**(2007) 03 GAU CK 0037**

**Gauhati High Court**

**Case No:** None

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| State of Manipur | | APPELLANT |
| | Vs | |
| All Manipur Petroleum Products Transporters Asson. and Others | | RESPONDENT |

**Date of Decision:** March 14, 2007

**Acts Referred:**

- Constitution of India, 1950 - Article 166, 299, 77

**Citation:** (2007) 3 GLT 747

**Hon'ble Judges:** U.B. Saha, J; I.A. Ansari, J

**Bench:** Division Bench

**Judgement**

I.A. Ansari, J.
The material facts and various stages, which have given rise to this appeal, may, in brief, be set out as follows:

(i) As the State of Manipur is a land-locked State and railways do not function in the State, transportation of essential commodities depends entirely on movement of various motor vehicles. The State''s requirement for various petroleum products, such as, MS (Petrol), Kerosene, HS Diesel (HSD) and Aero Turbine Fuel (ATF), etc., is met by transportation of these petroleum products by oil tankers through NH 39. When, therefore, the State of Manipur is without diesel and petrol, movement of vehicles stops and transportation of essential goods comes to stand-still. The respondent No. 1 herein is an Association formed and constituted by the oil transport contractors of the State of Manipur for welfare and development of its members. Respondent No. 2 herein is an Association formed and constituted by the owners of the oil tankers in the State of Manipur for the welfare and development of its members. The members of these two associations are the only transporters of various kinds of petroleum products in the State of Manipur.

(ii) On 31.12.2000, one oil tanker of a member of the said Association was burnt down between Tadubi and Mao, on the NH 39, by suspected underground extremists and in this accident, the oil tanker involved exploded and the petrol, loaded therein, got completely burnt down. The news of the incident spread like wild fire. Following this incident, members of the two Associations stopped transporting petroleum products to the State of Manipur. As a result thereof, the residents of Manipur suffered immensely, for, non-availability of petroleum products led to the rise of prices of essential commodities and the buses, which carry passengers, too felt the impact. A meeting was, then, convened, on 10.01.2001, by the Minister, Food and Civil Supplies, Government of Manipur, with the representatives of the respondent Association No. 1. Following some deliberations, an agreement, in writing, was reached between the Minister concerned, on the one hand, and the representatives of the respondent No. 1, on the other. To this agreement, one of the officers of the Indian Oil Corporation Ltd. (in short, ''the IOC''), i.e., respondent No. 4 herein, was a witness. This agreement read as under:

Agreement made on 10.1.2001 between the All Manipur Petroleum Products Transporters'' Association, Imphal, Manipur for resumption or lifting/transportation of petroleum products meant for Manipur from outside state:

A meeting convened by the Minister (ICS), Manipur with the representatives of the All Manipur Petroleum Products Transporters Association, Imphal was held on 10.1.2001 at 11.00 am in the conference room of the Hon''ble Minister (I''-CS), Manipur.

In the meeting the transporters Association expressed their grievances and made certain demands for protection of petroleum products and the oil tankers while transporting the products from Khatkhati to Imphal. After a minute discussion the following agreements were arrived at:

i) The State Govt. will provide full security coverage from Imphal to Khatkhati and back for oil tankers while transporting petroleum products like M.S., HSD, S.K. Oil etc.

ii) To compensate the loss suffered by the transporters association'' on 31.12.2000 as a result of burning down of one of its oil tankers on NH-39 near Tadubi, a committee comprising the representative of the Govt. the transporters assn. & IOC/AOD would be constituted to assess the extent of damages/loss suffered by the association.

iii) On receipt of the report of title committee the Govt. will determine the amount of relief to be paid to the owner through the association. Relief to be provided to the association will be made within the current financial year.

iv) The Govt. will also take follow up action on the Gov assurance given to the association on similar incidents that took place in the year 1998.

v) The transporters association will resume transportation of the above mentioned products as soon as the security escorts are provided by the Government.

(iii) In terms of the agreement quoted above, the Minister, Food and Civil Supplies, Govt. of Manipur, agreed, that (a) the State Government would provide security coverage from Imphal to Khatkhati and back, while the tankers transport petroleum products, such as, MS (Petrol), HSD (Diesel), SK Oil; and (b) that the State Government would compensate the loss suffered by the transporters Association in the said accident on 31.12.2000. In terms of the agreement, so arrived at, the transporters also undertook to resume transportation of petroleum products as soon as security escorts were provided by the government.

