



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 1151/2023

1. M/s Ultra Tech Cement Ltd., A Company Registered Under The Companies Act, 1956, Having Its Registered Office At 'b' Wing, Ahura Centre, 2Nd Floor, Mahakali Caves Road, Andheri (East), Mumbai - 400093 Through Its Authorized Signatory Mr. Dilip Kumar Kochar Having Office At Aditya Cement Works, Adityapuram, Sawa-Shambhupura Road, Chittorgarh (Raj.)-312622, Plant 1 At Kotputli Cement Works, Tehsil Mohanpura, Kotputli, Jaipur, Rajasthan, Plant 2 At Unit Aditya Cement Works, Shambhupura, District Chittorgarh, Rajasthan.
2. Mr. Bhanu Prakash Singh S/o Rajendra Singh, Aged About 54 Years, Residing At A-Type Bungalow, Staff Colony Adityapuram, Chittorgarh (Raj.) 312622

----Petitioners

Versus

1. Energy Department, Government Of Rajasthan, Through Its Secretary, Rvpn It Center, Chambal Power House Campus, Hawa Sarak, Jaipur 302006
2. Rajasthan Urja Vikas Nigam Limited, Through Its Chairman, Vidyut Bhawan, Janpath, Jyoti Nagar, Jaipur 302005
3. Jaipur Vidyut Vitran Nigam Limited, Through Chairman And Managing Director Jaopar - Kishangarh Expy, Heerapura, Ward No. 18, Jaipur 302020
4. Ajmer Vidyut Vitarnn Nigam Limited, Through Its Chairman And Managing Director, Bhawan, Panchsheel Nagar, Makarwali Road, Ajmer 305004
5. Rajasthan Renewable Energy Corporation Limited, Through Its Chairman, E-166, Yudhister Marg, C Scheme, Ashok Nagar, Jaipur - 302001
6. Finance Department, Government Of Rajasthan, Through Its Secretary, 1St Floor, Main Building, Gate 2, Government Secretariat, Jaipur, Rajasthan 302005

----Respondents

Connected with D.B. Civil Writ Petition Nos - 12531/2021, 13492/2021, 13525/2021, 15565/2021, 13979/2022, 15593/2022. - (Associations)

and

Connected with D.B. Civil Writ Petition Nos - 7298/2022, 9591/2022, 9593/2022, 9621/2022, 9633/2022, 9689/2022, 12614/2022, 13681/2022, 14422/2022, 15097/2022, 15337/2022, 17557/2022, 17691/2022, 19686/2022, 1964/2023, 2423/2023, 2688/2023, 2811/2023, 10590/2023, 10618/2023, 11135/2023, 18783/2023, 19436/2023, 4503/2024.

For Petitioner(s) : Mr. Vikas Balia, Sr. Advocate assisted by Mr. Mridul Chakravarty



Mr. Sharad Kothari, Mr. Lakshyajit Singh Badhwal, Mr. Sachin Saraswat, Mr. Shridhar Mehta, Mr. Abhishek Aggarwal for Mr. T.C. Sharma, Mr. Sunil Joshi, Mr. Kuldeep Bishnoi, Mr. Ankur Mathur, Mr. Kalpit Shishodia Mr. Chirag Soni, Mr. Samikrith Rao, Mr. Kunal Kaul, Mr. Abhishek Howt, Mr. Dinesh Kumar Bishnoi, Mr. Priyansh Arora, Mr. Gopal Sandu, Ms. Varsha Paliwal, Mr. Yashraj Singh Kanawat, Mr. Lakshya Bagadwat, Mr. Punit Choudhary, Mr. Manish Priyadarshi, Mr. Ayush Goyal, Mr. Vijay Bishnoi, Mr. Sachin Lohia

For Respondent(s) : Mr. Rajendra Prasad, Advocate General assisted by Mr. Anirudh S. Shekhawat, Mr. Dheerendra Singh Sodha, Mr. Anurag Jyani for Mr. Mahaveer Bishnoi, A.A.G., Mr. Harshwardhan Singh Chundawat, Mr. Arpit Samaria for Mr. Nathu Singh Rathore, A.A.G., Mr. Manvendra Singh, Mr. Bhavyadeep Singh

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE SUNIL BENIWAL
Judgment

Reportable

Judgment Reserved On : 23/03/2026

Pronounced On : 06/04/2026

By the Court (Per: Arun Monga, J)

D.B. Civil Writ Petition No. 1151/2023.

1. The issue raised by petitioner before us is qua the enforceability of policy assurances made by the State in the context of renewable energy promotion (solar power), and the extent to which such assurances can be withdrawn, allegedly to the detriment of petitioners/investors who have acted upon them.
2. The State of Rajasthan, with a view to promote solar energy, introduced the Solar Policy, 2019, which, inter alia, assured exemption from payment of electricity duty for a period of seven



years from the date of commissioning of solar power plants. Acting upon such representation, the petitioner made investments in establishing its captive solar power project.

3. The Petitioner No. 1 company, UltraTech Cement Limited ("UltraTech"), operates two cement manufacturing plants in Rajasthan, namely Aditya Cement Works and Kotputli Cement Works, for which it has established captive solar power generation facilities after declaration of the State Solar policy.

