M/S. M.R.F. Ltd vs Manohar Parrikar & Ors on 3 May, 2010

Author: H.L. Dattu

Bench: H.L. Dattu, R.V. Raveendran

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4220 OF 2002

M/s M.R.F. Ltd. .....Appellant

Versus

Manohar Parrikar and Ors. .....Respondents

WITH

CIVIL APPEAL NO.4219 OF 2002

M/s M.R.F. Ltd. & Anr. .....Appellants

Versus

The State of Goa and Anr. .....Respondents

WITH

CIVIL APPEAL NO.4213 OF 2002

Goa Glass Fibre Ltd. & Anr. .....Appellants

Versus

Manohar Parrikar and Ors. .....Respondents

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WITH

CIVIL APPEAL NO.4214 OF 2002

Goa Glass Fibre Ltd. & Anr. .....Appellants

Versus

The State of Goa and Anr. ..... Respondents

WITH

CIVIL APPEAL NO.4217 OF 2002

Alcon Cement Company Limited & Anr. .....Appellants

Versus

The State of Goa & Anr. .....Respondents

WITH

CIVIL APPEAL NO.4218 OF 2002

Mauvin Godinho .....Appellant

Versus

Manohar Parrikar ad Ors. .....Respondents

JUDGMENT

H.L. Dattu,J.

In Civil Appeal Nos. 4220 of 2002, 4213 of 2002 and 4218 of 2002, the appellants have called in question the correctness of the judgment and order in Writ Petition No. 316 of 1998 dated 19/24.4.2001, passed by the High Court of Bombay Panaji Bench, at Goa in a Writ Petition brought in public interest by one Manohar Parrikar, a Member of Legislative Assembly, Goa (who later on became the Chief Minister of the State of Goa) questioning the legality, validity and propriety of two notifications issued by Government of Goa dated 15.5.1996 and 01.8.1996 in respect of grant of 25% rebate to Low Tension, High Tension and Extra High Tension Industrial consumers of electricity as a policy of the State Government.

In Civil Appeal No. 4219 of 2002 (M/s M.R.F. Ltd. & Anr. Vs. State of Goa & Anr.), the appellant has called in question the judgment and order passed by the High Court of Bombay Panaji Bench, at Goa in Writ Petition No. 364 of 1999 dated 24.4.2001, partly allowing the writ petition filed by the appellant.

In Civil Appeal No. 4214 of 2002 (Goa Glass Fibre Ltd. & Anr. Vs. The State of Goa & Anr.), the appellant has called in question the correctness or otherwise of the judgment and order passed by the High Court of Bombay Panaji Bench, at Goa in Writ Petition No. 254 of 1999 dated 25.4.2001 dismissing the writ petition filed by the appellant. In Civil Appeal No. 4217 of 2002 (Alcon Cement

Company Limited & Anr. Vs. The State of Goa & Anr.), the appellant has called in question the correctness of the judgment and order passed by the High Court of Bombay Panaji Bench, at Goa in Writ Petition No. 277 of 1999 dated 24.4.2001 partly allowing the writ petition.

In Civil Appeal No. 4218 of 2008 (Mauvin Godinho Vs. Manohar Parrikar & Ors.), the appellant has called in question the correctness of the judgment and order passed by the High Court of Bombay Panaji Bench, at Goa in Writ Petition No. 316 of 1998 dated 19/24.4.2001 The material facts as pleaded by the Appellants in Civil Appeal Nos. 4220 of 2002, 4213 of 2002 and 4218 of 2002 are as under:

> 1) The Government of Goa, in purported exercise powers conferred upon them by Section 23 of the Indian Electricity Act, 1910 (`Electricity Act' for short) issued a Notification on 30.09.1991, granting rebate of 25% in Tariff in respect of the power supply to the Low Tension and High Tension Industrial Consumers/appellants who apply for availing High Tension or Low Tension Power Supply on or after the 1st of October, 1991 for bona fide industrial activities and certified by the Industries Department, Government of Goa as eligible for concessional tariffs for a period of five years from the date on which electricity supply is made available to such units.
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> 2) This Notification was issued by the State Government in the name of the Governor of the State as per the Rules of Authentication framed under Article 166(2) of the Constitution of India by following the procedure prescribed by the Business Rules framed under the Provisions of Article 166(3) of the Constitution of India after the State Cabinet had approved it. Though the said Notification was in subsistence, except one Industrial Unit, none applied to the State Government for the grant of benefit of the Notification for a long period or at least till 31.03.1995.

On 31.03.1995, the said Notification was rescinded by the State Government in purported exercise of power conferred on it under Section 21 of the General Clauses Act read with Sections 23 & 51-A of the Electricity Act with effect from 01.04.1995, by issuing a Notification dated 31.03.1995 strictly in accordance with the Business Rules and Rules of Authentication pursuant to the decision taken by the State Cabinet.