(iv). Following the agreement, dated 10.01.2001, aforementioned, the two Associations aforementioned resumed lifting of petroleum products from Assam and transporting the same to the State of Manipur. However, on 23.01.2001, nine loaded oil tankers, i.e., six Petrol tankers, two Diesel tankers and one SK oil tankers were, again, set ablaze by the suspected underground militants on the said National Highway near Karong, District Senapati, Manipur. According to the said two Associations, this incident took place due to the breach of agreement by the State Government inasmuch as the State Government had not provided necessary security coverage, while petroleum products were being transported. This apart, as the loss sustained by the members of the Associations had not been made good by the State Government, the members of both the said Associations went on indefinite strike from 23.01.2001 and transportation of petroleum products,l in the State of Manipur, came to a grinding halt. This resulted into great sufferings of the general public. Realizing the difficulties faced by the residents of Manipur, the IOC (i.e. respondent No. 4 herein) had an informal meeting with the representatives of the said two Associations. Following the meeting so held, the IOC sent a letter, on 25.01.2001, to the Chief Secretary, Government of Manipur, apprising the latter of the demands raised by the two Associations, namely, that (a) full compensation should be paid for the tankers, which got burnt down; (b) highway protection force shall be provided all along the National Highway No. 39 from Imphal to Dimapur, and (iii) the State Government shall give assurance that the it would be responsible for the loss incurred by the membors of the Association as a result of damage done to the vehicles as well as the petroleum products. On 30.01.01, another meeting between the members of the said two Associations on the one hand, and the Minister, Food and Civil Supplies, Government of Manipur, on the other, was held and an agreement was reached, which is reproduced herein below:

Agreement made on 30th January, 2001 in connection with burning down ten Nos. Tank Trucks in a fire incident. The following agreements were made between the Hon''ble Minister (FCS), Manipur and the representatives of All Manipur Petroleum

Products Transporters'' Association and All Manipur Oil Tankers'' Owners'' Assn. on 30.1.2001.

1. The State Govt. will provide full security coverage to and from Imphal-Khatkhati for Oil Tankers in transportation of Petroleum Products to meet the requirement of Manipur State. Transporters/Owners should ensure to detail their Oil Tankers on the fixed date/day of escort for lifting and Transporting of petroleum products from Khatkhati/Dimapur.

2(i) To compensate the loss suffered by the Assn. Owners of the Oil Tankers on account of fire incident which took place on 31.12.2000 and 23.1.2001 on NII-39 near Tadubi and Karong in which the following tankers including petroleum products were burnt down by miscreants.

Sl. TT Cost of Product Product Qty Remarks No. No. vehicle cost (KL)

Rs.

1. MN-0I-47126,50,000 3,35,000 M.S. 12 Claim...of the

2. MN-01-47/4 6,50,000 3,35,000 M.S. 12 AMPTA and

3. NLN-8841 5,70,000 2,20,000 M.S. 10 AMOTO Assn.

4. MN-01-4188 6,50,000 3,35,000 M.S. 12 Imphal.

5. MNA-1843 4,60,000 2,90,000 M.S. 10.6. MN-02-5436 8,50,000 3,35,000 M.S. 12/7. MN-01-4578 5,60,000 3,35,000 M.S.128. MN-01 3895 5,40,000 75,000 S.K.O. 12

6. MNP-1712 3,50,000 10. MN-01-4242 5.50,000 2,90,000 M.S. 12 58,30,00026,20,000

(ii) The State Govt. will constitute a Committee to access the extent of loss/damages immediately.

3. (i) On receipt of the report of the Assessment Committee Govt. will arrange all possible relief to be paid to the owners of ill-fated Tank Trucks by within the current financial year through Association.

(ii) It was also agreed that the State Govt. will arrange to pay a sum of Rs. 20,00,000/-(Rupees twenty lakhs) as immediate relief to the Assam on or before 10.2.2001.

4(i). The Govt. will also approach the Ministry of Petroleum and Natural Gas to write off the loss as a special case and AOD authority will also be appraised not to recover the loss of produce amount from the Transporters'' bill for sometime, i.e. till fmalization of the request from MOP.

(ii) In case the M.O.P. rejects the request the State Govt. will be made good for the entire loss.

5. Any kind of unforeseen incident took place while coming under security coverage in which loss and damage of man and material will be taken the account as a part of agreement.