4. The grievance of the petitioner arises from the subsequent action of the State, whereby the benefit of exemption was withdrawn by way of impugned amendment dated 10.05.2022 in the Solar policy, thereby subjecting such project to electricity duty. The petitioner's case, inter alia, is anchored on promissory estoppel and legitimate expectation. More of it later.

CHRONOLOGY OF FACTS

5. Succinct factual narrative, shorn of unnecessary details, which, the petitioners state, led to their decision in setting up Solar power plants in Rajasthan, is as below :-

5.1. On 21.05.1962, the Rajasthan Electricity (Duty) Act, 1962 ("ED Act") came into force. Section 3 thereof levies a duty on a consumer consuming electricity generated by itself, at such rate as may be notified by the State Government. Section 3(3) further empowers the State Government, where it is of the opinion that it is necessary or expedient in public interest, to reduce or remit electricity duty, inter alia, for consumers in the manufacturing industry or persons generating energy for their own consumption.





5.2. On 10.06.2003, the Electricity Act, 2003 came into force. The Act seeks to promote efficient and environmentally benign policies, as reflected in its Statement of Objects and Reasons, and incorporates several provisions aimed at encouraging efficient use of captive as well as renewable energy through various facilitative measures.

5.3. On 12.02.2005, the Government of India notified the National Electricity Policy under Section 3 of the Electricity Act. Clause 5.12 thereof envisages the need to promote electricity generation from non-conventional (renewable) sources through appropriate promotional measures.

5.4. On 06.01.2006 (as revised on 28.01.2016), the Government of India notified the Tariff Policy under Section 3 of the Electricity Act, which has a statutory force. Clause 6.4 of the said policy mandates that State Electricity Regulatory Commissions ("SERCs") shall endeavour to promote renewable energy by prescribing a minimum percentage for procurement of power from such sources.

5.5. On 08.03.2006, the Government of Rajasthan issued a notification remitting electricity duty on consumption of electricity by a person generating such electricity for its own use.

5.6. In July 2012, the Government of Rajasthan issued the "Policy for Promoting Generation of Electricity from Wind, 2012" ("Wind Policy, 2012"). Clause 9.1 thereof provided that energy consumed by a power producer for captive use would be exempt from payment of electricity duty.





5.7. On 04.03.2014, the Government of Rajasthan issued a notification amending, inter alia, Clause 9.1 of the Wind Policy, 2012, to restrict the exemption to energy consumed for captive use within the State of Rajasthan.

5.8. On 18.10.2014, the Government of Rajasthan introduced the Rajasthan Investment Promotion Scheme, 2014 ("RIPS, 2014"), which provided, inter alia, that eligible manufacturing enterprises would be granted exemption from payment of 50% of electricity duty for a period of seven years (subject to a reduced benefit of 25% for the tourism sector).

5.9. In year 2014 itself, the Government of Rajasthan also notified the Rajasthan Solar Energy Policy, 2014 ("Solar Policy, 2014"). Clause 13.1 thereof provided that captive solar generators would be treated as eligible industries under RIPS, 2014. Unlike wind energy projects which enjoyed full exemption, solar projects were extended only a 50% exemption.

5.10. On 09.03.2015, the Government of Rajasthan issued a notification, in supersession of the earlier notification dated 08.03.2006, prescribing electricity duty at the rate of Rs. 0.40 per unit on consumption of captively generated electricity (other than from diesel generating plants), with effect from 16.03.2015.

5.11. On 15.12.2016, the Government of Rajasthan issued a notification (Annexure P-10) granting complete exemption from payment of electricity duty to captive solar plants up to 31.03.2018.

5.12. On 10.07.2019, the Government of Rajasthan issued a notification extending the exemption from electricity duty for





captive solar plants from 01.04.2018 to 31.03.2020. The said notification also amended the earlier notification dated 09.03.2015 by enhancing the duty rate from Rs. 0.40 per unit to Rs. 1.00 per unit.

5.13. On 01.08.2019, the Government of Rajasthan issued a further notification amending the notification dated 09.03.2015 by revising the electricity duty rate from Rs. 1.00 per unit to Rs. 0.60 per unit.

5.14. In year 2019, the Government of Rajasthan also introduced the Rajasthan Solar Energy Policy, 2019 ("Solar Policy, 2019"), which provided for exemption from payment of electricity duty for a period of seven years from the Commercial Operation Date (COD) for captive solar plants registered under the policy, subject to consumption of power within the State.

5.15. In the same year, the Government of Rajasthan also notified the Wind and Hybrid Energy Policy, 2019, which, under Clause 34.3, granted a blanket exemption from electricity duty to captive wind and wind-solar hybrid power projects without any sunset clause or commissioning-based limitation, unlike the conditional exemption provided to solar projects.

5.16. On 30.06.2021, the Chairman of Ajmer Vidyut Vitran Nigam Ltd., Jodhpur Vidyut Vitran Nigam Ltd., and Jaipur Vidyut Vitran Nigam Ltd. ("Rajasthan Discoms") issued impugned letter (Annexure P-15) clarifying that electricity duty at the rate of Rs. 0.60 per unit is chargeable on consumption of self-generated energy from captive power plants (other than diesel generating sets). The letter further clarified that the exemption granted vide





notification dated 10.07.2019 remained operative only until 31.03.2020, and consequently, electricity duty is leviable on such consumers with effect from 01.04.2020.

