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

**LPA 231/2008**

Reserved on: 10th November 2009
Decision on: 23rd November 2009

SOUTHERN PETROCHEMICAL INDUSTRIES CORPORATION LTD. & ORS. ..... Appellants
Through: Mr. S. Ganesh, Senior Advocate with Ms. Reena George, Mr. Manish Bishnoi, Mr. Guatam Talukdar, Advocates

versus

UNION OF INDIA ..... Respondent
Through: Mr. A.S. Chandhiok, ASG with Ms. Sweta Kakkad, Mr. Amitesh S. Bakshi, Mr. Varun Pathak, Advocates

**LPA 95/2008**

UNION OF INDIA ..... Appellant
Through: Mr. A.S. Chandhiok, Addl. Solicitor General of India with Ms. Sweta Kakkad, Mr. Amitesh S. Bakshi and Mr. Varun Pathak, Advocates

versus

SOUTHERN PETROCHEMICAL INDUSTRIES CORPORATION LTD. & ORS. ..... Respondents
Through: Mr. S. Ganesh, Senior Advocate with Ms. Reena George, Mr. Manish Bishnoi, Mr. Guatam Talukdar, Advocates

**CORAM:**
**HON'BLE THE CHIEF JUSTICE**
**HON'BLE DR. JUSTICE S. MURALIDHAR**

1. Whether reporters of the local papers be allowed to see the judgment? No

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

**JUDGMENT**
**23.11.2009**

**S. Muralidhar, J.**

1. These two appeals, one by the Union of India and another by the Southern Petrochemical Industries Corporation Ltd. (SPICL) and eleven other companies, are directed against the impugned order and judgment dated 6th July 2007, passed by the learned Single Judge in Writ Petition (Civil) No. 1503 of 1998.

2. For the sake of convenience, the parties will be referred to with reference to their status in the writ petition. The SPICL and eleven other companies will be referred to as the Petitioners and the Union of India as the Respondent.

3. The Petitioners are manufacturers and/or importers of fertilizers including Di-Ammonium Phosphate (DAP). DAP and other complex fertilizers were covered by the Statutory Price Control under the Fertilizer Control Order issued by the Government of India under the Essential Commodities Act 1955. The difference between the selling price fixed by the Government and the costs of production which was higher, was paid by the Government to the Petitioners as subsidy under the Retention Price Scheme (RPS). Likewise in the case of imported fertilizers, the difference between the controlled selling price and the cost of import and distribution was borne by the Government as subsidy. This was the position prior to 24th August 1992.

4. From 25th August 1992 onwards, the Statutory Price Control as well as the subsidy cover were withdrawn as DAP and other complex fertilizers were decontrolled. Consequently there was a sharp increase in the price of the fertilizers. It was feared that the consequent reduced consumption of fertilizers by the farmers would affect agricultural productivity. Consequently, the Government introduced a scheme of ad-hoc concession whereunder the Government fixed a selling price and if the manufacturer/importer sold the fertilizers at that price, it would be entitled to concession for a certain amount fixed by the Government being the difference between the selling price and the cost of manufacture/import and distribution. In October 1992, the Government announced a concession of Rs.1000/- per tonne on DAP and this rate continued for the years 1993-94; 1994-95 and 1995-96. Phosphate being one of the three essential nutrients in the soil necessary for better crop productivity, the Government wanted to encourage the consumption of phosphatic and potassium based fertilizers. Consequently in 1996, a three-fold increase in the concession amount was announced by the Government. This, however, did not result in increasing consumption of the phosphatic nutrient even in the 1996-97 season.

