any means of escape, are compelled simply to place their trust in what has been represented to them."*

48. The Court finally held that when a public authority wishes to renege on its promise, it must take into account the legitimate expectation of the public. Unless there are valid reasons recognized by law for not giving effect to the same, the authorities are bound to give reasons so that the propriety of such reasons can be tested in a Court of law. The relevant portion of the observations of the Court are as under:

> *"58. When considering the legitimate expectation which it has created, the Authority is entitled to take into account the current statutory framework, the allocation scheme, the legitimate expectation of other people, its assets both in terms of what housing it has at its disposal and in terms of what assets it has or could have available. It should consider whether, if it considers it inappropriate to grant the applicants secure tenancies of a council house, it should adopt any other way of helping the applicants to obtain secure housing whether by cash or other aid or by amending the allocation scheme so as to give some weight to legitimate expectation in cases similar to the present, of which we understand there to be a number.*
>
> *59. But when the Authority looks at the matter again it must take into account the legitimate expectation.* ***Unless there are reasons recognised by law for not***

> ***giving effect to those legitimate expectation then effect should be given to them****. In circumstances such as the present where the conduct of the Authority has given rise to a legitimate expectation then fairness requires that, if the Authority decides not to give effect to that expectation, the Authority articulate its reasons so that their propriety may be tested by the court if that is what the disappointed person requires."*

49. The Court, in conclusion, recognised that the Authority was under a duty to ***consider*** the application of the Applicants' housing, based on their legitimate expectation, and provide reasons which could be tested in the court of law, if it chose to not provide the housing. Therefore, the Court finally directed the Housing authority to consider the applicants' applications for suitable housing on the basis that they had a Legitimate expectation towards being provided with a suitable accommodation, with secure tenancy.

50. In ***the Queen (on the application of Noorrullah Niazi and ors.) v. the Secretary of State, [2008] EWCA Civ 755,*** the Supreme Court of Judicature of the UK was concerned with two concurrent schemes to compensate victims of miscarriages of justice. The said victims were entitled to *ex-gratia payments.* The schemes provided compensation in respect of those persons who were held to be in custody due to a wrongful conviction or charge, and if the same was a result of a serious default by a member of police or any other public authority. A further discretionary scheme was announced by the Secretary of State in 1985, according to which, apart from these two categories, there could be other exceptional circumstances such as new facts emerging at trial etc., which may entitle such victims for compensation under the said scheme. Thus, there were two

categories of compensation schemes, one which was statutory, due to default by police authority or other public authorities, and the second which was discretionary and to be provided under exceptional circumstances.

51. The three claimants in these cases were convicted of various offences such as indecent assault, blackmail, rape etc. In respect of two claimants, the convictions were quashed by the Court of Appeal. In respect of the third claimant, the charges were dropped. The question was whether they were eligible for compensation under the statutory scheme i.e. due to a default by the police or the public authorities. The quashing of the convictions of two of the applicants was firstly due to a translator who had been suspended on the ground of dishonesty, and secondly due to non-disclosure of medical evidence.

52. The Supreme Court held that the concept of legitimate expectation had two dimensions- i.e. procedural legitimate expectation and substantive legitimate expectation. The first means that notice would be given or consultation would be held before bringing any change to a substantive policy. The second, i.e. a substantive legitimate expectation, means that an existing practice of policy would be directed to be continued, in the face of a change in policy, on the ground that the persons who enjoy benefits under the earlier policy, had a legitimate expectation to continue to enjoy the same despite the change in policy. The facts of this particular case, however, related to a change in policy which the authorities could bring about. Since there was a change in the policy and the earlier scheme had itself been withdrawn completely, the Court held that there could not have been any legitimate expectation in favour of the Applicants.

53. In ***the Queen (on the application of Alansi) v. London Borough of Newham, [2013] EWHC 3722 (Admin)***, the High Court of Justice in UK dealt with a claimant who had made an application for housing to the permanent council, on the ground that she belonged to the home-seeker category. There was a long waiting list for the allocation and considerable time would lapse before the allocation of a house could be made. In order to overcome the severe shortage of housing, the Respondent had introduced a Bond Scheme, which was also an arrangement between the authority and private landlord, where some incentive payments would be made so that the household could be given an assured short hold tenancy in the private sector. The claimant made an application in 2005 seeking homelessness assistance. At that time she had one child, and thereafter, by the time the case was considered by the Court, she had four children. She was also diagnosed with hyper mobility syndrome. In view of the long waiting list in the housing scheme, she decided to avail of accommodation under the Bond Scheme. However, at the time when the claimant had decided to avail of the Bond Scheme, the authority had assured her that she would "*still retain the right to bid for Permanent Council accommodation"*. It was this assurance which was given by the authority, which was the subject matter of the dispute before the UK Court.

54. The claimant availed of the accommodation under the Bond Scheme and thereafter, continued to remain in line for permanent housing accommodation. However, the policy for accommodation was changed sometime in 2012, by which the claimant's priority in the waiting list for accommodation was reduced as various other categories were given preference over the people who were similarly situated to the claimant. It

was this change in policy and the deprivation of preference given to the claimant that was challenged.

55. The High Court, discussed the entire law on legitimate expectation in UK. It distinguished the assurances given under the contracts to those that are given by the public authorities, especially to the members of the public who may not be so well versed with laws and policies. The court then observed:

> *20. I do not accept that the approach that is appropriate when interpreting contractual documents prepared by persons who are intent on entering into contractual relations is directly transferable to the interpretation of statements by public bodies that are said to give rise not to a contract but to legitimate expectation. The law of contract assumes a measure of equality which makes it appropriate to adopt the objective view of the hypothetical "reasonable person", though even when interpreting contracts, the objective approach to the understanding of the reasonable person takes into account the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract. It is necessary to recognise that, where a public body makes statements to an individual, there can be no assumption of equality and it is what the individual will understand that matters. For that reason, the approach to interpretation of statements that are said to give rise to a legitimate expectation is more closely analogous to the approach to be adopted when considering the meaning and quality of advice given by professionals to their clients. The facts of this case provide a clear illustration of why this should be so. It is accepted that the Claimant is typical of persons to whom the Defendant may owe a duty under s. 193. While the Court has no knowledge of her early life or education, it is apparent that she is not*

originally of English ethnicity religion or culture; she is not in employment; and the Court was told that she had limited understanding of English - her witness statement stated that a solicitor had read it over and explained it to her, which tends to confirm this information. <u>While English law may assume that all subjects are aware of the law, it is (as was accepted by Mr Baker) quite unrealistic to assume that the Claimant (or persons in her position generally) will have any detailed understanding of the labyrinthine provisions of housing law in general or of the Defendant's schemes in particular; this is reflected in the steps taken by the Defendant to record that certain matters are explained to applicants, but it is obvious that such explanations are no substitute for detailed understanding. Similarly, there is no reason to assume that applicants will be aware of the fact that policies may change or how that change may be effected.</u>

21. What I would accept is that an element of objectivity is to be adopted in interpreting the statements made by public authorities upon the basis of which it is alleged that legitimate expectation has arisen. As appears below, reliance and acting to a person's detriment may be material when assessing whether an authority's subsequent actions amount to an unlawful abuse of power. That being so, it would not be acceptable for an individual to be allowed to rely upon an interpretation that was irrational or capricious for her given her background knowledge and understanding. I would therefore modify the ICS test as follows: <u>the Court should ascertain the meaning which the Defendant's statements would reasonably convey to the Claimant in the light of all the background knowledge which she had in the situation in which she was at the time that the statements were made.</u>

56. After discussing the law on legitimate expectation, the Court held as under:

"*26. It is now well established is that where a Claimant is relying upon a promise or representation by a public authority as giving rise to a substantive right, the Court will not be limited to a Wednesbury irrationality challenge, but will be required to consider whether the public authority has struck the correct balance between the public interest and the interests of the Claimant. In doing so, it will ask whether the public authority has shown there to be an overriding public interest that justifies departing from the assurance that has been given."*

57. Thereafter, the Court laid down the following tests while considering the issues concerning legitimate expectation of citizens:

"*35. Without derogating in any way from the statements of applicable principle set out above, I attempt to summarise the main points as follows:*

i) Where a person asserts a legitimate expectation to enforce what amounts to a substantive right based upon a promise or assurance by a public authority, the authority's statement must be clear, unambiguous and devoid of relevant qualification;

ii) Where a public authority has made statements to an individual that are said to give rise to a legitimate expectation, the Court should ascertain the meaning which the authority's statements would reasonably convey to that person in the light of all the background knowledge which he or she had in the situation in which he or she was at the time that the statements were made;

iii) Where a person is relying upon a promise or representation by a public authority as giving rise to a substantive right, the Court will not be limited to a Wednesbury irrationality test but will be required to consider whether the public authority has struck the

correct balance between the public interest and the interests of the person relying on the promise or representation;

iv) The test to be applied is whether frustrating the Claimant's expectation is so unfair that to take a new and different course will amount to an abuse of power. Once the expectation has been established, the court must weigh the requirements of fairness against any overriding interest relied upon for the change of policy. Both procedural and substantive unfairness may be taken into account when applying this test;

v) Reliance and detriment are not essential pre-requisites to a finding of unlawful abuse of power but their presence (or absence) may be taken into account in deciding where the balance of fairness lies and whether the authority has acted unlawfully;

vi) The Court should give due weight to the proper role of public authorities as agents of change and as being responsible for the adoption and implementation of policies that are in the public interest even though they may conflict with the interest of private individuals, including those to whom assurances have been given;

vii) Being afforded priority under a housing allocation scheme is no guarantee of being awarded permanent accommodation either at all or within any particular timescale."