(v). In terms of the agreement reached on 30.01.2001, the Minister, Food and Civil Supplies, agreed that (i) the Government of Manipur would arrange to pay rupees twenty lakhs as immediate relief to the Associations on or before 10.02.2001; and (ii) that the State Government would approach the Ministry of Petroleum, Govt. of India, to write off the loss as a special case and the authorities of the Assam Oil Division (i.e. AOD) would be requested not to recover the amount from the transporters ''bills until the time the Ministry of Petroleum took a final decision in the matter. In terms of the agreement reached on 30.01.2001, it was further agreed that in case, however, the Ministry of Petroleum, Govt. of India, rejects the State Government''s request for writing off the loss sufferedbythe members of the two Associations as a special case, the State Government would bear the entire loss and that if, while transporting the petroleum products under the security coverage, an accident takes place resulting into loss and damage of man and/or material, such loss and/ or damage would be taken into account as a part of the agreement. The respondent Association No. 1 herein, then, submitted an application, on 26.02.2001, to the Executive Director, IOC, AOD, Digboi, informing him about the said agreement reached on 30.01.2001 and requesting him not to recover from the transporters'' bills the value of the oil, which had got burnt in the incident, which took place, on 23.01.2001, till the matter was settled. Thereafter, by order, dated 17.02.2001, a sum of rupees twenty lakhs was sanctioned by the Government of Manipur and paid to the members of the said two Associations. However, on 08.03.2001, while the convoy of tankers, belonging to the members of the said two Associations, were carrying petroleum products under armed escort, which had been provided by the State Government, some militants ambushed the convoy and the incident resulted into burning down of fifteen fully loaded oil tankers, death of one driver and injuries to fifteen persons. Following the incident, which occurred on 08.03.2001, the two Associations aforementioned submitted an application, dated 10.03.2001, to the Chief Minister, Government of Manipur, praying for granting money as ex gratia to the bereaved family of the driver and also pay, in terms of the agreement, dated 30.01.2001, damages to the owners of the petroleum tankers for damage caused to the tankers and the petroleum products. This application was followed by a number of applications made to various Ministers of the State Government for taking necessary action in terms of the agreement aforementioned. In the meanwhile, the IOC too sent demand notices to the members of the said two Associations directing them to pay the value of petroleum products, which had been lost in the incident of 08.03.2001. As the State Government had not taken any step to make payment of the amount, which had been demanded by the IOC, the two Associations filed writ petitions, which gave rise to WP (C) No. 7758/2001 and WP(C).No. 1732/2001.

2. The State Government resisted the said two writ petitions, their case being, in brief, thus: The agreements, dated 10.01.2001 and dated 30.01.2001, signed by the Minister, Food and Civil Supplies, Government of Manipur, on behalf of the State Government, are null and void inasmuch as the Minister concerned had no authority to enter into any such agreement as he did and bind the Government to such agreements. Any agreement to be binding on the Government must, according to the Rules of Business of the Government of Manipur, be signed in the name of the Governor by an officer of a rank of not less than Under Secretary to the State Government. The agreements, which have been relied upon by the said two Associations, are not binding on the State Government and the State Government is not liable to pay any compensation for the loss sustained by, or the damage caused to the properties of, the said two Associations.

3. The two important questions, which fell for consideration in the writ petitions were: (i) whether the Minister, Food and Civil Supplies, Government of Manipur, could have acted on behalf of the State Government and enter into an agreement, as he did, binding the State Government; and (ii) whether the State Government is barred by the principle of promissory estoppel from refusing to comply with the terms of the agreements, which had been reached on 10.01.2001 and 30.01.2001, as mentioned hereinabove. As the learned Single Judge answered these two questions in favour of the writ petitioners, directions were given, in the writ petitions, to the State Government to carry out their promises made in the said two agreements and make good the loss suffered by the members of the two Associations in the incidents, which took place on 03.12.2001, 23.01.2001 and 08.03.2001, within five months from the date of receipt of the order. Aggrieved by the decision, so reached, and the directions, so given, the State has preferred an appeal, which has given rise to the present Writ appeal. As the IOC has also been stopped from realizing the amount for the petroleum products, which had been lifted by the members of the said two Associations, the IOC has also filed an appeal, which has given rise to Writ Appeal No. 71 /2006.

4. We have heard Mr. Ashok Potsangbam, learned Advocate General, Manipur, appearing on behalf of the appellant, and Mr. B.P. Sahu, learned Counsel for the writ petitioners-respondents.

5. Learned Advocate General, Manipur, has submitted that according to the Rules of Business of the Government of Manipur (in short, ''the Rules of Business''), all proposals, which affect the finances of the State and in which previous concurrence of the Finance Department is necessary under the Rules of Business, the Finance Department shall be consulted before the issue of any order.

6. Under Rule 34A of the Rules of Business, points out the learned Advocate General, proposals involving expenditure for which no provisions have been made in the Appropriation Act necessitate consultation with the Finance Department before the order is issued. In the present case, contends the learned Advocate General, it is

clear that the agreements, which the Minister, Food and Civil Supplies, had signed, involved expenditure for which no provision, under the Appropriation Act, had been made and in view of the fact that in such circumstances, consultation with the Finance Department was imperative, but had not been done, the State Government, as a whole, could not have been bound down by the agreement, which the Minister had reached beyond the powers, which the said Rules of Business vested in him

7. The learned Advocate General also submits that in terms of the contract agreements, which the two associations had with the IOC, the contractors had undertaken to have comprehensive insurance policy from an established insurance company for each of their vehicles and to keep such policy in force, at all times, to cover all risk of whatever nature inclusive of any damage caused by the tanker (s) to the IOC''s, property. Thus, the loss sustained by the owners of the tankers are, according to the learned Advocate General, recoverable from the insurer concerned and in the face of this agreement, no financial inability for the loss, if any, sustained by the members of the said two associations could have been imposed on the State Government.