3) Though the Government rescinded the Notification dated 30.09.1991, number of industrial units approached the State Government and claimed benefit of 25% rebate in terms of Notification dated 30.09.1991 for the period between the date of supply of electricity and 31.03.1995. Some applications were rejected by the Chief Electrical Engineer of State of Goa, on the ground, that, they being in the category of Extra High Tension did not fall within the category of consumers covered by the Notification dated 30.09.1991. On 29.06.1995, a Calling Attention Notice in Legislative Assembly was also brought in by Mr. Manohar Parrikar, seeking clarification from the State Government as to whether these industrial units were entitled for the benefits flowing from the Notification dated 30.09.1991 upto 31.03.1995. The Power Minister gave a reply to the said Notice which is reproduced in the judgment under appeal. In sum and substance the Minister stated, that, the Government was committed to honour the concession granted by the Notification dated

30.09.1991 to the eligible industrial units who apply for High Tension and low tension power on or after 01.10.1991 till the date of withdrawal, i.e. 01.04.1995.

4) The Under Secretary to Government of Goa, Department of Power issued a clarification dated 01.11.1995 to the Chief Electrical Engineer on the lines of the reply given by the Power Minister to the Calling Attention Motion and reiterated the same by a communication dated 12.12.1995. Later, as the Government being satisfied that there were certain difficulties in the matter of clearing cases of claim of rebate for the period upto 31.03.1995, issued certain clarifications. On 15.05.1996, however, the State Government issued another Notification in purported exercise of power conferred on it under Sections 23 & 51-A of the Electricity Act read with Section 21 of the General Clauses Act, to amend the Notification dated 30.09.1991 which had been rescinded as per Notification dated 31.03.1995. By the said Notification the Government substituted the words "High Tension or Low Tension power supply" by the words "High Tension/Extra High Tension or Low Tension power supply". The State Government further issued another Notification dated 01.08.1996 restoring the facility of giving 25% rebate to these three categories of Industrial consumers and made the said rebate available from 01.08.1996 to those who had either applied or availed the power supply as on that date.

5) By an order dated 31.03.1998, issued by the Chief Electrical Engineer of State of Goa, the benefits of rebate granted by the State Government were withdrawn, as it appears that the State Government did a re-thinking over its power to grant such rebate on the Tariff. This action of the State Government led to a spate of litigations by the Industrial Units in the High Court of Bombay Panaji Bench, at Goa, wherein they contended that the benefits granted by the State Government as a policy decision could not be withdrawn by the order dated 31.03.1998, which was merely an administrative order and that they were entitled to the benefits granted by the Notification dated 01.03.1996, as long as the said Notification was not withdrawn by due process of law.

6) During the pendency of these writ proceedings before the High Court, the State Cabinet after addressing itself to the issues raised by the industrial units in the writ proceedings, passed a resolution to withdraw the benefit of 25% rebate and accordingly issued a Notification dated 24.07.1998 and withdrew the rebate of 25% with effect from 01.08.1998. By an order dated 21.01.1999, the High Court disposed of the batch of writ petitions, inter alia holding that the Circular dated 31.03.1998 mentioned supra as invalid and inoperative and the Notification dated 24.07.1998 as legal, valid and operative, and that all petitioners therein were entitled to 25% rebate in power tariff for the periods as indicated in paragraph 56 of the said judgment etc.

7) The judgment of the High Court was taken up in appeal by both parties to this Court and this Court by an order dated 13.02.2001 declined to interfere with the said order of the High Court and rejected both sets of appeals.

8) Mr. Manohar Parrikar, the 1st respondent herein, in the meantime, had moved the High Court with a Misc. Civil Application No.637 of 1999, seeking withdrawal of his writ petition with liberty to challenge the legality or otherwise of the Notification after this Court decided the above mentioned civil appeals filed before it against the order of the High Court dated 21.01.1999. The High Court by

its order dated 27.01.2000 rejected the said application. Mr. Manohar Parrikar had also moved the High Court to hear his petition along with earlier set of writ petitions disposed of by the High Court on 21.01.1999. Subsequently, the said prayer was also withdrawn.

9) Before the High Court, the 1st respondent herein challenged the correctness of the Notifications dated 15.05.1996 and 01.08.1996, and sought to declare the same as null and void. He also challenged the guidelines framed in the letter dated 12.12.1995 and sought to declare the said circular was illegal and to quash it to the extent it goes beyond the scope of Notification of 1991. He also prayed for certain other reliefs, including initiation of recovery of rebates paid by the State Government to the beneficiaries.