58. Applying the said principles in the facts and circumstances of the case, the Court held that the authority's attempt to resile from the assurance that was given to the Applicant was *prima facie* unreasonable and required justification. However, upon examination of the justifications that were

pleaded on record for the change in the said housing policy, the Court held that the conduct of the authority was not unreasonable and there was no unlawful abuse of power. In the Court's view, the new policy was a proportionate response to the social problem that the authorities were attempting to deal with.

Indian Judgments

59. The foundational principles of the doctrines of promissory estoppel and legitimate expectation in India were laid down in the case of ***Collector of Bombay v. Municipal Corporation of the City of Bombay & Ors., 1952 1 SCR 43***. In the said case, the question that arose was as to whether any rent could be charged from the Municipal Corporation, which gave up its old site and was asked to shift to a new site, on the ground that it is a public building. The Municipal Corporation had given up the old site where the markets were located and had spent a substantial sum in erecting and maintaining markets on a new site. The Collector of Bombay, however, assessed the new site to land revenue. A suit was filed by the Municipal Corporation challenging the said assessment by the Commissioner. The High Court of Bombay, in the said suit, held that in view of the equity which arose in favour of the Municipal Corporation, the Government would not assess the Corporation for land revenue. The Government had, in fact, given an assurance that the Corporation could retain the land in perpetuity free of rent. In lieu of this assurance, the observations of Justice N. Chandrasekhara Aiyar were as under:

> *31. Can the Government be now allowed to go back on the representation and, if we do so, would it not amount to our countenancing the perpetration of what can be compendiously described as* ***legal fraud*** *which*

> *a court of equity must prevent being committed? If the resolution can be read as meaning that the grant was of rent-free land, the case would come strictly within the doctrine of estoppel enunciated in section 115 of the Indian Evidence Act. But even otherwise, that is, if there was merely the holding out of a promise that no rent will be charged in the future, the Government must be deemed in the circumstances of this case to have bound themselves to fulfil it. Whether it is the equity recognised in Ramsden's case (1866) L.R. 1 H.L. 129, or it is some other form of equity, is not of much importance. Courts must do justice by the promotion of honesty and good faith, as far as it lies in their power. As pointed out by Jenkins C.J. in Dadoba Janardhan's case (Dadoba Janardan v. The Collector of Bombay (1901) I.L.R. 25 Bom. 714, a different conclusion would be "opposed to what is reasonable, to what is probable, and to what is fair."*

60. The doctrine of promissory estoppel was thereafter crystallised in the decision in the case of ***Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh and Ors., AIR 1979 SC 621***, where the Supreme Court was dealing with the a Petitioner who was engaged in the business of manufacturing and sale of sugar. The Petitioner sought to enforce an assurance given by the State Government that it would be given a partial concession in sales tax, if it sets up a new *vanaspati* unit. The assurance was initially given by the Secretary of Industries, Department of UP, in the form of a statement that was reported in The National Herald newspaper. On the basis of the said assurance, the Petitioner informed the Government that it intended to set up a manufacturing unit for *vanaspati* and the Director of Industries had confirmed that there would be no sales tax that

would be levied for a period of three years on the finished product. The assurance as given vide letter dated 14th October 1968, reads as under:

> *"there will be no sales tax for three years on the finished product of your proposed Vanaspati factory from the date it gets power connection for commencing production."*

61. The said assurance was repeatedly confirmed to the Petitioner on several other occasions as well, and on one specific occasion, the then Chief Secretary of the Government, who was also the Advisor to the Governor, stated in a letter dated 22nd December 1968 that the Petitioner could "*go ahead with the arrangements for setting up the factory"*. Subsequently however, the State Government had second thoughts on the exemption and a meeting was called with the Petitioner. In the meeting, the Petitioner's representative took the stand that it had already been given an exemption from sales tax as per the correspondences that it had received from the officers of the State Government. However, finally vide a letter dated 20th January, 1970, the Government went back on its policy and only partial concession in sales tax was to be given for a period of three years. The question, therefore, raised in this case by the Petitioner was whether the assurance that was given for exemption from payment of full sales tax for a period of three years could be enforced by invoking the doctrine of promissory estoppel, against the Government. The Supreme Court relied upon various judgments from the UK as also the older precedents in India, and held that the said doctrine of promissory estoppel was an equitable doctrine, also called as equitable estoppel, *quasi* estoppel or new estoppel. The Supreme Court held:

- No pre-existing relationship between the parties is required for enforcement of such promise or an assurance.
- If one of the parties had made, through its words or conduct, a clear and unequivocal promise intending to create legal relations, the said doctrine of promissory estoppel could be invoked.
- If the person has acted on the strength of such promise, then the promise would be binding.

62. The observations of the Supreme Court, speaking through Justice P.N. Bhagwati, read as under:

> "*The true principle of promissory estoppel, therefore seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective whether there is any pre-existing relationship between the parties or not."*

63. The Supreme Court observed that initially there was some hesitance in enforcing these doctrines by the English Courts, as there would be an absence of consideration to support the contractual obligation. However, since this is an equitable doctrine, which is intended to promote honesty and good faith, the Supreme Court held that it needed to be recognised. The Supreme Court also considered the legal position in the United States of

America, which had, by then started recognizing the doctrine of promissory estoppel even against the Government.

64. Thereafter, the Supreme Court considered the case of ***Union of India v. Indo-Afghan Agencies***, ***[1968] 2 SCR 366,*** wherein under a Foreign Export Promotion Scheme, the exporter was entitled to import raw material equivalent to 100% FOV value of export. In the said case, the doctrine of executive necessity to resile from a promise was negated by the Supreme Court. The Supreme Court in ***Motilal Padampat (supra)*** then observed that if the Government makes a promise intending that it would be acted upon, and a person alters his position, the Government would be held to be bound by the promise. The Supreme Court held:

> "*36. The law may, therefore, now be taken to be settled as a result of this decision that where the Government makes a promise knowing or intending that it would be acted on by the promisees and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisees, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a Republic governed by the rule of law, no one, howsoever high or low, is above the law. Every one is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of*

promissory estoppel. Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of "honesty and good faith"? Why should the Government not be held to a high "standard of rectangular rectitude while dealing with its citizens"? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its contractual obligations, but let it be said to the eternal glory of this Court, this doctrine was emphatically negatived in the Indo-Afghan Agencies case and the supremacy of the rule of law was established. It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society and the constant endeavour of the Courts and the legislatures must, therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible. The doctrine of promissory estoppel is a significant judicial contribution in that direction."

65. Further, the Supreme Court also carved the applicable exception to the doctrine of promissory estoppel to the effect that, if it is inequitable to the hold the Government to its promise in larger public interest and if the

same is established by the Government, then the Court would not do so. The observations of the Supreme Court in this regard are as under:

> "*37. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts as have transpired, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and after this position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot, as Shah, J., pointed out in the Indo-Afghan Agencies case, claim to be exempt from the liability to carry out the promise "on some indefinite and undisclosed ground of necessity or expediency", nor can the Government claim to be the sole judge of its liability and repudiate it "on an ex-parte appraisement of the circumstances". If the Government wants to resist the liability, it will have to disclose to the Court what are the facts and*

circumstances on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether these facts and circumstances are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability: the Government would have to show what precisely is the changed policy and also its reason and justification so that the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the Court is satisfied, on proper and adequate material placed by the Government, the over-riding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden.

But even where there is no such over-riding public interest, it may still be competent to the Government to resile from the promise "on giving reasonable notice which need not be a formal notice, giving the promise a reasonable opportunity of resuming his position" provided of course it is possible for the promisee to restore status quo ante. If however, the promisee cannot resume his position, the promise would become final and irrevocable. Vide Emmanuel Ayodeji Ajayi v. Briscoe [1964] 3 All. E.R. 556"

Thus, the exception to the doctrine of promissory estoppel was held to only be applicable if the Government contended that there is an overriding public interest in not enforcing the promise, and it fulfilled its burden to show the same with proper and adequate material placed before the court.