8. Further submission of the learned Advocate General is that the doctrine of promissory estoppel does not apply to the facts of the present case inasmuch as the promises, if any, made, in the present case, was not by an authority competent to do so, nor was the promise made in accordance with law, for, a Minister, under the Rules of Business, is not competent, points out Mr. Ashok Potsangbam, to sign any agreement and that an agreement, to be binding on the Government, has to be signed, under the Rules of Business, by an officer of the rank of not less than Under Secretary to the State Government and such agreement has to be reached in the name of the Governor of the State. In support of his submission that the Minister, in the present case, was not empowered to bind the Government with financial liabilities in a case of present nature, the learned Advocate General places reliance on the case of Mahesh Kumar Mudgil Vs. State of U.P. and Others, , and Haridwar Singh Vs. Bagun Sumbrui and Others, .

9. Support for his submission that in a case of present nature, the doctrine of promissory estoppel cannot be invoked, the learned Advocate General has placed reliance on Union of India and Another Vs. Tulsiram Patel and Others, , Shree Subhlaxmi Fabrics Pvt. Ltd. Vs. Chand Mal Baradia and Others, , Union of India and Another Vs. Tulsiram Patel and Others, , and Sharma Transport Rep. by D.P. Sharma Vs. Government of Andhra Pradesh and Others,

10. Opposing the submissions made on behalf of the appellant, Mr. B.P. Sahu, learned Counsel for the writ petitioners-respondents, has, by referring to the cases of Union of India and Anr. v. Sripati Ranjan Biswas and Anr. AIR 1975 SC I755, submitted that the decision of a Minister, under the Rules of business, is the decision of the Government and, hence, in the present case, when the subject-matter, which the Minister concerned had dealt with, fell under his

Department, the promise made by him was binding on the Government and it would not make any material difference even if the Minister had not consulted the Finance Department, for, the Minister had acted, according to Mr. Sahu, on behalf of the State Government in the present case. It is also submitted, on behalf of the writ petitioners-respondents, that there was implied concurrence of the Government, as a whole, to the agreements, which the Minister had reached with the writ petitioners. It is pointed out by Mr. Sahu that since the Minister was allowed to represent the State Government in dealing with the writ petitioners, the agreements reached by the Minister, were binding on the Government and the doctrine of promissory estoppel does not, now, permit the State Government to resile from the promises, which the Minister had made in the agreement aforementioned.

11. Pointing to various materials available on record, Mr. B.P. Sahu has contended that the State Government has partly acted on the said agreements inasmuch as it had provided, in terms of the agreements aforementioned, security coverage, on some occasions, to the tankers, which were carrying petroleum products, and also by providing, in terms of the said agreements, the relief of Rs. 20,00,000/- (Rupees Twenty Lakhs) to the members of the said associations to make good the loss sustained by the members of the said association in the first incident, which took place on 03.12.2000. Having so acted upon the agreements, contends Mr. Sahu, the State Government had made it clear to the parties concerned that it had bound itself by all the terms and conditions, which had been reached between the parties to the agreement aforementioned. In such circumstances, the doctrine of promissory estoppel, reiterates Mr. Sahu, does not permit the State Government to resile from the promises made by it, through the Minister, Food and Civil Supplies, to make good the loss or damage, which may be sustained by the members of the said two associations. In support of his submissions that the doctrine of promissory estoppel is squarely applicable to the facts of the case at hand, Mr. Sahu places reliance on the decisions in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , Bakshi Sardari Lal (Dead) through Lrs and Others Vs. Union of India (UOI) and Another, , Air India Cabin Crew Association Vs. Yeshawinee Merchant and Others, , State of Orissa and Others Vs. Mangalam Timber Products Ltd., , Shri. Amrik Singh and Others Vs. Union of India (UOI) and Others, , and Oriental Insurance Co., Ltd. v. Mantora Oil Products Pvt. Ltd., (2000) 10 SCC 26

12. The mere fact, submits Mr. B.P. Sahu, that the agreement was signed by the Minister and not, in terms of the provisions of the Rules of Business, by an officer competent to sign such an agreement cannot be of any material consequence insamuch as the Minister, according to Mr. Sahu, had acted, as the events disclose, with the consent of the Government and, thus, when the acts done by the Minister was on behalf of the Government, such acts must be treated to have been done by the State Government in the name of the Governor of the State. To draw support for this submission, Mr. B.P. Sahu places reliance on Air India Cabin Crew Association Vs. Yeshawinee Merchant and Others,

13. Refuting the submissions made on behal fo the writ petitioners-respondents, Mr. Ashok Potsangbam, learned Advocate General, submits that the payment of Rs. 20,00,000/- (Rupees Twenty Lakhs only) was made, by the Home Department of the State Government, not pursuant to the promises made by the Minister, but as a measure of relief, which the Home Department of the State Government, otherwise, also provides in deserving cases. Hence, merely because of the fact that the amount of Rs. 20,00,000/- (Rupees Twenty Lakhs only) had been paid to the said two associations, it does not, as a collorary thereto, mean, contends the learned Advocate General, that the Government has become bound by the agreements, which had been reached by the Minister with the writ petitioners.