5.17. Acting thus on the basis of the assurances given by the State of Rajasthan, particularly, as per Solar Policy 2019, the Petitioner No. 1 has taken various steps for setting up a captive solar power plant in the State of Rajasthan. In this regard, the relevant details are as under:-

S.No.	Particular	Aditya	Kotputli
1.	Project Registration No	S/2019/0127	S/2019/0152
2.	Date of application for registration	27.09.2021	13.01.2022
3.	Date of registration	22.11.2021	24.03.2022
4.	Date of in-principle clearance	16.03.2022	25.07.2022
5.	Date of final approval	01.04.2022	17.08.2022
6.	Date of ordering panel	29.10.2021	29.12.2021
7.	Date of starting of construction	16.10.2021	12.01.2022
8.	Date of commissioning	07.05.2022	To be commissioned.
9.	Amount of capital expenditure incurred.	46.56 Crores	42.54 Crores

5.18. On 10.05.2022, the Government of Rajasthan issued impugned Notification (Annexure P-18) amending Clause 16.4 of the Solar Policy, 2019 whereby the assurance of exemption from payment of Electricity Duty for 7 years with effect from the commercial operations date (COD). The applications for registration of solar plant by the petitioner/company, as well as the grant of registration





thereof, were under the Solar Policy, 2019 (i.e., before the amendment).

5.19. On 07.06.2022, Aditya Cement Works, a unit of Petitioner No. 1 wrote to the Chief Electrical Inspector, Jaipur seeking exemption of Electricity Duty for energy consumed from the onsite 8 MW captive solar plant. But to no avail, as thereafter, the following impugned bills (Annexure P/20-Colly.) were raised on UltraTech's plants by the Respective Respondents, the details of which are provided below:

Unit	Bill Details qua Electricity Duty and Period	Electricity Duty Levied	Payment Status qua Electricity Duty
Aditya Cement Works [Area supply of Ajmer VVNL]	Bill dated 06.07.2022 issued for June, 2022	Rs. 12,36,764	Paid
	Bill dated 05.08.2022 issued for July, 2022	Rs. 9,38,252	Paid
	Bill dated 07.09.2022 issued for August, 2022	Rs. 4,94,338/-	Paid

6. Hence the instant petition.

Arguments on behalf of the Petitioner

7. Led by Mr. Vikas. Balia, Senior advocate assisted by Mr. Mridul Chakravarty and other advocates, the learned counsels for the petitioners seek quashing of the impugned amendment dated 10.05.2022 and all consequential levy of the electricity duty on the power generation through solar plants. Their arguments, inter alia, are:-

A. SOLAR POLICY 2019 GIVES A VESTED RIGHT ARISING OUT OF LEGITIMATE EXPECTATION BOUND BY PROMISSORY ESTOPPEL



I. The Solar Policy, 2019 dated 18.12.2019, issued under Article 162, expressly provided under Clauses 10.3 and 16.4 for exemption from electricity duty for 7 years from commissioning, thereby constituting a clear sovereign representation to promote solar energy. Acting upon this representation, the petitioner (UTCL) altered its position and invested approximately ₹89 crores in setting up captive solar power plants, thereby fulfilling the reliance requirement for invoking promissory estoppel. Consequently, a vested right accrued in favour of the petitioner to claim exemption for 7 years from Commercial Operation Date (COD).

II. Elaborating, learned senior would argue that the petitioner's case rests on a well-settled public law principle that where the State, in exercise of its executive policy-making power, makes a clear and unambiguous representation intended to induce investment in a priority sector such as renewable energy, and the investor alters its position acting upon such representation, the State is bound to honor its assurance. The Solar Policy, 2019, read with the contemporaneous notifications granting exemption from electricity duty for a defined period, constitutes a specific and actionable representation. It is not a vague policy aspiration but a concrete fiscal incentive designed to attract capital investment in solar infrastructure, a sector characterized by high upfront costs and long gestation periods.

III. The petitioner acted upon these assurances by establishing captive solar generation facilities, thereby making substantial





capital investments premised on the economic viability assured through exemption from electricity duty. The doctrine of promissory estoppel is therefore squarely attracted: the State cannot, after inducing such investment, resile from its promise in a manner that prejudicially alters the financial equilibrium of the project. The withdrawal of exemption by way of the impugned amendment dated 10.05.2022 operates retrospectively in effect, as it defeats vested expectations arising from prior representations and disrupts the petitioner's settled commercial position.

IV. Equally, the principle of legitimate expectation reinforces the petitioner's claim. The consistent policy framework, spanning the Electricity Act, National Electricity Policy, Tariff Policy, and successive State policies, unequivocally emphasized promotion of renewable energy through fiscal incentives. The petitioner, as a participant in this regulated sector, was entitled to expect that such incentives, once granted for a specified duration, would not be withdrawn arbitrarily or prematurely. The expectation here is not merely procedural but substantive, grounded in a structured policy regime and specific assurances extended to a defined class of investors.

V. The argument thus is that it is settled position that: (a) promissory estoppel can compel enforcement of governmental representations; (b) denial of legitimate expectation violates Article 14; and (c) estoppel operates even against procedurally irregular representations.

