Reserved on : 27.04.2026
Pronounced on : 16.06.2026

R

IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH

DATED THIS THE 16TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.109133 OF 2025 (GM - RES)

BETWEEN:

M/S.VINP DISTILLERIES AND SUGARS PVT. LTD.,
A COMPANY DULY INCORPORATED
UNDER THE PROVISIONS OF
THE COMPANIES ACT, 2013
HAVING ITS REGISTERED OFFICE AT,
SY. NO.42, 43 AND 53,
JAKKANAKATTI ROAD,
KONANAKERI VILLAGE, SHIGGAON TALUK,
HAVERI DISTRICT – 581 193
REPRESENTED BY ITS VICE PRESIDENT
SRI MANJUNATHA CB

... PETITIONER

Digitally signed by SANJEEVINI J KARISHETTY
Location: High Court of Karnataka

(BY SRI PRABHULING K.NAVADGI, SR. ADVOCATE A/W
SRI AJAY KADKOL, ADVOCATE;
SRI SHASHANKK PADIYAR, ADVOCATE;
SRI SHARAN K., ADVOCATE
MS.PRIYANKA J.SREEDHARA, ADVOCATE)

AND:

1 . UNION OF INDIA
MINISTRY OF PETROLEUM AND NATURAL GAS

GOVERNMENT OF INDIA
KARTAVYA BHAVAN - 03
JANPATH, NEW DELHI – 110 001
REPRESENTED BY ITS JOINT SECRETARY.

2 . BHARAT PETROLEUM CORPORATION LIMITED
BHARAT BHAVAN PETROLEUM CORPORATION LIMITED,
12TH FLOOR, E AND F MAKER TOWERS CUFFE PARADE,
MUMBAI 400 005
MAHARASHTRA
REPRESENTED BY ITS MANAGING DIRECTOR.

3 . HINDUSTAN PETROLEUM CORPORATION LIMITED
HAVING ITS REGISTERED OFFICE AT PETROLEUM
CORPORATION LTD.,
HINDUSTAN BHAWAN
S U MARG FORT, MUMBAI – 400 001.
MAHARASHTRA,
REPRESENTED BY ITS
MANAGING DIRECTOR.

4 . INDIAN OIL CORPORATION LIMITED
INDIAN OIL BHAVAN
G9, ALI YAVAR JUNG MARG
BANDRA EAST, MUMBAI
MAHARASHTRA – 400 051
REPRESENTED ITS
MANAGING DIRECTOR.

5. MSRIT INDUSTRIES PVT. LTD.
HAVING ITS REGISTERED OFFICE AND UNIT AT:
LAKHANAYAKANKOPPA VILLAGE,
TALUKA RAMDURG, DISTRICT BELAGAVI,
KARNATAKA, INDIA - 591127
THROUGH ITS AUTHORISED REPRESENTATIVE.

6. PRABHRITI ETHANOL PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT:

D NO. 2/1, PROPERTY NO.15A,
RS NO. 246/1&2, VIDYANAGAR HAVERI,
HAVERI, KARNATAKA - 581110
HAVING ITS UNIT AT:
244/182, BELAVAGI ROAD,
NEGALUR, HAVERI, KARNATAKA - 581213
THROUGH ITS AUTHORISED REPRESENTATIVE.

7. SOORAJ AGRO DISTILLERIES LIMITED
HAVING ITS REGISTERED OFFICE AND UNIT AT:
RS NO. 479/5 & 479/8,
HAVANUR VILLAGE, GADAG BELAVAGI ROAD,
GUTTAL SUB POST OFFICE,
HAVERI, KARNATAKA - 581108
THROUGH ITS AUTHORISED REPRESENTATIVE.

8. KARTHIK AGRO INDUSTRIES PVT. LTD.
HAVING ITS REGISTERED OFFICE AND UNIT AT:
SY NO. 92, HOOLGERI VILLAGE,
BADAMI TALUK, BAGALKOT DISTRICT,
BAGALKOT, KARNATAKA - 587106
THROUGH ITS AUTHORISED REPRESENTATIVE.

9. MODI BIOTECH PVT. LTD. (MBPL)
MODI NATURALS LTD.
HAVING ITS REGISTERED OFFICE AT:
D-54, 2ND FLOOR,
OKHLA INDUSTRIAL AREA PHASE 1,
NEW DELHI-110020
HAVING ITS UNIT AT:
KHASRA NO. 1175, VILLAGE BHILAI, TAHSIL AARANG,
RAIPUR, CHHATTISGARH - 493441
THROUGH ITS AUTHORISED REPRESENTATIVE.

10. BCL INDUSTRIES LTD.
HAVING ITS REGISTERED OFFICE AND UNIT AT:
DABWALI ROAD,
SANGAT KALAN, BATHINDA,

PUNJAB 151401
THROUGH ITS AUTHORISED REPRESENTATIVE.

11. SVAKSHA DISTILLERY LTD.
HAVING ITS REGISTERED OFFICE AND UNIT AT:
DAKSHIN SIMLA, DAG NO. 1288 (P), JL-355,
B.O. CHANGUAL, P.S. KHARAGPUR (LOCAL),
KHARAGPUR, PASCHIM MEDINIPUR,
WEST BENGAL - 721301
THROUGH ITS AUTHORISED REPRESENTATIVE.

12. HARP CHEMICALS PVT. LTD.
HAVING ITS REGISTERED OFFICE AT:
PLOT NO. ITC-11, 2ND FLOOR, IT PARK,
SECTOR-67, S.A.S. NAGAR, MOHALI,
PUNJAB 160062
HAVING ITS UNIT AT:
VILLAGE JAHANGIR, TEHSIL DHURI,
DISTRICT SANGRUR, PUNJAB
THROUGH ITS AUTHORISED REPRESENTATIVE.

13. ORIENT ETHANOL INDUSTRIES PVT. LTD.
HAVING ITS REGISTERED OFFICE AT:
UNIT NO. 614, 6TH FLOOR,
P.P. CITY CENTRE, PLOT NO. 3, ROAD NO. 44,
PITAMPURA, DELHI - 110034
HAVING ITS UNIT AT:
MANERI INDUSTRIAL AREA,
DISTRICT MANDLA, MADHYA PRADESH
THROUGH ITS AUTHORISED REPRESENTATIVE.

14. OASIS DISTILLERIES LIMITED
HAVING ITS REGISTERED OFFICE AT:
H-102, METRO TOWERS,
SCHEME NO. 54, VIJAY NAGAR,
INDORE, MADHYA PRADESH 454660
HAVING ITS UNIT AT:
VILLAGE BORALI, TEHSIL BADNAWAR,

DISTRICT DHAR,
MADHYA PRADESH - 454660
THROUGH ITS AUTHORISED REPRESENTATIVE.

15. BAIDYANATH BIOFUELS PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT:
C/704, PRAMUKH PLAZA,
CARDINAL GRACIOUS ROAD, CHAKALA,
ANDHERI EAST, MUMBAI 400069
HAVING ITS UNIT AT:
PLOT NO. B-48,
ADDITIONAL BUTIBORI INDUSTRIAL AREA,
VILLAGE BRAHMNI, NAGPUR,
MAHARASHTRA - 441122
THROUGH ITS AUTHORISED REPRESENTATIVE.

16. SHRI BAJRANG CHEMICAL DISTILLERY LLP
HAVING ITS OFFICE AT:
BORJHARA VILLAGE, URLA-GUMA ROAD,
URLA GROWTH CENTRE, RAIPUR CHHATTISGARH - 492003
HAVING ITS UNIT AT:
KHASRA NO - 1105/7,
NEAR NEW WAREHOUSE,
VILL-ARANG, ARANG KHARORA ROAD,
CHHATTISGARH - 493441
THROUGH ITS AUTHORISED REPRESENTATIVE.

17. INDIAN SUGAR AND BIO-ENERGY
MANUFACTURERS ASSOCIATION
A SOCIETY REGISTERED UNDER
THE SOCIETIES REGISTRATION ACT, 1860
HAVING ITS OFFICE AT:
C BLOCK, 2ND FLOOR, ANSAL PLAZA
ANDREWS GANJ, AUGUST KRANTI MARG,
NEW DELHI - 110049
REPRESENTED BY DIRECTOR GENERAL:
MR. DEEPAK BALLANI.

18. WHITEFIELD BIOFUELS PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT
91, 9TH FLOOR, KUBER TOWER,
OFF NARIMAN ROAD, A V NAGWEKAR MARG,
PRABHADEVI, MUMBAI CITY, MUMBAI,
MAHARASHTRA, INDIA, 400025.
REPRESENTED BY MR. NARESH KUMAR.

19. JURALA ORGANIC FARMS AND AGRO INDUSTRIES LLP
HAVING ITS REGISTERED OFFICE AT:
H.NO. 13-195/1, KISTAPUR ROAD MEDCHAL,
HYDERABAD, TELANGANA 501401.
REPRESENTED BY DR. KIRAN KUMAR T.

20. GRAINFUEL DISTILLERIES PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT:
9TH FLOOR, 903, PINNACLE BUSINESS PARK,
CORPORATE RD, PRAHLAD NAGAR,
AHMEDABAD, GUJARAT 380015.

21 VIVEK BIO PRODUCTS PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT:
PLOT NO: 108, TSFPZ KAMAREDDY,
LINGAMPALLI VILLAGE, SADASHIVANAGAR MANDAL,
KAMAREDDY DISTRICT-503145 TELANGANA.

22. GRAINSPAN NUTRIENTS PVT. LTD
HAVING ITS REGISTERED OFFICE AT:
GRAINSPAN NUTRIENTS PVT. LTD, 504-505,
SHAPATH V, SARKHEJ - GANDHINAGAR HWY,
OPP. KARNAVATI CLUB ROAD, PRAHLAD NAGAR,
AHMEDABAD, GUJARAT 380015.

23. VIDYA GREEN VENTURES PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT:
VILLAGE JALODI, TEHSIL TALERA,
DISTRICT BUNDI - 323021, RAJASTHAN.

24. PINGAKSH BEVERAGES PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT:
TEHSIL TALERA, POST BAJAD,
VILLAGE LADPURA,
RAJASTHAN 323021.

... RESPONDENTS

(BY SRI M.B.KANAVI, SR.CGC FOR R-1;
SRI R.VENKATARAMANI, ATTORNEY GENERAL OF INDIA A/W
SRI C.V.ANGADI, ADVOCATE
SRI AMIT DHINGRA, ADVOCATE
SRI KARTIKAY AGGARWAL, ADVOCATE
SRI ROHIT MAHAJAN, ADVOCATE
SRI SIDDHARTH AGARWAL, ADVOCATE
SRI KESANG DOMA, ADVOCATE FOR R-2 TO R-4;
SRI SAJAN POOVAYYA, SR. ADVOCATE A/W
SRI MANU S KULKARNI, ADV. FOR R-5 TO R-16,
SRI DHYAN CHINNAPPA, SR. ADVOCATE A/W
SRI AAKASH SHERWAL & MS. NIKITA GANESH,
ADVS. FOR R-17
SRI UDAYA HOLLA, SR.ADVOCATE A/W
SRI NAMAN JHABAKH, ADVOCATE FOR R-18 TO R-24)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO A. PASS AN APPROPRIATE WRIT, DIRECTION OR ORDER DIRECTING THE RESPONDENTS NO.2 TO 4 TO TAKE NECESSARY STEPS IN ACCORDANCE WITH LAW, IN RELATION TO THE REPRESENTATION DATED 27.10.2025 FILED BY THE PETITIONER, SEEKING AN ENHANCEMENT OF THE ALLOCATION IN SUPPLY OF ETHANOL TO THE RESPONDENTS NO.2 TO 4 HEREIN UNDER TENDER NO.22376 DATED 23.09.2025 FOR THE ETHANOL SUPPLY YEAR 2025-26 WHICH IS PRODUCED AS ANNEXURE-A.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 27.04.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner is before this Court seeking the following prayer:

> "a. Pass an appropriate writ, direction or order directing the Respondents No.2 to 4 to take necessary steps in accordance with law, in relation to the Representation dated 27.10.2025 filed by the Petitioner, seeking an enhancement of the allocation in supply of ethanol to the Respondents No. 2 to 4 herein under Tender No.22376 dated 23.09.2025 for the Ethanol Supply Year 2025-26 which is produced as **ANNEXURE - "A"**;
>
> **And/Or**
>
> b. pass such other order/s as this Hon'ble Court may deem fit and proper in the ends of justice."

2. Facts in brief, germane, are as follows: -

2.1. The petitioner is said to be a Dedicated Ethanol Plant ('the Plant' for short) engaged in the business of manufacture and supply of Denatured Anhydrous Ethanol among other allied

products. The unit of the petitioner is established exclusively for the purpose of supplying ethanol to Oil Marketing Companies (OMCs)/respondents 2 to 4. The OMCs notified a tender/Expression of Interest ('EOI' for short) on 27-08-2021 for entering into Long-Term Offtake Agreements ('the Agreement/LTOA' for short) with Dedicated Ethanol Plants in Ethanol deficit states. The bids were opened on 17-09-2021. Pursuant to the said tender/EOI, the petitioner emerged successful among others and in furtherance thereof, a Letter of Intent was issued to the petitioner, for entering into a LTOA, on 13-11-2021. In terms of the EOI/tender, the petitioner enters into a LTOA on 13-01-2022, with the OMCs/respondents 2 to 4 for the establishment of Dedicated Ethanol Plants for the production of ethanol. On 15-03-2023, respondents 2 to 4 issued second EOI for signing the LTOAs in some of the states. The issue does not relate to these agreements.

2.2. On 23-09-2025, a tender comes to be floated inviting bids by respondents 2 to 4 for the supply of 1050 crore liters of Denatured Anhydrous Ethanol for Ethanol Supply Year ('ESY' for short) 2025-26. The petitioner participated in a pre-bid meeting

pursuant to the notification of the aforesaid tender and sought clarification with regard to the status of preferential allocation for the ESY 2025-26. Through an email dated 17-10-2025, it is communicated, that the petitioner was allotted a quantity of only 3.92 crore liters supply of ethanol as against the allocation in the bid of 9.26 crore liters. The deficit was 6.33 crore liters. The petitioner immediately complained of the said short allotment to the respondents. The respondents did not heed to the request of the petitioner but operated only a part of the clause of the agreement to permit further allocation *sans* complete allocation as obtaining under certain clauses of the agreement. A representation was submitted by the petitioner to the respondents 2 to 4, seeking complete allotment, pursuant to the tender, to the tune of 9.26 crore liters, as against 3.92 crore liters that was allotted. This was not acceded to. Therefore, alleging in-action on the part of the respondents in not considering the representation of the petitioner dated 27-10-2025, the petitioner files the subject writ petition seeking a direction by issuance of a writ in the nature of mandamus as extracted *supra*. This Court passed an interim order on 15-12-2025. The order reads as follows:

"The petitioner is before this Court seeking the following prayer and the interim prayer:

PRAYER

A. Pass an appropriate writ, direction or order directing the Respondents No.2 to 4 to take necessary steps in accordance with law, in relation to the Representation dated 27.10.2025 filed by the Petitioner, seeking an enhancement of the allocation in supply of ethanol to the Respondents No.2 to 4 herein under Tender NO.22376 dated 23.09.2025 for the Ethanol Supply Year 2025-26 which is produced as Annexure-A.

AND/OR

B. Pass such other Order/s as this Hon'ble may deem fit and proper in the ends of justice.

INTERIM PRAYER

A. Issue a direction to the Respondents no.2 to 4 to revise the allotment made under Tender bearing No.22376 dated 23.09.2025, in line with the terms and conditions of the Long-Term Offtake Agreement (LTOA) entered into between the Petitioner and the said respondents no.2 to 4 herein.

AND/OR

B. Pass such other order/s as this Hon'ble court may deem fit and proper in the ends of justice.

The rights of the parties are governed by a long term offtake agreement with dedicated ethanol plant. The relevant Clauses of the Agreement are 6.2 and 6.8 which reads as follows:

6.2 Buyer/OMCs offer jointly an annual offtake quantity of 1.44 Cr lit of Ethanol and the Seller/ Supplier commits to supply the same by participating in the vendor registration process and ethanol procurement process. Interstate movements, if required, by Buyer/OMCs should be honoured by the Seller/Supplier. The annual offtake quantity offered is on best endeavor basis to the extent of ethanol required, considering prevalent ethanol blending percentage and MS. sale of Buyer/ OMCs, and any other factor impacting ethanol requirement, including, but not limited to, demand issues arising out of the new economic imperatives/ regulations, vehicle short supply and such similar circumstances beyond the control of Buyer/ OMCs. In case, the Seller/ Supplier intends to supply during the ongoing ESY, offtake quantity will be limited to the requirement of Buyer/ OMCs for the balance period of that ESY.

6.8 **In the above EOI floated for setting up of dedicated ethanol units, in case a bidder is being issued LOI for a quantity lesser than the quantity for which they have bid. it is clarified that in case they set up plants as per their bids, Buyer/ OMCs may offer additional annual offtake quantity, beyond that offered under 6.2 above, with overall annual offtake quantity limited to the design capacity of the plant offered BY the bidder under the EOI. This additional offtake quantity by Buyer/OMCs will be given through preferential allocation in the ethanol procurement process followed by Buyer/OMCs on best endeavor basis.**

Reliance is placed on Clause 6.2 by the respondent and to Clause 6.8 by the learned senior counsel Sri. Prabuling K. Navadgi.

The Clause 6.8 unequivocally mandates that, if beyond what is offered in Clause 6.2, the overall annual offtake quantity of a plant is offered by the bidder under the EOI, the additional offtake quantity will be through

the preferential allocation in the ethanol procurement process followed by procedure.

The Clause 6.8 is what the learned senior counsel seeks to press into service.

In that light, the matter would require consideration.

Therefore, there shall be an interim order as prayed for, particularly in the teeth of Clause 6.8 quoted supra.

List the matter on 23.01.2026 for further hearing. Objections, if any, then."

(Emphasis supplied)

Clause 6.8 of the agreement was relied upon while passing the interim order. This interim order so granted by this Bench was challenged by respondents 2 to 4 before the Division Bench. The Division Bench, in terms of its order dated 29-01-2026, rejected Writ Appeal No.100001 of 2026. This was challenged by, one of the appellants in the aforesaid writ appeal, before the Apex Court. The Apex court, set aside both the orders passed by this Bench and that of the Division Bench. The order dated 26-02-2026, of the Apex Court in S.L.P.(C) No.7799 of 2026, reads as follows:

"…. …. ….

9. The respondent No. 2 went before the High Court by filing a writ petition redressing the grievance that although the petitioners had issued the indicative proposed allocations for the (ESY) 2025-26 yet the respondent no. 2 was allotted only

39,269 KL (3.92 Crore Liters) as against its bid for 9.26 Crore Liters.

10. A learned Single Judge of the High Court passed an interim order in writ petition referred to above dated 15th December, 2025 which reads thus:

> "The petitioner is before this Court seeking the following prayer and the interim prayer:
>
> PRAYER
>
> A. Pass an appropriate writ, direction or order directing the Respondents No.2 to 4 to take necessary steps in accordance with law, in relation to the Representation dated 27.10.2025 filed by the Petitioner, seeking an enhancement of the allocation in supply of ethanol to the Respondents No.2 to 4 herein under Tender NO.22376 dated 23.09.2025 for the Ethanol Supply Year 2025-26 which is produced as Annexure-A.
>
> AND/OR
>
> B. Pass such other Order/s as this Hon'ble may deem fit and proper in the ends of justice.
>
> INTERIM PRAYER
>
> A. Issue a direction to the Respondents no.2 to 4 to revise the allotment made under Tender bearing No.22376 dated 23.09.2025, in line with the terms and conditions of the Long-Term Offtake Agreement (LTOA) entered into between the Petitioner and the said respondents no.2 to 4 herein.
>
> AND/OR
>
> B. Pass such other order/s as this Hon'ble court may deem fit and proper in the ends of justice.
>
> The rights of the parties are governed by an long term offtake agreement with dedicated ethanol plant. The relevant Clauses of the Agreement are 6.2 and 6.8 which reads as follows:

6.2 Buyer/OMCs offer jointly an annual offtake quantity of 1.44 Cr lit of Ethanol and the Seller/ Supplier commits to supply the same by participating in the vendor registration process and ethanol procurement process. Interstate movements, if required, by Buyer/OMCs should be honoured by the Seller/Supplier. The annual offtake quantity offered is on best endeavor basis to the extent of ethanol required, considering prevalent ethanol blending percentage and MS. sale of Buyer/ OMCs, and any other factor impacting ethanol requirement, including, but not limited to, demand issues arising out of the new economic imperatives/ regulations, vehicle short supply and such similar circumstances beyond the control of Buyer/ OMCs. In case, the Seller/ Supplier intends to supply during the ongoing ESY, offtake quantity will be limited to the requirement of Buyer/ OMCs for the balance period of that ESY.