66. The Supreme Court, importantly, also observed on the facts of the case that the assurance and representation given to the Petitioner was confirmed by the Chief Secretary of the Government, who was also the Advisor to the Governor, and it could not be accepted that the said officer's statement had no authority, and could not bind the Government, or that the said representation was not made on behalf of the Government. The observations of the Supreme Court in this regard are as under:

> *48……It was faintly contended before us on behalf of the State that this representation was not binding on the Government, but we cannot countenance this argument, because, in the first place, the averment in the writ petition that the 4th respondent made this representation on behalf of the Government was not denied by the State in the affidavit in reply filed on its behalf, and secondly, it is difficult to accept the contention that the 4th respondent, who was at the material time the Chief Secretary to the Government and also advisor to the Governor who was discharging the functions of the Government during the President's Rule, had no authority to bind the Government. We must, therefore, proceed on the basis that this representation made by the 4th respondent was a representation within the scope of his authority and was binding on the Government. Now, there can be no doubt that this representation was made by the Government knowing or intending that it would be acted on by the appellant, because the appellant had made it clear that it was only on account of the exemption from sales tax promised by the Government*

> *that the appellant had decided to set up the factory for manufacture of vanaspati at Kanpur. The appellant, in fact, relying on this representation of the Government, borrowed moneys from various financial institutions, purchased plant and machinery from M/s. De Smith (India) Pvt. Ltd., Bombay and set up a vanaspati factory at Kanpur. The facts necessary for invoking the doctrine of promissory estoppel were, therefore, clearly present and the Government was bound to carry out the representation and exempt the appellant from sales tax in respect of sales of vanaspati effected by it in Uttar Pradesh for a period of three years from the date of commencement of the production.*

Accordingly, the Supreme Court, finally concluded, on the facts of the case, that the State Government was bound to abide by the representation that it had made to the Appellant, for exemption of Sales Tax for a period of three years, by applying the doctrine of promissory estoppel.

67. In ***State of Punjab v. Nestle India Limited & Ors., (2004) 6 SCC 465,*** the Respondents were producers of various milk products, and had factories in Punjab. They sourced milk from various villages, and paid purchase tax in terms of Section 4(d) of Punjab General Sales Tax Act, 1948. According to the factory owners- the Respondents, for a period of one year between 1st April, 1996 to 4th June, 1997, they were not liable to pay the purchase tax as the Government had decided to abolish purchase tax. The case of the factory owners was that since the Chief Minister had made an announcement on 26th February, 1996 while addressing Delhi farmers at a State level function stating that the State Government had abolished the purchase tax on milk and milk produces, the Government

ought to be held to be bound by the said announcement made by the Chief Minister.

68. The High Court had held that the Government would be bound by the promise to abolish purchase tax, which was challenged by the State before the Supreme Court. The Supreme Court considered the factual background wherein subsequent to the announcement made by the Chief Minister, the Finance Minister had, in the budget speech, confirmed the Chief Minister's announcement. This was followed by a memo of the Financial Commissioner and a circular dated 26th April, 1996 which was issued by the Excise and Taxation Commissioner, Punjab to all the Deputy and Assistant Excise and Taxation Commissioners and the Deputy Directors (Enforcement) in the State. The factory owners were informed of the said circular and in a meeting with the excise and taxation minister, it was informed by the Finance Minister that a formal notification abolishing purchase tax would be issued "in a day or two". Post this, once again, the Finance Minister had made the announcement confirming the same. However, finally, the Council of Ministers recorded that the decision of abolishing the purchase tax for milk was not accepted and enforced. In the light of these facts, the writ petition was filed seeking enforcement of the assurance that was given.

69. The Supreme Court, in ***Nestle India (supra)***, considered the judgments in ***Indo-Afghan Agencies (supra)*** and ***Motilal Padampat (supra)*** and held that two pre-conditions for the operation of the doctrine of promissory estoppel were made out in the factual circumstances of the case.

The observations of the Supreme Court, speaking through Justice Ruma Pal, are as under:

> "*28. This Court rejected all the three pleas of the Government. It reiterated the well-known preconditions for the operation of the doctrine.*
>
> > *(1) a clear and unequivocal promise knowing and intending that it would be acted upon by the promise;*
> >
> > *(2) such acting upon the promise by the promise so that it would be inequitable to allow the promisor to go back on the promise.*
>
> *29. As for its strengths it was said: that the doctrine was not limited only to cases where there was some contractual relationship or other pre-existing legal relationship between the parties. The principle would be applied even when the promise is intended to create legal relations or affect a legal relationship which would arise in future. The Government was held to be equally susceptible to the operation of the doctrine in whatever area or field the promise is made, contractual, administrative or statutory. To put it in the words of the Court:*
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> > *"The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promise and, in fact, the promise, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promise, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the*

Constitution.(p.442) ..... Equity will, in a given case where justice and fairness demand, prevent a person from insisting on strict legal rights, even where they arise, not under any contract, but on his own title deeds or under statute.(p.424) .....Whatever be the nature of the function which the Government is discharging, the Government is subject to the rule of promissory estoppel and if the essential ingredients of this rule are satisfied, the Government can be compelled to carry out the promise made by it. " (p. 453)

(emphasis added)

30. So much for the strengths. Then come the limitations. These are:

(1) since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. But it is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government.(p.443)

(2) No representation can be enforced which is prohibited by law in the sense that the person or authority making the representation or promise must have the power to carry out the promise. If the power is there, then subject to the preconditions and limitations noted earlier, it must be exercised. Thus, if the statute does not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be

compelled to act contrary to the statute. But if the statute confers power on the Government to grant the exemption, the Government can legitimately be held bound by its promise to exempt the promise from payment of sales tax. (p.387-388)"

70. In the background of this legal position, the Supreme Court reiterated the observations of Justice N. Chandrasekhara Aiyar in ***Collector of Bombay (supra)*** and held that there was no overriding public interest, which the State Government was able to show, which made it inequitable to enforce the doctrine of promissory estoppel against the said Government. The Supreme Court, accordingly, concluded as under:

"*47. The appellants have been unable to establish any overriding public interest which would make it inequitable to enforce the estoppel against the State Government. The representation was made by the highest authorities including the Finance Minister in his Budget Speech after considering the financial implications of the grant of the exemption to milk. It was found that the overall benefit to the state's economy and the public would be greater if the exemption were allowed. The respondents have passed on the benefit of that exemption by providing various facilities and concessions for the upliftment of the milk producers. This has not been denied. It would, in the circumstances, be inequitable to allow the State Government now to resile from its decision to exempt milk and demand the purchase tax with retrospective effect from 1st April 1996 so that the respondents cannot in any event re-adjust the expenditure already made. The High Court was also right when it held that the operation of the estoppel would come to an end with the 1987 decision of the Cabinet.*

48. In the case before us, the power in the State Government to grant exemption under the Act is

> *coupled with the word "may" - signifying the discretionary nature of the power. We are of the view that the State Government's refusal to exercise its discretion to issue the necessary notification "abolishing" or exempting the tax on milk was not reasonably exercised for the same reasons that we have upheld the plea of promissory estoppel raised by the respondents. We, therefore, have no hesitation in affirming the decision of the High Court and dismissing the appeals without costs."*

Importantly, while concluding that the Appellants were bound to enforce the promise that was made, the Supreme Court emphasized upon the "Budget Speech" given by one of the highest authorities i.e., the Finance Minister, which was presumably after consideration of the financial implications of the grant of the said exemption of purchase tax on milk. Relying on this representation, and the fact that no overriding public interests was reasonably shown by the State, the Supreme Court held that the doctrine of promissory estoppel was applicable to the facts of the said case.

71. In ***State of Arunachal Pradesh v. Nezone Law House, Assam, AIR 2008 SC 2045***, the Respondent-publisher sought enforcement of an assurance given by the Law Minister to purchase 500 sets of North Eastern Region local Acts and Rules. According to the publisher, the Law Minister had given an assurance to the proprietor of the publisher that the Government would purchase these books, and hence had given the go-ahead for printing and publishing the same. However the said assurance was rescinded from by the Government of Arunachal Pradesh. The publisher relied upon the doctrines of promissory estoppel and legitimate expectation to seek enforcement of the said assurance by the Law Minister.

Factually, the publisher relied upon an internal departmental note which had recorded the Law Minister's statement of assurance, but had also recorded that the views of various departments and ministries ought to be taken and their concurrence was to be obtained. According to the State, this departmental note did not constitute a promise for printing/publishing the books and that considering the cost involvement of around Rupees One Crore, the said two doctrines could not have been applied when no approval was given by the departments. It was found by the State that these books were of no use for the judicial officers. The Supreme Court held against the publisher on the ground that there was no supporting material to enforce the said two doctrines of legitimate expectation and promissory estoppel.