Judgements relied in support:





- a. State of Jharkhand v. Brahmputra Metallica Ltd.¹
- b. State of Punjab v. Nestle India Ltd.²
- c. State of Bihar v. Kalyanpur Cement Ltd.³
- d. Manuelsona Hotels Pvt. Ltd. v. State of Kerala.⁴
- e. Motilal Padampat Sugar Mills v. State of U.P.⁵

B. AMENDMENT IN POLICY IS ARBITRARY

I. Any amendment withdrawing exemption must disclose cogent reasons; none are provided in the notification dated 10.05.2022. Clause 3.3 of the Policy permits modification only for valid and germane reasons. [***Brahmputra Metallica (supra), Mohinder Singh Gill v. Chief Election Commissioner.***⁶] No overriding public interest justifies withdrawal, particularly when policy targets remain unmet (30,000 MW target vs. ~15,000 MW achieved as on 24.05.2023), undermining the very objective of the Policy.

II. The State's action further fails the test of reasonableness under Article 14. The abrupt withdrawal of exemption, without any overriding public interest justification or transitional mechanism, is manifestly arbitrary and disproportionate. This is particularly so when similarly situated sectors, such as wind energy, have continued to enjoy more favourable or stable exemptions, thereby resulting in discriminatory treatment within the same class of renewable energy producers.

1. 2020 SCC OnLine SC 968 (paras 20–54).
2. (2004) 6 SCC 465 (paras 3, 4, 6, 11, 14, 16, 20, 25, 35).
3. (2010) 3 SCC 274 (paras 66–79).
4. (2016) 6 SCC 766 (paras 12, 13, 33).
5. (1979) 2 SCC 409 (paras 18–30).
6. (1978) 1 SCC 405.





III. In fiscal matters, while the State retains the power to amend or withdraw exemptions, such power is not unfettered. It is circumscribed by the doctrines of fairness, non-arbitrariness, and the obligation to respect induced reliance. The impugned amendment, in negating accrued benefits and undermining investor confidence in State assurances, strikes at the Rule of Law and the credibility of governmental policy. In the absence of any compelling public interest that outweighs the inequity caused to the petitioner, the withdrawal of exemption is legally unsustainable and liable to be set aside.

IV. Under Sections 7 and 9 of the Electricity Act, 2003, generation is de-licensed (**Tata Power v. Reliance Energy**.⁷). Thus, exemption from electricity duty was a primary incentive under the Policy. Its withdrawal defeats the very basis of investment and undermines renewable energy promotion and climate commitments.S

V. The amendment dated 10.05.2022 is an attempt to overreach judicial proceedings, having been issued after interim protection was granted in collateral proceedings instituted by Rajasthan Solar Association's writ petition no. 12531/2021 (order dated 13.09.2021) challenging preferential treatment to the Wind energy generation, which is still sub judice in this Court.

Judgements in support:

- a. NHPC Ltd. v. State of Himachal Pradesh.⁸
- b. State of Karnataka v. Karnataka Pawn Brokers Assn.⁹

7. (2009) 16 SCC 65, (paras 106–110)

8. 2023 SCC OnLine SC 1137 (paras 36–38).

9. (2018) 6 SCC 363 (paras 24–25).





C. SUBSEQUENT AMENDMENT DATED 10.05.2022, IF AT ALL, IS APPLICABLE PROSPECTIVELY

In any event, it is settled law that the amendment can operate only prospectively. Retrospective levy is impermissible under Section 3 of the ED Act. Further, in the State's own pleadings in the pending writ petition, *ibid*, filed by RSA at Jaipur, it is conceded stand of the State that exemptions already granted are the time-bound and any withdrawal thereof is prospective in nature.

Judgement in support:

- a. *Hitendra Vishnu Thakur v. State of Maharashtra*.¹⁰

D. CONTENTION THAT EXEMPTION ON ELECTRICITY DUTY CANNOT BE GRANTED IN ABSENCE OF EXTENSION OF SUCH NOTIFICATION BEYOND 31.03.2020 IS UNTENABLE:

Such contention by respondents is untenable, as similar arguments were rejected in *Nestle India (supra)*, and it has been held that the State can be compelled to issue a notification to give effect to its promise (*Brahmputra Metallica, supra*). Past conduct of the State shows consistent extension of exemptions, even retrospectively (e.g., 2019 notification extending exemption from 01.04.2018–31.03.2020 despite prior lapse), thereby reinforcing legitimate expectation of continuity under the Solar Policy, 2019.

E. THE DISCOM LETTER DATED 30.06.2021 IS LEGALLY UNTENABLE:

It cannot override the solar policy, 2019 issued under executive power. The ED Act does not empower Discom authorities to amend policy; subordinate instruments cannot override statute/policy.