6.8 In the above EOI floated for setting up of dedicated ethanol units, in case a bidder is being issued LOI for a quantity lesser than the quantity for which they have bid. it is clarified that in case they set up plants as per their bids, Buyer/ OMCs may offer additional annual offtake quantity, beyond that offered under 6.2 above, with overall annual offtake quantity limited to the design capacity of the plant offered BY the bidder under the EOI. This additional offtake quantity by Buyer/OMCs will be given through preferential allocation in the ethanol procurement process followed by Buyer/OMCs on best endeavor basis.

Reliance is placed on Clause 6.2 by the respondent and to Clause 6.8 by the learned senior counsel Sri. Prabuling K. Navadgi.

The Clause 6.8 unequivocally mandates that, if beyond what is offered in Clause 6.2, the overall annual offtake quantity of a plant is offered by the bidder under the EOI, the additional offtake quantity will be through the preferential allocation in the ethanol procurement process followed by procedure.

> The Clause 6.8 is what the learned senior counsel seeks to press into service.
>
> In that light, the matter would require consideration.
>
> Therefore, there shall be an interim order as prayed for, particularly in the teeth of Clause 6.8 quoted supra.
>
> List the matter on 23.01.2026 for further hearing. Objections, if any, then."

11. Thus, the plain reading of the interim order passed by the learned Single Judge would indicate that strong reliance was placed by the respondent no. 2 on Clause 6.8 of the LTOA. According to the learned Single Judge, Clause 6.8 unequivocally mandates that if beyond what is offered in Clause 6.2, the overall annual off-take quantity of the plant is offered by the bidder under the EOI, the additional off-take quantity should be through the preferential allocation in the ethanol procurement process.

12. In such circumstances, the learned Single Judge granted interim relief to the respondent no. 2 as prayed for and referred to earlier.

13. The petitioners before us being dissatisfied with the grant of interim order passed by the learned Single Judge preferred three writ appeals.

14. All the three writ appeals were taken up for hearing together and by the impugned order all the three appeals came to be dismissed, thereby affirming the interim order passed by the learned Single Judge.

15. The Division Bench while dismissing the writ appeals preferred by the petitioners, observed in paragraphs 15, 16, 17, 18 and 19 respectively as under:

> "15. The question that arises for consideration in the present appeal is how Clause 6.8 of the agreement has to be interpreted and whether it

is advisable for the writ Court to interfere in contractual matters entered into between the State and private players.

16. Normally, Court should not interfere in contractual matters, and the remedy for a person like the petitioner would be to approach arbitration as per the Long-Term Offtake Agreement contains an arbitration clause. However, when facts are not in dispute and it requires only an interpretation of the contract and the action of the State is found to be arbitrary and unreasonable on the face of it, the Court does interfere under these circumstances.

17. Admittedly, there is a promise made out by the Union of India urging private players to establish dedicated ethanol plants, which led to the petitioner herein establishing a dedicated ethanol plant and the Long-Term Offtake Agreement being entered into with the respondents.

18. The respondents are bound by Clause 6 of the Long-Term Offtake Agreement and Clause 6.8 pertains as to how respondents have to procure the additional ethanol produced by the petitioner over and above 1.44 crore litres per annum. They have to give preferential allocation in ethanol procurement process as per the agreed terms. It means that the tender conditions floated every year by the respondents (in this case the tender document for the year Ethanol Procurement Year 2025-26), cannot be contrary to the condition mentioned in Clause 6.8 of the Long-Term Offtake Agreement.

19. The decision of the respondents to treat the dedicated ethanol plants on par with other ethanol producing units is in violation of Clause 6.8. Other ethanol producing units, which are not dedicated for manufacturing of only ethanol, are having the liberty to produce other products like sugar cane, alcohol, denatured spirit and the like and market it elsewhere. Whereas, dedicated ethanol plants have been established at the behest of the Union of India by private players by taking huge financial risk and not giving them the

> preferential treatment as agreed upon, may have consequences disastrous to the very survival of the said establishments."

16. In such circumstances referred to above, the petitioners are here before us with the present petitions.

17. We heard Mr. R. Venkataramani, the learned Attorney General, Mr. Balbir Singh and Mr. Sajan Poovayya, the learned senior counsel appearing for the petitioners in their respective petitions and Mr. Gopal Subramanium and Dr. Abhishek Manu Singhvi, the learned senior counsel appearing for respondent no. 2.

18. The learned Attorney General submitted that the interim relief granted by the High Court has led to reopening of the entire tender process which has attained finality. He submitted that additional allocation for supply of ethanol is not possible at this stage. He also submitted that supply of allocated quantity to various suppliers cannot be now changed at this point of time.

19. The learned Attorney General argued that additional supply would result in increase of allocations for some i.e., DEP-decrease of supply for the non-DEPs. He also pointed out that if Clause 6.8 of the LTOA is interpreted as mandatory as argued on behalf of the respondent no. 2, the DEP-1 category suppliers who have in total offered 585.3 crore Litres. would alone account for approximately 56 per cent of the total published requirement of 1,050 crore Litres which would necessitate appropriate reduction from other categories thereby displacing the non-LTOA suppliers extensively thereby affecting their business viability. The same will have its own cascading effect.

20. The learned senior counsel appearing for the petitioners would submit that the tender allocations stood completed on 17.10.2025. The supply agreements were entered into on 27.10.2025. The principal submission before us is that the interim order passed by the High Court has disturbed the allocation already undertaken way back on 17.10.2025 and may have a cascading effect on the supply of ethanol being made currently in terms of the allocation already made to other DEPs and non-DEPs pursuant to the tender.

21. On the other hand, the learned Senior counsel appearing for the respondent no. 2 seeks to heavily rely upon Clause 6.8 of the LTOA. The sum and substance of their argument is that the petitioners could not have ignored Clause 6.8. According to both the learned senior counsel, this is exactly what the learned Single Judge of the High Court and the Division Bench looked into and in their discretion, granted the interim relief as prayed for. According to the learned Senior counsel no interference is warranted in the present case.

22. Both the sides have manifold contentions to raise. We do not propose to enter into the merits of each and every argument canvassed on either side and return our own findings on those. We are convinced that the interim order passed by the learned Single Judge of the High Court as affirmed by the Division Bench is not sustainable in law.

23. The materials on record prima facie indicate the following:

1. Tender allocations stood completed on 17.10.2025 and accepted by signing definitive agreements.

2. These supplies are only for ESY 2025-26. As on 15.02.2026, 281 Crore Litres have been supplied to the OMC's under the tender.

3. ESY 2025-26 is for the period November 2025 to October 2026 only. Hence, Q1 of the ESY 2025-26 stood completed and the petitioners have entered Q2.

24. We are of the view that the High Court should have kept the aforesaid circumstances in mind before passing the interim order in the writ petition preferred by the respondent no. 2. In matters relating to contracts/tenders writ courts should remain circumspect and slow in passing interim orders which may have the effect of seriously impeding the execution of the tender etc. In other words, the High Court should be extremely careful in exercise of its discretion while granting interim relief in the matters of the present nature.

25. In such circumstances referred to above, we have reached the conclusion that we should set aside the impugned order and request the High Court to expeditiously take up Writ Petition No. 109133/2025 preferred by the respondent no. 2 for hearing. Expeditious hearing is required because of the nature of the dispute between the parties and the adverse effect that may be caused due to delay in the adjudication of this litigation.

26. We keep all contentions open for both the sides to be canvassed before the High Court in the Writ Petition.

27. We also make it clear that any further allocation of the ethanol by the petitioners shall be subject to the final outcome of the writ petition.

28. **It is needless to clarify that the writ petition shall be decided on its own merits without being influenced by the fact that we have thought fit to set aside the interim order passed by the High Court.**

29. At this stage, Mr. Balbir Singh, the learned senior counsel appearing for the Indian Sugar and Bio-Energy Manufacturers in SLP(C)..@Diary No. 12091/2026 submitted, that he may be permitted to intervene in the writ petition preferred by the respondent no.2. It shall be open for the clients of Mr. Balbir Singh to make a request to the High Court.

Upon being mentioned, the SLP (C)Diary No.12141/2026 is also taken on board.

30. With the aforesaid, all the petitions stand disposed of accordingly.

31. Pending application(s), if any, shall stand disposed of."

(Emphasis supplied)

The Apex Court while setting aside the interim order so granted by this Bench as affirmed by the Division Bench directed this Court to decide the issue on its own merit without being influenced by the fact that, the Apex Court has thought it fit to set aside the interim order passed by this Court. The matter is then heard on merits.

3. Heard Sri Prabhuling K. Navadgi, learned senior counsel appearing for the petitioner; Sri M.B.Kanavi, learned senior Central Government Counsel appearing for respondent No.1; Sri R. Venkataramani, learned Attorney General of India appearing for respondents 2 to 4; Sri Udaya Holla, learned senior counsel appearing for the respondent Nos.18 to 24 ; Sri Sajan Poovayya learned senior counsel appearing for the respondent Nos.5 to 16 and Sri Dhyan Chinnappa learned senior counsel appearing for the respondent No.17.

SUBMISSIONS:

PETITIONER:

4.1. Learned senior counsel Sri Prabhuling K. Navadgi appearing for the petitioner would submit that the treatment that is

meted out to the petitioner is completely contrary to what was being done hitherto. It is not the first agreement that is entered into between the parties of the kind that is now entered into. Since 2021 whenever respondents 2 to 4 had floated expression of interest and consequent agreement was entered into, complete capacity of the petitioner's plant was allowed to be supplied. It is only this time there is a change by respondents 2 to 4 by curtailing the entire capacity of production of ethanol to be supplied in terms of the subject agreement.

4.2. The learned senior counsel submits that the petitioner has invested huge sum of money running into hundreds of crores only for the purpose of production of ethanol and the petitioner can offer it and remain only as a dedicated ethanol plant. He would contend that respondents 2 to 4/OMCs exercise an absolute monopoly over the procurement of ethanol and petitioner's production of ethanol cannot be supplied to any other private entity. He would seek to place reliance on certain clauses of the agreement to demonstrate that the action of respondents 2 to 4 in not permitting complete supply of produced ethanol is arbitrary. He

would particularly place reliance upon Clause 6.8 of the agreement to buttress his submission that the petitioner has legitimately expected respondents 2 to 4 to act in terms of the contract and the respondents being State under Article 12 of the Constitution of India, could not and cannot act arbitrarily even in matters of contract. The subject tender issued by respondents 2 to 4 has grossly violated the contractual provision bringing it within the ambit of non-preferential allocation. The obligation cast upon the respondents to allow to supply the complete 9.90 crore liters of ethanol springs from the clauses of the contract itself.

4.3. The learned senior counsel would submit that the phrase "Best Endeavour" found in clause 6.8 of the agreement also obligates the respondents to permit entire supply of ethanol that is produced for the ethanol year. He would contend that there is continued existence of sustained demand for ethanol in the light of increased percentage of ethanol in petroleum products from 7 to 8 percent hitherto to 20% as on today. Therefore, Government needs ethanol, but is not wanting to take it from the petitioner notwithstanding the agreement. If ethanol is not allowed to be

supplied by the petitioner, it would run in to huge losses and would be constrained to shut down the operations if the allocation is not revived. He would, in all, submit that even the theory of legitimate expectation has now been elevated to the status of violation of Article 14 of the Constitution of India. He would seek to place reliance upon plethora of judgments of the Apex Court and that of this Court to buttress the aforesaid submissions, all of which would bear consideration *qua* their relevance in the course of the order.

RESPONDENTS:

5.1. Contrariwise, the learned Attorney General of India would vehemently refute the submissions to contend that the petitioner is a beneficiary of a contract entered into between respondents 2 to 4 and the petitioner. Therefore, the issue must be assessed in the realm of contracts and not in the realm of public law remedy, as is contended by the petitioner. He would, therefore, contend that the writ petition is not entertainable, as it pertains to interpretation of a contract between the parties. He would submit that the petition involves seriously disputed questions of fact to be adjudicated, as the allocation under the subject tender involves

complex factual questions relating to allocation methodology, quarter-wise zone requirements, quantum of bids received and the overall constraint of national blending targets. He would submit that the representation submitted by the petitioner cannot be used as a tool to completely change the allocation of ethanol which is driven by commercial and contractual commitments of respondents 2 to 4, as well as the policy of the Government and directions so issued by the 1st respondent. He would contend that the petitioner can at best seek for a writ of mandamus to consider and respond to the said representation. Instead, the petitioner is seeking a mandamus, which in effect would change the policy itself.

5.2. The learned Attorney General of India would submit that there is misrepresentation of contractual terms by the petitioner and relief is sought in terms of the subject programme. The Ethanol Supply Tender captures the intention of increasing the production of ethanol in deficit states. The State of Karnataka is not a deficit State. Deficit would mean the deficit in ethanol supply. Therefore, to balance it was necessary to short allot the ethanol to the petitioner, notwithstanding clause 6.8. Clause 6.8 hinges upon

clause 6.2 of the agreement. Two factors are important to be considered in the subject agreement is his submission. They are preferential allocation on best endeavour basis. Therefore, preferential allocation and best endeavour basis cannot become a right to the petitioner to seek a mandamus to respondents 2 to 4 to act in terms of the agreement so entered into between the parties. Clauses of the agreement particularly 6.8 is only directory and cannot be seen to be mandatory for the petitioner to seek writ in the nature of mandamus.

5.3. The learned Attorney General of India would further contend that the plea of legitimate expectation and promissory estoppels, that is projected by the learned senior counsel for the petitioner is inapplicable to the facts of the case, as the two doctrines would not create any legally enforceable right, where none exists in an underlying contractual framework. The best endeavour basis that is found in clause 6.8 of the agreement, is subject to multiple conditions. It cannot be demanded as a right by the petitioner, particularly after entering into the contract. The doctrine of promissory estoppel cannot be used to compel a public

authority or a State under Article 12 to act in a manner inconsistent with the statutory duty, public obligation and public interest. The OMCs are required to operate within the national ethanol procurement framework governed by the guidelines issued by the Ministry. Any judicial order that would be passed in the case at hand should not override the deficit State, getting adequate ethanol and sufficient State getting excess of ethanol. Therefore, the representation if considered in favour of the petitioner would amount to modification of the Government policy itself, which cannot be permitted in law. The relief sought results in modification of the allocation methodology provided under Annexure-III of the tender.

5.4. The learned Attorney General would lay emphasis upon the fact that the wisdom and advisability of economic policies are ordinarily not amenable to judicial review, unless it is demonstrated that the action of respondents 2 to 4 touches upon the traits of arbitrariness. The classification made in the tender or in the agreement and not agreeing to the agreement or non-consideration of the representation is a rational act on the part of respondents 2

to 4 and would be still within the non-arbitrariness as obtaining in Article 14 of the Constitution of India.

6. The learned senior counsel appearing for the petitioner would refute the submissions of the learned Attorney General in contending that, preferential allocation as found in Clause 6.8 cannot mean that the respondents can act arbitrarily by taking recourse to best endeavour obligation or preferential allocation. He would again lay emphasis upon legitimate expectation on the part of respondents 2 to 4 being violated.

7. The intervenors who have been permitted to be impleaded by this Court pursuant to the directions of the Apex Court have also made their submissions. The learned senior counsels Sri Udaya Holla, Sri Sajan Poovayya and Sri Dhyan Chinnappa appearing for the respondent Nos.18 to 24, respondent Nos.5 to 16 and respondent No.17 respectively, would toe the lines of the learned Attorney General in contending that, no right of the petitioner is taken away for the petitioner to knock at the doors of this Court, seeking a direction to interpret and implement the

clauses of the agreement according to the whim and fancy of the petitioner. The learned Attorney General and the respondents who have made their submissions now have again placed reliance upon a plethora of judgments which would be considered *qua* their relevance in the course of the order.

8. I have given my anxious consideration to the submissions made by the respective learned senior counsel and have perused the material on record.

ANALYSIS AND CONSIDERATION:

BACKDROP:

9. The genesis of the present controversy lies in the 'Ethanol Blended Petrol Programme' conceived by the Government of India in the year 2002, a policy initiative born not merely out of economic necessity, but from a larger national vision of ushering India towards energy security, environmental sustainability and a cleaner ecological future. The programme, was introduced as a measure of profound public importance, intended to progressively green fossil

fuels and reduce the nation's dependence upon conventional hydrocarbon energy sources.

10. What began as a policy experiment has, over the years, evolved into one of the central pillars of India's clean-energy transition. The programme embodies multiple national objectives — reduction in crude oil imports, conservation of valuable foreign exchange, mitigation of environmental degradation and, equally significantly, revitalisation of the agricultural economy by fostering a sustainable biofuel ecosystem. The 'National Policy on Biofuels, 2009', incorporated this vision and envisaged an ambitious roadmap for blending ethanol with petrol, initially targeting a blend ratio of 20% while commencing from a modest 5% blending level prevalent at the time.

11. The march towards that objective did not remain static. Policies evolved, committees were constituted and successive measures were undertaken to strengthen the ethanol economy of the nation. In the year 2020, upon recommendations submitted before the Expert Committee constituted for the purpose, the

Ministry of Petroleum and Natural Gas formulated the "Roadmap for Ethanol Blending in India: 2020–2025". The preambular philosophy underlying the said roadmap eloquently encapsulates the national imperative behind the blending programme, thus:

> "**Achieving energy security and the transitioning to a thriving low carbon economy is critical for a growing nation like India. Blending locally produced ethanol with petrol will help India strengthen its energy security, enable local enterprises and farmers to participate in the energy economy and reduce vehicular emissions**…."
>
> (Emphasis supplied)

The aforesaid policy document, issued under the National Policy on Biofuels – 2018, laid down an indicative target of achieving 20% ethanol blending in petrol by the year 2030. The report also undertook an exhaustive assessment of projected ethanol demand and the corresponding augmentation of national production capacities. Clause 7.1 thereof assumes significance and merits reproduction, for it reflects the scale and seriousness of the national endeavour. It reads as follows:

> "7.1 ETHANOL PRODUCTION CAPACITIES
>
> In the year 2017-18, installed capacity of molasses-based distilleries was around 278 crore liters. With a view to enhance ethanol production capacity in the country, the government in

> July, 2018 & March, 2019 notified two interest subvention schemes for molasses-based distilleries. Under the aforesaid scheme of DFPD, interest subvention at the rate of 6% per annum or 50% of rate of interest charged, whichever is lower on the loan sanctioned was borne by the central government for a period of 5 years. DFPD approved 368 projects for setting up of new distilleries / expansion of existing distilleries.
>
> … … …
>
> **With a view to achieve blending targets, DFPD is making concerted efforts to enhance the ethanol distillation capacity in the country. For this, the government had invited applications from the entrepreneurs under the ethanol interest subvention schemes in September, 2020 during a window of 30 days. Thus far, 238 projects for a capacity enhancement of 583 Cr liters with a loan amount of about Rs.16,000/- crore have been approved by DFPD. It is expected that at least 400 Cr liters capacity would be added from these projects by 2024**."
>
> (Emphasis supplied)

Clause 7.1 deals with ethanol production capacity. About 238 projects for a capacity of 583 crore liters, was sought to be envisaged to be completed by March 2022. The recommendations of the Committee, for augmentation of Ethanol production capacity is found in Clauses 9.1 and 9.2. They read as follows:

> "9.1 AUGMENTATION OF ETHANOL PRODUCTION CAPACITY.
>
> **With liberalized feedstock policy, incentives and close monitoring as listed in Chapter-7, sufficient capacity for ethanol production is likely to be built in the country to meet demand till 2025. For this, both the sugarcane-based and grain-based ethanol production capacities**

shall have to be augmented by 78% and 187% to 760 and 740 crore liters respectively. To enable a pan-Indian roll-out, ethanol would need to be supplied from surplus to deficit states as per requirements so as to ensure uniform availability of ethanol blends in the country.