14. While considering the present appeal, what needs to be carefully noted is that Sripati Ranjan Biswas'' case (supra) is an authority for the proposition that when a decision is taken by a minister on a subject-matter, which falls within the ambit and domain of his ministry, such a decision is binding on the government. The mere fact that the decision, in such a case, has been reached or the order has been passed by the minister concerned and not by the President would not render the order, so made, ineffective. What, however, needs to be pointed out is that the decision, in Shripati Ranjan Biswas (supra), cannot be extended to a case, wherein the minister concerned takes a decision on a subject matter, which is outside the purview of his ministry or does not fall within the domain or ambit of his powers under the Rules of Business of the Government. Whether a minister is entitled to take a decision on a particular subject and whether his decision is binding on the government would wholly depend on the rules of business of the government and the nature of conduct of the Minister and the Government. It may also be pointed out that the decision, in Sripati Ranjan Biswas (supra), is based on, and derives strength from, a Seven-Judge Bench decision of the Supreme Court, in Samsher Singh Vs. State of Punjab and Another, , wherein the Supreme Court held, at para 48, thus:

The President as well as the Governor is the constitutional or formal head. The President as well as the Governor exercises his powers and functions conferred on him, by or under the Constitution, on the aid and advice of his Council of Ministers, save in spheres, where the President or Governor is required by or under the Constitution to exercise his functions in his discretion. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise by the President or the Governor of any power or function, the satisfaction required by the Constitution is not the personal satisfaction of the President or Governor, but the satisfaction of the President or Governor in the constitutional sense in the Cabinet system of Government, that is, satisfaction of his Council of Ministers on whose aid and advice, the President or the Governor, generally, exercises all his powers and functions. The decision of any Minister or officer under Rules of Business made under any of these two Articles 77(3) and 166(3) is the decision of the President or the Governor respectively. These articles did not provide for any delegation. Therefore, the decision of a Minister or officer under the Rules of Business is the

decision of the President or the Governor.

15. The Apex Court has further pointed out in Samsher Singh (supra) that the appointment as well as removal of the members of the Subordinate Judicial Service is an executive action of the Governor to be exercised on the aid and advice of the Council of Ministers in accordance with the provisions of the Constitution. Appointments and removals of persons are made by the President and the Governor as the constitutional heads of the Executive on the aid and advice of the Council of Ministers and it is for this reason that any action by any servant of the Union or the State, with regard to appointment or dismissal, is brought against the Union or the State and not against the President or the Governor.

16. From what has been held in Samsher Singh (supra), it is clear that except where the President or the Governor exercises his discretionary power, the President as well as the Governor act on the aid and advice of their Council of Ministers in their executive function. The case of Sripati Ranjan Biswas (supra) further clarifies, if I may reiterate, that when a Mini ster takes a decision on a subject-matter, which falls within the domain of his ministry and if the decision is taken in accordance with the Rules of Business of the Government, such a decision, though ought to have been taken in the name of Governor, may nevertheless be the decision of the Government-be it under Article 77(3) and/or 166(3).

17. The rules of business of a Government consist of two distinct parts; while some of the provisions of the rules may be directory, there may be provisions in the rules, which are mandatory in nature, if the rules do not empower a minister to take a decision or if a minister takes a decision on a subject matter, which is outside the domain and ambit of his ministry, such a decision would not be binding on the Government. Similarly, when the rules require prior consultation with the Finance Department as a pre-requisite for exercise of power by a minister, a decision taken by a minister without such consultation with, or concurrence of, the Finance Department, would not be binding on the Government, particularly, when such an action or decision involves revenue expenditure and is not covered by an Appropriation Act. This position of law becomes abundantly clear from the decision in Haridwar Singh (supra) and Mukesh Kumar Mudgil (supra).

18. In order to appreciate principles propounded in Haridwar Singh (supra), it is imperative to note that Rule 10 of the rules of executive business, which was considered by the Apex Court, in Haridwar Singh (supra), read as under:

10. (1) No department shall, without previous consultation with the Finance Department, authorise any orders (other than orders pursuant to any general or special delegation made by the Finance Department) which--

(a) Either immediately or by their repercussion, will affect the finances of the State, or which, in particular,

(i) Involve any grant of land or assignment of revenue or concession, grant, lease or license of mineral or forests, rights or a right to water power or any easement or privilege in respect of such concession.

* * * *

(2) Where'' on a proposal under this rule, prior consultation with the Finance Department is required, but on which the Finance Department might not have agreed, no further action shall be taken on any such proposal until the cabinet takes a decision to this effect.