5. Relevant to the present dispute is a statement made in Parliament by the Minister of Agriculture on 21st February 1997. After noting that the decontrol of phosphatic (P) and potassic (K) fertilizers had resulted in a decline in their consumption, the Minister announced that it had been decided to increase the concessions on these

fertilizers during the 1997-98. The incremental requirements of funds was to be met by increasing the price of Urea by ten per cent. It was announced by the Minister that the increase in concession for DAP would be Rs.750/- per tonne. For Single Super Phosphate (SSP) fertilizer, it was increased by Rs.100/- per tonne and for the Muriate of Potash (MOP) fertilizer, the concession was increased to Rs.500/- per tonne. There were to be proportionate increases in respect of other complexes. The Minister announced that the revised concession would be applicable from 1st April 1997 and the corresponding increase in the price of urea would be effective from 21st February 1997. It was also decided to subsidise the transportation of decontrolled phosphatic and potassic fertilizers to parts of Jammu and Kashmir and North-Eastern States.

6. After the announcement by the Minister of the rates of concession on the floor of the Parliament, the Petitioners on 22nd February 1997 placed orders for import of phosphoric acid, one of the major components for the manufacture of DAP. The letters of intent were issued and letters of credit opened to facilitate imports for production for the entire year 1997-98. It may be mentioned here that there are two crop seasons; one being the kharif season for the period 1st April 1997 to 30th September 1997 and the other the rabi season between 1st October 1997 to 31st March 1998. The Petitioners state that a major part of the raw material used for production during this period had already been contracted for prior to 1st October 1997.

7. By an order dated 4th March 1997, the Government constituted an Empowered Committee under the Chairmanship of the Secretary, Agriculture & Cooperation (A&C). The other members were the Secretaries of the Department of Expenditure and Ministry of Fertilizers, one representative each of the FICC, the Fertilizer Association of India (FAI) (of which the Petitioners herein are members) and the BICP. The terms of the reference of the Committee were as under:-

> "i) To indicate reasonable prices in respect of decontrolled phosphatic and potassic fertilizers (P&K), whether derived from straight sources or through Complexes.
> ii) The Committee may decide upon marginal adjustments in the incremental concessions on P&K fertilizers that may be necessary.
> iii) The Committee may formulate a scheme for funding the extra cost of transportation to move fertilizers to more difficult areas i.e. parts of J&K and North Eastern States including Sikkim, to be met out of the concessional scheme."

It was stated in para 3 of the above order dated 4th March 1997 that the Empowered Committee "shall take appropriate decisions immediately".

8. On 5th March 1997 the formal announcement was made about the increase in the concessions. The revised concession for indigenous DAP was Rs.3750 per tonne, imported DAP Rs.2250/- per tonne, MOP Rs.2000/- per tonne and SSP Rs.600/- per tonne. The revised

rates were effective from 1st April 1997. It was clarified that all stocks held and actually sold on or after that date would be eligible for the enhanced concession. It was also announced that the Government had decided to continue the scheme of concession on the sale of decontrolled phosphatic and potassic fertilizers to the farmers during 1997-98 (1st April 1997 to 31st March 1998) on existing pattern at the revised rates indicated for DAP, MOP, SSP and other indigenous complexes in accordance with the guidelines issued on 7th September 1994.

9. On 28th March 1997, the Government of India announced the "farm gate prices of decontrolled Phosphatic and Potassic fertilizers net of enhanced concession and exclusive of local taxes wherever applicable, effective from 1st April 1997". For DAP it was Rs.8300/- per tonne inclusive of Rs.300/- per metric tonne (PMT) as distribution margin. Likewise the selling price for MOP was indicated and price of SSP was to be decided by the respective State Governments. It was further announced that after receipt of claims for release of concession on sales of DAP, MOP and complexes from suppliers, the Department of Agriculture and Cooperation (DAC) would release payment of 80% of the claim as per the guidelines issued by the Government. The procedure for release of 80% on account payment was indicated by a separate circular dated 18th June 1997.

10. The Empowered Committee set up by the Government of India

met on 24th September 1997 when it considered the suggestion of the Ministry of Agriculture for reducing the concession earlier announced. From the minutes of the said meeting of the Committee, it appears that there was no agreement on the proposals of the Ministry. However, the members were in agreement that there should be no change in the prices of DAP, MOP or the complexes.