Over time, technology for production of ethanol from non-food feedstock, called "Advanced Biofuels" including second generation (2G) should be promoted so as to tap this abundantly available resource without causing any tradeoff with the food production system.

A close follow up is required of the planned steps for enhancing ethanol production capacity across the country to 1500 Cr. liters by ESY 2025-26 required for E20 blending. Special efforts are needed to attract investors to the North East of the county to avail the Interest Subvention Scheme of DFPD and build an adequate distillation capacity and to avoid long distance transport of ethanol.

9.2 ETHANOL BLENDING ROADMAP

1. MoP&NG should immediately notify the plan for pan-India availability of E10 fuel by April, 2022 and its continued availability thereafter until 2025 for older vehicles, and launch of E20 in the country in phases from April, 2023 onwards so as to make E20 available by April, 2025. MoPNG should notify that the blending program is applicable to all oil marketing companies, including the private companies. This will trigger action by all relevant stakeholders. The roll out of higher ethanol blends may be done in phases, starting with the states having surplus ethanol production.

2. **In view of the switch of dispensing of EBP fuels between E10 and E20 (such as E12 or E15) as well in manufacturing compatible vehicles, the Expert Committee agrees that intermediate blends will give flexibility to OMCs to manage supply and demand of ethanol in the country. For this purpose, BIS may formulate specifications for these intermediate E12**

and E15 blends. Flex fuel vehicles should be encouraged and popularized for moving to higher blends.

3. A nation wide educational campaign should be launched jointly by MoP&NG through its OMCs, MoRT&H and DHI in partnership with the industry to educate the consumers of the benefits of EBP, and to select the correct fuel for their class of vehicles."

(Emphasis supplied)

12. The report records that during the year 2017-18, the installed capacity of molasses-based distilleries stood at approximately 278 crore litres. Recognizing that such capacity was grossly insufficient to meet the envisioned blending targets, the Union Government introduced interest subvention schemes in the years 2018 and 2019 to incentivise the establishment of new distilleries and expansion of existing units. Under the aegis of the Department of Food and Public Distribution, the Central Government undertook to bear substantial portions of the interest burden on sanctioned loans, thereby encouraging private participation in the national biofuel mission. Consequently, hundreds of projects involving colossal investments running into thousands of crores came to be approved for augmentation of ethanol production capacity across the country.

13. The roadmap further underscores that, in order to achieve pan-India implementation of the blending programme, ethanol would necessarily have to move from surplus States to deficit States so as to ensure uniform availability of blended fuel throughout the nation. It also emphasizes the urgent necessity of increasing ethanol production capacity to nearly 1500 crore litres by ESY 2025-26 to facilitate E20 blending.

14. Clause 9.2 of the roadmap thereafter delineates the broader national strategy for phased implementation of E10 and E20 fuel availability across the country. It contemplates not merely infrastructural and industrial preparedness, but also consumer education, technological adaptation and coordinated participation of all stakeholders in the energy ecosystem. The programme was thus envisioned not as an isolated commercial arrangement, but as a transformative national policy, intended to recalibrate India's energy architecture itself.

15. The Government of India issued a notification dated 06-07-2021, directing Oil Marketing Companies, including

respondents 2 to 4, to market ethanol blended petrol with blending percentages extending up to 20%, in conformity with Bureau of Indian Standards specifications, throughout the territory of India with effect from 01-04-2023. The impetus for such accelerated implementation stemmed from India's solemn international commitment towards achieving net-zero carbon emissions by the year 2070. Biofuels and natural gas were envisioned as transitional bridge fuels capable of facilitating a gradual yet meaningful movement towards a greener and environmentally sustainable future.

THE GENESIS OF THE ISSUE IN THE SUBJECT *LIS*:

16. The genesis of the *lis* at hand must be understood in the aforesaid backdrop of the national policy and economic transformation. The petitioner is a Dedicated Ethanol Plant engaged exclusively in the manufacture and supply of ethanol and its allied products. Respondents 2 to 4 are the Oil Marketing Companies authorized by the Government of India to procure ethanol for implementation of the Ethanol Blending in Petrol Programme. In

furtherance of the national policy objectives noticed hereinabove, respondents 2 to 4 floated EOIs inviting private participation for establishment of dedicated ethanol plants in ethanol-deficit States and for entering into LTOAs for assured procurement of ethanol.

17. The architecture of the EOIs contemplated, long-term contractual assurances, being extended to successful bidders based upon estimated State-wise ethanol requirements and ranking of qualified participants. Insofar as the State of Karnataka was concerned, the projected requirement of ethanol was also specifically indicated in the EOI, thereby forming the foundational premise upon which investments of enormous magnitude were induced from private entrepreneurs such as the petitioner.

18. In furtherance of the avowed objectives afore-noted, respondents 2 to 4/Oil Marketing Companies (OMCs) floated an EOI/tender dated 27.08.2021 inviting participation for procurement of ethanol. The said EOI emanated collectively from all the OMCs. Certain clauses therein assume profound significance in the

adjudication of the present *lis* and therefore deserve particular notice:

> "EXPRESSION OF INTEREST (EOI) FOR SIGNING LONG TERM BIPARTITE AGREEMENT WITH UPCOMING DEDICATED ETHANOL PLANTS IN ETHANOL DEFICIT STATES FOR SUPPLY OF DENATURED ANHYDROUS ETHANOL TO OIL MARKETING COMPANIES (OMCS)
>
> **1)** INDIAN OIL CORPORATION LIMITED (IOCL), BHARAT PETROLEUM CORPORATION LIMITED (BPCL), HINDUSTAN PETROLEUM CORPORATION LIMITED (HPCL), Public Sector Enterprises, collectively known as OMCs Ethanol Procurement Group (OEPG), intend to shortlist and enter into long term bipartite agreement with upcoming dedicated ethanol plants in ethanol deficit states to procure Denatured Anhydrous Ethanol, meeting IS 15464:2004 specifications as detailed in **Annexure-I**, for their requirement of blending ethanol with Petrol at various Depots/ Terminals/Installations/Retail outlets/ any other destination of IOCL/BPCL/ HPCL in these states. IOCL, BPCL & HPCL shall be referred as OMCs-Oil Marketing Companies in this EOI document. Dedicated Ethanol Plants (DEP) will only produce ethanol complying with specifications as per IS 15464:2004 for blending with Petrol and all of the quantity produced in this plant would be supplied to OMCs/ group of Oil Marketing Companies only for Ethanol Blended Petrol (EBP) Programme.
>
> **2)** Those proponents, including PSUs (other than IOCL, BPCL & HPCL), herein after referred to as "bidder", who desire to set up or are in the process of setting up dedicated ethanol plants may apply through this EOI. Dedicated ethanol plants which have commenced supplies prior to the date of EOI are not eligible to apply through this EOI.
>
> **3)** Central Procurement Orginzation (marketing), Bharat Petroleum Corporation Limited, on behalf of OMC, invites expression of interest to short list bidders who are

desiring to set up pr are in the process of setting up dedicated ethanol plants to manufacture Denatured Anhydrous Ethanol conforming to specification IS 15464:2994. Ethanol is to be supplied through Tank Truck on delivered basis to the OMC's Company Depots/Terminals/Retail Outlets/any other destination. The estimated ethanol requirement of OMCs in the deficit states for which OMCs intend to enter into Long Term Bipartite Agreement are indicated in **Table-1** below:

Table – 1

State/Union Territory(UT)	Estimated Ethanol Quantity (Cr Litre/ESY*)
Tamil Nadu & UT of Puducherry	97.00
Kerala	55.00
Rajasthan	54.00
Gujarat and UT of Dadra & Nagar Haveli and Daman and Diu	54.50
Telangana	9.00
Madhya Pradesh	10.00
West Bengal	35.00
Haryana	19.00
Jharkhand	18.00
Bihar	14.00
UTs of Jammu and Kashmir & Ladakh	11.00
Karnataka	18.00
Punjab & UT of Chandigarh	6.00
Himachal Pradesh	3.50
Maharashtra	2.00
Goa	7.00
Uttarakhand	7.50
Delhi NCT	33.00
Assam	10.00
Meghalaya	4.00
Manipur	2.50
Tripura	2.00
Arunachal Pradesh	2.00
Nagaland	1.50
Mizoram	1.00
Sikkim	1.00
TOTAL	**477.50**

*ESY=Ethanol Supply Year (from 1st December of a year to 30th November of the next year)

…. …. ….

5) Qualification and evaluation criteria

…. …. ….

Documents required:

…. …. ….

3. **If a new dedicated ethanol plant is setup in the same premises where an existing distillery is operating (or is being set up as a new distillery) it should be clearly identifiable as a separate unit.** The processing units and storage area of ethanol have to be separate for the dedicated ethanol plant. The non-production facilities, however, can be shared. Necessary certification of such plants by any of the following authorities i.e., factories department, PCB, IIP CSIR-Dehradun, NSI Kanpur and VSI Pune is required to be submitted.

4. Bidders who do not meet the mandatory requirements as per clause 5.ii).1, 2 & 3 above will not be considered for further evaluation. However, they can submit fresh applications in subsequent EOI(s), if any.

… … …

9) Supply Condition:

Suppliers need to supply the complete production quantity to OMCs only, however with written permission of OMC, supplier can supply Ethanol to other private oil marketing companies.

10) Procurement Process:

- Supplier after successful commissioning of Ethanol plant need to participate in prevailing ethanol procurement process which is the process followed by OMCs for procurement of ethanol. The process is guided by the directions/advice issued by MOPNG/Govt. of India from time to time. MOPNG/Govt. of India from time to time.

- **Supplier will register himself with OMCS/ BPCL through a vendor registration process in order to**

participate in quantity bids. After successful registration, supplier will participate in quantity bids floated by OMCs for their location-wise requirement of ethanol.

- Quantity bids for the full requirement of the Ethanol Supply Year (ESY) shall be released at the beginning of ESY.

- **The OMCs shall off-take and the Seller/ Supplier shall provide the quantities of Ethanol as agreed in the annual allocation plan.**

- **The responsibility of execution of allocations made as per Long term BPA in relation to procurement of ethanol and related activities will lie with the respective OMC to whom allocation has been made as per procurement process and the parties will keep each other indemnified in respect of any dispute arising between them or with any third party after the allocations have been done.**

- All allocation and subsequent reallocation will be carried out at discretion of OMC.

- **LOI will be issued by individual OMCs for the allocated quantity.**

- Supplier will sign an Annual Contract Agreement with each OMC for the allocated quantity after submitting Security Deposit.

- Purchase Order (PO)/Indents will be placed by each OMC location giving day-wise delivery schedule.

- On receipt of ethanol at location as per specification & terms and conditions of contract, location will make Goods Receipt.

- Purchase Order (PO) will be issued by the OMC only after submission of signed purchase agreement along with bank guarantee by the supplier."

18.1. Clause 1, *supra*, unmistakably reveals the intent and architecture of the OMCs to procure ethanol exclusively from Dedicated Ethanol Plants. The chart appended thereto vividly demonstrates that, as on the date of issuance of the EOI, namely 27-08-2021, the estimated ethanol requirement in the State of Karnataka stood at 18 crore litres. Clause 5, in particular, which discusses the qualification and evaluation criteria and also the documents required for applying for the EOI, ordains that wherever a new dedicated ethanol plant is established alongside an existing distillery, such plant must remain distinctly identifiable as an independent unit, with separate processing facilities and segregated storage infrastructure for ethanol. The clause further proclaims that bidders failing to satisfy the stipulations of the EOI would stand excluded from further consideration. It also mandates disclosure to the OMCs by bidders proposing establishment of dedicated ethanol plants.

18.2. Clause 9, *supra,* is equally illuminating. It obligates the supplier to channel the entirety of its ethanol production solely to

the OMCs and to none else, save and except with prior written permission permitting supply to a private oil marketing company. The clause, therefore, forges an exclusive bond between the ethanol plant and respondents 2 to 4, who admittedly enjoy an overwhelming monopoly over the procurement and distribution of ethanol in the country.

18.3. Clause 10, *supra,* traverses the procurement process. Certain sub-clauses thereof indicate that bids were invited for the entire requirement of ethanol at the commencement of every supply year and that allocations would rest within the discretion of the OMCs.

19. Insofar as the State of Karnataka is concerned, certain companies and distilleries were identified for execution of the LTOAs for supply of ethanol to respondents 2 to 4. The bids received for the aforesaid EOI dated 27-08-2021, were opened on 17-09-2021. The petitioner was one amongst the shortlisted entities. The relevant details of the shortlisted bidders are as follows:

> "**EXPRESSION OF INTEREST (EOI) FOR SIGNING LONG TERM BIPARTITE AGREEMENT WITH UPCOMING**

DEDICATED ETHANOL PLANTS IN ETHANOL DEFICIT STATES FOR SUPPLY OF DENATURED ANHYDROUS ETHANOL TO OIL MARKETING COMPANIES (OMCS)

EOI No. 1000374174 ID 86996 opened on 17.09.2021

State	Name of Shortlisted Bidders	Annual Offtake Quantity Offered (Cr. Ltrs)	Annual Offtake Quantity offered (in KLPD)
KARNATAKA	Davangere Sugar Company Limited	0.99	30
	Haveri Mega Food Park Private Limited	4.95	150
	Satish Sugars Limited	3.30	100
	The Ugar Sugar Works Limited	3.60	300
	NSL SUGARS LTD	1.32	40
	Shree Renuka Sugars Limited, Unit IV,Sy. No. 377, Burlatti Village, Taluka Athani, Dist. Belgavi, Karnataka	1.43	130
	NSL Sugars Limited Unit 2 Aland	3.63	110
	NSL Sugars (Tungabhadra) Limited	3.63	110
	VINP Distilleries and Sugars Privatelimited	1.44	70

The shortlisted bidders may note the following:

1. The conversion of Annual Offtake Quantity Offered (in Cr lit) mentioned above to KLPD has been done on the basis of 330 days of operation or as submitted by the shortlisted bidder through his application, whichever is lower.

2. **The annual off take quantity offered to shortlisted bidders as above for signing Long Term Offtake Agreement for supply of denatured anhydrous ethanol to oil marketing companies (OMCs) may be less than the annual design capacity offered by the shortlisted bidder in his application under this EOI.**

3. **The shortlisted bidder is free to set up plant upto the annual design capacity offered in his application under this EOI. This additional capacity, over and above the annual offtake quantity offered in point 2 above, also needs to remain dedicated ethanol plant only.**

4. Ethanol so produced from additional capacity stated in point no. 3 above, may be procured through the prevailing Ethanol procurement process followed by OMCs and/or Pvt. OMCs on need basis.

5. The annual offtake quantity offered to shortlisted bidders for signing long-term offtake agreement as per point no. 2, may be considered for amendment in future, to include the additional capacity as stated in point no. 3, as per the need of OMCs at that point of time and rules and guidelines in force.

DATE: 01.11.2021"

(Emphasis added)

The shortlisted bidders were required to convert the Annual Offtake Quantity offered in crore liters into KLPD on the basis of 330 operating days or such lesser duration, as furnished by the bidder. The bidders were further informed that they were at liberty to establish plants up to the annual design capacity disclosed in their applications under the EOI. Such additional capacity, over and above the Annual Offtake Quantity offered, was also required to remain a Dedicated Ethanol Plant, thereby signifying that every drop of ethanol manufactured therein would be supplied only to respondents 2 to 4. Two incontrovertible features emerge from the EOI dated 27-08-2021: first, that companies and distilleries were required to establish ethanol plants solely for manufacture and

supply of ethanol to the OMCs/respondents 2 to 4; and secondly, that the procurement mechanism was effectively monopolized by the said respondents.

20. Pursuant to the aforesaid EOI, the petitioner submitted its application on 17.09.2021. In the said response, the proposed unit was described as a "300 KLPD Distillery", denoting a dedicated ethanol plant possessing a production capacity of 300 KLPD. Computed on the basis of 330 days of operation, as contemplated under the EOI, the annual production capacity would aggregate to 9.90 crore liters of ethanol per annum. Upon consideration of the petitioner's application, an agreement came to be executed between the petitioner, the OMCs and certain cooperative societies for supply and distribution of ethanol. It is this agreement that constitutes the very fulcrum of the present *lis*. The agreement bears the nomenclature "Long-Term Offtake Agreement with Dedicated Ethanol Plant". Certain clauses thereof are germane and therefore require extraction. They read as follows:

"1. DEFINITIONS AND INTERPRETATION:

1.1. Definitions:

In this Long-term Offtake agreement, unless the subject or context otherwise requires, the following words and expressions shall have the following meanings:

1.1.1. Dedicated Ethanol Plant (DEP): These ethanol plants will only produce ethanol (as per prevalent BIS specifications) and all of the quantity produced in this unit would be supplied to Buyer/ OMCs only. In case a new dedicated ethanol plant is setup in the same premises where the existing distillery is operating (or is set up as a new distillery), the ethanol plant should be clearly identifiable as a separate unit. Processing units and storage area of ethanol have to be separate for the dedicated ethanol plant. The nonproduction facilities, however, can be shared. Necessary certification of such plants by appropriate authorities is required.

1.1.2. "Business" means sale and purchase of Ethanol by Seller/ Supplier and Buyer/ OMCs respectively through DEP/PDEP/GD on mutually agreed terms and conditions.

1.1.3. **The "Ethanol Procurement Process" is the process followed by OMCs for procurement of ethanol. The process is guided by the directions / advice issued by MOPNG/Govt. of India from time to time.**

1.1.4. ESY means Ethanol Supply Year i.e. from 1st Dec to 30th November of following year.

1.1.5. "Purchase Agreement" means supply agreement made by individual OMC with the supplier for the purchase of ethanol as per allocation made in each ESY.

1.1.6. "Allocation" means OMC supply location-wise quantity of ethanol to be supplied by the Seller/Supplier as per prevalent Ethanol procurement process

1.1.7. "Supply Price" means the price at which Ethanol shall be purchased by Buyer/ OMCS from Seller/ Supplier as explained in Clause 9.

1.1.8. "Taxes" means all forms of taxation and statutory, governmental, state, principal, local governmental or municipal impositions, duties, contributions and levies, imposts, tariffs and rates and all penalties, charges, costs and interest payable in connection with any failure to pay or delay in paying them and any associated deductions or withholdings of any sort, and as may revised from time to time by statutory authorities.

1.1.9. "Standards" shall include applicable national or international standards relevant to Ethanol business.

1.1.10. "EOI" means Expression of Interest for signing long term offtake agreement with upcoming ethanol plants (DEP/ PDEP/ GD) in ethanol deficit states for supply of denatured anhydrous ethanol to oil marketing companies (OMCs) floated by Buyer/OMCs for inviting application from project proponents

1.1.1. "Application" means the application submitted by the Project promoter / proponent to participate in the EOI"

…. …. ….

1.2. INTERPRETATION:

…. …. ….