19. In Haridwar Singh (supra), while considering the question as to whether consultation with the Finance Department was or was not mandatory, the Apex Court pointed out:

15. Where however, a power or authority is conferred with a direction that certain regulation or formality shall be complied with, it seems neither unjust nor incorrect to exact a rigorous observance of it as essential to the acquisition of the right or authority (see Maxwell, Interpretation of Statutes, 6th edition, pp. 649-650).

16. In this case, we think that a power has been given to the Minister in charge of the Forest Department to do an act which concerns the revenue of the State and also the rights of individuals. The negative or prohibitive language of Rule 10(1) is a strong indication of the intent to make the rule mandatory. Further, Rule 10(2) makes it clear that where prior consultation with the Finance Department is required for a proposal, and the department on consultation, does not agree to the proposal, the department originating the proposal can take no further action on the proposal. The cabinet alone would be competent to take a decision. When we see that the disagreement of the Finance Department with a proposal, on consultation, deprives the department, originating the proposal, of the power to take further action on it, the only conclusion possible is that prior consultation is an essential prerequisite to the exercise of the power. We, therefore, think that the order passed by the Minister of Forest, Government of Bihar on December 13, 1970, settling the coup in favour of the 6th Respondent was bad and we quash the order.

20. Similarly, in the case of M.K. Mudgil (supra), para 4(2) of the Uttar Pradesh Rules of Business, 1975, was considered. Para 4(2) of the Rules, which was so considered, was similar in nature as Rule 34A in the present case. On considering para 4(2), the Apex Court held that the Rule is specific and carries with it the mandate of the Constitution under Article 166 thereof. Based on this Rule, the decision taken by the Government, consistent with the decision of the Finance Department, not to extend the duration of a post was held to be a valid decision and not interfered with.

21. In the present appeal, Rules 34A, which is the sheet-anchor of the appellants'' case, states as follows:

34 A. The Finance Department shall be consulted before the issue of orders upon all proposals which affect finances of the State and in which its previous concurrence is necessary under these Rules and in particular;

(a) Proposals to create any post or abolish any post from the public service or to vary the emolument of any post;

(b) Proposals to sanction an allowance or special or personal pay for any post or class of posts or to any servant of the Government of the State;

(c) Proposals involving abandonment of revenue or involving an expenditure for which no provision has been made in the Appropriate Act.

22. In the backdrop of the law laid down in Haridwar Singh (supra) and M.K. Mudgil (supra), when Rule 34A, in the present case, is examined, it clearly emerges that if a decision by any Minister of any Department involves financial implication for the State and no provisions, in this regard, have been made in the Appropriation Act, the Department as well as its Minister is bound to consult the Finance Department and if the Finance Department does not agree or does not give consent to such a decision, the decision will be without jurisdiction unless, in terms of the Rules, appropriate authority, such as, the Chief Minister or the Cabinet, as the case may be, approves the decision taken by the Department concerned contrary to the decision or opinion of the Finance Department.

23. There can be no dispute and, in fact, it has not been disputed that unless a power exists in law, exercise of non-existent power would be nothing, but void. If, in a given case, the minister does not have the power to take a decision or pass an order or if he is prohibited, by the rules of business, from either taking a decision or passing an order, exercise of such a non-existent power would be void ab initio. A promissory estoppel, as correctly submitted by the learned Advocate General, cannot be used to compel the Government to carry out such representation or promise, which is either prohibited by law or is devoid of authority, for, in such a case, the power can be said to have been exercised without authority of law or contrary to law. This position of law has succinctly been described by the Apex Court, at para 24 of its decision in Sharma Transport (supra), thus:

It is equally settled law that the promissory estoppel cannot be used to compel the Government or a public authority to cany out a representation or promise which is prohibited by law or which was devoid of the authority or power of the officer of the Government or the public authority to make. Doctrine of promissory estoppel being an equitable doctrine, it must yield place to the equity, if larger public interest so requires, and if it can be shown by the Government or public authority for having regard to the facts as they have transpired that it would be inequitable to hold the Government or public authority to the promise or representation made by it. The court on satisfaction would not, in those circumstances raise the equity in favour of the persons to whom a promise or representation is made and enforce the promise

or representation against the Government or the public authority. These aspects were highlighted by this Court in Vasantkumar Radhakisan Vora Vs. The Board of Trustees of the Port of Bombay, , Sales Tax Officer and Another Vs. Shree Durga Oil Mills and Another, and Dr. Ashok Kumar Maheshwari Vs. State of U.P. and Another, . Above being the position, the plea relating to promissory estoppel has no substance.