72. In ***Manuelsons Hotels Private Limited v. State of Kerala and Ors., AIR 2016 SC 2322***, the issue that arose for consideration by the Supreme Court, was whether the Government Order (*hereinafter, "G.O."*) issued by the State of Kerala, accepting the Government of India's representation that tourism would be declared as an industry, was liable to be enforced. The Petitioner-hotel had claimed that the said declaration of tourism being treated as industry, entitled it to various concessions and incentives, as applicable to the industrial sector. Thus, the Supreme Court considered the fact that the G.O. dated 11th July, 1986 resulted in the amendment of The Kerala Building Tax Act, 1990, and recognized tourism as an industry "*with a view to develop tourism in the State*". A hotel project for the setting up of a three star hotel was approved by the Government of India and the Petitioner had begun constructing the hotel building. The question was whether the Petitioner, in view of the recognition granted to tourism as an 'industry', was entitled to exemption from payment of Building tax. The

State of Kerala issued the notice to the Petitioner for filing returns under The Kerala Building Tax Act, which was challenged by the Petitioner before the court. The exemptions from property tax were repeatedly rejected by the State of Kerala. The Petitioner then, relying upon the doctrine of promissory estoppel, raised its challenge. The High Court had held that since no notification was issued under the Kerala Building Tax Act, no benefit would be accrued to the Petitioner. On appeal, the Supreme Court, speaking through Justice R.F. Nariman, following the judgments in ***Motilal Padampat (supra), Nestle India (supra)*** and the said line of cases, as also the international jurisprudence on this aspect, held as under:

> *"21. In fact, we must never forget that the doctrine of promissory estoppel is a doctrine whose foundation is that an unconscionable departure by one party from the subject matter of an assumption which may be of fact or law, present or future, and which has been adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster. And the relief to be given in cases involving the doctrine of promissory estoppels contains a degree of flexibility which would ultimately render justice to the aggrieved party. The entire basis of this doctrine has been well put in a judgment of the Australian High Court reported in The Commonwealth of Australia v. Verwayen 170 C.L.R. 394, by Deane, J. in the following words:*
>
> > *1. While the ordinary operation of estoppel by conduct is between parties to litigation, it is a doctrine of substantive law the factual ingredients of which fall to be pleaded and resolved like other*

factual issues in a case. The persons who may be bound by or who may take the benefit of such an estoppel extend beyond the immediate parties to it, to their privies, whether by blood, by estate or by contract. That being so, an estoppel by conduct can be the origin of primary rights of property and of contract.

2. The central principle of the doctrine is that the law will not permit an unconscionable-or, more accurately, unconscientious-departure by one party from the subject matter of an assumption which has been adopted by the other party as the basis of some relationship, course of conduct, act or omission which would operate to that other party's detriment if the assumption be not adhered to for the purposes of the litigation.

3. Since an estoppel will not arise unless the party claiming the benefit of it has adopted the assumption as the basis of action or inaction and thereby placed himself in a position of significant disadvantage if departure from the assumption be permitted, the resolution of an issue of estoppel by conduct will involve an examination of the relevant belief, actions and position of that party.

4. The question whether such a departure would be unconscionable relates to the conduct of the allegedly estopped party in all the circumstances. That party must have played such a part in the adoption of, or persistence in, the assumption that he would be guilty of unjust and oppressive conduct if he were now to depart from it. The cases indicate four main, but not exhaustive categories in

which an affirmative answer to that question may be justified, namely, where that party: (a) has induced the assumption by express or implied representation; (b) has entered into contractual or other material relations with the other party on the conventional basis of the assumption; (c) has exercised against the other party rights which would exist only if the assumption were correct; (d) knew that the other party laboured under the assumption and refrained from correcting him when it was his duty in conscience to do so. Ultimately, however, the question whether departure from the assumption would be unconscionable must be resolved not by reference to some preconceived formula framed to serve as a universal yardstick but by reference to all the circumstances of the case, including the reasonableness of the conduct of the other party in acting upon the assumption and the nature and extent of the detriment which he would sustain by acting upon the assumption if departure from the assumed state of affairs were permitted. In cases falling within category (a), a critical consideration will commonly be that the allegedly estopped party knew or intended or clearly ought to have known that the other party would be induced by his conduct to adopt, and act on the basis of, the assumption. Particularly in cases falling within category (b), actual belief in the correctness of the fact or state of affairs assumed may not be necessary. Obviously, the facts of a particular case may be such that it falls within more than one of the above categories.

5. The assumption may be of fact or law, present or future. That is to say it may be about the present or future existence of a fact or state of affairs (including the state of the law or the existence of a legal right, interest or relationship or the content of future conduct).

6. The doctrine should be seen as a unified one which operates consistently in both law and equity. In that regard, "equitable estoppel" should not be seen as a separate or distinct doctrine which operates only in equity or as restricted to certain defined categories (e.g. acquiescence, encouragement, promissory estoppel or proprietary estoppel).

7. Estoppel by conduct does not of itself constitute an independent cause of action. The assumed fact or state of affairs (which one party is estopped from denying) may be relied upon defensively or it may be used aggressively as the factual foundation of an action arising under ordinary principles with the entitlement to ultimate relief being determined on the basis of the existence of that fact or state of affairs. In some cases, the estoppel may operate to fashion an assumed state of affairs which will found relief (under ordinary principles) which gives effect to the assumption itself (e.g. where the Defendant in an action for a declaration of trust is estopped from denying the existence of the trust).

8. The recognition of estoppel by conduct as a doctrine operating consistently in law and equity and the prevalence of equity in a Judicature Act system combine to give the whole doctrine a degree

of flexibility which it might lack if it were an exclusively common law doctrine. In particular, the prima facie entitlement to relief based upon the assumed state of affairs will be qualified in a case where such relief would exceed what could be justified by the requirements of good conscience and would be unjust to the estopped party. In such a case, relief framed on the basis of the assumed state of affairs represents the outer limits within which the relief appropriate to do justice between the parties should be framed.

22. The above statement, based on various earlier English authorities, correctly encapsulates the law of promissory estoppel with one difference-under our law, as has been seen hereinabove, promissory estoppel can be the basis of an independent cause of action in which detriment does not need to be proved. It is enough that a party has acted upon the representation made. The importance of the Australian case is only to reiterate two fundamental concepts relating to the doctrine of promissory estoppel- one, that the central principle of the doctrine is that the law will not permit an unconscionable departure by one party from the subject matter of an assumption which has been adopted by the other party as the basis of a course of conduct which would affect the other party if the assumption be not adhered to. The assumption may be of fact or law, present or future. And two, that the relief that may be given on the facts of a given case is flexible enough to remedy injustice wherever it is found. And this would include the relief of acting on the basis that a future assumption either as to fact or law will be deemed to have taken place so as to afford relief to the wronged party.

> *23. In the circumstances, the High Court judgment when it holds that no notification was, in fact, issued Under Section 3A of the Kerala Buildings Tax Act, 1975, (which would be sufficient to deny the Appellants relief) is, therefore, clearly incorrect in law.*"

73. Thereafter, the Supreme Court considered the question as to whether a writ of mandamus ought to be issued or not. The Supreme Court finally held that since the Petitioner had constructed a hotel building based upon the G.O. of 1986, the non-issuance of a notification, in terms of the procedure established by the statute, was an arbitrary act, which deserves to be remedied by applying the doctrine of promissory estoppel. The Supreme Court concluded as under:

> "*39.....It is clear, therefore, that the non-issuance of a notification Under Section 3A was an arbitrary act of the Government which must be remedied by application of the doctrine of promissory estoppel, as has been held by us hereinabove. **The ministerial act of non-issue of the notification cannot possibly stand in the way of the Appellants getting relief under the said doctrine for it would be unconscionable on the part of Government to get away without fulfilling its promise.** It is also an admitted fact that no other consideration of overwhelming public interest exists in order that the Government be justified in resiling from its promise. The relief that must therefore be moulded on the facts of the present case is that for the period that Section 3A was in force, no building tax is payable by the Appellants. However, for the period post 1.3.1993, no statutory provision for the grant of exemption being available, it is clear that no relief can be given to the Appellants as the doctrine of promissory estoppel must yield when it is found that it would be contrary to statute to grant such relief. To the extent indicated above, therefore, we are of the view that no building tax can be levied or collected*

from the Appellants in the facts of the present case. Consequently, we allow the appeal to the extent indicated above and set aside the judgment of the High Court."

74. In ***All Tripura Book Sellers & Publishers Association and Ors. v. The State of Tripura and Ors., AIR 2020 Tripura 1***, the ld. Division Bench of High Court of Tripura was considering the question as to whether the statement of a Minister, as reported in the newspaper, can be made the basis for invoking the doctrines of promissory estoppel and legitimate expectation. The said statement was to the effect that the State Government had decided to implement the NCERT curriculum for grades I to VIII and the translation of text books were being conducted by the State authorities. The State, however thereafter, called a tender for translation of NCERT text books into Bengali for class IX. This, according to the publisher, was contrary to the statement of the Minister, who had agreed to only implement the same for classes I to VIII. The same was challenged before the High Court.

75. The High Court of Tripura held that the State did not compromise with the interests of the children. There was due deliberation which was held and the same was based on the recommendations of the Committee which was constituted by the State. The Court then considered the objects of the Right of Children to Free and Compulsory Education Act, 2009, which prescribed that the curriculum and the evaluation procedure for elementary education had to be laid before an academic authority. In the context of the provisions of the said Act, and the recommendation of the Committee which was constituted for the said purpose, the High Court held that the statement of the Minister would not constitute an unequivocal

promise, that intended to create a legal relationship or right upon the publishers. The High Court distinguished the judgment in ***Nestle India (supra)*** and followed the judgment in ***Nezone Law (supra)*** to hold that the said two doctrines of promissory estoppel and legitimate expectation cannot apply. The Court further held that there was a larger public interest in enforcing the educational policy, the provisions of the Act, as also the recommendations of the Committee, which were all considered by the State Government.