11. On 7th October 1997, the Government announced the maximum retail price (MRP) of DAP, MOP and complexes. It was announced that the MRP for the rabi season 1997-98 would be the same as it was for the kharif 1997-98. In other words, the MRP of DAP was to remain at Rs.8300 per tonne. It was stated that "in regard to rates of concession on the above fertilizers, orders will issue shortly".

12. According to the Petitioners, on account of depreciation of the rupee and corresponding increase in the price of Naptha and fuel oil, they were expecting an increase in the rate of concession. However, on 3rd February 1998, nearly four months after the announcement of the MRP for the rabi season, the Government announced the reduction in the concession on DAP, MOP and complexes. The concession on indigenous DAP which was Rs.3,750/- per tonne and imported DAP which was Rs.2,200/- per tonne was reduced to Rs.3500/- and Rs.200/- per tonne respectively during the rabi 1997-98 season, i.e., from 1st October 1997 to 31st March 1998. The reduction was made applicable retrospectively with effect from 1st October 1997. The on account payment was also stopped.

13. Claiming that they had acted on the assurance that the rates of concession announced way back on 21st February 1997 on the floor of the Parliament would remain unchanged for the entire year 1997-98 and that the reduction in the concession made on 3rd February 1998 was affecting them adversely, the Petitioners filed the aforementioned Writ Petition (Civil) No.1503 of 1998 in this Court.

14. The plea of the Petitioners was based on the doctrine of promissory estoppel. According to them by the Circular dated 15th March 1997, the Government held out a clear and unequivocal representation that the rates of concession on DAP would remain unchanged for the entire year from 1st April 1997 to 31st March 1998. The Petitioners acted on the said representation, and planned their imports as well as schedule of manufacture for the entire year. Accordingly, the Respondents were estopped from reducing the rates of concession with retrospective effect from 1st October 1997. Reliance was placed on the decisions in ***Motilal Padampat Sugar Mills v. State of UP (1979) 2 SCC 409***; ***Godfrey Philips v. Union of India 1985 (4) SCC 369*** and ***National Buildings Construction v. S. Raghunathan (1998) 7 SCC 66***. On its part, the Respondent Union of India contended that no representation was held out by the circular dated 5th March 1997 that the rates of concession would remain unchanged. The reduction in the rates of DAP was necessitated on account of the fall in the price of Ammonia which was the main component of DAP. By reducing the rates of concession by the circular dated 3rd February 1998, the Respondent had been able to

save Rs.110 crores of public money which otherwise would have gone to private manufacturers/suppliers. Further the Circular dated 7th October 1997 announcing the MRP for the DAP for the rabi season had itself indicated that the revised rates of concession would be issued thereafter. Therefore, the Petitioners could not have been taken by surprise by the revised rates of concession announced on 3rd February 1998.

15. The learned Single Judge held that the industry knew that the rates of concession announced by the circular dated 5th March 1997 was for the entire year subject to certain marginal adjustments which could apply even retrospectively. It was held that the principle of promissory estoppel, therefore, would apply in respect of the said limited representation. However, in order to succeed, the Petitioners had to show that they had altered their position to their detriment prior to the announcement of the new rates on 3rd February 1998.

16. The learned Single Judge concluded that the reduction in the rates of concession both in respect of indigenous DAP as well as imported DAP could not be said to be merely marginal. Consequently it was held that "up to 03.02.1998 when the impugned circular was issued, the petitioners would be entitled to claim concession on the rates notified on 05.03.1997 provided they establish detriment as a fact. However, after 03.02.1998 the petitioners would be only entitled to the reduced rates of concession as notified in the circular of 03.02.1998". The Respondents were, therefore, directed to "process

the petitioners' claims for concession and to make the payments thereof, if any, along with interest thereon @ 7% from the date on which they became due till the date of payment". The said claims had to be cleared within eight weeks.