1.2.13. In the event of any conflict between any provisions of main body of this Agreement and the provisions of the Appendices, Schedules, Annexures and Attachments; the provisions of the main body of this Agreement shall prevail.

1.2.14. All terms and conditions mentioned in the Expression of Interest (EOI) and Letter of Intent (LOI) issued by OMCs/ Buyer in relation to signing of this agreement

shall be deemed to be included in this Agreement by reference.

1.2.15. The clauses of EOI / LOI / this agreement are to be read in cognizance & in totality. Similar clause mentioned in this agreement shall supersede clause mentioned in the EOI/LOI.

2. SCOPE OF AGREEMENT:

2.1. The Seller/ Supplier agrees to supply and the Buyer/ OMCs agree to purchase Ethanol under the terms of this Agreement in the quantities, and at Supply Price determined in accordance with, and subject to, the terms and conditions of this Agreement.

2.2 The Ethanol Plant from which the Ethanol shall be supplied under this Agreement is located at **Sy. No 41, 42 & 53, Jakkanakatti Road, Konankeri Villge, Shiggav Taluk, Haveri district, Karnataka, 581193, Area 69 Acres** (complete details/address of the plant) **and has a design capacity to produce 1.44 Cr lit per annum of Ethanol by using Sugarcane Juice/ Syrup and Maize/ Corn as feedstock.**

2.3 The Seller/ Supplier shall deliver Ethanol at the designated location(s) of Buyer/OMCS.

2.4 The Buyer/ OMCs are entitled to appoint other suppliers for the supply of Ethanol at the designated location(s). Seller/ Supplier agrees not to dispute, object or challenge the appointment of other sellers / suppliers of Ethanol for the designated location(s) by the Buyer/ OMCs. The Seller/ Supplier shall not be entitled to any compensation, remuneration, commission or allowance whatsoever for such appointments/purchase by the Buyer / OMCs."

... ...

6. QUANTITIES AND ALLOCATIONS:

6.1. Seller/ Supplier will register himself with OMCs/ BPCL through a vendor registration process and participate in ethanol procurement process mandatorily. After successful registration, the Seller/ Supplier will participate in ethanol procurement process followed by OMCs for their location-wise requirement of ethanol.

6.2. Buyer/OMCs offer jointly an annual offtake quantity of 1.44 Cr lit of Ethanol and the Seller/ Supplier commits to supply the same by participating in the vendor registration process and ethanol procurement process. Interstate movements, if required, by Buyer/OMCs should be honoured by the Seller/ Supplier. The annual offtake quantity offered is on best endeavor basis to the extent of ethanol required, considering prevalent ethanol blending percentage and MS sale of Buyer/ OMCs, and any other factor impacting ethanol requirement, including, but not limited to, demand issues arising out of the new economic imperatives/ regulations, vehicle short supply and such similar circumstances beyond the control of Buyer/ OMCs. In case, the Seller/ Supplier intends to supply during the ongoing ESY, offtake quantity will be limited to the requirement of Buyer/OMCs for the balance period of that ESY.

6.3. Offtake quantity offered jointly by Buyer/ OMCs is subject to the Seller/Supplier complying with the condition under clause 6.1.

6.4. The annual off take quantity offered as above for supply of denatured anhydrous ethanol to OMCs may be less than the annual design capacity offered by the shortlisted bidder in his application.

6.5. The shortlisted bidder is free to set up plant upto the annual design capacity offered in his application. This additional capacity, over and above the annual offtake quantity offered in 6.2

above, also needs to remain dedicated ethanol plant only.

6.6. Ethanol so produced from additional capacity stated in 6.5 above, may be procured through the prevailing Ethanol procurement process followed by OMCs and/or Pvt. OMCs on need basis.

6.7. The annual offtake quantity offered as per 6.2 above, may be considered for amendment in future, to include the additional capacity as stated in 6.5 above, as per the need of OMCs at that point of time and rules and guidelines in force.

6.8. In the above EOI floated for setting up of dedicated ethanol units, in case a bidder is being issued LOI for a quantity lesser than the quantity for which they have bid it is clarified that in case they set up plants as per their bids, Buyer/ OMCs/may offer additional annual offtake quantity, beyond that offered under 6.2 above, with overall annual offtake quantity limited to the design capacity of the plant offered by the bidder under the EOI. This additional offtake quantity by buyer/OMCs will be given through preferential allocation in the ethanol procurement process followed by Buyer/OMCs on best endeavor basis.

6.9 "EOI for Quantity Bids" for the full requirement of the ESY shall be floated prior to the start of ESY to the registered vendors only. There after EOI for quantity bids shall be floated for the shortfall quantity/ additional requirement, if any, purely based on requirements of Buyer/ OMCs.

a. Location-wise, individual OMC-wise quantity to be supplied in each ESY quarter shall be allocated to the Seller/ Supplier as per prevalent allocation criteria.

b. All allocations including any subsequent re-allocation will be at the sole discretion of the Buyer/ OMCs.

c. LOI will be issued by individual OMCs for the allocated quantity to the Seller/ Supplier.

d. For the allocated quantity, Seller/ Supplier will sign Purchase Agreement with each OMC after submitting Security Deposit as per the terms and conditions of the LOI. All terms and conditions of the Purchase Agreement will be binding on the Seller/Supplier.

6.10. The responsibility of execution of allocations/ re-allocations made in relation to procurement of ethanol and related activities will lie with the respective OMCs to whom allocation has been made as per procurement process and the parties will keep each other indemnified in respect of any dispute arising between them or with any third party after such allocations/re-allocations has been done."

… … …

17. REPRESENTATIONS AND WARRANTIES:

…. …. ….

17.1.9. The Seller/ Supplier shall not without the prior written consent of Buyer/ OMCs, undertake or allow any 'Change in Constitution'. 'Change in Constitution' shall mean; (a) change in sole proprietor of a sole proprietorship, (b) change in partner(s) of partnership firm or a limited liability partnership, (c) change in member of a one person company, (d) change in shareholder of a private limited company or unlisted public limited company, (e) change in 'promoter' or any member of the 'promoter group' of a listed public limited company, (f) change in committee representative (person identified as 'committee representative' in case of a registered co-operative society at the time of making an application for appointment as CS) of registered cooperative society, or (g) change in karta of a hindu undivided family, or (h) change in legal status."

…. …. ….

23.11. Exclusivity:

> **Subject to the terms and conditions of this Agreement, during the Term of this Agreement, the Seller/ Supplier shall not enter into any similar agreement with any third party pertaining to supply of Ethanol from the Ethanol Plant."**

(Emphasis added)

21.1. Clause 1.1.1, *supra*, defines a "Dedicated Ethanol Plant" as a plant which would exclusively manufacture ethanol and whose entire production would be supplied solely to the OMCs. It further stipulates that where such dedicated ethanol plant is established within the same premises as an existing distillery, it must nevertheless remain separately identifiable. The petitioner being a Dedicated Ethanol Plant admits of no dispute. On this admitted position the petitioner established a new dedicated ethanol facility.

21.2. Clause 2.2, *supra,* delineating the scope of the agreement, envisages that the ethanol plant contemplated thereunder must possess the design capacity to produce 1.44 crore litres of ethanol per annum by utilising sugar juice/syrup and maize/corn as feedstock. Clause 6 forms the very soul and marrow

of the agreement, as it governs the quantities and allocations. The ethanol procurement process undertaken by the OMCs was to cater to their location-specific requirements.

21.3. Clause 6.2, *supra,* stipulates that the Annual Offtake Quantity of 1.44 crore litres of ethanol shall be supplied to the OMCs. The said Annual Offtake Quantity is contemplated on a best endeavour basis, corresponding to the ethanol requirement arising out of the blending percentage with petrol. Clause 6.5 further permits the shortlisted bidder to establish a plant up to the Annual Design Capacity disclosed in its application. Such additional capacity, over and above the annual offtake quantity offered in Clause 6.2, was also required to continue as a dedicated ethanol plant.

21.4. Clause 6.8, *supra,* assumes commanding importance. It clarifies that where a bidder, pursuant to the EOI floated for establishment of dedicated ethanol units, is issued a Letter of Intent for a quantity lesser than the quantity bid for, the OMC may offer additional Annual Offtake Quantity beyond what is contemplated under Clause 6.2, namely 1.44 crore litres, and the bidder would be

accorded preferential allocation in the ethanol procurement process for the additional quantity, albeit again on a best endeavour basis.

21.5. What unmistakably emerges from Clause 6, *supra,* is that the ethanol supplier must necessarily be a dedicated ethanol plant; that the minimum annual offtake quantity is fixed at 1.44 crore litres; and that any additional production capacity is also intended to be supplied only to the OMCs through preferential allocation under the procurement process. Presently, the petitioner stands allotted 1.44 crore litres of ethanol in terms of Clause 6.2. Drawing sustenance from Clause 6.8, the petitioner now seeks a direction that the entirety of its production capacity, namely 9.90 crore litres, be procured by the OMCs.

21.6. Clause 23.11, *supra,* further engrafts exclusivity into the contractual framework. The supplier is interdicted from entering into any agreement of a similar nature with any third party concerning supply of ethanol from the dedicated ethanol plant. Thus, the entirety of the ethanol produced by the dedicated plant must inexorably find its way only to the OMCs.

22. The petitioner has placed on record the immense efforts undertaken in establishing the dedicated ethanol plant and in ensuring supply of its entire production capacity to the OMCs. For over three years, all remained serene and undisturbed. The proverbial fly in the ointment, however, emerged in the form of the EOI/tender dated 23-09-2025 issued for procurement of 1050 crore litres of ethanol to be supplied to the OMCs. One particular clause therein has now become the nucleus of controversy. It reads thus:

> "…. …. ….
>
> For all DEPs under EOI-1 (CRFQ No. 1000374174, System ID 86996 dtd. 28-09-2021) and EOI-2 (CRFQ No. 1000403925, System ID 11837 dtd. 15-05-2023), **Additional Quantity offered, if any, beyond long term offtake quantity (pro-rated and calculated on a quarterly basis) shall not be considered for preferential allocation. Allocation of this additional quantity offered shall be done as per allocation criteria applicable for non-DEPs.**"

(Emphasis added)

The aforesaid clause stipulates that any additional quantity offered beyond the long-term offtake quantity would not be considered for preferential allocation, and that allocation of such additional quantity would instead be governed by the criteria applicable to Non-dedicated Ethanol Plants. Thus, a palpable departure is

introduced from the terms of the Long-Term Offtake Agreement executed between the petitioner and the OMCs. The petitioner applies for the aforesaid EOI/tender and participates in the pre-bid meetings where the petitioner raises concerns over the afore-quoted clause of the tender. The petitioner also communicates these objections through an e-mail dated 30-09-2025.

23. Thereafter, on 17-10-2025, the petitioner receives an e-mail communication stating that, in the EOI for procurement of ethanol, for ESY 2025–26, it has been allotted only 3.92 crore litres (39,269 KL), despite having submitted a bid for allocation of 9.26 crore litres. Immediately thereafter, the petitioner communicates a detailed representation through e-mail, seeking for an increase in the allocation of quantity of supply of ethanol offered to the petitioner for ESY 2025-26 from 3.92 crore Liters. The representation dated 27-10-2025 reads as follows:

"ESY/25-26/OMC/02

27th October, 2025

To

Chairman & Managing Director Indian Oil Corporation Limited G-9, Ali Yuvar Jung Marg Bandra (East), Mumbai Maharashtra, PIN - 400 051	Chairman & Managing Director Bharat Petroleum Corporation Limited 12th Floor, E&F Maker Towers, Cuffe Parade, Mumbai Maharashtra, PIN-400 005
Chairman & Managing Director Hindustan Petroleum Corporation Ltd Hindustan Bhawan, S V Marg, Fort, Mumbai, Maharashtra, PIN-400 001	Shri Rajesh Gehlot Bharat Petroleum Corporation Limited Procurement Manager CPO
Shri Vineet Buthani Bharat Petroleum Corporation Limited GM Biofuels, H.Q	

Email Communication &

Registered Post Acknowledgement Due

Subject: Request for immediate increase in allocation of ethanol for supply to the Oil Marketing Companies under Tender No. 22376 dated 23.09.2025 for the Ethanol Supply Year 2025-26

1. We are a Dedicated Ethanol Plant (**DEP**) engaged in the manufacture and supply of Denatured Anhydrous Ethanol. Our unit was established exclusively for the purpose of supplying ethanol to the Oil Marketing Companies (**OMCs**) pursuant to the Expression of Interest (**EOI**) bearing No. 1000374174, floated on 27.08.2021 and opened on 17.09.2021 by the OMCs

2. **Pursuant to the aforesaid EOI, we entered into a Long Term Offtake Agreement (LTOA) dated 13.01.2022 with the OMCs for the supply of ethanol.**

Under the terms of the said LTOA, the OMCs are obligated to purchase from us, a minimum quantity of 1.44 Crore (One Crore Forty Four Lakh) litres of ethanol,

3. **Being the annual offtake quantity, during each Ethanol Supply Year (ESY). Further, we were assured of an additional preferential offtake up to our annual design capacity, which presently stands at 10.95 Crore (Ten Crore Ninety Five Lakh) litres.**

4. **It is pertinent to state that we had applied for the establishment of a 300 KLPD Plant under the aforesaid EOI and, pursuant thereto, we have set up the Dedicated Ethanol Plant of 300 KLPD Capacity or 10.95 Crore (Ten Crore Ninety Five Lakh) litres, as stated supra, as on this day.**

5. The aforesaid plant set up was undertaken strictly in accordance with Clause

6.5 of the LTOA, which reads thus -

> "The shortlisted bidder is free to set up plant **up to the annual design capacity in his application**. This additional capacity over and above the annual offtake quantity, offered in 6.2 above, also needs to remain dedicated ethanol plant only"

6. This being the backdrop, bids were invited by the OMCs for the supply of approximately 1,050 Crore (One Thousand and Fifty Crore) litres of Denatured Anhydrous Ethanol for the ESY 2025-26, vide Tender bearing No. 22376 dated 23.09.2025.

    1. We submitted our bids pursuant to the aforesaid Tender and emerged successful therein. However, to our utter shock and disappointment, as per the indicative proposed allocations communicated vide email communication dated 17.10.2025, it appears that we have been **offered a quantity of only 39,269 (Thirty Nine Thousand Two Hundred and Sixty Nine) KL, or 3.92 Crore (Three Crore**

Ninety Two Lakh) litres, for the ESY 2025-26 against our bid of 9.26 crore Liters, which constitutes a mere fraction of our annual design capacity of 10.95 Crore (Ten Crore Ninety Five Lakh) litres.

2. **The said allocation is in clear violation of the letter and spirit of the EOI and the subsequent LTOA, both of which form the foundational basis of our operations and the obligations mutually agreed upon thereunder.**

3. We have established 300 KLPD distillery with annual design capacity to 10.95 Crore (Ten Crore Ninety Five Lakh) litres, strictly in adherence to our Application made pursuant to the EOI floated by the OMCs and only after signing the LTOA, which expressly recognizes our right to set up such capacity in terms of our Application.

4. **Consequently, we have incurred substantial capital expenditure running into several hundred crores of rupees, for which we were constrained to avail loans from various financial institutions.**

5. In fact, another crucial aspect of the LTOA, preferential allotment appears to have been given a complete go by while making the aforesaid allotment for the first time.

6. In addition to Clause 6.5, which permits us to establish the Plant up to the annual design capacity offered in the EOI, as stated supra, Clause 6.8 of the LTOA reads thus -

> "In the above EOI floated for setting up dedicated ethanol units, in case a bidder is being issued LOI for a quantity lesser than the quantity for which they have bid it is clarified that in case they set up plants as per their bids, **Buyer/OMCs may offer an additional annual offtake quantity,**

beyond that offered under 6.2 above, with overall annual offtake quantity limited to the design capacity of the Plant offered by the bidder under the EOI. This additional offtake quantity by Buyer/OMCs will be given through preferential allocation in the ethanol procurement process followed by Buyer/OMCs on best endeavor basis."

7. Despite an ethanol demand of 1050 crore litres for Cycle 1, the Tender Document, by disregarding and effectively overriding the contractual provisions cited above, has erroneously included within the scope of "preferential allocation" even the annual offtake quantity that the OMCs are mandatorily obligated to procure from us. This amounts to a clear abdication of the OMCs' contractual obligations under the LTOA

8. **It is reiterated that the our 300KLPD plant was set up to the annual design capacity as specified in our Application pursuant to the EOI was undertaken strictly in accordance with the terms of the LTOA, particularly Clause 6.5, which expressly confers upon us the right to do so, subject to the condition that the additional capacity shall continue to remain a dedicated ethanol plant.**

9. **Such a condition, being a dedicated ethanol plant coupled with the various restrictions imposed on the sale of ethanol by LTOA and bearing in mind that our Plant was established exclusively for the purpose of supplying ethanol to the OMCs pursuant to the EOI floated, gives rise to a legitimate expectation that the ethanol produced by us, up to our annual design capacity, will be duly considered for procurement to the true letter and spirit of the EOI and the LTOA executed pursuant thereto.**

10. In furtherance of such expectation, we have entered into Harvesting and Transportation (H&T) Contracts for the procurement of sugarcane as raw material and purchase arrangements of maze has been done, and substantial advance payments amounting to several crores of rupees have already been paid to the farmers situated in the command area.

However, the allotment made to us for the ESY 2025-26 is substantially lower than the quantity of ethanol that will be produced solely from the raw materials purchase plan already made pursuant to the aforesaid H&T Contracts, without even taking into account our total annual design capacity,

1. Which is considerably higher.

2. **In fact, a perusal of the tender document reveals that the annual production capacity of DEPs and preferential allocation have not been accorded any consideration whatsoever for the purpose of determining or making the allotment.**

3. **Such a reduced allocation would leave our Plant unoperational for nearly 235 days of the forthcoming ESY, leaving it largely idle each quarter starting from this November-2025 and pose grave and far reaching consequences on our operations, severe financial implications, jeopardizing the overall viability of the Plant and long term sustainability of the project.**

4. We also play a pivotal role in sustaining the local agrarian economy, with several thousands of farmers directly dependent on our operations for their livelihood. Therefore, any disruption in our operations would have a cascading adverse impact on the farming community and the rural economy at large.

We, therefore, request you to read and take note of the aforenarrated facts and circumstances, and further,

take immediate steps as may be necessary to increase the allocation made in our favour for the supply of ethanol for the ESY 2025-26, pursuant to the Tender bearing No. 22376 dated 23.09.2025

We remain optimistic that your good offices would certainly consider the request made in this communication favourably, for which acts of indulgence on your part, we shall remain ever grateful.

Thanking you

Your faithfully

For M/s VINP Distilleries and Sugars Pvt. Ltd.,
Sd/-
Managing Director"

(Emphasis added)

The representation goes unheeded. Therefore, the petitioner is now at the doors of this Court.

24. With all the aforesaid clauses of the contract and the action of the respondent OMCs in the aftermath, it becomes necessary to consider the submission of the learned Attorney General with regard to maintainability of the petition. It is his submission that the petition is neither maintainable nor entertainable for the reason it revolves around the agreement between the parties which is a matter of contract between them.

Therefore, contractual obligations or breach of any of the contractual obligations cannot be projected before the Constitutional Court under Article 226 of the Constitution of India. The elucidation of law by the Apex Court is otherwise. I, therefore, deem it appropriate to notice the judicial landscape with regard to the entertainment of the petition in exercise of the jurisdiction of this Court under Article 226 of the Constitution of India, notwithstanding the issue being in the realm of contract.