76. In the recent decision of the Supreme Court in ***the State of Jharkhand and Ors. v. Brahmaputra Metallics Ltd. And Ors., 2021 (1) SCJ 131***, the Respondents had set up an integrated manufacturing unit of Sponge Iron and Mild Steel Billets, together with a captive thermal plant of 20 MW capacity. The Respondents sought to enforce a clause in the Industrial Policy of 2012 of the State of Jharkhand, which exempted payment of 50% of the electricity duty for a period of five years for self-consumption or captive use from the date of commission. Though the Industrial Policy of 2012 of the State of Jharkhand was finalized, the notification which was to be issued within one month was not issued under Section 9 of the Bihar Act, 1948. A third party challenged the said inaction by the State, which finally issued exemption notification dated 8th January, 2015. The said notification, once issued, was however made prospective in nature and the five year period was not made fully available for the Respondents. This was challenged by the Respondents before the High Court. The High Court held that the non-issuance of exemption notification would not deprive the industrial units from getting the benefit which was promised and it enforced the same on the doctrine of promissory estoppel.

It held that the issuance of the notification was only a ministerial act. The State of Jharkhand approached the Supreme Court in appeal.

77. The Supreme Court found that the Industrial Policy of 2012 got entangled into bureaucratic lethargy. The representation for 50% exemption was held to be a solemn commitment made by the State of Jharkhand. Further, there was no overriding public interest which the State could rely upon to overreach the representation that was contained in the Industrial Policy of 2012. The Supreme Court, speaking through Justice D.Y. Chandrachud, considered the decision in ***Manuelsons Hotels (supra),*** and held:

> "*31.* ***India, as we shall explore shortly, adopted a more expansive statement of the doctrine****. Comparative law enables countries which apply a doctrine from across international frontiers to have the benefit of hindsight.*
>
> *This Court has given an expansive interpretation to the doctrine of promissory estoppel in order to remedy the injustice being done to a party who has relied on a promise. In Motilal Padampat (supra), this Court viewed promissory estoppel as a principle in equity, which was not hampered by the doctrine of consideration as was the case under English Law. This Court, speaking through Justice P N Bhagwati (as he was then), held thus:*
>
> > *12....having regard to the general opprobrium to which the doctrine of consideration has been subjected by eminent jurists, we need not be unduly anxious to project this doctrine against assault or erosion nor allow it to dwarf or stultify the full development of the equity of promissory estoppel or inhibit or curtail its operational efficacy as a justice device for preventing*

> *injustice...We do not see any valid reason why promissory estoppel should not be allowed to found a cause of action where, in order to satisfy the equity, it is necessary to do so."*

The view in ***Motilal Padampat (supra)*** was reiterated and followed by the Court.

78. The Supreme Court then analysed the doctrine of promissory estoppel *vis-a-vis* the doctrine of legitimate expectation and considered the judgment in ***the Queen (on the application of Manik Bibi and Ataya Al-Nashed) (supra)*** to spell out the difference between these two doctrines in English Law. The Supreme Court observed:

> "35. *Consequently, while the basis of the doctrine of promissory estoppel in private law is a promise made between two parties, the basis of the doctrine of legitimate expectation in public law is premised on the principles of fairness and non-arbitrariness surrounding the conduct of public authorities. This is not to suggest that the doctrine of promissory estoppel has no application in circumstances when a State entity has entered into a private contract with another private party. Rather, in English law, it is inapplicable in circumstances when the State has made representation to a private party, in furtherance of its public functions."*

79. The Court then observed that there is a conflation of these two doctrines in Indian law, and as a result, the citizens have become the victims of the same. What is important, herein, is the fact that the Supreme Court observed that the doctrinal confusion between these two doctrines should not affect the enforcement of these doctrines when required. The conclusion of the Supreme Court is as under:

> "*37. While this doctrinal confusion has the unfortunate consequence of making the law unclear, citizens have been the victims. Representations by public authorities need to be held to scrupulous standards, since citizens continue to live their lives based on the trust they repose in the State. In the commercial world also, certainty and consistency are essential to planning the affairs of business. When public authorities fail to adhere to their representations without providing an adequate reason to the citizens for this failure, it violates the trust reposed by citizens in the State. The generation of a business friendly climate for investment and trade is conditioned by the faith which can be reposed in government to fulfil the expectations which it generates."*

Thus, the Supreme Court held that public authorities need to be held to scrupulous standards due to the trust that is reposed by the citizens.

80. The Supreme Court, then examined the doctrine of legitimate expectation in the context of Article 14 of the Constitution of India and, importantly, held that while the doctrine of legitimate expectation may not by itself be a distinct enforceable right, however if there is failure of *consideration* of the legitimate expectation of the citizens, the decision taken by the public authority would be arbitrary. The Supreme Court concluded as under:

> "*As such, we can see that the doctrine of substantive legitimate expectation is one of the ways in which the guarantee of non-arbitrariness enshrined Under Article 14 finds concrete expression.*"

81. On the basis of these principles, the Court held that it would be manifestly unfair and arbitrary to deprive the industrial units of the legitimate entitlement under the Industrial Policy of 2012, as the State had

made "***a solemn representation***". The State is also accountable to its citizens when it makes such representation and is, thus, bound to act in a fair and transparent manner, which is an elementary requirement of Article 14 of the Constitution. The State had opposed the grant of exemption to the Respondents on the ground of unjust enrichment, however, since it could not prove that the Respondents had enriched themselves in any manner, the court gave effect to the representation made in the Industrial Policy of 2012. Finally, the Court held that the failure to issue the notification in terms of the Industrial Policy of 2012, is violative of Article 14 of the Constitution.

82. It is noted that the judgment of the Supreme Court in ***Madras City Wine Merchants' Association and Ors. v. State of Tamil Nadu & Ors., (1994) 5 SCC 509*** has also been cited by both the sides. The said decision relates to a policy relating to prohibitions and as to whether the cancellation of licenses for selling liquor was valid or not. The policies of the Government of Tamil Nadu in the said case were based upon the provisions of The Tamil Nadu Prohibition Act, 1937. and the overwhelming number of complaints which were received pursuant to the issuance of licenses which had, according to the State, led to a law and order problem. This case is completely distinguishable on facts, and in the opinion of this Court the said case has no applicability to the facts of the present case.

Principles emerging out of the decisions above

83. On the basis of the judicial decisions that are discussed above, the following are the salient principles of the doctrines of promissory estoppel and legitimate expectation:

Principles from decisions in United Kingdom:

i) The two doctrines of promissory estoppel and legitimate expectation have their genesis in the concept of **trust** between citizen and the Government. Good governance requires the said trust to be maintained between those who govern and those who are governed.[1]

ii) The sustenance of this trust coupled with the legal certainty of an assurance given, cements the relationship between the citizen and the authority/ Government.[2]

iii) Citizens repose a lot of trust in a promise made by officials and those who hold positions in the Government.[3]

iv) An assurance given or a representation made is to be given effect to like an undertaking which is compatible with public duty. The overriding public duty requires that such representations are given effect to.[4]

v) While busy bodies are not to be encouraged genuine grievances have to be considered.[5]

vi) The exception to the same would be overriding public interest which would permit a departure from the assurance, or the representation made.[6]

vii) There have to be justifiable reasons in law, in order to negate the application of the said two doctrines. This overriding public

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[1] *R. v. Liverpool Corporation, ex parte Liverpool Taxi Fleet Operators Association,* [1972] 2 All ER 589
[2] *Ibid.*
[3] *The Attorney General v. Ng Yuen Shiu also known as Ng Kam Shing (and Cross-appeal),* [1983] 2 AC 629
[4] *Ibid.*
[5] *Supra* at n. 1.
[6] *The Queen (on the application of Asif Mahmood Khan) v. the Secretary of State for the Home Department Ex Parte*, [1984] 1 WLR 1337, [1984] EWCA Civ 8.

interest cannot be based on a mere claim and has to be substantially and factually established before the court.[7]

viii) The Court has to see as to whether there is a commitment, whether the authority acted unlawfully and, if so, what the Court should do under such circumstances.[8]

ix) The doctrine of legitimate expectation is a guide and is not to be treated like a cage.[9]

x) The legality of the action needs to be assessed to see if there is any unlawfulness.[10]

xi) The Court cannot assume the power of the executive, and hence legitimate expectation is to be taken into account to merely consider as to whether the same was a part of the decision-making process.[11]

xii) The financial impact of the assurance or the promise would also have to be considered.[12]

xiii) The standard is not one of concrete detriment or detriment. It could even be moral detriment.[13]

xiv) A number of representations and assurances may or may not be actionable, but the Court has to examine the fairness of not adhering to it or whether it constitutes abuse of power.[14]