17. The Union of India is aggrieved by the impugned judgment since according to it the Petitioners were not entitled to invoke the doctrine of promissory estoppel at all. The revised rates of concession, according to the Union of India, had to be held to be effective retrospectively from 1st October 1997 as mandated by the impugned circular dated 3rd February 1998. The Petitioners are also aggrieved by the impugned judgment to the extent the learned Single Judge has required the Petitioners to establish detriment as a fact even for availing of the rates of concession (as prevailing prior to 3rd February 1998) and further requiring them to abide by the circular dated 3rd February 1998 prospectively from that date. The Petitioners contend that the impugned circular dated 3rd February 1998 should have been quashed and the rates announced by the Circular dated 5th March 1997 ought to have been made applicable for the entire year up to 1st April 1998.

18. Mr. S. Ganesh, the learned Senior Counsel appearing on behalf of the Petitioners contended that the reasons stated by the Union of India in its counter affidavit before the learned Single Judge to justify the reduction in the rates of concession were considered and rejected by the Empowered Committee set up by the Government. That

Committee had at the meeting on 24th September 1997 decided to continue with the MRP of DAP. The procedure for revising the rates of concession was spelt out by the order dated 4th March 1997 setting up the Empowered Committee. They had to be determined only by the Empowered Committee and not by any other body. This body had representatives of the FAI as well. Overlooking the decisions of the Empowered Committee, the Cabinet Committee on Economic Affairs (CCEA) determined the revised rates of concession nearly four months later with there being no change in the circumstances. Therefore, the reduction of the rates of concession announced on 3rd February 1998 was both unilateral and arbitrary. The irrationality of the said decision was further apparent from the fact that for nearly four months after announcing the MRP, the Respondents did not revise the rates of concession. There was no rational basis for announcing the revised rates of concession just two months prior to the closure of the rabi year on 31st March 1998 and then make it retrospective from 1st October 1997. There was no way the Petitioners could alter their decisions from 1st October 1997 onwards since all orders for imports of phosphoric acid had already been placed by that date. Further with effect from 1st April 1998, the rates of concession had again been revised from Rs.3,750/- per tonne to Rs.4400/- for DAP and for indigenous DAP from Rs.2,250/- per tonne to Rs.2000/- per tonne for the year 1997-98. It is inconceivable that within these two months the parameters again changed so much as to give rise to enhancement of the rates of concession. It has been submitted that there was no need for the Petitioners to show that they

suffered detriment of the rates of concession originally announced on 5th March 1997. It is submitted that relying on the statement of the Minister of Agriculture made on 21st February 1997 on the floor of the Parliament, the Petitioners had placed orders for import for the year 1997 and therefore had altered their position with effect from that date. In any event, there was no need to prove detriment. The reliance was placed, apart from the decision in ***Motilal Padampat Sugar Mills*** (supra), on the decisions in ***MRF v. Assistant Commissioner (2006) 8 SCC 702***; ***Pawan Alloys & Castings Pvt. Ltd. v. UP State Electricity Board (1997) 7 SCC 251*** and ***State of Punjab v. Nestle (2004) 6 SCC 465***.

19. Mr. A.S. Chandhiok, the learned Addl. Solicitor General of India, appearing for the Union of India submitted that no unequivocal promise was held out by the circular dated 5th March 1997 that the rates of concession would remain unchanged for the entire year 1997-98. On the other hand, an Empowered Committee was set up to make recommendations for marginal adjustments in the rates. Even the circular dated 7th October 1997 had put the Petitioners on notice that the revised rates of concession would be announced "shortly". Significantly this circular was never challenged by the Petitioners. Therefore, they could not have been taken by surprise by the announcement of the reduced rates of concession by the circular dated 3rd February 1998. He points out that the Empowered Committee in fact did not arrive at any decision in the meeting of 24th September 1997 since there was no agreement on the rates of