24. The true meaning and scope of the doctrine of promissory estoppel, in the realm of governmental promises and application of this doctrine to the facts of the present case, may be summarized thus : Where the Government makes a promise knowing or intending that it would be acted upon by the promisee and, in fact, the promisee, acting upon the promise, 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 the fact that there was no consideration for the promise and the promise was not recorded in the form of a formal contract as required by Article 299 of the Constitution or in accordance with the procedure prescribed by the relevant statute. The doctrine of promissory estoppel would be attracted in such a case, for, on the facts, equity would require that the Government should be held bound by the promise made by it. When the Government is able to show that public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest vis-a-vis the position of the promisee, who has altered his position, and it is the Court, which has to, eventually, determine which way the equity lies. It would, however, not be enough for the Government merely to contend 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 its promise. 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 exempted from the liability and it would be for the Court to decide whether those 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. The Court would not act on the mere ipse dixit of the Government, for, the Government cannot be the judge of its own cause and it is the Court, which has to, ultimately, decide and not the Government whether the Government should be held exempt from liability. The doctrine of promissory estoppel would apply even when the promise would, if acted upon, give rise to legal relationship in future. The doctrine of promissory estoppel would not be attracted if the promise made by the Government is barred by law. However, when the law does not bar the Government from making the promise, as might have been made by the Government, or when making of the promise itself is

not contrary to law, the Government would be required to abide by the promise. The Government has to function as a cohesive body and its different organs or departments have to act in tandem with each other and in harmony with each other on the principles of collective responsibility. The constitutional scheme of governance of the Government does not permit the Government to work in violation of the principles of collective responsibility. It will, therefore, be no defence for the Finance Department, in a case of the present nature, to merely contend that until the time, requisite notification, in terms of the relevant statute, is published, the promise for tax exemption made by the Government under its industrial policy cannot force the Government to grant such exemption, for, there is no estoppel against the statute. In a case of this nature, if the promise made by the Government is not barred by law, though the same might not have been made strictly in accordance with the relevant statute, yet it will be the duty of the Court to trace out the source of power of the Government and if the power is found to exist with the Government, the Government cannot be allowed to resile from its promise by merely citing lack of issuance of appropriate notification (s) in terms of the relevant statute. Since the doctrine of promissory estoppel can be used not merely as a shield but also as a sword and for forming cause of action, permissible it would be for the Court to insist upon the Government to issue requisite notification or, conversely, not to demand payment of taxes contrary to the promises made by the Government. If the industrial policy invites investment by making promises of exemption from payment of sales tax, neither the Finance Department can levy sales tax on the ground that until necessary notifications in terms of the relevant statute is issued, the industry, in question, would be liable to pay sale tax nor would it be permissible for even the Government to say that until the notification in termis of the relevant statute is brought out or published, the promise cannot be enforced against the Government. In a given case, however, even when the promise is not barred by law and there is no supervening public interest permitting the Government to resile from the promise, it will be still permissible for the Government to resile from the promise made by it if it is possible for the promisee to resume its original position or to restore status quo ante if, on a reasonable opportunity being given to the promisee, the promisee can resume his original position. If the status quo ante cannot be restored, the promise would become irrevocable and can be enforced against the Government. It will be no defence for the Government to say that the promisee ought to have known the position of law that without issuance or publication of the requisite notification under the relevant statute, the promise would not be binding. (See also State of Bihar v. Suprabhat Steel reported in (1999) 1 SCC 30 , Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , State of Punjab v. Nestle India Ltd. reported in (2004) 136 STC 35, and Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., ).

25. Though the decision in Godfrey Philips (India) Ltd. (supra), Motilal Padampat Sugar Mills Co. (supra) and Pournami Oil Mills (supra) are cases wherein the doctrine

of promissory estoppel was applied to the claims of exemption from payment of tax, the fact remains that the principles governing the application of promissory estoppel against the Government flowing from the decision in Godfrey Philips India Ltd. (supra) are that if the Government possesses a power, it is bound to wield that power to enforce its promise, the limitation on the enforcement of the promise being when the statute prohibits the exercise of powers necessary for carrying out the representation made by the Government or when the overriding public interest permits the Government not keep itself within the bounds of the promise made by it. In short, as long as, by asking the Government to keep to its promise, the Court does not force the Government to act contrary to law or against supervening public interest, the Court will not be doing anything wrong.

26. When a statute prohibits or bars enforcement of the representation made by the Government, the Court would not enforce the representation against the Government, for, the Government cannot be compelled to act contrary to the statute. Logically, therefore, when a sales tax enactment contains provisions enabling the Government to grant exemption from payment of sales tax, the Court can, in an appropriate case, force the Government to act in terms of its representation and it would be no defence for the Government to say that necessary notification, in terms of the taxing statute, has not been brought out or published, for, the Government, in such a case, can be bound by its promise to exempt person (s) from payment of sales tax.

27. Moreover, it further emerges from the decision in Pournami Oil Mills and Ors. v. State of Kerala and Anr. reported in 1986 SCC 728, that when the Government makes an announcement promising to grant exemption from sales tax if specified industries are set up at specified place (s) within a specified date without, however, bringing out corresponding notification granting exemption in terms of the relevant statute, the notification, which makes no reference to the provisions of the relevant statute, while making the announcement, would still be treated as a notification under the relevant provisions of the statute and the doctrine of promissory estoppel would force the Government not to deny the incentive of exemption from payment of sales tax promised by it provided, of course, that the other conditions for application of the doctrine exist.