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[7] *The Queen (on the application of Alansi) v. London Borough of Newham*, [2013] EWHC 3722 (Admin).
[8] *Ibid.*
[9] *Ibid.*
[10] *Ibid.*
[11] *Ibid.*
[12] *Ibid.*
[13] *Ibid.*
[14] *Ibid.*

xv) If a legitimate expectation arises but the authority decides to not give effect to the same, it ought to articulate its reasons so that the propriety of the same may be tested by a court of law, if required.[15]

xvi) Legitimate expectation could either be procedural or substantive. A procedural legitimate expectation would mean that there has to be a proper notice and consolidation in the decision-making process. A substantive legitimate expectation would also include change in existing policies, and the effect that it may have on those governed by the unchanged policies.[16]

xvii) The promise, assurance or representation made has to be judged from the reasonable understanding of a common individual, and not as per the authority making the representation.[17]

xviii) An assurance or a promise made to the weaker sections of society would be tested on a higher standard.[18]

xix) The citizens are not expected to have a detailed understanding of the act involved, but what is to be judged is the message that is being conveyed and as to whether it gives rise to a legitimate expectation in the eyes of a reasonable citizen.[19]

xx) The various tests laid down in ***Queen (on the application of Alansi) (supra)***, as extracted above, could be some of the standards that could be adopted to arrive at a conclusion as to

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[15] *Ibid.*
[16] *The Queen (on the application of Noorrullah Niazi and ors.) v. the Secretary of State,* [2008] EWCA Civ 755.
[17] *the Queen (on the application of Alansi) v. London Borough of Newham,* [2013] EWHC 3722 (Admin).
[18] *Ibid.*
[19] *Ibid.*

whether the doctrine of legitimate expectation ought to be applied in a particular fact situation.[20]

Principles from decisions in India:

In India the two doctrines of promissory estoppel and legitimate expectation have been moulded and expanded further, in order to suit the economic and social conditions prevalent in India. Some of the principles that emerge are:

i) If a representation is made by the Government, the question is whether it should be allowed to go back on it and whether such an act of resiling from the said assurance would constitute legal fraud.[21]

ii) It is necessary to promote honesty and good faith in governance. Therefore, if a promise has been made, the Government has a duty to fulfil the same.[22]

iii) Executive necessity does not constitute an adequate reason to not give effect to a representation.[23]

iv) If the promise made is clear and unequivocal then the Court can enforce it.[24]

v) If the promise is acted upon by the promisee, the need to enforce the said promise becomes stronger. There need not be any

[20] *Ibid.*
[21] *Collector of Bombay v. Municipal Corporation of the City of Bombay & Ors., 1952 1 SCR 43.*
[22] *Ibid.*
[23] *Union of India v. Indo-Afghan Agencies, [1968]2 SCR 366.*
[24] *Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh and Ors., AIR 1979 SC 621.*

detriment caused. Mere action on the promise is sufficient for cause of action to arise.[25]

vi) Under the traditional law of contracts, unless and until, the terms are agreed upon, there would be no contract. However, the doctrine of promissory estoppel is an exception, i.e., no contract is required to enforce a promise made by the Government, if the Government made the same consciously, with an intention for it to be acted upon by the citizen.[26]

vii) It is important to bridge the gap between law and morality and these two doctrines of promissory estoppel and legitimate expectation are judicial contributions in the said direction.[27]

viii) Relief based on legitimate expectation or promissory estoppel can be refused only if it is unequitable to hold the Government to its promise.[28]

ix) If public interest would be prejudiced by enforcing the said promise, only then, relief may be refused. The only exception is overriding public interest or when enforcement is unfair or contrary to public interest. However, the Government would have to disclose the facts that would exempt it from enforcing the said promise and a mere claim in respect of the same would not be sufficient to establish overriding public interest.[29]

x) A mere *ipse dixit* would not work, and the Government cannot presume a self-exemption. Only a Court can grant exemption

[25] *Ibid.*
[26] *Ibid.*
[27] *Ibid.*
[28] *Ibid.*
[29] *Ibid.*

from liability for not adhering to the assurance, provided the Government shows proper justification.[30]

xi) High ranking officials who may have made representations or given assurances or promises, can, due to the position they hold, bind the Government to their statements.[31]

xii) It is presumed that once a representation is made by a high-ranking official, the same is within the scope of its authority.[32]

xiii) If the representation or promise made or is prohibited by law then it cannot be enforced.[33]

xiv) The relief that may be given by the Court, in the case of an unconscionable departure from a promise is flexible, so as to remedy the injustice caused.[34]

xv) The mere non-issuance of a notification would not stand in the way of granting relief, if the facts justify the same, as the same would only be a ministerial act.[35]

xvi) Both these doctrines have to be expansively interpreted, as a recognition of the doctrine of fairness and non-arbitrariness.[36]

xvii) The legitimate expectation of a citizen ought to be considered and given due weight in decision making. It is a relevant factor for consideration in the decision making process. [37]

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[30] *Ibid.*
[31] *Ibid.*
[32] *Ibid.*
[33] *State of Punjab v. Nestle India Limited & Ors., (2004) 6 SCC 465*.
[34] *Manuelsons Hotels Private Limited v. State of Kerala and Ors., AIR 2016 SC 2322.*
[35] *Ibid.*
[36] *The State of Jharkhand and Ors. v. Brahmaputra Metallics Ltd. And Ors.,* 2021 (1) SCJ 131.
[37] *Ibid.*

xviii) Failure to adhere to a promise without adequate justification violates the trust between the Government and the citizen.[38]

xix) The broad exceptions to not grant relief on the basis of these principles would be - mistake, or if the same is unfair and contrary to public interest.[39]

xx) The doctrine of legitimate expectation is broader in its scope than the doctrine of promissory estoppel, and it may be based on past practice of the authorities. It need not involve a specific statement and is meant to ensure non-arbitrariness in State action.[40]

xxi) The doctrine of legitimate expectation and its enforcement is an integral part of non-arbitrariness and non-abuse of power as enshrined in Article 14 of the Constitution.[41]

Applicability of the law to the facts

84. Before applying the position of law on the doctrines of promissory estoppel and legitimate expectation, it is first important to note that the factum of the speech dated 29th March 2020, having been given by the CM, in the present case is admitted and not in dispute. The text of the speech is also not in dispute. The same has been extracted in paragraph 3 above. A perusal of the said statement, made by the CM, shows that it contains the following elements:

- It is an appeal to landlords not to collect rent from tenants for two to three months, if they are unable to pay the rent due to poverty.

[38] *Ibid.*
[39] *Ibid*
[40] *Ibid.*
[41] *Ibid.*

- It is an appeal to the landlords to talk to tenants and express solidarity with them to the effect that they will not compel for payment of rent.
- It is also an appeal to the landlords to postpone the collection of rent and not to indulge in coercion for collection of rent. It records that such coercion could result in tenants leaving/ migrating from Delhi.
- The CM then promises the landlords that if any tenant, who because of lack of means, is unable to pay some of the rent due poverty, the Government would pay the landlord on behalf of the tenant.
- It ends with a warning that if the landlords coerce their tenants, then the Government would take strict action against such landlords.

85. The address by the CM in the press conference has three dimensions. The first dimension is an appeal to the landlords. Second is a promise to landlords that it would pay on behalf of the tenants, if they are unable to due to lack of means and poverty, and thirdly, it has a warning to landlords to not coerce the tenants.

86. Before proceeding further, as to whether the said statements given by the CM in this address are enforceable by applying either the doctrine of legitimate expectation or promissory estoppel, the factual backdrop and the context in which the above address was made, needs to be taken note of.

87. The outburst of the COVID-19 pandemic had resulted in the announcement of a nationwide lockdown with effect from 25th March, 2020. On the eve of the lockdown, and a few days thereafter, the city of

Delhi saw a mass exodus of citizens, mostly consisting of labourers, migrant workers, etc., who were leaving the city of Delhi for their home towns. The news headlines during the said four to five days are illustratively captured below:

S.No.	***Newspaper/News agency***	***Date***	***Headlines***
1.	Asian News International	24th March, 2020	*"People stranded at Anand Vihar bus terminal amid lockdown in Delhi"*
2.	Times of India	29th March, 2020	*"Massive evacuation op on as huge mass of migrants heads out of city"* *"Great Escape: Misery on the March- Hordes of Migrants take Dangerous trek home."* *"Don't leave, we'll provide food, shelter: CM"*
3.	Times of India	30th March, 2020	*"Seal borders to stem migrant exodus, ensure shelter, food, wages, rent relief: Govt. to States."* *"Stay where you are, says CM, and repeats his plea on tenants."*
4.	The Hindu	29th March, 2020	*"Exodus of migrant workers out of Delhi unabated but police block their entry into Anand Vihar ISBT"*
5.	Deccan Chronicles	29th March, 2020	*"Exodus of Migrant Workers"*

6.	The Economic Times	29th March, 2020	*"Govt. Swings into action to help Migrant Workers"*
7.	Financial Express	30th March, 2020	*"Tackling Exodus: State, district borders sealed"*

88. A perusal of all these news reports preceding the announcement made by the CM, would reveal that the city of Delhi witnessed a massive human issue, in which labourers, blue-collar workers, construction workers, etc., who were employed in various construction projects, commercial establishments, factories, godowns, weekly markets, etc., had all started leaving Delhi. A large number of such people also lost their employment due to the shutting down of these establishments. Various facilities, schemes and *ex-gratia* payments were announced by Governmental authorities, both at the Centre and the State level, during this period. These included provision of free food, shelter and transportation, *ex-gratia* payments, etc. It is in this context that the promise was made by the CM that there would be reimbursement to the landlords, if the tenants do not pay the rent. The speech, which was under the premise that COVID-19 may be over within two- three months, shows that the words used were *आश्वासन* (assurance or promise) and *भुगतान* (reimbursement) for the landlords, on behalf of the tenants.