concession. Consequently the matter was left to the CCEA to take a decision which it did and the impugned circular dated 3rd February 1998 was issued. Therefore, there was no departure from the procedure envisaged. He submits that there is no pleading in the writ petition to the effect that relying on the circular dated 5th March 1997 the Petitioners had altered their position to their detriment. The pleadings only show that orders for purchase of phosphoric acid were placed on 22nd February 1997. Relying on the decision in ***Kashinka Trading v. Union of India (1995) 1 SCC 274***, Mr. Chandhiok submits that in the absence of pleadings, the Petitioners could not be permitted to invoke the doctrine of promissory estoppel. Lastly, it is submitted that the court should take into account the public interest involved in the decision of the Respondent to reduce the rates of concession. Reliance is placed on certain observations made by the Supreme Court in this regard in ***Motilal Padampat Sugar Mills*** (supra). Mr. Chandhiok sought to distinguish the decisions in ***MRF v. Assistant Commissioner*** (supra) and ***Pawan Alloys*** (supra) on facts.

20. The submissions of the learned counsel for the parties have been considered. Before dealing with the submissions, the law as explained by the Supreme Court may be taken note of. In ***Motilal Padampat Sugar Mills*** the doctrine of promissory estoppel as developed by our courts was referred to and was explained as under (SCC @ p.442-444):

> "36. The law may, therefore, now be taken to be settled as a result of this decision that **where the Government**

**makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution**. It is elementary that in a Republic governed by the rule of law, no one, howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel. Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of "honesty and good faith"? Why should the Government not be held to a high "standard of rectangular rectitude while dealing with its citizens"? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its contractual obligations, but let it be said to the eternal glory of this Court, this doctrine was emphatically negatived in the *Indo-Afghan Agencies case* and the supremacy of the rule of law was established. It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promise and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society and the constant endeavour of the Courts and the legislatures must, therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible. The

doctrine of promissory estoppel is a significant judicial contribution in that direction.

37. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. **If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise equity in favour of the promise and enforce the promise against the Government**. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. **When the Government is able to show that in view of the facts as have transpired, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and after this position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies**. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot, as Shah, J., pointed out in the *Indo-Afghan Agencies case*, claim to be exempt from the liability to carry out the promise "on some indefinite and undisclosed ground of necessity or expediency", nor can the Government claim to be the sole judge of its liability and repudiate it "on an ex-parte appraisement of the circumstances". If the Government wants to resist the liability, it will have to disclose to the Court what are the facts and circumstances on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether these facts and circumstances are such as to render it inequitable to enforce the liability against the Government. **Mere claim of change of policy would not be sufficient to exonerate the Government from the liability: the Government would have to show what precisely is the changed policy and also its reason and justification so that the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the Court is satisfied, on proper and adequate material placed by the Government, the over-riding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government**. The Court would not act on the mere ipse dixit of the Government, for it is the Court

> which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. **The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such over-riding public interest, it may still be competent to the Government to resile from the promise "on giving reasonable notice which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position" provided of course it is possible for the promisee to restore status quo ante. If however, the promisee cannot resume his position, the promise would become final and irrevocable**. (See *Emmanuel Ayodeji Ajayi v. Briscoe* [1964] 3 All. E.R. 556" (emphasis supplied)

21. The above law has been followed and applied in several judgments of the Supreme Court thereafter including ***Pawan Alloys & Castings Pvt. Ltd.***, ***MRF v. Assistant Commissioner***, ***Mahabir Vegetable Oils (P) Ltd. v. State of Haryana,(2006) 3 SCC 620*** and ***State of Punjab v. Nestle***.