MAINTAINABILITY AND ENTERTAINABILITY OF THE PETITION UNDER SECTION 226 OF THE CONSTITUTION OF INDIA:

JUDICIAL LANDSCAPE:

24.1. The Apex Court in **GUJARAT STATE FINANCIAL CORPORATION v. LOTUS HOTELS PRIVATE LIMITED**[1] has held as follows:

> "…. …. ….
>
> **7.** Mr R.P. Bhatt, learned counsel who appeared for the appellant urged that the sanctioning of the loan by the Corporation in favour of the respondent was conditional upon the IDBI undertaking to refinance the loan and as IDBI declined to refinance the loan, the Corporation cannot be compelled by a

[1] (1983) 3 SCC 379

mandamus to grant the loan. **It was also incidentally urged that the dispute raised between the parties is in the realm of contract and at best the Corporation can be charged with breach of contract for which the remedy is by way of damages or any other remedy available to the respondent for breach of contract; but, in any case, a writ of mandamus cannot be issued compelling the Corporation to perform its part of the contract. There is no merit in either of the contentions.**

8. The first contention of Mr Bhatt appearing for the appellant is that the sanctioning of the loan by the Corporation in favour of respondent was conditional upon IDBI agreeing to and undertaking to refinance the loan and as IDBI has declined, for the time being, to refinance the loan, the Corporation cannot be compelled to undertake the onerous liability of financing a huge loan to one undertaking and therefore the appellant was discharged from performing its part of the contract. Both the learned Single Judge and the Division Bench of the High Court have concurrently held that the sanctioning of the loan by the Corporation in favour of the respondent was not conditional upon IDBI agreeing and undertaking to refinance the loan. In this connection, a reference to clauses 2 and 5 of the letter dated July 27, 1978 by the appellant to the respondent setting out the terms and conditions subject to which loan was sanctioned would be advantageous:

> "2. Rate of interest will be 12½ per cent p.a. if refinance is available from Industrial Development Bank of India at the rate of 9 per cent p.a. otherwise it will be at the rate of 13 per cent p.a. Higher rate of interest at 6 per cent over the normal rate of interest will be charged on the amount in default.
>
> 5. Commitment charge at the rate of 1 per cent p.a. on the amount of loan not drawn out of the loan sanctioned shall be paid from the date as advised by the Industrial Development Bank of India, if refinance is sanctioned. In case, refinance is not sanctioned by the Industrial Development Bank of India, commitment charge at the rate of 1 per cent p.a. on the amount of loan undrawn out of loan sanctioned shall be paid from the expiry of six months from the date of sanction."

A bare perusal of the clauses would show that the loan sanctioned by the appellant in favour of the respondent was not specifically subject to the condition upon the IDBI agreeing and undertaking to refinance the loan. In fact, refinancing of the loan by IDBI had an impact on the rate of interest only. This clearly transpires from clause 2 which provides that if refinance is available from IDBI at 9 per cent p.a., the rate of interest payable by the respondent to the appellant will be 12½ per cent p.a. otherwise it will be 13 per cent p.a. In clause 5 it is stated that commitment charge at 1 per cent p.a. on the grant of loan not drawn out of the sanctioned amount shall be paid from the date as advised by IDBI if refinance is sanctioned but in case refinance is not sanctioned by IDBI commitment charge at 1 per cent p.a. on the amount of loan undrawn out of the loan sanctioned shall be paid from the expiry of six months from the date of sanction. Thus refinancing of the loan by IDBI was to have an impact on the rate of interest and the commitment charge and the sanctioning of the loan was not conditional upon refinance from IDBI available. In fact consequences of IDBI not agreeing to refinance loan are provided in the agreement. The consequence was not that the appellant would be discharged from performing the agreement but it would only be entitled to higher rate of interest and liability to commitment charge from a certain date, but the agreement to advance loan would remain unaltered and binding. When these two clauses were pointed out to Mr Bhatt, he could hardly pursue the point any more. The parties had envisaged a situation where the refinance of the loan may not be available from IDBI. The obligation undertaken by the appellant to sanction the loan was independent of a refinancing of loan available from IDBI. In such situation, the first contention of Mr Bhatt cannot be accepted.

9. It was next contended that the dispute between the parties is in the realm of contract and even if there was a concluded contract between the parties about grant and acceptance of loan, the failure of the Corporation to carry out its part of the obligation may amount to breach of contract for which a remedy lies elsewhere but a writ of mandamus cannot be issued compelling the Corporation to specifically perform the contract. It is too late in the day to contend that the instrumentality of the State which would be "other authority" under Article 12 of the Constitution can commit breach of a solemn undertaking on which other

side has acted and then contend that the party suffering by the breach of contract may sue for damages but cannot compel specific performance of the contract. It was not disputed and in fairness to Mr Bhatt, it must be said that he did not dispute that the Corporation which is set up under Section 3 of the State Financial Corporation Act, 1955 is an instrumentality of the State and would be "other authority" under Article 12 of the Constitution. By its letter of offer dated July 24, 1978 and the subsequent agreement dated February 1, 1979 the appellant entered into a solemn agreement in performance of its statutory duty to advance the loan of Rs 30 lakhs to the respondent. Acting on the solemn undertaking, the respondent proceeded to undertake and execute the project of setting up a 4-star hotel at Baroda. The agreement to advance the loan was entered into in performance of the statutory duty cast on the Corporation by the statute under which it was created and set up. On its solemn promise evidenced by the aforementioned two documents, the respondent incurred expenses, suffered liabilities to set up a hotel. Presumably, if the loan was not forthcoming, the respondent may not have undertaken such a huge project. Acting on the promise of the appellant evidenced by documents, the respondent proceeded to suffer further liabilities to implement and execute the project. In the back drop of this incontrovertible fact situation, the principle of promissory estoppel would come into play. In *Motilal Padampat Sugar Mills Co.* (*P*) *Ltd.* v. *State of U.P.* [(1979) 2 SCC 409 : 1979 SCC (Tax) 144 : AIR 1979 SC 621 : (1979) 2 SCR 641, 662] this Court observed as under : [SCC para 8, p. 425 : SCC (Tax) p. 160]

> **"The true principle of promissory estoppel, therefore, seems to be that where one party has by his words of 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 of whether there is any pre-existing relationship between the parties or not.""

24.2. The Apex Court in **ABL INTERNATIONAL LIMITED v. EXPORT CREDIT GUARANTEE CORPORATION OF INDIA LIMITED**[2] has held as follows:

"…. …. ….

3. Having failed to persuade the first respondent to adhere to the contract of insurance between it and the appellant, the appellant filed a writ petition before a learned Single Judge of the Calcutta High Court, inter alia, praying for quashing of the letters of repudiation issued by the first respondent. It also consequentially prayed for a direction to the first respondent to make payment of the dues to it under the contract of insurance. The learned Single Judge after hearing the parties came to the conclusion that though the dispute between the parties arose out of a contract, the first respondent being a State for the purpose of Article 12, was bound by the terms of the contract, therefore, for such non-performance, a writ was maintainable and after considering the arguments of the parties in regard to the liability under the contract of insurance, allowed the writ petition and issued the writ and directions as prayed for by the appellants in the writ petition.

…. …. ….

10. It is clear from the above observations of this Court in the said case, though a writ was not issued on the facts of that case, this Court has held that on a given set of facts if a State acts in an arbitrary manner even in

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[2] (2004) 3 SCC 553

a matter of contract, an aggrieved party can approach the court by way of writ under Article 226 of the Constitution and the court depending on facts of the said case is empowered to grant the relief. This judgment in *K.N. Guruswamy* v. *State of Mysore* [AIR 1954 SC 592 : (1955) 1 SCR 305] was followed subsequently by this Court in the case of *D.F.O.* v. *Ram Sanehi Singh* [(1971) 3 SCC 864] wherein this Court held: (SCC p. 865, para 4)

> **"By that order he has deprived the respondent of a valuable right. We are unable to hold that merely because the source of the right which the respondent claims *was initially in a contract, for obtaining relief against any arbitrary and unlawful action on the part of a public authority he must resort to a suit and not to a petition by way of a writ*. In view of the judgment of this Court in *K.N. Guruswamy case* [AIR 1954 SC 592 : (1955) 1 SCR 305] there can be no doubt that the petition was maintainable, even *if the right to relief arose out of an alleged breach of contract*, where the action challenged was of a public authority invested with statutory power."**
>
> (emphasis supplied)

11. In the case of *Gujarat State Financial Corpn.* v. *Lotus Hotels (P) Ltd.* [(1983) 3 SCC 379] this Court following an earlier judgment in *Ramana Dayaram Shetty* v. *International Airport Authority of India* [(1979) 3 SCC 489] held: (SCC pp. 385-**86, paras 9 & 11)**

The instrumentality of the State which would be 'other authority' under Article 12 cannot commit breach of a solemn undertaking to the prejudice of the other party which acted on that undertaking or promise and put itself in a disadvantageous position. The appellant Corporation, created under the State Financial Corporations Act, falls within the expression of 'other authority' in Article 12 and if it backs out from such a promise, it cannot be said that the only remedy for the aggrieved party would be suing for damages for breach and that it could not compel the Corporation for specific performance of the contract under Article 226.

…. …. ….

15. The learned counsel then contending that this Court will not entertain a writ petition involving disputed questions of fact relied on a judgment of this Court in the case of *State of Bihar* v. *Jain Plastics and Chemicals Ltd.* [(2002) 1 SCC 216] wherein this Court held: (SCC p. 218, para 7)

> "***7*. In our view, it is apparent that the order passed by the High Court is, on the face of it, illegal and erroneous. It is true that many matters could be decided after referring to the contentions raised in the affidavits and counter-affidavits, but that would hardly be a ground for exercise of extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract. Whether the alleged non-supply of road permits by the appellants would justify breach of contract by the respondent would depend upon facts and evidence and is not required to be decided or dealt with in a writ petition. Such seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in a properly instituted civil suit rather than by a court exercising prerogative of issuing writs**."

…. …. ….

23. It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the abovesaid requirement of Article 14, then we have no hesitation in holding that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent. In this context, we may note that though the first respondent is a company registered under the Companies Act, it is wholly owned by the Government of India. The total subscribed share capital of this

Company is 2,50,000 shares out of which 2,49,998 shares are held by the President of India while one share each is held by the Joint Secretary, Ministry of Commerce and Industry and Officer on Special Duty, Ministry of Commerce and Industry respectively. The objects enumerated in the memorandum of association of the first respondent at para 10 read:

> "To undertake such functions as may be entrusted to it by the Government from time to time, including grant of credits and guarantees in foreign currency for the purpose of facilitating the import of raw materials and semi-finished goods for manufacture or processing goods for export."

Para 11 of the said object reads thus:

> "To act as agent of the Government, or with the sanction of the Government on its own account, to give the guarantees, undertake such responsibilities and discharge such functions as are considered by the Government as necessary in national interest."

24. It is clear from the above two objects of the Company that apart from the fact that the Company is wholly a Government-owned company, it discharges the functions of the Government and acts as an agent of the Government even when it gives guarantees and it has a responsibility to discharge such functions in the national interest. In this background it will be futile to contend that the actions of the first respondent impugned in the writ petition do not have a touch of public function or discharge of a public duty. Therefore, this argument of the first respondent must also fail.

…. …. ….

27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

> **(*a*) In an appropriate case, a writ petition as against a State or an instrumentality**

of a State arising out of a contractual obligation is maintainable.

(*b*) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(*c*) A writ petition involving a consequential relief of monetary claim is also maintainable.

28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See *Whirlpool Corpn.* v. *Registrar of Trade Marks* [(1998) 8 SCC 1] .) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction."

24.3. Again, the Apex Court in **NOBLE RESOURCES LIMITED v. STATE OF ORISSA**[3] has held as follows:

"…. …. ….

[3] **(2006) 10 SCC 236**

19. On a conspectus of several decisions, a Division Bench of this Court in *ABL International Ltd.* [(2004) 3 SCC 553] opined that such a writ petition would be maintainable even if it involves some disputed questions of fact. It was stated that no decision lays down an absolute rule that in all cases involving disputed questions of fact, the party should be relegated to a civil court.

20. In *Mahabir Auto Stores* v. *Indian Oil Corpn.* [(1990) 3 SCC 752] this Court observed: (SCC p. 761, para 12)

> "**It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case**."

…. …. ….

22. Interplay between writ jurisdiction and contractual disputes has given rise to a plethora of decisions by this Court. See, for example, *Dwarkadas Marfatia & Sons* v. *Board of Trustees, Port of Bombay* [(1989) 3 SCC 293] and *Mahabir Auto Stores* [(1990) 3 SCC 752] .

26. In *ABL International Ltd.* [(2004) 3 SCC 553] this Court opined that on a given set of facts, **if a State acts in an arbitrary manner even in a matter of contract, a writ petition would be maintainable**. It was opined: (SCC p. 570, para 23)

> "*23*. **It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party to the contract, it has an obligation in law to act fairly, justly and**

> **reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the abovesaid requirement of Article 14, then we have no hesitation in holding that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent**."
>
> …. …. ….
>
> **28. Although the terms of the invitation to tender may not be open to judicial scrutiny, but the courts can scrutinise the award of contract by the Government or its agencies in exercise of their power of judicial review to prevent arbitrariness or favouritism.** (See *Directorate of Education* v. *Educomp Datamatics Ltd.* [(2004) 4 SCC 19]) **However, the court may refuse to exercise its jurisdiction, if it does not involve any public interest.**
>
> **29. Although the scope of judicial review or the development of law in this field has been noticed hereinbefore particularly in the light of the decision of this Court in *ABL International Ltd.* [(2004) 3 SCC 553] each case, however, must be decided on its own facts. Public interest as noticed hereinbefore, may be one of the factors to exercise the power of judicial review. In a case where a public law element is involved, judicial review may be permissible**. (See *Binny Ltd.* v. *V. Sadasivan* [(2005) 6 SCC 657 : 2005 SCC (L&S) 881] and *G.B. Mahajan* v. *Jalgaon Municipal Council* [(1991) 3 SCC 91] .)"

If the facts obtaining in the present case are tested upon the anvil of the law declared by the Apex Court in the aforesaid judgments, what unmistakably emerges is that notwithstanding the contractual complexion of the dispute, a

writ petition under Article 226 would indeed be maintainable. It is not in dispute that respondents 2 to 4 are "other authorities" within the meaning of Article 12 of the Constitution of India and therefore answer the description of "State". Once the State enters into a contractual relationship and disputes arise therefrom, judicial review does not stand eclipsed merely because the controversy has its genesis in contract. The writ petition is therefore maintainable as well as entertainable.

25. Reverting to the factual canvas, the petitioner's plant was admittedly established solely pursuant to the EOI floated by respondents 2 to 4 and the consequent Long-Term Offtake Agreement executed between the parties. The petitioner responded to the Expression of Interest, was shortlisted, and thereafter entered into the LTOA dated 13.01.2022. The capacity of the petitioner's plant, namely 9.90 crore litres per annum, was disclosed right from inception in its response to the Expression of Interest. The petitioner has neither expanded nor altered the unit thereafter and continues to maintain the same production capacity.

26. The petitioner was expressly interdicted from supplying ethanol produced by it to any entity other than respondents 2 to 4. Such was the prevailing regime until issuance of the impugned Expression of Interest. Respondents 2 to 4 admittedly exercise overwhelming monopoly over procurement of ethanol from dedicated ethanol plants. For over three years, the petitioner's production capacity to the extent of 3.30 crore litres annually stood fully utilised through supplies made to respondents 2 to 4, and significantly, such utilisation occurred squarely under Clause 6.8 itself.

27. Even subsequent to the impugned Expression of Interest, Clause 6.8 has not remained wholly dormant; indeed, it has been invoked to permit enhancement of supply from 1.44 crore litres to 3.30 crore litres. Respondents 2 to 4, therefore, cannot now be heard to contend that the Long-Term Offtake Agreement is wholly discretionary or that they may, at whim, induct alternative suppliers and distribute procurement through preferential allocation unfettered by prior assurances.

28. **When an instrumentality of the State enjoys monopoly power, fairness and reasonableness are not matters of grace but constitutional obligation. The State cannot, by a sudden volte-face, dismantle a long-standing course of conduct or defeat the solemn assurances upon which parties altered their positions and invested colossal sums.** It becomes apposite to refer to the judgments of the Apex Court on the said issue:

28.1. The Apex Court in **MAHABIR AUTO STORES v. INDIAN OIL CORPORATION**[4] has held as follows:

"…. …. ….

> **11.** We have heard learned counsel Dr L.M. Singhvi as well as Mr Salve exhaustively. Further affidavits were filed and documents produced before us. It was sought to be urged by Dr Singhvi that the respondent was an instrumentality of State and as such the question involved was whether an instrumentality of State can suddenly, arbitrarily, unreasonably, without any relevant factors and without any notice and determination or proceeding stop supplies of products which, according to him, had been supplied more than 1 crore 11 lakhs litres/kg of product continuously and uninterruptedly over a period of more than 18 years. Dr Singhvi suggested that the respondent IOC is an instrumentality of State under Article 12 of the Constitution. From the nature of the business carried on by the appellants, it was manifest to us that the supply of the lubricants of the type with which the respondent had a monopoly, could be carried on by the appellants only as the supplier from the respondent. That

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[4] (1990) 3 SCC 752

business was not possible otherwise. The respondent had monopoly in that respect. This aspect is important. The respondent company was supplying from 1965 to 1983 large quantities of lubricant oil and from 1983 onwards till 1989 supplies were continued on the interim order of the High Court of Delhi. Supplies were stopped suddenly on May 27, 1983. There is no dispute that no intimation was given, no notice was given, no query or clarification sought for and there was no adjudication as such. It was held that the appellant firm was not entitled to supply; the stoppage of supply in May 1983 was (*sic* not), therefore, bad. The appellant further contended that the case of the respondent company IOC was never made known or revealed prior to the counter-affidavit in the High Court of the appellants. The contention urged on behalf of the appellants was that this is patent violation of all canons of natural justice, fair play and reasonableness. It is submitted that natural justice and reasonableness of the procedure are enshrined under Article 14 of the Constitution.

12. It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court in *Radha Krishna Agarwal* v. *State of Bihar* [(1977) 3 SCC 457] . It appears to us, at the outset, that in the facts and circumstances of the case, the respondent company IOC is an organ of the State or an instrumentality of the State as contemplated under Article 12 of the Constitution. The State acts in its executive power under Article 298 of the Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercises of power. Therefore, the action of State organ under Article 14 can be checked. See *Radha Krishna Agarwal* v. *State of Bihar* [(1977) 3 SCC 457] at p. 462, but Article 14 of the Constitution cannot and has not been construed as a charter for judicial review of State action after the contract has been entered into, to call upon the State to account for its actions in its manifold activities by stating reasons for such actions. In

a situation of this nature certain activities of the respondent company which constituted State under Article 12 of the Constitution may be in certain circumstances subject to Article 14 of the Constitution in entering or not entering into contracts and must be reasonable and taken only upon lawful and relevant consideration; it depends upon facts and circumstances of a particular transaction whether hearing is necessary and reasons have to be stated. In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. In this connection reference may be made to *E.P. Royappa* v. *State of Tamil Nadu* [(1974) 4 SCC 3 : 1974 SCC (L&S) 165] , *Maneka Gandhi* v. *Union of India* [(1978) 1 SCC 248] , *Ajay Hasia* v. *Khalid Mujib Sehravardi* [(1981) 1 SCC 722 : 1981 SCC (L&S) 258] , *R.D. Shetty* v. *International Airport Authority of India* [(1979) 3 SCC 489] and also *Dwarkadas Marfatia and Sons* v. *Board of Trustees of the Port of Bombay* [(1989) 3 SCC 293] . **It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case.**

…. …. ….

17. We are of the opinion that in all such cases whether public law or private law rights are involved, depends upon the facts and circumstances of the case. The dichotomy between rights and remedies cannot be obliterated by any strait-jacket formula. It has to be examined in each particular case. Mr Salve sought to urge that there are certain cases under Article 14 of arbitrary exercise of such "power" and not cases of exercise of a "right" arising either under a contract or under a statute. We are of the opinion that that would depend upon the factual matrix.