Judgement in support:

10. (1994) 4 SCC 602.





a. Indian Express Newspapers v. Union of India.¹¹

Arguments/Submissions on behalf of the Respondents

8. Seeking dismissal of the petition, learned Advocate General Mr. Rajendra Prasad, Senior Advocate, assisted by Mr. Anirudh S. Shekhawat, led the arguments on behalf of the respondents along with other advocates, which, *inter alia*, are noted as below:-

A. EXCLUSIVE DOMAIN OF STATE TO LEVY/EXEMPT ELECTRICITY DUTY

I. The petitioner's contention that Solar Policy, 2019 is statutory under Section 3 of the Electricity Act, 2003 is misconceived. Levy of electricity duty falls exclusively within Entry 53, List II (State List), and is governed solely by the Rajasthan Electricity (Duty) Act, 1962. Section 3 of the Electricity Act, 2003 pertains only to national electricity and tariff policies framed by the Central Government, and does not empower States to create binding statutory policies on electricity duty.

II. National Electricity Policy (2005) and Tariff Policy (2005) expressly state issuance under Section 3 of the 2003 Act, whereas the Solar Policy, 2019 contains no such statutory basis and is merely an executive policy. Under Section 3 of the Act of 1962, the State Government has exclusive authority to levy, exempt, modify, or withdraw electricity duty through notification in the Official Gazette, whether prospectively or retrospectively. It is settled that where a statute prescribes a specific mode (i.e., notification), it must be followed strictly; exemption cannot arise de hors statutory notification and remains discretionary.

B. POLICIES HAVE NO STATUTORY FORCE

11. (1985) 1 SCC 641 (para 78).



I. Solar and Wind Policies are executive instruments without statutory force; they are advisory frameworks and cannot override or supplant statutory provisions. Executive instructions may supplement but cannot contradict statute; they may be altered, replaced, or withdrawn at any time. Amendment dated 10.05.2022 aligns the policy with the statutory scheme by clarifying that exemption shall be governed by notifications under the Act of 1962.

II. In absence of any amendment to the Act of 1962, policy cannot create enforceable rights contrary to statute; statutory provisions prevail over executive policy. The State retains power to modify or withdraw exemptions in public interest; no estoppel operates against statute.

Judgements in support:

- a. Sales Tax Officer v. Shree Durga Oil Mills.¹²
- b. Kasinka Trading v. Union of India.¹³
- c. Shrijee Sales Corpn. v. Union of India.¹⁴

C. POLICY DECISIONS AND LIMITED SCOPE OF JUDICIAL REVIEW

I. The petitioner has failed to demonstrate arbitrariness, mala fides, or violation of Article 14; hence, no interference is warranted. Mandamus cannot be issued to compel issuance of a statutory notification, as it amounts to directing legislation. No mandamus lies for enforcement of non-statutory guidelines or policies. Issuance of notification under statute is a legislative

12. (1998) 1 SCC 572 (paras 14–26).

13. (1995) 1 SCC 274.

14. (1997) 3 SCC 398.



function involving policy considerations; courts cannot compel such action.

Judgements in support:

- a. Mangalam Organics Ltd. v. Union of India.¹⁵
- b. Census Commr. v. R. Krishnamurthy.¹⁶

II. Judicial review of policy decisions is limited; unless arbitrary or unconstitutional, courts must defer to executive wisdom.

Judgements in support:

- a. Narendra Kumar Maheshwari v. Union of India.¹⁷
- b. Syndicate Bank v. Ramachandran Pillai.¹⁸
- c. Raghupathy v. State of A.P.¹⁹

D. DOCTRINE OF LEGITIMATE EXPECTATION – INAPPLICABLE

Legitimate expectation arises only from a legal foundation or consistent past practice; neither exists here. The petitioner was aware that exemption under the Act of 1962 is discretionary and time-bound, with no assurance of continuity. Policies lacking statutory force cannot create enforceable promises; expectation cannot override statute or public interest. Change in policy in public interest negates any claim of legitimate expectation.

Judgements in support:

- a. Union of India v. Hindustan Development Corpn.²⁰
- b. Kuldeep Singh v. GNCTD.²¹ (2006) 5 SCC 702 (para 25);

15. (2017) 7 SCC 221 (paras 33, 35, 39–40).

16. (2015) 2 SCC 796 (para 25).

17. 1990 (Supp) SCC 440.

18. (2011) 15 SCC 398.

19. (1988) 4 SCC 364.

20. (1993) 3 SCC 499 (paras 28, 33).

21. (2006) 5 SCC 702 (para 25).





- c. Madras City Wine Merchants Assn. v. State of T.N.²²
- d. Pine Chemicals Ltd. v. Assessing Authority²³

E. NO PARITY BETWEEN WIND AND SOLAR ENERGY

Solar and wind energy are distinct sources with different infrastructure, economics, and policy considerations; they do not form a homogeneous class. Differential treatment is justified as solar energy has matured with significant growth, whereas wind energy still requires incentives for promotion. Policy differentiation based on sectoral needs does not violate Article 14. Notification dated 10.05.2022 harmonizes both policies by subjecting exemptions to statutory notifications under the Act of 1962; thus, the claim of blanket exemption to wind energy is unfounded.

F. FINANCIAL CONSTRAINTS JUSTIFY WITHDRAWAL

The State has justified withdrawal of exemption on grounds of financial constraints and evolving economic considerations, which constitute valid public interest. Initial incentives were necessary to promote solar adoption; however, with increased penetration and reduced costs, continued exemption would unjustifiably burden public exchequer for private benefit.