89. The effect of the above assurance and promise made by the CM in curbing the movement of migrants/labourers etc., cannot be estimated at

this point. However, the question is as to whether the said promise is a legally enforceable one, and if so, in what manner.

90. The principles governing the doctrines of legitimate expectation and promissory estoppel are well settled. Both these doctrines primarily recognize the role of the State or the Governmental authorities *vis-a-vis* the public. They are a reflection of the legal recognition being accorded to the trust that citizens repose on promises/assurances/representations which are made by Constitutional functionaries and governmental authorities, especially in times of distress. The *raison d'être* for granting recognition to such assurances/promises/representations, is that such functionaries and authorities, who are either elected to public positions or who hold positions of power, are answerable to the people, especially once they undertake or agree to do or not to do a particular thing.

91. The said two doctrines are not absolute in nature. There are various conditions that need to be satisfied for legal enforcement of rights claimed under these doctrines. There are also well recognized exceptions, which can be relied upon for not enforcing such promises/assurances/representations. The question as to whether a promise/assurance/representation results in a legally enforceable right and if so, what would be the relief that a Court can grant, depends upon the factual circumstances of each case and the context in which the said promises/assurance or representations have been made by the Governmental authorities.

92. The present petition is being decided in the backdrop of the COVID-19 pandemic. The pandemic resulted in severe economic, social and medical distress to people across the world and the citizens of India and the residents of Delhi were no exceptions. The fear of the pandemic, which, at

the initial stage, was conceived to be an urban phenomenon, resulted in mass migration and exodus of workers, labourers and other blue collared employees who had migrated to cities from their towns and villages, to leave the urban areas. The mass movement was to such a great extent that people were travelling on foot for a continuous period of several days to reach their respected homes and to be closer to their near and dear ones. Governmental authorities faced enormous criticism for having not provided adequate transportation and other facilities, to enable these migrants to have a seamless journey to their destinations. In this context, several schemes, were announced assuring free food, free shelter, free transportation, free medical help, *ex-gratia* payments etc. Apart from the governmental authorities, various organizations and individuals played a praiseworthy role in extending such facilities to migrant labourers.

93. The judicial enforceability of the assurance and promise made by a Constitutional functionary, such as the CM, needs to be considered by the Court both in letter and in spirit, in the aforesaid context. The assurance given or the promise made in the present case was obviously with a view to stop or curb the migration of people from Delhi, to the extent possible. The actual effect of the promise or the assurance is beyond the scope of the present writ petition, inasmuch as there is no clarity as to whether the assurance resulted in tenants staying back. However, this Court cannot be dismissive of the fact that the Petitioners, who are before the Court, claim to have acted on the promise or the assurance made by the CM. It would not be unreasonable to presume that some tenants and landlords may have altered their positions based upon the assurance given by the CM. It is in

this background that this Court has to examine whether the assurance/promise made by the CM would be enforceable.

94. The various judgments, which have been discussed above, show that there are different categories of cases which have been decided on this issue, both internationally and in India. For example, in ***the Queen (on the application of Manik Bibi and Ataya Al-Nashed) (supra)*** relating to the provision of housing for the underprivileged and homeless, Courts have, to some extent, recognized that the governmental policy would have to be enforced and consideration for housing would have to be provided in accordance with the said policy. In the said case, the court, importantly recognised that even when a public authority decided to renege from its promise/ assurance/ representation, the least that would be expected, before reneging on the promise, is due consideration by the government and adequate, legally valid reasons to not abide by the same. Further, in the case of ***Ng Yuen Shiu (supra)***, the Privy Council recognized the requirement of a fair inquiry for an immigrant prior to repatriation. Thus, the concepts of legitimate expectation and promissory estoppel have been translated by English Courts to mean a fair inquiry, a fair hearing as also a proper procedure being followed while making decisions that affect the public, failing which the action of the governmental authorities in not honouring the promise/ assurance/ representation given, would be held to be arbitrary and violative of the citizens' rights.

95. In the Indian context, the doctrines have been expanded further as is clear from ***Manuelsons Hotels (supra)*** and ***Brahmaputra Metallics (supra)***. The Indian decisions which have been discussed above, can be categorized into three broad categories:

- The first category of cases are where there is a clear governmental policy, which is sought to be changed, and the legitimate expectation of those who were covered under the previously existing policy is in question. In this category of cases, the Courts have, as in ***Brahmaputra Metallics (supra),*** held that the benefits of the policy would have to extend to the commercial society or individual concerned.
- The second category of cases are those where the initial assurance/promise given by a State functionary or a Governmental authority was, thereafter, translated into a specific policy, which again was enforced by the Courts as in ***Motilal Padampat (supra). Nestle India (supra)*** and ***Manuelsons Hotels (supra)***.
- The third category of cases are those cases where an oral assurance/promise which was made was not implemented by a conscious policy decision, that was taken in public interest due to adequate reasons that were shown. The decisions in ***Nezone Law House (supra)*** and ***All Tripura Book Sellers & Publishers Association (supra),*** would fall under this category.

96. The factual background of the present case, however, shows that this case would fall in a fourth category – i.e., where a clear and unequivocal oral assurance and promise is made by the CM of the GNCTD but there is no policy whatsoever, placed before the Court. The salient facts and features of the present case are:

(1) Exceptional circumstances of the COVID-19 pandemic.

(2) Extreme distress being faced by migrant labourers and blue-collar workers and employees.

(3) A clear promise/assurance made by the CM.

(4) No positive policy to implement the said promise/assurance given by the GNCTD.

(5) No contrary policy implemented by the government, placed before the Court.

(6) No decision taken to not implement the said promise/assurance that was given by the CM.

(7) The exception of public interest having not been invoked for the non-implementation of the promise/assurance.

97. Thus, the question that arises is as to what should be the conduct of the Government, in the context when a senior functionary like the CM gives a promise/assurance to the public, which is categorical, unequivocal and unambiguous. Can the Government be permitted to stay silent and leave the said promise/assurance in the public record, without taking a decision, either positively towards implementing it, or without taking a decision not to implement the same, for any reasons whatsoever? In the opinion of this court, such inaction would not be permissible when clearly the making of the promise/assurance by the CM is not in doubt, and is in fact admitted by the GNCTD.

98. The doctrines of promissory estoppel as also legitimate expectation are based on the axiom that the people trust the government. In a democratic setup, persons who hold an elected office, and especially heads of government, heads of State and those holding responsible positions are expected to make responsible assurances/promises to their citizens, especially in times of crisis and distress. On behalf of the citizens, there would obviously be a reasonable expectation, that an assurance or a

promise made by a senior Constitutional functionary, not less than the CM himself, would be give effect to. It cannot be reasonably said that no tenant or landlord would have believed the CM. As per the normal conduct as also the context of the COVID-19 pandemic, surely there must have been a large number of tenants and landlords, who would have believed the assurance made by the CM. If the GNCTD had actually come out with a policy either deciding to not implement the said promise or assurance on grounds which are legally sustainable, obviously the Courts cannot interfere. However, even applying the basic Wednesbury principles, the decision making, after the promise was made, ought not to be an arbitrary one. The said principle has also been settled by the Supreme Court in the case of ***Brahmaputra Metallics (Supra),*** where the Supreme Court clearly recognised the fact that a reasoned decision ought to be taken on the legitimate expectation of the citizens by the Government, for the said decision to be reasonable, non-arbitrary and in accordance with Article 14 of the Constitution.

99. In the present case, in the backdrop of the commitment made, it is not the positive decision making which is arbitrary, but the *lack* of decision making or *indecision*, which this Court holds to be contrary to law. Once the CM had made a solemn assurance, there was a duty cast on the GNCTD to take a stand as to whether to enforce the said promise or not, and if so on what grounds or on the basis of what reasons. The Supreme Court has recognised and granted relief in the context of commercial matters such as tax exemptions, grant of incentives etc.. In the present case, the nature of rights are of even greater importance as they relate to the Right to Shelter during a pandemic. In the context of upholding Fundamental Rights, the

principles of legitimate expectation have to be accorded a higher pedestal and the burden on the authority concerned not to honour the same, is even higher.

100. It cannot be held that there was no expectation or anticipation by the citizens that the CM's promise would be given effect to. The doctrine of promissory estoppel also being an equitable doctrine, equity requires this Court to hold the GNCTD responsible for the said indecision or lack of action, on the promise/assurance given by the CM.