22. On the facts of the present case, this Court finds that the Petitioners are right in contending that the statement regarding the rates of concession for the year 1997-98 made by the Minister for Agriculture on the floor of the Parliament by the Minister of Agriculture on 21st February 1997 was a representation that was clear and unequivocal. That statement was given wide publicity and was immediately acted upon by the petitioners by placing orders for import of phosphoric acid. The circular dated 5.3.1997 was only the formal manifestation of the representation made by government through the Minister in Parliament. The text of the said statement,

which has been placed on record, indicates that the Respondent had already taken the decision and that the subsequent circular dated 5th March 1998 was only a formal announcement of the said decision. The relevant portion of the statement of the Minister made on the floor of the Parliament on 21st February 1997 reads as under:

> "Urea is the only fertilizer which is under Statutory Price Control and sold at a uniform price of Rs.3,320/- per tonne all across the country. The decontrol of P&K fertilizers resulted in decline in their consumption whereas in respect of Urea the growth in consumption has been maintained and consequent imbalance in the use of fertilizers. The NPK ratio which stood at 5.9:2.4:1 during 1992-92 widened to 8.5:2.5:1 during 1995-96.
>
> The Government of India announced a substantial increase in concession on P&K fertilizers with effect from 6th July, 1996 as a first step towards improving the deteriorating NPK ratio. The rate of concession on indigenous Di-Ammonium Phosphate (DAP) was raised from Rs.1,000/- per tonne to Rs.3,000/- per tonne. A concession to the extent of Rs.1,500/- per tonne was extended to imported DAP also to bring its selling price at par with indigenous DAP. Similarly, the concession on Muriate of Potash (MOP) was increased from Rs.1,000/- per tonne to Rs.1,500/- per tonne. The rate of concession on Single Super Phosphate (SSP) was also enhanced from Rs.340/- to Rs.500/- per tonne. The rates of concession on Complexes were increased proportionately.
>
> To reduce the existing imbalance in the application of NPK nutrients, it has been decided to further increase the concessions on phosphatic and potassic fertilizers during 1997-98 and the incremental requirements of funds will be met by increasing the price of Urea by 10 per cent. As a result, **the increase in concession for DAP will be Rs.750/- per tonne, Rs.100/- for S.S.P. and Rs.500/- for M.O.P. and proportionate increases in respect of other Complexes**.
>
> **The revised concessions will be applicable from April 1, 1997 and the increase in price of Urea with effect from February 21, 1997**." (emphasis supplied)

23. The decision of each of the Petitioners to place orders of import

on 22nd February 1997 is evidenced by the letters of intent placed by each of them on their importers, copies of which have been placed on record. This Court is satisfied that acting on the above statement of the Minister made on the floor of the Parliament, which is not a mere announcement but in fact the communication of the decision of the Government of India, the Petitioners had placed orders for imports for the entire year 1997-98. This has to be taken to be an altering of the position of the petitioners relying upon the statement made on behalf of the Respondent in Parliament on 21st February 1997.

24. This Court is unable to agree with the learned Single Judge that the Petitioners were required to show detriment suffered by each of them for the period 1st October 1997 to 31st March 1998. In para 33 in ***Motilal Padampat Sugar Mills,*** it was held as under (SCC @ p.452):

> "We do not think that in order to invoke the doctrine of promissory estoppel it is necessary for the promisee to show that he suffered detriment as a result of acting in reliance on the promise. But we may make it clear that if by detriment we mean injustice to the promisee which could result if the promisor were to recede from his promise then detriment would certainly come in as a necessary ingredient. **The detriment in such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee, if the promisor were allowed to go back on the promise**." (emphasis supplied)

25. The above facts show that the orders for the imports for the entire year 1997-1998 were placed by each of the petitioners on 22nd February 1997 itself. The petitioners are right in contending that the reduction of the concessions as late as on 3rd February 1998 left them

with no chance of "unraveling" the events that preceded that date. Further with only two moths to the close of the financial year, and most of the production schedule for the year nearing completion, there could be no doubt that the petitioners would suffer prejudice if the Respondent's decision to reduce the concessions at that late a stage were to be sustained.