DISCUSSION AND ANALYSIS

9. In the aforesaid backdrop, having perused the material on record and heard the arrival contentions and after going through the relevant citations relied upon by both sides, we shall now proceed to record our discussion and based thereupon render our opinion.

22. (1994) 5 SCC 509. (para 48).

23. (1992) 2 SCC 683 (para 20).





9.1. Before advertng to the merits, first and foremost, reference may be had to Section 3 (3) of The Rajasthan Electricity (Duty) Act 1962 which reads as under:

“(3) Electricity duty on energy consumed.-

There shall be levied for, and paid to, the State Government on the energy consumed by a consumer or by a person other than a supplier generating energy for his own use or consumption a duty 1 (hereinafter referred to as the “electricity duty”) computed at such rate [xx] as may be fixed by the State Government from time to time by notification in the Official Gazette: Provided that—

x-x-x-x-x-x-x

(3) where the State Government is of the opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette, exempt fully or partially, whether prospectively or retrospectively, from payment of electricity duty payable on energy consumed by any consumer or class of consumers, without any condition or with such condition as may be specified in the notification.”

Section 3(3) of the Rajasthan Electricity (Duty) Act, 1962 thus vests in the State Government a broad enabling power to grant exemption from electricity duty, either wholly or partially, in public interest. The statute itself provide that such power of exemption is exercisable prospectively or retrospectively, for any one consumer or class of consumers, and either unconditionally or subject to specified conditions. The provision, however, does not create any automatic or continuing exemption upon expiry of the notification.

9.2. In exercise of the aforesaid power, the State Government issued its first notification dated 15.12.2016 granting exemption from payment of electricity duty on energy generated and consumed by captive solar power plants, as well as rooftop and net-metered solar systems. English translation thereof is as under:




“15.12.2016 NOTIFICATION

In exercise of the powers conferred by clause (3) of the proviso to section 3 of the Rajasthan Electricity (Duty) Act, 1962 (Act No. 12 of 1962), the State Government being of the opinion that it is expedient in the public interest so to do, hereby, with immediate effect, exempts from payment of electricity duty payable by a person on the consumption of energy, generated by him within the State from:-

- (i) solar power plants set up for his own use, and*
- (ii) solar power plant set up under the Rajasthan Electricity Regulatory Commission (Connectivity and Net-Metering for Rooftop and Small Solar Grid interactive Systems) Regulations, 2015.*

subject to the conditions that the duty collected or charged, if any, shall be paid to the State Government and that the duty deposited to the State Government shall not be refunded.

This notification shall remain in force upto 31.03.2018.”

Upon expiry of the above said notification, the State Government, by a subsequent notification dated 10.07.2019, retrospectively extended the exemption for the period from 01.04.2018 to 31.03.2020. This retrospective extension effectively bridged the intervening period and ensured continuity of the exemption up to the latter date. However, beyond 31.03.2020, no further notification, either prospective or retrospective, has been issued by the State Government extending or continuing the exemption.

9.3. Reference may be had to the relevant clauses of the State policy on solar power generation, which for ready reference are extracted hereinbelow:-

Erstwhile Clause 16.4	Impugned Amended Clause 16.4
<i>The electricity consumed by the Power Producer for captive use within the State under Clause 7.1, 10.3.1, 10.3.2, 11.4 and 13(iv) will be exempted from payment of Electricity Duty for 7 years from COD"</i>	<i>The exemption/ relaxation from payment of Electricity Duty for the electricity consumed by the Power Producer for captive use within the state under clause 7.1 (Rooftop Solar Plant), 10.3.1 (solar plant for captive use within premises), 10.3.2 (solar plant for captive use outside premises), 11.4 (solar plant for storage system & 13(iv) (project for EV charging station) will be governed as per the Orders/Notifications of the Government of Rajasthan issued from time to time under the provisions of the Rajasthan Electricity (Duty) Act, 1962"</i>



A perusal of the above reveals that the amendment has withdrawn the fiscal incentive of exemption by making it subject to applicable government orders and notifications issued from time to time. As is borne out the exemption on electricity duty which was earlier granted and extended retrospectively has also not been extended any further after the amendment in the policy, as above.

10. In light of the above legal position, reverting now to the case in hand, the controversy before the Court concerns the enforceability of policy assurances made by the State in the domain of renewable energy and the extent to which such assurances, once acted upon, can be withdrawn. The State of Rajasthan, in furtherance of its objective to promote solar energy, introduced the Solar Policy, 2019, which, inter alia, assured exemption from payment of electricity duty for a period of seven years from the date of commissioning of solar power plants. This assurance, from plain language of the policy, was neither vague nor aspirational. It was a time-bound fiscal representation for limited period of 7 years intended to induce investment in the renewable energy sector. Acting upon this representation, it so appears that the petitioners and/or members of the associations in various petitions, altered their position to set up solar plants at an alternative location in other States. The petitioner/Ultratech is stated to have made substantial capital investments, including investments to the tune of approximately ₹89 crore in establishing captive solar power projects.



11. However, vide the subsequent amendment dated 10.05.2022, the State withdrew the benefit of exemption and subjected such projects to electricity duty. The dispute, therefore, transcends a mere question of fiscal concession and enters the broader realm of State accountability and the integrity of governmental representations in the sector of renewable energy involving long-gestation investments.