101. Most of the decisions, which are relied upon by the parties concerned, relate to the categories which have been set out hereinabove, where there has been a contrarian decision or a policy that has been announced, be it contrary to the promise/ assurance made or implementing the promise/assurance which has been made. In the present case, however, it is not clear as to why the GNCTD chose to completely disregard the promise or assurance given by its CM and not effectuate the same. A statement given in a consciously held press conference, in the background of the lockdown announced due to the pandemic and the mass exodus of migrant labourers, cannot be simply overlooked. Proper governance requires the Government to take a decision on the assurance given by the CM, and inaction on the same cannot be the answer. The expectation of the citizens could be that the Government would implement the promise, however, when this Court is examining this promise and the expectation that comes with it, the question is whether there is any reason as to why the Government did not even take a decision in this regard. To that extent, insofar as the indecision is concerned, the GNCTD needed to answer the question, which it has failed to answer.

102. While the Courts cannot assume the discretion which exists with the Governmental authorities, the authorities also ought to follow the rule of reason. There has to be a reason as to why the Government has simply chosen to disregard or failed to implement the promise/assurance given by the CM.

103. The said assurance is not a political promise, as is sought to be canvassed before this Court. It was also not made as a part of an election rally. It is a statement made by the CM of the GNCTD. There is a reasonable expectation on behalf of the citizens that the CM knows the background, in which such a promise is being made, the number of people who would be affected by the same as also the financial implications of such a promise/assurance, in the context in which it was made. The statement was not made by a Government functionary at a lower level in the hierarchy, who could be devoid of such knowledge. The CM is expected to have had the said knowledge and is expected to exercise his authority to give effect to his promise/assurance. To that extent, it would not be out of the place to state that a reasonable citizen would believe that the CM has spoken on behalf of his Government, while making the said promise. The said promise was to act as a *balm* on the wounds of landlords and tenants, who were severely affected as a class of citizens in Delhi. However, the lack of any decision to implement, or a conscious reasoned decision not to implement, has resulted in *non decisionem factionem* in respect of the legitimate expectation of its citizens. The statements made by persons in power are trusted by the public who repose faith and believe in the same. Thus, "puffing" which may be permissible in commercial advertising, ought not to be recognisable and permissible in governance.

104. On behalf of the Respondents, Article 166 of the Constitution of India has been placed in service to argue that any decision of the Government has to be taken in the name of the Governor, in consultation with the council of ministers, which was not done in the present case, and therefore it cannot give rise to a legitimate expectation or promissory estoppel. Reliance has been placed on the judgments in ***Bacchittar Singh (supra)***, and ***Kripalu Shankar (supra),*** in support of this submission.

105. The submission on behalf of the GNCTD that all governmental policy is executed in the name of the Governor, and hence any statement made by the CM would not be enforceable in law in view of the Article 166 of the Constitution, would not be tenable. The issue has to be considered from a common man's perspective or a citizen's perspective who would believe that a statement by the CM can be relied upon and trusted. In fact, judgments have gone on to hold, for example, in ***Motilal Padampat (supra),*** that a statement/ representation made even by the Chief Secretary to the Government, while discharging functions of the Government, would by itself, due to the position the person holds, be presumed to be within the scope of the authority of the person making it, and would be an enforceable representation. The decision once taken would have to be in the name of the Governor but what is challenged here is the complete indecision after the announcement. Hence, the decisions cited in respect of Article 166 of the Constitution of India, would not have a bearing on the present case. The common man or a citizen would be entitled to presume, on a reasonable standard, that when a CM is making a statement/ representation/ assurance which is so categorical and unequivocal, especially in the context in which

the present statement was made, the same is with the backing of the authority and the position that he holds.

106. In any case, the decisions cited by the GNCTD are distinguishable and would not be applicable to the facts and circumstances of the present case. In ***Bachhittar Singh (supra)***, the Supreme Court was dealing with a matter relating to the appointment of a *Kanungo* as an Assistant Consolidation Officer. Considering the allegations of tampering, he was suspended, and an enquiry was held which culminated in his dismissal. The revenue minister had, considering the official's precarious family position, opined that the dismissal ought not to be resorted to and that he should be reverted to his position with a warning. This opinion of the Minister was relied upon by the official concerned, as an order of the Government. In this context, the Supreme Court held that the activities and business of the State have to be conducted as per the rules of business, and it has to be in the name of the Head of the State i.e., the *Rajpramukh*. This case did not deal with any assurance or promise, or representation made by a high ranking official but, in fact, only an opinion which was part of the file or the note sheet. It was under those circumstances, that the Court held that a decision of the Government ought to be taken in the manner so prescribed. Further in ***Bachhittar Singh (supra)***, the Supreme Court has observed:

> *"Thus, it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of*

Ministers to consider the matter over and over again and, therefore, till its communication"

Thus, the opinion of the Minister in the said case was not even communicated to the official concerned and hence it was held that the State cannot be bound by the same. The same is clearly distinguishable from the facts of the present case, where an assurance has been given by the CM in a press conference, directly to the citizens.

107. Even in ***Kripalu Shankar (supra)*** it was held that internal notes are privileged documents and unless and until the contents of the internal note is authenticated by the Government and communicated to the public it would not be binding in nature. The same is also not applicable to the facts of the present case.

108. While there can be no doubt as to the propositions laid down in these two judgments, the question that arises in this case is as to whether the statement made by the CM can be completely ignored and can be held to be not binding on the GNCTD. The CM and the Council of Ministers are to aid and advise the Governor in the exercise of his functions, and an assurance given by the CM, in a press conference, i.e., a public platform, even without resulting in a formal policy or an order on behalf of the GNCTD, would create a valuable and legal right by applying the doctrine of promissory estoppel. Further non-consideration of the same can definitely be tested on the ground of arbitrariness due to the doctrine of legitimate expectation being applicable. Thus, it cannot be said that merely because of the fact that the conduct of the business of the Government has to be in the name of the Governor, the CM can be shorn of all the responsibilities. Even, in the well-known treatise titled, "*Principles of*

Administrative Law", authors Prof. M.P. Jain and S.N Jain have elucidated upon the significance of the doctrine of promissory estoppel, in the context of promises made by an administrator, by observing:

> "*The significance of the doctrine of promissory estoppel is great in the Administrative Law of today. In India, the question whether the doctrine of promissory estoppel applies against the Administration in a specific fact-situation arises quite frequently. The reason is that with the vesting of large discretionary powers with the Administration, it has become increasingly common for it to make advance pronouncements regarding the manner in which it would exercise its discretion, or interpret the law, before an occasion to do so in a particular case actually arises. It may also give opinion or render advice to a particular individual as to how it proposed to exercise its power in a particular factual scenario. Sometimes the administrator makes promises or announces schemes or policy decisions to be followed by him in the future."*[42]

In this background, this court is of the opinion that the promise/assurance/representation given by the CM clearly amounts to an enforceable promise, the implementation of which ought to be considered by the Government. Good governance requires that promises made to citizens, by those who govern, are not broken, without valid and justifiable reasons.

109. While holding that the assurance/promise given by the CM is enforceable, both on the basis of the doctrines of promissory estoppel and

[42] M.P. Jain and S.N. Jain, "*Principles of Administrative Law"* (2017, Lexis Nexis Publications, 8 edn. Vol. 2) Pg. 1536)

legitimate expectation, the relief would have to be moulded keeping in mind the various factors as set out below:

- Firstly, the assurance given by the CM has to be considered by the Government and a decision has to be taken whether to implement or not implement the same;
- Secondly, the *bonafides* of the said Petitioners need to be verified. The material particulars in respect of each of the Petitioners, the premises which they have either rented out or have taken on rent, the amounts which they had paid during the lockdown period, the loans which have been taken etc., would need to be verified. Further, owing to the decision of the ld. Division Bench in ***Gaurav Jain (supra)*** this Court is also concerned about the *bonafides* of the Petitioners themselves owing to the lack of material particulars.
- The pleadings in the present case, especially the rejoinder, also gives an impression to this Court that the intention is to sensationalize the issue rather than to actually seek redressal of a grievance.

110. In view of the above factual and legal discussion, the following directions are issued:

i. The GNCTD would, having regard to the statement made by the CM on 29th March, 2020, extracted in paragraph no. 3 above, to landlords and tenants, take a decision as to the implementation of the same within a period of 6 weeks;

ii. The said decision would be taken, bearing in mind the larger interest of the persons to whom the benefits were intended to

be extended in the said statement, as also any overriding public interest concerns.

iii. Upon the said decision being taken, the GNCTD would frame a clear policy in this regard.

iv. Upon the said decision being taken, if a Scheme or Policy is announced, the Petitioners' case be considered under the said Scheme/Policy as per the procedure prescribed therein, if any. Remedies against any decision taken are left open.

111. The petition is disposed of in these terms.

PRATHIBA M. SINGH
JUDGE

JULY 22, 2021
dk/dj/Ak