

M/S KOTHARI INDUSTRIAL CORPORATION LTD.

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v.

TAMIL NADU ELECTRICITY BOARD & ANR.

(Civil Appeal No. 9748 of 2003 etc.)

OCTOBER 01, 2010

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[MARKANDEY KATJU AND T. S. THAKUR, JJ.]

Reference to Larger Bench – Tariff-concession provided to new industries under Electrical Energy Act – Establishment of industrial units – Subsequently by Notification new condition for tariff-concession provided – Industrial units also giving undertaking to that effect – Held: In view of difference of opinion in various judgments passed by Supreme Court, the matter referred to Larger Bench to decide the issues whether principles of ‘legitimate expectation’ and ‘promissory estoppel’ are applicable to the case and whether undertaking given by the industrial units acted as estoppel against them – Tamil Nadu Revision of Tariff Rates on Supply of Electrical Energy Act, 1978 – Administrative Law – Principles of ‘legitimate expectation’ and ‘promissory estoppel’ – Estoppel – Electricity.

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Tariff concessions were given for a period of first five years to new industries under Tamil Nadu Revision of Tariff Rates on Supply of Electrical Energy Act, 1978. The appellants, attracted by the concessions, established their industrial units. Subsequently, by a Notification dated 30.04.1982, the respondents revised the tariff concession, whereby the concession was not to apply from the year when the industry started earning profit.

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Appellants were asked to give an undertaking to that effect which they gave fearing disconnection of their power supply. Appellant in C. A. No. 9748 of 2003 was served notice to pay a particular amount towards tariff.

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A The questions for consideration in the instant appeals were whether the principles of 'promissory estoppel' and 'legitimate expectation' were applicable and whether the undertaking given by the appellants acted as an estoppel against them.

B Referring the matters to the Larger Bench, the Court

HELD: There are some differences of opinion in the various decisions by different benches of the Supreme Court. Hence the matter needs to be decided by a Larger

C Bench of this Court, on the issue as to whether the principles of 'promissory estoppel' and 'legitimate expectation' are applicable in this case. The Larger Bench may also consider whether the undertaking given by the appellants acts as an estoppel against them.

D [1143-E-F]

Pawan Alloys and Casting (P) Ltd. vs. U.P. State Electricity Board and Ors. (1997) 7 SCC 251; Southern Petrochemical Industries Company Limited vs. Electricity Inspector and E.T.I.O. and Ors. (2007) 5 SCC 447; Shri Bakul Oil Industries and Anr. vs. State of Gujarat and Anr. (1987) 1 SCC 31 etc.; Union of India and Ors. vs. Godfrey Philips India Limited (1985) 4 SCC 369, State of Tamil Nadu vs. K. Sabanayagam and Anr. (1998) 1 SCC 318; Jalan Trading Co. (Pvt. Ltd.) vs. Mill Mazdoor Union 1967(1) SCR 15; Kasinka Trading and Anr. vs. Union of India and Anr. (1995) 1 SCC 274; (1997) 3 SCC 398; Tamil Nadu Electricity Board vs. Status Spinning Mills Ltd. and Anr. (2008) 7 SCC 353 – referred to.

G Case Law Reference:

(1997) 7 SCC 251 Referred to. Para 5

(2007) 5 SCC 447 Referred to. Para 5

(1987) 1 SCC 31 Referred to. Para 5

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KOTHARI INDUSTRIAL CORPORATION LTD. v. TAMILNADU ELECTRICITY BOARD & ANR.

(1985) 4 SCC 369	Referred to.	Para 6	A
(1998) 1 SCC 318	Referred to.	Para 6	
1967(1) SCR 15	Referred to.	Para 6	
(1995) 1 SCC 274	Referred to.	Para 6	B
(1997) 3 SCC 398	Referred to.	Para 6	
(2008) 7 SCC 353	Referred to.	Para 6	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9748 of 2003. C

From the Judgment & Order dated 06.12.2001 of the High Court of Madras in WA No. 421 of 1995.

With D

Civil Appeal No. 9749 and 9750 of 2003.

P.H. Parekh, Nalini Chidambaram, E.R. Kumar, Debojyoti Battacharya, Vishal Prasad, Anand Jha (for Parekh & Co.) Nikhil Swani, Prabha Swami, A.M.P. Latha, Krishnamurthi Swani, D. Durga Devi (for Vikas Mehta), R. Nedumaran and Vimal Dubey for the appearing parties. E

The Judgment of the Court was delivered by

MARKANDEY KATJU, J. 1. These appeals have been filed against the common judgment and order of the Madras High Court dated 06.12.2001 in Writ Appeals Nos. 421 & 488 of 1985 etc. The facts have been stated out in great detail in the impugned judgment of the High Court in which the points contended by the parties herein have been dealt with. Hence we are not repeating the same here. F G

2. The appellants have set up new industries in which a major raw material is said to be power (electricity). It is alleged by the appellants that due to large consumption of power, the H

- A economic viability of their project is very sensitive to power tariffs. It is further alleged that the appellants were attracted by the tariff concessions given under Tamil Nadu Revision of Tariff Rates on Supply of Electrical Energy Act, 1978 (Tamil Nadu Act 1 of 1979). In the Schedule to the said Act, new industries
- B were to be given the benefit of concessional tariffs for the first five years of production. It is alleged that on the basis of said promise the appellants proceeded in setting up their projects and established their industrial units which commenced production. The appellants were sanctioned the power supply
- C by the respondents and started production.

3. Subsequently, by notification dated 30.4.1982 the respondents by revising the tariff introduced a new condition to the tariff concession, namely, that the said concession was not to apply from the year when the industry starts earning
- D profits. On the basis of the above notification, the appellants were asked by the respondents to give an undertaking, which they gave, fearing disconnection of their power supply.

4. It is alleged by M/s. Kothari Industrial Corporation
- E Limited, which is one of the appellants before us, that in the year 1982-83 they disclosed a net profit of Rs.7,07,572/- which under Income Tax Act was available for set off against carry forward losses which amounted to Rs.45,20,611/- . Hence it was alleged that in fact the said appellant incurred losses. The
- F appellant has been served notice to pay Rs.2,09,433/- to avoid disconnection of power supply.

5. The appellants have relied on the decisions of this Court in *Pawan Alloys & Casting (P) Ltd. vs. U.P. State Electricity Board & Ors.* (1997) 7 SCC 251, *Southern*
- G *Petrochemical Industries Company Limited vs. Electricity Inspector and E.T.I.O. & Ors.* (2007) 5 SCC 447, *Shri Bakul Oil Industries & Anr. vs. State of Gujarat & Anr.* (1987) 1 SCC 31 etc. On the basis of the aforesaid decisions the appellants relied on the doctrine of promissory estoppel and
- H legitimate expectation.

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