18. Having considered the facts and circumstances of the case and the nature of the contentions and the dealing between the parties and in view of the present state of law, we are of the opinion that decision of the State/public authority under Article 298 of the Constitution, is an administrative decision and can be impeached on the ground that the decision is arbitrary or violative of Article 14 of the Constitution of India on any of the grounds available in public law field. It appears to us that in respect of corporation like IOC when without informing the parties concerned, as in the case of the appellant-firm herein on alleged change of policy and on that basis action to seek to bring to an end to course of transaction over 18 years involving large amounts of money is not fair action, especially in view of the monopolistic nature of the power of the respondent in this field. Therefore, it is necessary to reiterate that even in the field of public law, the relevant persons concerned or to be affected, should be taken into confidence. Whether and in what circumstances that confidence should be taken into consideration cannot be laid down on any strait-jacket basis. It depends on the nature of the right involved and nature of the power sought to be exercised in a particular situation. It is true that there is discrimination between power and right but whether the State or the instrumentality of a State has the right to function in public field or private field is a matter which, in our opinion, depends upon the facts and circumstances

of the situation, but such exercise of power cannot be dealt with by the State or the instrumentality of the State without informing and taking into confidence, the party whose rights and powers are affected or sought to be affected, into confidence. In such situations most often people feel aggrieved by exclusion of knowledge if not taken into confidence.

19. Such transaction should continue as an administrative decision with the organ of the State. It may be contractual or statutory but in a situation of transaction between the parties for nearly two decades, such procedure should be followed which will be reasonable, fair and just, that is, the process which normally be accepted (*sic* is expected) to be followed by an organ of the State and that process must be conscious and all those affected should be taken into confidence.

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

28.2. In **DWARKADAS MARFATIA v. BOARD OF TRUSTEES OF THE PORT OF BOMBAY**[5] the Apex Court has held as follows:

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[5] (1989) 3 SCC 293

"…. …. ….

21. We are unable to accept the submissions. Being a public body even in respect of its dealing with its tenant, it must act in public interest, and an infraction of that duty is amenable to examination either in civil suit or in writ jurisdiction.

22. Our attention was drawn to the observations of this Court in *Radhakrishna Agarwal* v. *State of Bihar* [(1977) 3 SCC 457 : (1977) 3 SCR 249] . Reliance was also placed on the observations of this Court in *Life Insurance Corpn. of India* v. *Escorts Ltd.* [(1986) 1 SCC 264 : 1985 Supp 3 SCR 909] , in support of the contention that the public corporations dealing with tenants is a contractual dealing and it is not a matter for public law domain and is not subject to judicial review. However, it is not the correct position. The *Escorts decision* [(1986) 1 SCC 264 : 1985 Supp 3 SCR 909] reiterated that **every action of the State or as instrumentality of the State, must be informed by reason. Indubitably, the respondent is an organ of the State under Article 12 of the Constitution. In appropriate cases, as was observed in the last mentioned decision, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. But it has to be remembered that Article 14 cannot be construed as a charter for judicial review of State action, to call upon the State to account for its actions in its manifold activities by stating reasons for such actions.**

23. The contractual privileges are made immune from the protection of the Rent Act for the respondent because of the public position occupied by the respondent authority. Hence, its actions are amenable to judicial review only to the extent that the State must act validly for a discernible reason not whimsically for any ulterior purpose. Where any special right or privilege is granted to any public or statutory body on the presumption that it must act in certain manner, such bodies must make good such presumption while acting by virtue of such privileges. Judicial review to oversee if such bodies are so acting is permissible.

> **24.** The field of letting and eviction of tenants is normally governed by the Rent Act. The Port Trust is statutorily exempted from the operation of the Rent Act on the basis of its public/governmental character**. The legislative assumption or expectation as noted in the observations of Chagla, C.J. in *Rampratap Jaidayal case* [1952 LR 54 Bom 927, 934] cannot make such conduct a matter of contract pure and simple. These corporations must act in accordance with certain constitutional conscience and whether they have so acted, must be discernible from the conduct of such corporations.** In this connection, reference may be made on the observations of this Court in *Som Prakash Rekhi* v. *Union of India* [(1981) 1 SCC 449 : (1981) 2 SCR 111] , reiterated in *M.C. Mehta* v. *Union of India* [(1987) 1 SCC 395] , wherein at p. 148 this Court observed: (SCC p. 480, para 55)
>
> > "**It is dangerous to exonerate corporations from the need to have constitutional conscience; and so, that interpretation, language permitting, which makes governmental agencies, whatever their mien, amenable to constitutional limitations must be adopted by the court as against the alternative of permitting them to flourish as an imperium in imperio**.""

29. The question that now falls for consideration is, whether the twin doctrines of promissory estoppel and legitimate expectation stand attracted to the facts of the present case. It is trite that neither legitimate expectation nor promissory estoppel may operate against the command of a statute. The present case, however, does not concern any statutory interdiction; rather, it concerns interpretation of obligations flowing from a contract entered into by the State with a contracting party.

30. It is also not in dispute that the petitioner invested several hundred crores of rupees not upon some fanciful illusion of its own creation, but upon the solemn assurances embedded within the Long-Term Offtake Agreement. If, after years of adherence to a settled course of conduct, the respondents seek to alter the regime as a bolt from the blue through the impugned Expression of Interest, such deviation cannot evade constitutional scrutiny.

31. The petitioner was not merely promised; the promise stood acted upon and operationalised. It is now the execution of that promise which is sought to be diluted through the impugned tender condition. **Legitimate expectation has, by judicial evolution, attained the status of a facet of Article 14 itself, and whenever a departure from settled policy results in arbitrariness, constitutional courts have not hesitated to interdict such action.** It becomes apposite to refer to certain judgments of the Apex Court on the issue.

31.1. The Apex Court in **NAVJYOTI COOP. GROUP HOUSING SOCIETY v. UNION OF INDIA**[6] has held as follows:

"…. …. ….

15. It also appears to us that in any event the new policy decision as contained in the impugned memorandum of January 20, 1990 should not have been implemented without making such change in the existing criterion for allotment known to the Group Housing Societies if necessary by way of a public notice so that they might make proper representation to the concerned authorities for consideration of their viewpoints. Even assuming that in the absence of any explanation of the expression "first come first served" in Rule 6(*vi*) of Nazul Rules there was no statutory requirement to make allotment with reference to date of registration, it has been rightly held, as a matter of fact, by the High Court that prior to the new guideline contained in the memo of January 20, 1990 the principle for allotment had always been on the basis of date of registration and not the date of approval of the list of members. In the brochure issued in 1982 by the DDA even after Gazette notification of Nazul Rules on September 26, 1981 the policy of allotment on the basis of seniority in registration was clearly indicated. **In the aforesaid facts, the Group Housing Societies were entitled to 'legitimate expectation' of following consistent past practice in the matter of allotment, even though they may not have any legal right in private law to receive such treatment. The existence of 'legitimate expectation' may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat the 'legitimate expectation' without some overriding reason of public policy to justify its doing so. In a case of 'legitimate expectation' if the authority proposes to defeat a person's 'legitimate expectation' it should afford him an opportunity to make representations in the matter. In this connection reference may be made to the discussions on 'legitimate expectation' at page 151 of Volume 1(1) of *Halsbury's Laws of England*, 4th edn. (re-issue). We may also refer**

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[6] (1992) 4 SCC 477

to a decision of the House of Lords in *Council of Civil Service Unions* v. *Minister for the Civil Service* [(1984) 3 All ER 935] . It has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reasons.

16. It may be indicated here that the doctrine of 'legitimate expectation' imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation'. Within the conspectus of fair dealing in case of 'legitimate expectation', the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in. We, have not been shown any compelling reasons taken into consideration by the Central Government to make a departure from the existing policy of allotment with reference to seniority in registration by introducing a new guideline. On the contrary, Mr Jaitley the learned counsel has submitted that the DDA and/or Central Government do not intend to challenge the decision of the High Court and the impugned memorandum of January 20, 1990 has since been withdrawn. We therefore feel that in the facts of the case it was only desirable that before introducing or implementing any change in the guideline for allotment, an opportunity to make representations against the proposed change in the guideline should have been given to the registered Group Housing Societies, if necessary, by way of a public notice."

31.2. The Apex Court again in **UNION OF INDIA v. HINDUSTAN DEVELOPMENT CORPORATION**[7] has held as follows:

"…. …. ….

> **22.** Now coming to the notice inviting tender in the instant case, we have already noted that the price quoted is subject to price variation clause and the railways reserved a right to accept the lowest price or accept the whole or any part of the tender or portion of the quantity offered. The notice, however, mentioned that the tenderer is at liberty to tender for the whole or any portion or to state in the tender that the rate quoted shall apply only if the entire quantity is taken from him. From these provisions it becomes clear that the tenderer cannot expect that his entire tender should be accepted in respect of the quantity and that the railways have a right to accept the tender as a whole or a part of it or portion of the quantity offered. It is not in dispute that in the past also there were many instances where the Railways as per the procedure followed, arrived at decisions in respect of both price and quantity for good and justifiable reasons. In the year 1991 the quantities of M/s H.D.C. and Bhartiya were in fact reduced from the allocations made by the Tender Committee which made its recommendations on the basis of certain data. It has to be noted that the Tender Committee is not a statutory authority and its proposals are recommendatory in nature and have to be considered in the distribution procedure culminating in the decision of the approving authority who as a matter of fact, also can take decisions in respect of price and allotment of quantities taking into consideration various other aspects from the point of view of public interest. Therefore it is evident that there is no legally fixed procedure regarding fixation of price and particularly regarding allotment giving scope to a legitimate expectation. However, with this factual background, we shall consider the contention regarding 'legitimate expectation'.

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[7] (1993) 3 SCC 499

23. In *Halsbury's Laws of England*, Fourth Edition, Volume I(I) 151 a passage explaining the scope of "legitimate expectations" runs thus:

> **"81. *Legitimate expectations*.— A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice.**
>
> ***The existence of a legitimate expectation may have a number of different consequences; it may give locus standi to seek leave to apply for judicial review; it may mean that the authority ought not to act so as to defeat the expectation without some overriding reason of public policy to justify its doing so; or it may mean that, if the authority proposes to defeat a person's* legitimate expectation, it must afford him an opportunity to make representations on the matter. The courts also distinguish, for example in licensing cases, between original applications, applications to renew and revocations; a party who has been granted a licence may have a legitimate expectation that it will be renewed unless there is some good reason not to do so, and may therefore be entitled to greater procedural protection than a mere applicant for a grant.**"
>
> (emphasis supplied)

…. …. ….

25. In *Council of Civil Service Unions* v. *Minister for the Civil Service* [(1984) 3 All ER 935] a question arose whether the decision of the Minister withdrawing the right to trade union membership without consulting the staff which according to the appellant was his legitimate expectation arising from the existence of a regular practice of consultation, was valid. It was contended that the Minister had a duty to consult the staff as per the existing practice and that though the employee did not have a legal right, he had a legitimate expectation that the

existing practice would be followed. On behalf of the Minister on the basis of the evidence produced, it was contended that the decision not to consult was taken for reasons of national security. The Court held as under:

> "**An aggrieved person was entitled to invoke judicial review if he showed that a decision of a public authority affected him by depriving him of some benefit or advantage which in the past he had been permitted to enjoy and which he could legitimately expect to be permitted to continue to enjoy either until he was given reasons for its withdrawal and the opportunity to comment on those reasons or because he had received an assurance that it would not be withdrawn before he had been given the opportunity of making representations against the withdrawal. The appellants' legitimate expectation arising from the existence of a regular practice of consultation which the appellants could reasonably expect to continue gave rise to an implied limitation on the minister's exercise of the power contained in Article 4 of the 1982 order, namely an obligation to act fairly by consulting the GCHQ staff before withdrawing the benefit of trade union membership.**
>
> ***
>
> Once the minister produced evidence that her decision not to consult the staff before withdrawing the right to trade union membership was taken for reasons of national security, that overrode any right to judicial review which the appellants had arising out of the denial of their legitimate expectation of consultation. The appeal would therefore be dismissed.
>
> ***
>
> **Administrative action is subject to control by judicial review under three heads: (1) *illegality, where the decision-making authority has been guilty of an error of law, e.g. by purporting to exercise a power it does not possess; (2) irrationality, where the decision-making authority has acted so unreasonably that no reasonable***

authority would have made the decision; (3) procedural impropriety, where the decision-making authority has failed in its duty to act fairly."

(emphasis supplied)

Therefore the claim based on the principle of legitimate expectation can be sustained and the decision resulting in denial of such expectation can be questioned provided the same is found to be unfair, unreasonable, arbitrary and violative of principles of natural justice. (vide *Food Corpn. of India case* [(1993) 1 SCC 71 : JT (1992) 6 SC 259] and *Navjyoti Coop. Group Housing Society case* [(1992) 4 SCC 477]).

…. …. ….

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

28. Time is a three-fold present: the present as we experience it, the past as a present memory and future as a present expectation. For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does

not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense.

29. It has to be noticed that the concept of legitimate expectation in administrative law has now, undoubtedly, gained sufficient importance. It is stated that "legitimate expectation" is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action and this creation takes its place beside such principles as the rules of natural justice, unreasonableness, the fiduciary duty of local authorities and "in future, perhaps, the principle of proportionality". A passage in *Administrative Law*, Sixth Edition by H.W.R. Wade page 424 reads thus:

> **"*These are revealing decisions. They show that the courts now expect Government departments to honour their published statements or else to treat the citizen with the fullest personal consideration. Unfairness in the form of unreasonableness here comes close to unfairness in the form of violation of natural justice, and the doctrine of legitimate expectation can operate in both contexts. It is obvious, furthermore, that* this principle of substantive, as opposed to procedural, fairness may undermine some of the established rules about estoppel and misleading advice, which tend to operate unfairly. Lord Scarman has stated emphatically that unfairness in the purported exercise of a power can amount to an abuse or excess of power, and this seems likely to develop into an important general doctrine."**

Another passage at page 522 in the above book reads thus:

> "***It was in fact for the purpose of restricting the right to be heard that 'legitimate expectation' was introduced into the law. It made its first appearance in a case where*** **alien students of 'scientology' were refused extension of their entry permits as an act of policy by the Home Secretary, who had announced that no discretionary benefits would be granted to this sect. The court of appeal held that they had no legitimate expectation of extension beyond the permitted time, and so no right to a hearing, though revocation of their permits within that time would have been contrary to legitimate expectation. Official statements of policy, therefore, may cancel legitimate expectation, just as they may create it, as seen above. In a different context, where car-hire drivers had habitually offended against airport byelaws, with many convictions and unpaid fines, it was held that they had no legitimate expectation of being heard before being banned by the airport authority.**
>
> ***There is some ambiguity in the dicta about legitimate expectation, which may mean either expectation of a fair hearing or expectation of the licence or other benefit*** **which is being sought. But the result is the same in either case; absence of legitimate** ***expectation will absolve the public authority from affording a hearing***."
>
> (emphasis supplied)

30. In some cases a question arose whether the concept of legitimate expectation is an impact only on the procedure or whether it also can have a substantive impact and if so to what extent. *Attorney General for New South Wales* v. *Quin* [(1990) 64 Aust LJR 327] is a case from Australia in which this aspect is dealt with. In that case the Local Courts Act abolished Courts of Petty Sessions and replaced them by Local Courts. Section 12 of

the Act empowered the Governor to appoint any qualified person to be a Magistrate in the new court system. Mr Quin, who had been a Stipendiary Magistrate in charge of a Court of Petty Sessions under the old system, applied for, but was refused, an appointment under the new system. That was challenged. The challenge was upheld by the appellate court on the ground that the selection committee had taken into account an adverse report on him without giving a notice to him of the contents of the same. In the appeal by the Attorney-General against that order before the High Court, it was argued on behalf of Mr Quin that he had a legitimate expectation that he would be treated in the same way as his former colleagues considering his application on its own merits. **Coming to the nature of the substantive impact of the doctrine, Brennan, J. observed that the doctrine of legitimate expectations ought not to "unlock the gate which shuts the court out of review on the merits", and that the courts should not trespass "into the forbidden field of the merits" by striking down administrative acts or decisions which failed to fulfil the expectations. In the same case Mason, C.J. was of the view that if substantive protection is to be accorded to legitimate expectations that would encounter the objection of entailing "curial interference with administrative decisions on the merits by precluding the decision-maker from ultimately making the decision which he or she considers most appropriate in the circumstances**".

31. In *R* v. *Secretary of State for the Home Department ex parte Ruddock* [(1987) 2 All ER 518] Taylor, J. after referring to the ratio laid down in some of the above cases held thus:

> "***On these authorities I conclude that the doctrine of legitimate expectation in essence imposes a duty to act fairly. Whilst most of the cases are concerned, as Lord Roskill said, with a right to be heard, I do not think the doctrine is so confined. Indeed, in a case where ex hypothesi there is no right to be heard, it may be thought the more important to fair dealing that a promise or undertaking given by a minister as to how he will proceed should be kept. Of course such promise or undertaking must not conflict with his statutory duty or his duty, as here, in the exercise of a***

> ***prerogative power****. I accept the* submission of counsel for the Secretary of State that the respondent cannot fetter his discretion. By declaring a policy he does not preclude any possible need to change it. But then if the practice has been to publish the current policy, it would be incumbent on him in dealing fairly to publish the new policy, unless again that would conflict with his duties. Had the criteria here needed changing for national security reasons, no doubt the respondent could have changed them. Had those reasons prevented him also from publishing the new criteria, no doubt he could have refrained from doing so. Had he even decided to keep the criteria but depart from them in this single case for national security reasons, no doubt those reasons would have afforded him a defence to judicial review as in the GCHQ case."

(emphasis supplied)

In *Breen* v. *Amalgamated Engineering Union* [(1971) 2 QB 175 : (1971) 1 All ER 1148, 1154 (f-h)] Lord Denning observed as under:

> "If a man seeks a privilege to which he has no particular claim — such as an appointment to some post or other — then he can be turned away without a word. He need not be heard. No explanation need be given; see the cases cited in *Schmidt* v. *Secretary of State for Home Affairs* [(1993) 1 SCC 71 : JT (1992) 6 SC 259] at pages 170-171. **But if he is a man whose property is at stake, or who is being deprived of his livelihood, then reasons should be given why he is being turned down, and he should be given a chance to be heard. *I go further. If he is a man who has some right or interest, or some legitimate expectation, of which it would not be fair to deprive him without a hearing, or reasons given, then these should be afforded him, according as the case may demand*.**"

(emphasis supplied)

32. At this stage it is necessary to consider the scope of judicial review when a challenge is made on the basis of the doctrine of legitimate expectation. In *Findlay* v. *Secretary of*

State for the Home Department [(1984) 3 All ER 801] it was observed as under:

> "**The doctrine of legitimate expectation has an important place in the developing law of judicial review. It is, however, not necessary to explore the doctrine in this case, it is enough merely to note that a legitimate expectation can provide a sufficient interest to enable one who cannot point to the existence of a substantive right to obtain the leave of the court to apply for judicial review. These two applicants obtained leave. But their submission goes further. It is said that the refusal to accept them from the new policy was an unlawful act on the part of the Secretary of State in that his decision frustrated their expectation. But what was their legitimate expectation? Given the substance and purpose of the legislative provisions governing parole, the most that a convicted prisoner can legitimately expect is that his case will be examined individually in the light of whatever policy the State sees fit to adopt, provided always that the adopted policy is a lawful exercise of the discretion conferred on him by the statute. Any other view would entail the conclusion that the unfettered discretion conferred by the statute on the minister can in some cases be restricted so as to hamper, or even prevent, changes of policy. Bearing in mind the complexity of the issues which the Secretary of State has to consider and the importance of the public interest in the administration of parole, I cannot think that Parliament intended the discretion to be restricted in this way**."