26. The criticism that the pleadings in the writ petition do not bring out the case of the petitioners regarding the prejudice caused to them on account of the Respondent's decision dated 3.2.1998 is also not justified. Para 14 of the writ petition adverts to the fact that the petitioners placed orders by way of import on 22nd February 1997, one day after the Minister's announcement in Parliament. The learned ASG, therefore, is not right in contending that there are no adequate pleadings in the writ petition to support the petitioners' plea of promissory estoppel. The judgment in ***Kasinka Trading v. Union of India*** has been explained and distinguished in later decisions of the Supreme Court including ***MRF v. Assistant Commissioner*** and ***State of Punjab v. Nestle***. In doing so, the Supreme Court has invoked the doctrine of legitimate expectation based on Article 14 and the rule of fairness, which has been reiterated in ***Bannari Amman Sugars Ltd. v. Commercial Tax Officer (2005) 1 SCC 625.***

27. There is also merit in the contention of the learned Senior Counsel for the Petitioners that given the nature of the fertilizer industry, and the procedure of manufacture involved, the Petitioners

required a lead time for scheduling the manufacture for the entire year in advance. Undoubtedly phosphoric acid is a major component of the fertilizer (DAP) and has to be entirely imported. Although the prices of Ammonia, another major component, would impact on the price of fertilizers, that by itself cannot be determinative of the price. The minutes of the deliberations of the Empowered Committee in its meeting on 24th September 1997 show that the above factors were discussed by the said Committee. Although no decision could be arrived at, the fact remains that there was no immediate announcement of the revised rates of concession.

28. Therefore, while the circular dated 7th October 1997 indicated that the Government would announce the reduced rates of concession "shortly", there was no indication that the rates of concession in fact would be reduced. It is therefore not possible to accept the submission of the learned ASG that the statement in the circular dated 7th October 1997 that the announcement regarding rates of concession would follow shortly ought to have alerted the Petitioners about the possibility of the reduction in the rates of concession. The sentence reads "in regard to rates of concession on above fertilizers orders will issue shortly". There is merit in the contention of the Petitioners that due to depreciated value of rupee and the price of Naptha and fuel oil having increased, the Petitioners were, if at all, expecting an increase in the concession.

29. There is yet another aspect of the matter. If according to the

Union of India there was no agreement amongst members of the Empowered Committee on what should be the revised rates of concession, and the CCEA therefore had to take a decision on this aspect, such decision had to be taken within a reasonable time. There is no justifiable explanation offered by the Respondent for the CCEA not taking a decision for about four months. Therefore, the Petitioners are justified in contending that till 3rd February 1998 there was no way they could have known that the rates of concession were going to be reduced for the period 1st October 1997 to 31st March 1998. The petitioners cannot be expected to unravel the events that had already taken place, particularly the imports already made till that date and orders placed for further imports till 31st March 1998.

30. We find no rational basis for the circular dated 3rd February 1998. Consequently the said circular is held to be unsustainable in law. In any event, this Court is not furnished with any explanation by the Respondent Government of India for the basis on which the rates of concession were reduced on 3rd February 1998 when less than two months thereafter (i.e. with effect from 1st April 1998) the concessions were revised to Rs.4400 PMT for DAP without there being any change in the parameters. In the circumstances, the Petitioners are entitled to succeed in their plea that the revised rates of concession announced by the circular dated 5th March 1997 should hold good till 31st March 1998.

31. For the aforementioned reasons, the impugned judgment of the

learned Single Judge is hereby set aside. The impugned order dated 3rd February 1998 issued by the Respondent Union of India is quashed. The petitioners are entitled to the rates of concession as announced by the circular dated 5.3.1997 till 31.3.1998. The differential amount that the Petitioners would be entitled to should be paid/released to them within a period of two months from today together with interest at 7% per annum from 1.10.1997 till the date of payment.

32. Consequently the LPA No.95 of 2008 filed by the Union of India is dismissed and LPA No.231 of 2008 filed by the SPICL and the other petitioners is allowed. The Union of India will pay to each of the Appellants in the LPA No. 231 of 2008 costs of Rs.10,000 within a period of eight weeks from today.

**S. MURALIDHAR, J.**

**CHIEF JUSTICE**

**NOVEMBER 23, 2009**
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