12. The principal defence of the State rests primarily on four contentions viz.:

a). Firstly, that exemption from electricity duty is governed strictly by the Rajasthan Electricity (Duty) Act, 1962 and can be granted only by way of a statutory notification/exemption;

b). Secondly, that the Solar Policy, being non-statutory in character, does not create enforceable rights;

and

c). Thirdly, that the withdrawal of the exemption is justified in public interest on account of financial constraints and a reduced necessity for incentives.

d). Fourthly, there can be no estoppel against statute and that economic policy decisions are amenable to change in public interest even if such a change causes private detriment.

13. The desirability of solar energy is an aspect that is beyond dispute and a conceded position by one and all in the Government. In this backdrop, The Solar Policy, 2019, though, admittedly executive in nature and not legislative, was a conscious and unequivocal representation. Clause 16.4 specifically assured exemption from electricity duty for a defined period. This was not





a case of a general policy guideline but of a concrete assurance intended to create legal relations and acted upon by the petitioners. The essential ingredients of promissory estoppel, i.e., a clear representation, intention to induce action, actual reliance, and resulting detriment, stand satisfied.

14. Pertinently, the doctrines of promissory estoppel and legitimate expectation are not rooted in any codified statute. These are products of equitable principles of law and an administrative law evolution, developed over a period of time by way of various precedents/judgments rendered by courts to obviate possibility of any arbitrary State action (Article 14) and ensure fairness in governance. Promissory estoppel prevents a party, including even the State, from going back on a clear and unequivocal promise that has been relied upon by another party to its detriment. In **Motilal Padampat Sugar Mills v. State of Uttar Pradesh (supra)**, the Supreme Court held that the government can be bound by its promises even in the absence of formal contracts, provided overriding public interest does not justify withdrawal.

14.1. Legitimate expectation, on the other hand, ensures procedural and sometimes even the substantive fairness. Once a public authority, through express representation, creates an expectation in the mind of a person or an entity, that they will be treated in a certain way, it ought not to resile there from. It is so held in **Navjyoti Co-op. Group Housing Society v. Union of India²⁴** and **Food Corporation of India v. Kamdhenu Cattle**

24. (1992) 4 SCC 477.





Feed Industries²⁵. No doubt, unlike promissory estoppel, legitimate expectation does not create an enforceable right, but at the same time it contributes to ensure that expectations are not defeated arbitrarily.

15. Such being the position of law, the State's contention that exemption could only be granted by a statutory notification does not, in the peculiar facts of the present case, defeat the petitioners' claim. The Rajasthan Electricity Duty Act undoubtedly governs the mechanism of exemption; however, it also enables the grant of such exemption. The policy, in effect, represented that such statutory power would be exercised in favour of eligible projects. The State cannot now be permitted to rely upon its own failure to issue a notification as a defence to defeat a promise consciously made. To accept such a contention would render all policy assurances illusory, enabling the State to invite investment on the strength of representations and thereafter avoid compliance by inaction. Such a position would be fundamentally inconsistent with the Rule of Law and would reduce the doctrine of promissory estoppel to a dead letter.

16. Equally untenable is the plea that the Solar Policy lacks statutory force and is therefore unenforceable. The petitioners herein do not seek enforcement of the policy as if it were a Statute; rather, they invoke the equitable doctrine of promissory estoppel, which operates independently of statutory force. It is well settled that governmental representations, even if not backed by statute, are enforceable in equity where they have been acted

25. (1993) 1 SCC 71.





upon to the detriment of the promisee, unless an overriding public interest justifies their withdrawal. The State, having induced investment through a clear assurance, cannot approbate and reprobate by subsequently resiling from it.

17. Speaking of overriding public interest, the justification of financial constraint, advanced as argument on behalf of the State, also fails to withstand scrutiny. A mere bald assertion of fiscal burden or fiscal policy, in the absence of any substantive material, cannot suffice to defeat vested rights and legitimate expectations. On the contrary, the material on record indicates that the objectives of the Solar Policy, including the targeted solar capacity, remain unmet. In such circumstances, withdrawal of incentives appears not only unsupported by compelling necessity but also counterproductive to the very policy objectives the State seeks to advance. The invocation of public interest must be real, demonstrable, and proportionate; it cannot be a generic or post facto justification.

18. Adverting now to the constitutional dimension of the matter in hand. Promotion of renewable energy is intrinsically linked to the right to a clean and healthy environment under Article 21 and to the broader principles of sustainable development and management. Incentives such as electricity duty exemptions are not mere fiscal concessions but instruments through which the State discharges its constitutional and international commitments in relation to climate change and environmental protection. Arbitrary withdrawal of such incentives undermines not only





investor confidence, but also the constitutional ethos of fairness and non-arbitrariness.

19. Thus, even when viewed independently of promissory estoppel, the impugned action seems to be unsustainable on the touchstone of Article 14. Withdrawal of a specific and unambiguous assurance, after inducing substantial investment, without cogent justification, is manifestly arbitrary. Undoubtedly, the State retains the power to amend or modify its policies; however, in all fairness, such modification cannot operate retrospectively so as to divest accrued or vested rights, unless of course it is a converse case of conferring additional rights retrospectively. At best, a change in policy can have prospective operation, preserving the rights of those who have already altered their position in reliance upon the earlier representation. A balance has to be thus struck between the need to preserve executive flexibility in economic policy and the imperative of maintaining the credibility of State assurances. While it is true that fiscal policy must take precedence, but it cannot be rendered absolute by treating the governmental representations as expendable. If such assurances are permitted to be withdrawn arbitrarily, investor reliance becomes illusory and the predictability essential to economic governance is eroded.