In *Council of Civil Service Unions' case* [(1984) 3 All ER 935] Lord Diplock observed thus:

> "**To qualify as a subject for judicial review the decision must have consequences which affect some person (or body of persons) other than the decision-maker, although it may affect him too. It must affect such other person either (*a*) by altering rights or obligations of that person which are enforceable by or against him in private law or**

(*b*) by depriving him of some benefit or advantage which either (*i*) he has in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational ground for withdrawing it on which he has been given an opportunity to comment or (*ii*) he has received assurance from the decision-maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. I prefer to continue to call the kind of expectation that qualifies a decision for inclusion in class (*b*) a 'legitimate expectation' rather than a 'reasonable expectation', in order thereby to indicate that it has consequences to which effect will be given in public law, whereas an expectation or hope that some benefit or advantage would continue to be enjoyed, although it might well be entertained by a 'reasonable' man, would not necessarily have such consequences."

In *Attorney General for New South Wales case* [(1990) 64 Aust LJR 327] it is observed as under:

"**Some advocates of judicial intervention would encourage the courts to expand the scope and purpose of judicial review, especially to provide some check on the Executive Government which nowadays exercises enormous powers beyond the capacity of the Parliament to supervise effectively. Such advocacy is misplaced. If the courts were to assume a jurisdiction to review administrative acts or decisions which are 'unfair' in the opinion of the court — not to product of procedural fairness, but unfair on the merits — the courts would be assuming a jurisdiction to do the very thing which is to be done by the repository of an administrative power, namely, choosing among the courses of action upon which reasonable minds might differ**.

***

If judicial review were to trespass on the merits of the exercise of administrative power, it

would put its own legitimacy at risk. The risk must be acknowledged for a reason which Frankfurter, J. stated in *Trop* v. *Dulles* [(1958) 35 US 86, 119] :

'All power is, in Madison's phrase, "of an encroaching nature" .... Judicial power is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self-restraint.'

***If the courts were to postulate rules ostensibly related to limitations on administrative power but in reality calculated to open to the gate into the forbidden field of the merits of its exercise, the function of the courts would be exceeded: of* R. *v.* Nat Bell Liquors Ltd. [(1922) 2 AC 128, 156]** ***If the courts were to define the content of legitimate expectations as something less than a legal right and were to protect what would be thus defined by striking down administrative acts or decisions which failed to fulfil the expectations, the courts would be truncating the powers which are naturally apt to affect those expectations. To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law*. The authority of the courts and their salutary capacity judicially to review the exercise of administrative power depend in the last analysis on their fidelity to the rule of law, exhibited by the articulation of general principles.**

***To lie within the limits of judicial power, the notion of 'legitimate expectation' must be restricted to the illumination of what is the legal limitation on the exercise of administrative power in a particular case. Of course, if a legitimate expectation were to* amount to a legal right, the court would define the respective limits of the**

right and any power which might be exercised to infringe it so as to accommodate in part both the right and the power or so as to accord to one priority over the other. (That is a commonplace of curial declarations.) But a power which might be so exercised as to affect a legitimate expectation falling short of a legal right cannot be truncated to accommodate the expectation.

So long as the notion of legitimate expectation is seen merely as indicating 'the factors and kinds of factors which are relevant to any consideration of what are the things which must be done or afforded' to accord procedural fairness to an applicant for the exercise of an administrative power (*see* per Mahoney, JA in *Macrae*, at 285), the notion can, with one important proviso, be useful. If, but only if, the power is so created that the according of natural justice conditions its exercise, the notion of legitimate expectation may useful focus attention on the content of natural justice in a particular case; that is, on what must be done to give procedural fairness to a person whose interests might be affected by an exercise of the power. But if the according of natural justice does not condition the exercise of the power, the notion of legitimate expectation can have no role to play. If it were otherwise, the notion would become a stalking horse for excesses of judicial review."

(emphasis supplied)

In this very case, Brennan, J. after referring to *Schmidt case* [(1969) 2 Ch 149 : (1969) 1 All ER 904] observed thus:

"**Again, when a court is deciding what must be done in order to accord procedural fairness in a particular case, it has regard to precisely the same circumstances as those to which the court might refer in considering whether the applicant entertains a legitimate expectation, but the inquiry whether the applicant entertains a legitimate expectation is superfluous. Again, if an express promise be given or a regular practice be adopted by a public authority, and the promise or practice**

is the source of a legitimate expectation, the repository is bound to have regard to the promise or practice in exercising the power, and it is unnecessary to inquire whether those factors give rise to a legitimate expectation. But the court must stop short of compelling fulfilment of the promise or practice unless the statute so requires or the statute permits the repository of the power to bind itself as to the manner of the future exercise of the *power. It follows that the notion of legitimate expectation is not the key which unlocks the treasury of natural justice and it ought not unlock the gate which shuts the court out of review on the merits. The* notion of legitimate expectation was introduced at a time when the courts were developing the common law to suit modern conditions and were sweeping away the unnecessary archaisms of the prerogative writs, but it should not be used to subvert the principled justification for curial intervention in the exercise of administrative power."

(emphasis supplied)

In the same case, Dawson, J. observed thus:

"*It also follows that the required procedure may vary according to the dictates of fairness in the particular case*.

Thus, in order to succeed, the respondent must be able to point to something in the circumstances of the case which would make it unfair not to extend to him the procedure which he seeks. There is no doubt that the respondent had a legitimate expectation of continuing in his position as a stipendiary magistrate such that it would, apart from statute, have been unfair to remove him from that position without according him a hearing. If the principle of judicial independence extended to a stipendiary magistrate, then, no doubt, that would have strengthened his expectation. But the respondent was not removed from his position of stipendiary magistrate by administrative decision. He was removed by a statute which abolished the position of stipendiary magistrate and established the new position of magistrate. Not only that, the statute, the

> Local Courts Act, clearly contemplated that not all the former stipendiary magistrates would be appointed as magistrates pursuant to its terms. Accordingly it made provision for those who were not so appointed. It may be possible to deprecate the manner in which the statute removed the respondent from office, but it is not possible to deny its effect. Any unfairness was the product of the legislation which conferred no right upon the respondent to a procedure other than that which it laid down."

(emphasis supplied)

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

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

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

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

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

35. Legitimate expectations may come in various forms and owe their existence to different kind of circumstances and it is not possible to give an exhaustive list in the context of vast and fast expansion of the governmental activities. They shift and change so fast that the start of our list would be obsolete before we reached the middle. By and large they arise in cases of promotions which are in normal course expected, though not guaranteed by way of a statutory right, in cases of contracts, distribution of largess by the Government and in somewhat similar situations. For instance discretionary grant of licences, permits or the like, carry with it a reasonable expectation, though not a legal right to renewal or non-revocation, but to summarily disappoint that expectation may be seen as unfair without the expectant person being heard. But there again the court has to see whether it was done as a policy or in the public interest either by way of G.O., rule or by way of a legislation. If that be so, a decision denying a legitimate expectation based on such grounds does not qualify for interference unless in a given case, the decision or action taken amounts to an abuse of power. **Therefore the limitation is extremely confined and if the according of natural justice does not condition the exercise of the power, the concept of legitimate expectation can have no role to play and the court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. For instance if an authority who has full discretion to grant a licence prefers an existing licenceholder to a new applicant, the decision cannot be interfered with on the ground of legitimate expectation**

entertained by the new applicant applying the principles of natural justice. It can therefore be seen that legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. It would thus appear that there are stronger reasons as to why the legitimate expectation should not be substantively protected than the reasons as to why it should be protected. In other words such a legal obligation exists whenever the case supporting the same in terms of legal principles of different sorts, is stronger than the case against it. As observed in *Attorney General for New South Wales case* [(1990) 64 Aust LJR 327] : "To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law." If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is "not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which shuts the court out of review on the merits", particularly when the element of speculation and uncertainty is inherent in that very

concept. As cautioned in *Attorney General for New South Wales case* [(1990) 64 Aust LJR 327] the courts should restrain themselves and restrict such claims duly to the legal limitations. It is a well-meant caution. Otherwise a resourceful litigant having vested interests in contracts, licences etc. can successfully indulge in getting welfare activities mandated by directive principles thwarted to further his own interests. The caution, particularly in the changing scenario, becomes all the more important."

31.3. Later the Apex Court in **IFGL REFRACTORIES LIMITED v. ORISSA STATE FINANCIAL CORPORATION**[8] has held as follows:

"…. …. ….

- **<u>Doctrine of legitimate expectations in Indian Law</u>**

104. Under Indian law, the doctrines of promissory estoppel and legitimate expectation have often tended to be conflated in judicial discourse. This tendency has been noted and analysed in Jain and Jain's well-known treatise, ***Principles of Administrative Law*** (7th edn., EBC 2013):

> "***At times, the expressions 'legitimate expectation' and 'promissory estoppel' are used interchangeably, but that is not a correct usage because 'legitimate expectation' is a concept much broader in scope than 'promissory estoppel'.***
>
> xxxxxxxxx
>
> ***A reading of the relevant Indian cases, however, exhibit some confusion of ideas. It seems that the judicial thinking has not as yet crystallised as regards the nature and scope of the doctrine. At times, it has been referred to as***

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> ***merely a procedural doctrine; at times, it has been treated interchangeably as promissory estoppel. However both these ideas are incorrect. As stated above, legitimate expectation is a substantive doctrine as well and has much broader scope than promissory estoppel.***
>
> xxxxxxxxx
>
> ***In* Punjab Communications Ltd. *v.* Union of India, *the Supreme Court has observed in relation to the doctrine of legitimate expectation:***
>
> ***"the doctrine of legitimate expectation in the substantive sense has been accepted as part of our law and that the decision maker can normally be compelled to give effect to his representation in regard to the expectation based on previous practice or past conduct unless some overriding public interest comes in the way Reliance must have been placed on the said representation and the representee must have thereby suffered detriment."***
>
> ***It is suggested that this formulation of the doctrine of legitimate expectation is not correct as it makes "legitimate expectation" practically synonymous with promissory estoppel. Legitimate expectation may arise from conduct of the authority; a promise is not always necessary for the purpose."***

105. While such doctrinal conflation has the regrettable effect of introducing uncertainty into the law, it is ultimately citizens who bear its adverse consequences. Representations made by public authorities must, therefore, be subjected to the most exacting standards, for citizens order their affairs and regulate their conduct on the basis of the trust they repose in the State. The same considerations apply with equal force in the commercial sphere, where predictability and consistency are indispensable to rational business planning. A failure on the part of public authorities to honour their representations, absent adequate and cogent justification, undermines the

confidence of citizens in the State and erodes the credibility of governmental action. The creation of a business-friendly environment conducive to investment and trade is intrinsically linked to the degree of faith that may be placed in government to fulfil the expectations it engenders. Professors Jain and Deshpande have characterised the consequences of this doctrinal confusion in the following terms:

> ***"Thus, in India, the characterization of legitimate expectations is on a weaker footing, than in jurisdictions like UK where the courts are now willing to recognize the capacity of public law to absorb the moral values underlying the notion of estoppel in the light of the evolution of doctrines like LE [Legitimate Expectations] and abuse of power. If the Supreme Court of India has shown its creativity in transforming the notion of promissory estoppel from the limitations of private law, then it does not stand to reason as to why it should also not articulate and evolve the doctrine of LE for judicial review of resilement of administrative authorities from policies and longstanding practices. If such a notion of LE is adopted, then not only would the Court be able to do away with the artificial hierarchy between promissory estoppel and legitimate expectation, but, it would also be able to hold the administrative authorities to account on the footing of public law outside the zone of promises on a stronger and principled anvil. Presently, in the absence of a like doctrine to that of promissory estoppel outside the promissory zone, the administrative law adjudication of resilement of policies stands on a shaky public law foundation."***

106. Further, the necessity for this doctrine to possess an independent and autonomous existence was articulated by Justice Frankfurter of the United States Supreme Court in *Vitarelli* v. *Seaton*, reported in 359 US 535 (1959), in the following words:

> *"An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is*

> *based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."*

107. In *National Buildings Construction Corporation* v. *S. Raghunathan* reported in [2003] 1 WLR 348, a three Judge bench of this Court, speaking through Justice S. Saghir Ahmad, held that:

> *"18. **The doctrine of "legitimate expectation" has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of "legitimate expectation" was evolved which has today become a source of substantive as well as procedural rights. <u>But claims based on "legitimate expectation" have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel</u>**."*
>
> (Emphasis Supplied)

108. However, it is necessary to bear in mind that the aforesaid observation was made by this Court in the context of examining the contours of the doctrine of legitimate expectation under English law as it then stood. As noticed earlier, at that stage of its development, **English law exhibited a significant degree of overlap between the doctrines of legitimate expectation and promissory estoppel, the former often being invoked by analogy with the latter. Subsequent developments in English law, particularly following the decision of this Court in *National Buildings Construction Corporation* (supra), reflect a conscious effort to**

disentangle the two doctrines and to locate the doctrine of legitimate expectation on a distinct and more expansive doctrinal footing. In *Regina* (*Reprotech (Pebsham) Ltd)* v. *East Sussex County Council*, reported in [2003] 1 WLR 348, the House of Lords has held thus:

> ***"33. In any case, I think that it is unhelpful to introduce private law concepts of estoppel into planning law. As Lord Scarman pointed out in* Newbury District Council *v.* Secretary of State for the Environment *[1981] AC 578, 616, estoppels bind individuals on the ground that it would be unconscionable for them to deny what they have represented or agreed. But these concepts of private law should not be extended into "the public law of planning control, which binds everyone. (See also* Dyson J in R *v.* Leicester City Council, Ex p Powergen UK Ltd *[2000] JPL 629, 637.)***
>
> ***34. There is of course an analogy between a private law estoppel and the public law concept of a legitimate expectation created by a public authority, the denial of which may amount to an abuse of power... But it is no more than an analogy because remedies against public authorities also have to take into account the interests of the general public which the authority exists to promote. Public law can also take into account the hierarchy of individual rights which exist under the Human Rights Act 1998, so that, for example, the individual's right to a home is accorded a high degree of protection (see* Coughlan's case, *at pp 254—255) while ordinary property rights are in general far more limited by considerations of public interest: see* R (Alconbury Developments Ltd) *v.* Secretary of State for the Environment, Transport and the Regions *[2001] 2 WLR 1389.***
>
> *35. It is true that in early cases such as the* Wells case *[1967] 1 WLR 1000 and* Lever Finance Ltd *v.* Westminster (City) London Borough Council *[1971] 1 QB 222, Lord Denning MR used the language of estoppel in relation to planning law. At that time the public law concepts of abuse of power and legitimate expectation were very undeveloped and no doubt the analogy of*

estoppel seemed useful […] It seems to me that in this area, public law has already absorbed whatever is useful from the moral values which underlie the private law concept of estoppel and the time has come for it to stand upon its own two feet."

(Emphasis Supplied)

109. In a concurring opinion in *Monnet Ispat and Energy Ltd.* v. *Union of India*, reported in (2012) 11 SCC 1, Justice H. L. Gokhale underscored the distinct considerations underlying the doctrines of promissory estoppel and legitimate expectation. It was observed that the invocation of promissory estoppel presupposes the existence of a clear promise, acting upon which the promisee has altered its position to its detriment. In contrast, the application of the doctrine of legitimate expectation is primarily informed by considerations of fairness and reasonableness in State action. The relevant observation is as under:

"Promissory Estoppel and Legitimate Expectations

289. ***As we have seen earlier, for invoking the principle of promissory estoppel there has to be a promise, and on that basis the party concerned must have acted to its prejudice. In the instant case it was only a proposal, and it was very much made clear that it was to be approved by the Central Government, prior whereto it could not be construed as containing a promise. Besides, equity cannot be used against a statutory provision or notification****.*

290. […] ***In any case, in the absence of any promise, the Appellants including Aadhunik cannot claim promissory estoppel in the teeth of the notifications issued under the relevant statutory powers. Alternatively, the Appellants are trying to make a case under the doctrine of legitimate expectations. The basis of this doctrine is in reasonableness and fairness. However, it can also not be invoked where the decision of the public***

> ***authority is founded in a provision of law, and is in consonance with public interest.***"
>
> (Emphasis Supplied)

110. In *Union of India* v. *Lt. Col. P. K. Choudhary*, reported in (2016) 4 SCC 236, this Court considered the decision in *Monnet Ispat* (supra) and noted its reliance on the judgment in *Attorney General for New South Wales* v. *Quinn*, reported in (1990) 64 Aust LJR 327. This Court thereafter observed as follows:

> "***This Court went on to hold that if denial of legitimate expectation in a given case amounts to denial of a right that is guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or in violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 of the Constitution but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles.***"

111. Thus, the Court held that the doctrine of legitimate expectation cannot be claimed as a right in itself, but can be used only when the denial of a legitimate expectation leads to the violation of Article 14 of the Constitution.

112. As regards the relationship between Article 14 and the doctrine of legitimate expectation, a three judge Bench in *Food Corporation of India* v. *Kamdhenu Cattle Feed Industries*, reported in (1993) 1 SCC 71, held thus:

> ***"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fairplay in action'. Due observance of this obligation as a part of good administration raises a***

reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.″

(Emphasis Supplied)

113. In *NOIDA Entrepreneurs Assn.* v. *NOIDA*, reported in (2011) 6 SCC 508, a two judge bench of this Court, speaking through Justice B. S. Chauhan, elaborated on this relationship in the following terms:

> *"39.* ***State actions are required to be non-arbitrary and justified on the touchstone of Article 14 of the Constitution. Action of the State or its instrumentality must be in conformity with some principle which meets the test of reason and relevance. Functioning of a "democratic form of Government demands equality and absence of arbitrariness and discrimination". The rule of law prohibits arbitrary action and commands the authority concerned to act in accordance with law. Every action of the State or its instrumentalities should neither be suggestive of discrimination, nor even apparently give an impression of bias, favouritism and nepotism. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law****.*
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> xxxxxxxxx
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> *41.* ***Power vested by the State in a public authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact situation of a case. "Public authorities cannot play fast and loose with the powers vested in them." A decision taken in an arbitrary manner contradicts the principle of legitimate expectation. An authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred. In this context, "in good faith" means "for legitimate reasons". It must be exercised bona fide for the purpose and for none other*** *[…]"*

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.

114. As briefly discussed above, the operation of doctrine of promissory estoppel against government instrumentalities finds its reference in a pivotal decision of this Court in the case of *Motilal Padampat* (supra). In this case, the State Government of UP in 1968 had taken a policy decision to grant the incentive of exemption from sales tax for a period of three years to all new industrial units being established within the State. Pursuant to this policy, the appellant addressed a communication to the Director of Industries, stating that, in view of the sales-tax exemption announced by the Government, it intended to set up a plant unit for the manufacture of vanaspati and sought confirmation regarding the availability of the exemption. The Director of Industries affirmed the position, and the assurance was further endorsed and confirmed by the Chief Secretary to the State Government. Acting on the strength of these assurances, the appellant proceeded to establish the plant unit. In and around 1969, the State Government expressed reservations regarding the grant of exemption and requested the appellant to attend a meeting, during which the appellant reiterated that the government had already granted sales-tax exemption and that it had proceeded with the establishment of the plant unit on the strength of that assurance. Subsequently, in 1970, the State Government adopted a revised policy decision whereby new vanaspati units in the State that commenced commercial production by 30.09.1970 would be entitled only to a partial concession in sales tax. Although the appellant's unit went into commercial production on 02.07.1970, the State Government once again altered its policy and, on 12.08.1970, communicated its decision to rescind the concession earlier granted in favour of the appellant. On this note, this Court thoroughly examined the doctrine of promissory estoppel and observed that it is a principle evolved by equity to avoid injustice. It is neither in the realm of contract nor in the realm of estoppel.

115. According to this Court, the true principle of promissory estoppel seemed 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 effect 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. Where 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. This would be so irrespective of whether there is any pre-existing relationship between the parties or not.