28. Having made it clear that a minister''s entering into an agreement, with any party, involving revenue expenditure without consultation with the Finance Department or without provisions having been made in the Appropriation Act, is nothing, but an agreement reached beyond the powers of the minister and would be void ab initio, we would like to make it clear that notwithstanding the restrains or restrictions, which may have been put by the Rules of Business in a given case, when a minister is permitted by his State Government to act on its behalf and allows the Minister to make a promise on its behalf, the promise made by such a minister would be a promise made for and on behalf of the State Government and, in such a

case, it would be no answer for the State Government to contend that the Rules of Business did not empower the Minister to make the promise, which the minister has made, for, in such a case, the promise made by the minister would not be a promise made by a minister of the department concerned, but as a representative of the State Government. When the State Government has the power to take a decision and when it allows one of its ministers to take a decision on its behalf, the doctrine of promissory estoppel would be attracted and the Government would be bound, by the promise made, in such a case, by the minister, though the minister may not have the power to make such a promise, for, the government''s power would be traceable to the rules of business. If a Government has a power under the rules of business and it authorizes a Minister to make a promise, it would be binding on the Government. If, however, the Rules do not permit even the Government to make such promise or if any other law prohibits the Government, from making a promise, which a Minister, with the consent of his Government, has made or when the supervening public interest requires that the promise made is not adhered to, the Court cannot compel the Government, in such cases, to act according to the promise made by the Government.

29. We may further point out that though heavy reliance has been placed by the writ petitioners, on the case of Air India Cabin Crew Association (supra), to show that the agreement reached, in the present case, is binding on the government, we would like to point out that so far as the case of Air India Cabin Crew Association (supra) is concerned, it is an authority for the proposition that though, in terms of the provisions of the relevant rules, an order or an action needs to be taken in the name of the President or the Governor, and it has not been so done, yet an action or an order passed by a Minister or an authority may, in the context of the facts of a given case become binding on the government. In the present case, though the agreement has been signed by the Minister and not, in terms of the Rules, by a competent officer in the name of the Governor of the State, this fact, in itself, would not absolve the Government from the promises made in the agreements, if it is, otherwise, proved that the Minister had acted within the knowledge and with the authority of the State Government, for, under the rules, in question, State Government''s power to make such promises has not been disputed or doubted by the appellant.

30. Having discussed and indicated above the propositions of law governing the facts of the present case, what, now, needs to be pointed out is that in this writ petition, neither the Department of Finance nor the Chief Secretary to the Government of Manipur was made party. Since the subject-matter of promise involves revenue expenditure, the Chief Secretary to the State Government should have been made a party or, at least, the Secretary, Department of Finance, Government of Manipur, ought to have been made a party. Without giving the State Government, particularly, its Finance Department, any opportunity to have its say in the matter, it would not be appropriate to impose financial burden on the State

Government nor would it be proper to make the State Government wholly liable without giving the Chief Secretary to the State Government an opportunity of having his say in the matter, for, in the case at hand, there is no dispute that the promise made to provide security or to make good the loss, which may be suffered by the writ petitioners, are the promises, which are beyond the authority or power of the Minister concerned. If, therefore, the State government were to be heldliable, the State Government, its Finance Department and even Home Department ought to have been made parties to the writ petition, for, no effective order can be passed in their absence.

31. In the present case, though the State Government has been made party, the fact remains that it is only the Department of Food and Civil Supply, which has been made a party. The Department of Food and Civil Supply can bind the State Government only to the extent to which it is permissible by this Department to take a decision. When a subject-matter is outside the purview of a particular Department or involves revenue expenditure, which the Department concerned cannot incur without concurrence of the Finance Department, making the Department of Finance a party is an imperative necessity.

32. What crystallizes from the above discussion is that if the writ petition, in the present case, has to be effectively disposed of, the Chief Secretary to Government of Manipur, the Finance Secretary, Government of Manipur, and the Secretary, Home Department, must be made parties and they need to be given opportunity of having their say, in the matter, before the writ petition is finally disposed of. In other words, had the present case been one that concerned only the Department of Food and Civil Supply, the matter would have been different; but when the subject-matter involves the Finance Department and even the Department of Home, Departments of Finance and Home, Government of Manipur, were necessary parties.

33. Considering, therefore, the matter in its entirety and in the interest of justice, this writ appeal partly succeeds. The impugned judgment and order, dated 17.12.2004, and the directions, contained therein, are hereby set aside. The writ petition is remanded to the learned Single Judge with direction to implead the Chief Secretary to the Government of Manipur, the Secretary, Finance Department, Government of Manipur, and the Secretary, Home Department, Government of Manipur, parties to the writ petition and after giving them opportunity of having their say in the matter, the writ petition shall be considered and disposed of in accordance with law.

34. With the above observations and directions, this writ appeal stands disposed of.

No order as to cost.