20. As an upshot, we are satisfied that, no doubt, while the State can alter/amend/withdraw its policy in the larger public interest and/or fiscal requirements, but cannot take away accrued rights. Thus, the petitioners herein are entitled to the limited benefit of the exemption promised under the Solar Policy, 2019, only in





respect of those projects which have already been commissioned prior to the impugned amendment. The said amendment cannot operate retrospectively to divest accrued rights and can only have prospective effect.

21. With these observations, the writ petition is accordingly disposed of with liberty to verify exact commercial operations date of each of the two solar projects set up by the petitioner i.e. as to whether the same are prior to amendment in the policy and, thereafter, pass independent orders qua each claim of seeking exemption from the electricity duty by granting benefit for the limited period of seven years w.e.f. the commercial operations date (COD).

22. All pending applications stand disposed of.

D.B. Civil Writ Petition Nos - 12531/2021, 13492/2021, 13525/2021, 15565/2021, 13979/2022, 15593/2022.

23. Petitioners herein are different associations engaged in the promotion of the solar power industry, seeking issuance of an appropriate direction, order, or writ against Respondent No. 1 to grant the benefit of complete exemption from payment of electricity duty to all captive solar power plants operating in the State of Rajasthan for a period of seven years commencing from the date of issuance of the Rajasthan Solar Policy, 2019, without linking such benefit to the respective commercial operation dates of the captive solar power plants.

24. Upon perusal of the petitions, it is borne out that the petitioner associations comprises various members. However, the



petitions are conspicuously deficient in material particulars. Specifically, it fails to disclose the Commercial Operation Dates (COD) of the individual members' projects. Same is an essential and determinative criterion for assessing eligibility under the Solar Policy, 2019.

25. A mere bald assertion of deprivation of benefits does not suffice sufficient information.

26. Clause 32 (Savings Clause) of the Solar Policy, 2019 reads as under:-

"Clause 32: Savings Clause

The Power Plants already approved and/or commissioned before commencement of this Policy will continue to be governed by the policy/regulations prevailing at the relevant time."

The above provision, not under challenge before us, unequivocally stipulates that projects commissioned prior to the policy shall continue to be governed by the earlier regime. This necessarily requires precise disclosure of COD to determine the applicable legal framework.

27. The petitioners have further failed to plead, even in broad terms, how many of its members are actually impacted by the impugned amendment to the Solar Policy, 2019.

28. In these circumstances, these petitions are disposed of with liberty to the individual members of the association to submit separate representations. Such representations shall be considered in accordance with the judgment referred to above.

29. The competent authority shall examine each representation independently by verifying the exact commercial operations date of each solar project, including whether such date precedes the





policy amendment. Upon such verification, reasoned and independent orders shall be passed in respect of each claim seeking exemption from electricity duty, limited to a period of seven years from the respective Commercial Operation Date (COD).

30. Disposed of accordingly, with liberty as aforesaid. Pending application(s), if any, also stand(s) disposed of.

D.B. Civil Writ Petition Nos - 7298/2022, 9591/2022, 9593/2022, 9621/2022, 9633/2022, 9689/2022, 12614/2022, 13681/2022, 14422/2022, 15097/2022, 15337/2022, 17557/2022, 17691/2022, 19686/2022, 1151/2023, 1964/2023, 2423/2023, 2811/2023, 10590/2023, 10618/2023, 11135/2023, 18783/2023, 19436/2023, 4503/2024.

31. Petitioners herein seek quashing of an order dated 30.06.2021 issued by Chairman, Discoms, whereby it has been stipulated that electricity duty shall be levied at the rate of Rs. 0.60 per kWh on the consumption of solar-generated energy for any purpose. The petitioners further seek the issuance of an appropriate direction, order, or writ against Respondent No. 1 for granting complete exemption from the payment of electricity duty.

32. It is the case of the petitioners pleaded in affirmation that they have set up the rooftop solar energy system. However, a mere bald assertion of deprivation of benefits does not suffice sufficient information in the absence of their date of commissioning.

33. In the premise, the instant petitions are disposed of with the liberty to the petitioners to file their individual representations before the competent authority who will look into the same and in





case their case is found to be covered by the judgement ibid, appropriate order shall be passed.

34. The competent authority shall examine each representation independently by verifying the precise date on which the rooftop PV solar plant of each project became operational, including whether such date precedes the policy amendment. Upon such verification, reasoned and independent orders shall be passed in respect of each claim seeking exemption from electricity duty, with such exemption limited to a period of seven years from the exact date on which the respective rooftop PV solar plant became operational.

35. Disposed of accordingly, with liberty as aforesaid. Pending application(s), if any, also stand(s) disposed of.

(SUNIL BENIWAL),J

213-243-KP Singh Dewasi/-
Dhananjay Sharma/-

(ARUN MONGA),J