116. It was further observed that it is not necessary, **in order to attract the applicability of the doctrine of promissory estoppel, that the promisee, acting on the promise, should suffer any detriment. What is necessary is only that the promisee should have altered his position in reliance on the promise. This Court was of the view that the doctrine of promissory estoppel is also applicable against the government, where the government makes a promise knowing or intending that it would be acted upon by the promisee. Where, in fact, the promisee, acting on it, alters his position, the government would be held bound by the promise. The promise would be enforceable against the government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract.**

117. Applying the said doctrine to facts of that case, this Court had observed that the in the letter of the chief secretary to the government, a categorical representation was made by him on behalf of the government that the proposed vanaspati unit of the appellant would be entitled to exemption sales tax for a period of three years from the date of commencement of production. This representation was made by way of clarification and as a definite commitment on the part of the government to grant exemption. Therefore, the representation was made by the government knowing and intending that it would be acted on by the appellant, because, the appellant had decided to set up a unit for manufacture of vanaspati only on account of the exemption from sales tax promised by the government. The relevant observations are as under:

*"7. **That takes us to the question whether the assurance given by respondent 4 on behalf of the State Government that the appellant would be exempt from Sales Tax for a period of three years from the date of commencement of production could be enforced against the State Government by invoking the doctrine of promissory estoppel. Though the origins of the doctrine of promissory estoppel may be found in* Hughes *v.* Metropolitan Railway Co. *and* Birmingham and District Land Co. *v.* London and North-Western Rail Co. *authorities of old standing decided about a century ago by the House of Lords, it was only recently in 1947 that it was rediscovered by Mr. Justice Denning, as he then was, in his celebrated judgment in* Central London Property Trust Ltd. *v.* High Trees House Ltd.. *This doctrine has been variously called 'promissory estoppel', 'equitable estoppel', 'quasi estoppel' and 'new estoppel'. It is a principle evolved by equity to avoid injustice and though commonly named 'promissory estoppel', it is, as we shall presently point out, neither in the realm of contract nor in the realm of estoppel [...]***

***8. [...] 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 of whether there is any pre-existing relationship between the parties or not*.**

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32. We may now turn to examine the facts in the light of the law discussed by us. It is clear from the letter of respondent 4 dated January 23, 1969 that a

categorical representation was made by respondent 4 on behalf of the Government that the proposed vanaspati factory of the appellant would be entitled to exemption from sales tax in respect of sales of vanaspati effected in Uttar Pradesh for a period of three years from the date of commencement of production, This representation was made by way of clarification in view of the suggestion in the appellant's letter dated January 22, 1969 that the financial institutions were not prepared to regard the earlier letter of respondent 4 dated December 22, 1968 as a definite commitment on the part of the Government to grant exemption from sales tax. Now the letter dated January 23, 1969 clearly shows that respondent 4 made this representation in his capacity as the Chief Secretary of the Government, and it was therefore, a representation on behalf of the Government […] We must, therefore, proceed on the basis that this representation made by respondent 4 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 Smet (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.

33. The State, however, contended that the doctrine of promissory estoppel had no application in the present case because the appellant did not suffer any detriment by acting on the representation made by the Government: the vanaspati factory set up by the appellant was quite a profitable concern and there was no prejudice caused to the appellant. This contention of the State is clearly unsustainable and must be rejected.

We do not think it is necessary, in order to attract the applicability of the doctrine of promissory estoppel, that the promisee, acting in reliance on the promise, should suffer any detriment. What is necessary is only that the promisee should have altered his position in reliance on the promise *[…]"*

(Emphasis Supplied)

118. Further, this Court in the case of *Pawan Alloys & Casting (P) Ltd.* v. *U.P. SEB*, reported in (1997) 7 SCC 251, had the occasion to consider the application of the doctrine of promissory estoppel against the government with respect to an incentive policy. In this case, the U.P. State Electricity Board had issued three notifications dated 29.10.1982, 13.07.1984, and 28.01.1986 respectively on identical terms, notifying the revised rate schedules appended thereto, which were to apply to all consumers directly supplied with electricity by the Board throughout the State of U.P. Each of these notifications stipulated that the revised rate schedule would come into force from the respective dates mentioned therein. Among the items incorporated in these rate schedules was one relating to incentives for new industrial units. The corresponding item in the last notification dated 28.01.1986 provided that a development rebate of 10% (ten percent) on the amount of the bill pertaining to energy charges would be granted to a new industrial unit for a period of three years from the date of commencement of supply. The Board, however, issued a subsequent notification dated 31.07.1986 deleting the said item relating to incentives for new industrial units from the notification dated 28.01.1986. The appellant contended that, by virtue of the principle of promissory estoppel, the Board was not entitled to withdraw the rebate prematurely through its notification dated 31.07.1986.

119. This Court, for the purpose of applying the doctrine of promissory estoppel to the above set of facts, held that the Board had issued the notifications in question, acting in its wisdom and pursuant to the directions of the State, in furtherance of the package of incentives offered by the State of U.P. to new industrial units. By the plain terms of these notifications, the Board, functioning as an arm of the State Government had extended concessions in the form of rebates in

electricity duty to the new industrial units, with the objective of attracting such units to invest in the state and bringing them within its fold as prospective consumers of electricity. Through these notifications, the Board had clearly held out a promise to new industries, and since such industries had admittedly established themselves in the region where the Board operated, acting upon that promise, equity required that the Board be held bound by it. It was further observed that the new industrial units, having been induced to establish themselves in the region on the strength of the promise, had altered their position irretrievably. They had invested substantial amounts in setting up infrastructure and had necessarily changed their position relying on the representation that they would receive the promised benefit i.e., a rebate of 10% (ten percent) on their electricity bills for at least three years as an infancy benefit, so as to enable them to effectively compete with existing industries in the market. On the force of these facts, this Court was of the opinion that the Board could certainly be pinned down to its promise by the application of the doctrine of promissory estoppel. The relevant observation is as under:

> "*19. It is, therefore, not possible to agree with the contention of learned Senior Counsel for the Board that these three notifications did not hold out any promise or any representation to the general public enabling the new industries to get established acting on the said representation. It is obvious that after the expiry of this three-year period the Board would be able to charge full rate for electricity supplied to these new customers who would then become sufficiently old and mature and would not need any more rebate. It cannot, therefore, be said that the Board had no interest in these new industries, their prospective customers, and was not interested in attracting them to the territory catered to by it by the supply of electricity. It may be that the Board exercised its statutory powers under Section 49 of the Act for that purpose but all the same it in its wisdom and acting on the direction under Section 78-A of the Act pursuant to the package of incentives offered by the State of U.P. to these new industries, had issued the said notifications holding out these promises. But even assuming that the State had no role to play in this connection as submitted by Shri Dave for the respondents, these three notifications on their own wordings leave no room for doubt that they did contain*

offers of incentives to new industries who would be the prospective new consumers of electricity and, therefore, the Board's future customers.

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21. In the present case even leaving aside the promissory estoppel against the State of U.P. it can clearly be visualised that by the mere wordings of the aforesaid three notifications the Board acting as a limb of the State of U.P. had offered these concessions by way of rebate in electricity duty to the new industries so as to attract them to the State to enable the Board to take them in its fold as prospective consumers of electricity to be sold by it to them.

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24. Consequently it cannot be held on the clear recitals found in the aforesaid three notifications issued by the Board that no representation whatsoever guaranteeing 10% rebate on electricity consumption bills could be culled out from these notifications. We, therefore, agree with the finding of the High Court on Issue No. 1 that by these notifications the Board had clearly held out a promise to these new industries and as these new industries had admittedly got established in the region where the Board was operating, acting on such promise, the same in equity would bind the Board. Such a promise was not contrary to any statutory provision but on the contrary was in compliance with the directions issued under Section 78-A of the Act. These new industries which got attracted to this region relying upon the promise had altered their position irretrievably. They had spent large amounts of money for establishing the infrastructure, had entered into agreements with the Board for supply of electricity and, therefore, had necessarily altered their position relying on these representations thinking that they would be assured of at least three years' period guaranteeing rebate of 10% on the total bill of electricity to be consumed by them as infancy benefit so that they could effectively compete with the old industries operating in the field and their products could effectively compete with their products. On these well-established facts the Board can certainly

> *be pinned down to its promise on the doctrine of promissory estoppel."*
>
> (Emphasis Supplied)

120. Additionally, in the case of *Gujarat State Financial Corpn.* v. *Lotus Hotels (P) Ltd.*, reported in (1983) 3 SCC 379, this Court had observed that the doctrine of promissory estoppel applies against a statutory corporation which in the discharge of its duties makes a clear and unequivocal promise that is acted upon by the promisee. In this case, the appellant was Gujarat State Financial Corporation (GSFC) that had sanctioned a loan in favour of the respondent for setting up a hotel. On the basis of such sanctioning, the respondent invested in securities, incurred expenditures, and undertook substantial liabilities upon for its business. Subsequently, the appellant GSFC refused to disburse the loan. Dismissing the appeal, this Court held that **the GSFC, being an instrumentality of the State under Article 12 of the Constitution of India, could not have arbitrarily resiled from its solemn promise, particularly when the promisee had altered its position by relying thereon. In such circumstances, this Court held that promissory estoppel would operate against the appellant GSFC, and such promise would be enforceable to compel the performance of its obligation.** The relevant observation is as under:

> *"9.* ***It was next contended that the dispute between the parties is in the realm of contract and even if there was a concluded contract between the parties about grant and acceptance of loan, the failure of the Corporation to carry out its part of the obligation may amount to breach of contract for which a remedy lies elsewhere but a writ of mandamus cannot be issued compelling the Corporation to specifically perform the contract. It is too late in the day to contend that the instrumentality of the State which would be "other authority" under Article 12 of the Constitution can commit breach of a solemn undertaking on which other side has acted and then contend that the party suffering by the breach of contract may sue for damages but cannot compel specific performance of the contract.*** *It was not disputed and*

in fairness to Mr Bhatt, it must be said that he did not dispute that the Corporation which is set up under Section 3 of the State Financial Corporation Act, 1955 is an instrumentality of the State and would be "other authority" under Article 12 of the Constitution. By its letter of offer dated July 24, 1978 and the subsequent agreement dated February 1, 1979 the appellant entered into a solemn agreement in performance of its statutory duty to advance the loan of Rs. 30 lakhs to the respondent. Acting on the solemn undertaking, the respondent proceeded to undertake and execute the project of setting up a 4-star hotel at Baroda. The agreement to advance the loan was entered into in performance of the statutory duty cast on the Corporation by the statute under which it was created and set up. On its solemn promise evidenced by the aforementioned two documents, the respondent incurred expenses, suffered liabilities to set up a hotel. Presumably, if the loan was not forthcoming, the respondent may not have undertaken such a huge project. Acting on the promise of the appellant evidenced by documents, the respondent proceeded to suffer further liabilities to implement and execute the project. In the back drop of this incontrovertible fact situation, the principle of promissory estoppel would come into play. In Motilal Padampat Sugar Mills Co. (P) Ltd. *v.* State of U.P.2 *this Court observed as under: [SCC para 8, p. 425: SCC (Tax) p. 160]*

*"**The true principle of promissory estoppel, therefore, seems to be that where one party has by his words of 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 of whether there is any preexisting relationship between the parties or not**."*

> *10.* ***Thus the principle of promissory estoppel would certainly estop the Corporation from backing out of its obligation arising from a solemn promise made by it to the respondent***.
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> *13. Now if appellant entered into a solemn contract in discharge and performance of its statutory duty and the respondent acted upon it, the statutory corporation cannot be allowed to act arbitrarily so as to cause harm and injury, flowing from its unreasonable conduct, to the respondent. In such a situation, the court is not powerless from holding the appellant to its promise and it can be enforced by a writ of mandamus directing it to perform its statutory duty. A petition under Article 226 of the Constitution would certainly lie to direct performance of a statutory duty by "other authority" as envisaged by Article 12."*
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> (Emphasis Supplied)"

31.4. In **ARMY WELFARE EDUCATION SOCIETY v. SUNIL KUMAR SHARMA**[9] the Apex Court has held as follows:

> "…… …… ……
>
> **(*ii*) *Doctrine of legitimate expectation***
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> **58.** During the course of the arguments, a submission was canvassed that the respondents were under a legitimate expectation that their service conditions and salary would not be unilaterally altered by the appellant Society to their disadvantage. Thus, as the respondents were neither consulted with nor taken in confidence by the appellant Society before effecting the changes in their service conditions, it amounted to

[9] **(2024) 16 SCC 598**

a breach of their legitimate expectation, thereby making it a fit case for the exercise of writ jurisdiction by the High Court.

59. The doctrine of legitimate expectation was also referred to and relied upon by the Single Judge of the High Court as one of the reasons to allow the writ petition filed by the respondents. The relevant observations made by the Single Judge in the judgment and order dated 5-8-2014 [*Sunil Kumar Sharma* v. *Union of India*, 2014 SCC OnLine Utt 1865] are reproduced hereinbelow: (*Sunil Kumar Sharma case* [*Sunil Kumar Sharma* v. *Union of India*, 2014 SCC OnLine Utt 1865] , SCC OnLine Utt para 28)

> "*28*. We also have to appreciate the "legitimate expectations" of the petitioners who expect equity, fair play and justice, from a public authority which Respondents 2, 3 and 7 indeed are and, therefore, they must meet such standards as a public authority ought to have. The new management of the School, including Respondents 2, 3 and 7 are hereby directed not to change or vary the conditions of the petitioners to their disadvantage."

60. Before parting with the matter, we deem it necessary to answer the aforesaid submission of the respondents. This Court in *Union of India* v. *Hindustan Development Corpn.* [*Union of India* v. *Hindustan Development Corpn.*, (1993) 3 SCC 499] enunciated that **the doctrine of legitimate expectation is a creature of public law aimed at combating arbitrariness in executive action by public authorities**. It held thus: (SCC p. 540, para 28)

> "*28*. **Time is a threefold present: the present as we experience it, the past as a present memory and future as a present expectation. For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment**

does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again, it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense."

61. In *Ram Pravesh Singh* v. *State of Bihar* [*Ram Pravesh Singh* v. *State of Bihar*, (2006) 8 SCC 381 : 2006 SCC (L&S) 1986] , this Court explained the doctrine of legitimate expectation in detail as follows: (SCC pp. 390-391, para 15)

"*15*. What is legitimate expectation? Obviously, it is not a legal right. It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practice. The term "established practice" refers to a regular, consistent, predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by the courts, for judicial review of administrative action. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established. In short, a person can be said to have a "legitimate expectation" of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course. As a ground for relief, the efficacy of the doctrine is rather weak as its slot is just above "fairness in action" but far below "promissory estoppel". It may only entitle an expectant: (*a*) to an opportunity to show cause before the expectation is dashed; or (*b*) to an explanation as to the cause for denial. In appropriate cases, the courts may grant a direction requiring the authority to follow the promised procedure or established practice. A legitimate expectation,

even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bona fide reason given by the decision-maker, may be sufficient to negative the "legitimate expectation". The doctrine of legitimate expectation based on established practice (as contrasted from legitimate expectation based on a promise), can be invoked only by someone who has dealings or transactions or negotiations with an authority, on which such established practice has a bearing, or by someone who has a recognised legal relationship with the authority. A total stranger unconnected with the authority or a person who had no previous dealings with the authority and who has not entered into any transaction or negotiations with the authority, cannot invoke the doctrine of legitimate expectation, merely on the ground that the authority has a general obligation to act fairly."

62. In *Jitendra Kumar* v. *State of Haryana* [*Jitendra Kumar* v. *State of Haryana*, (2008) 2 SCC 161 : (2008) 1 SCC (L&S) 428] , this Court, while differentiating between legitimate expectation on the one hand and anticipation, wishes and desire on the other, observed thus: (SCC p. 183, para 58)

"*58*. … A legitimate expectation is not the same thing as an anticipation. It is distinct and different from a desire and hope. It is based on a right. [See *Chanchal Goyal* v. *State of Rajasthan* [*Chanchal Goyal* v. *State of Rajasthan*, (2003) 3 SCC 485 : 2003 SCC (L&S) 322] and *Union of India* v. *Hindustan Development Corpn.* [*Union of India* v. *Hindustan Development Corpn.*, (1993) 3 SCC 499] It is grounded in the rule of law as requiring regularity, predictability and certainty in the Government's dealings with the public. We have no doubt that the doctrine of legitimate expectation operates both in procedural and substantive matters."

63. A reading of the aforesaid decisions brings forth the following features regarding the doctrine of legitimate expectation:

63.1. *First*, legitimate expectation must be based on a right as opposed to a mere hope, wish or anticipation;

63.2. *Secondly*, legitimate expectation must arise either from an express or implied promise; or a consistent past practice or custom followed by an authority in its dealings;

63.3. *Thirdly*, expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be treated as a legitimate expectation;

63.4. *Fourthly*, legitimate expectation operates in relation to both substantive and procedural matters;

63.5. *Fifthly*, legitimate expectation operates in the realm of public law, that is, a plea of legitimate action can be taken only when a public authority breaches a promise or deviates from a consistent past practice, without any reasonable basis.

63.6. *Sixthly*, a plea of legitimate expectation based on past practice can only be taken by someone who has dealings, or negotiations with a public authority. It cannot be invoked by a total stranger to the authority merely on the ground that the authority has a duty to act fairly generally."

(Emphasis supplied at each instance)

32. In the teeth of the elucidation of law by the Apex Court in the aforesaid judgments, the action of a contracting party which answers the description of "State" under Article 12 of the Constitution can undoubtedly be subjected to judicial review and struck down if it falls foul of the doctrine of legitimate expectation.

In the case at hand, the petitioner had a legitimate expectation of continuance of the prevailing policy, such expectation having arisen directly from the agreement itself and the consistent past conduct of the respondents. The impugned tender condition could not have travelled beyond, or contrary to, the terms of the agreement entered into between the parties. It cannot be gainsaid that the State may alter or deviate from an earlier policy or agreement; yet, such deviation must withstand the scrutiny of law and comport with the mandate of Article 14 of the Constitution. Arbitrariness can never masquerade as discretion.

33. In the light of the aforesaid unequivocal facts, the towering objections raised by the learned Attorney General and the learned senior counsels appearing for the respondents becomes unacceptable. Ethanol is admittedly required. The present notification seeks procurement of 1500 crore litres of ethanol. **Dedicated Ethanol Plants, which have hitherto supplied ethanol exclusively to the OMCs and which are contractually prohibited from either manufacturing anything else or supplying ethanol to any third party, cannot now be**

relegated to the short end of the stick, thereby visiting them with grave and manifest prejudice.

34. The petitioner, therefore, becomes entitled to issuance of a writ of mandamus directing respondents 2 to 4/OMCs to act in consonance with Clause 6.8 of the agreement, particularly when the respondents themselves invoked Clause 6.8 to enhance procurement from 1.44 crore litres to 3.92 crore litres. There cannot be selective or partial invocation of Clause 6.8 by denying 9.90 crore liters as sought for. If such conduct were to be countenanced, operation of the clause would be reduced to the whims and fancies of respondents 2 to 4, an eventuality wholly antithetical to law. In that view of the matter, the writ petition deserves to succeed.

35. For the aforesaid reasons, the following:

O R D E R

(i) Writ Petition is **allowed.**

(ii) Mandamus issues to respondents 2 to 5 to consider the representation of the petitioner dated 27-10-2025 for enhancement of procurement as sought for in the representation, bearing in mind the observations made in the course of the order. The consideration should precede the decision on the tender now issued.

(iii) Appropriate order on the representation shall be passed within four weeks from the date of receipt of a copy of this order.

In the light of the aforesaid order impleading applications/ I.A.Nos.7 to 16 need not be considered and they are disposed as unnecessary. Other pending applications also stand disposed, as a consequence.

Sd/-
(M.NAGAPRASANNA)
JUDGE

bkp
CT:MJ