10) Though the petitioner had sought many reliefs in his writ petition, the High Court confined itself to the challenge made to the legality of the notifications dated 15.05.1996 and 01.08.1996. Before the High Court the 1st respondent herein contended as under:

> 7 That the two notifications were not issued in compliance with the requirements of Article 154 read with Article 166 of the Constitution of India and the Business Rules of the Government of Goa framed by the Governor thereunder.
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> 7 That retrospective benefit of rebate in tariff given by these two notifications was not bona fide and is illegal.
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> 7 That there was no Budgetary Provisions made for these benefits to be extended during the relevant financial years.
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> 7 That the Notifications in question were not issued as is contemplated by and under Articles 154 and 166 of the Constitution of India and that they were issued only at the instance of the Minister of Power at the relevant point of time and, hence, Notifications could not be termed as the decisions of the State Government.
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> 7 That the amendment brought by the Notification dated 01.08.1996 has overridden the very scope of the Notification dated 30.09.1991 which is impermissible in law.
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> 7 That the Notification dated 15.05.1996 could not have been issued when the Notification dated 30.09.1991 was already rescinded by Notification dated 31.03.1995 and no life could have been infused into the said notification when it did not exist.
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> 7 Addition to the said notification of Extra High Tension consumers with retrospective effect from 01.10.1991 was beyond the scope of the Notification dated 30.09.1991.

11) The said writ petition was contested by the 2nd respondent, who was the power Minister at the relevant point of time. He mainly contended that there was no illegality in the said Notifications which have been issued by following the prescribed procedure in the normal course of business of

the Government with a view to promote industrial growth of the State so as to generate more employment opportunities and, therefore, there was nothing improper or illegal about it. It was also contended by the 2nd respondent therein that even if the said notifications were held to be contrary to the provisions of Article 166 of the Constitution, the said Rules are only directory and failure to comply with them did not vitiate the Notifications and in any event, if it was realized by the State Government that these Notifications were issued contrary to the Provisions of Article 166 nothing prevented the State Government from withdrawing them and the fact that no such action was taken by the State Government for almost two years itself indicated that the State Government was satisfied with the legality of the Notifications. The respondent also raised a preliminary objection regarding the maintainability of the Writ Proceedings on the ground, that, once the Notifications impugned have been authenticated as per the Business Rules, they are immune from any challenge and there cannot be a situation where respondent No.1, who at the relevant point of time, was the Chief Minister of Goa, would be contesting against the action of the State Government. It was also contended that the petition lacked bona fides and was moved only to settle political scores and to gain political mileage. The fact that contradictory stands were taken by the State Government by filing two affidavits of the Chief Electrical Engineer itself showed that the State Government walked into the shoes of the 1st respondent herein and that the Government cannot support the challenge to the Notifications issued by it and even if the petition was pro bono when filed, it ceased to be so after the respondent No.1 herein took over as the Chief Minister of the State of Goa. The further contention advanced was that the High Court, having conclusively upheld the validity of these two notifications in its judgment dated 21.01.1999, cannot re-examine the same, more so, in view of confirmation of the said judgment by this Court in its Order dated 13.01.2001. The 2nd respondent therefore sought dismissal of the Writ Petition. A number of judgments were cited and relied upon by the 2nd respondent in support of his case before the High Court. The other parties including the interveners also supported the 2nd respondent therein, on the issue of maintainability and further addressed arguments based on the principles of res judicata and the concept of merger of the judgment of the High Court dated 21.01.1999 with the judgment of this Court dated 13.01.2001. On these premise the respondents sought dismissal of the Writ Petition. It appears from the pleadings before us, that, the High Court had permitted certain Companies including the M.R.F Ltd, to come on record as interveners and oppose the reliefs sought in the Writ Petition.

12) The High Court by its judgment dated 19/24.04.2001 impugned herein allowed the writ petition in part by holding that the Notifications dated 15.05.1996 & 01.08.1996 could not be termed as Notifications issued by the State Government on account of Non Compliance of the Rules of Business framed under Article 166 (3) of the Constitution of India and therefore non-est and void-ab-initio and that the consequential actions based on these two notifications are null and void.

13) Aggrieved by the said judgment of the High Court, the Appellant [M.R.F. Ltd.] and others are before us in Civil Appeal Nos. 4220 of 2002, 4213 of 2002 and 4218 of 2002.

14) In Civil Appeal Nos. 4219 of 2002, 4214 of 2002 and 4217 of 2002, the appellants - M/s M.R.F. Limited, Goa Glass Fibre Limited and Alcon Cement Company Limited are questioning the correctness of judgment of the High Court in partly allowing the Writ Petition Nos. 364 of 1999 and 277 of 1999 and dismissing the Writ Petition No. 254 of 1999 respectively.

15) The facts in Civil Appeal No. 4219 of 2002 are :- Appellant applied for power supply connection for setting up a factory in the State of Goa on 03.10.1991. On 02.09.1992, appellant was supplied electricity for the first time. Sometime in October 1996, the Executive Engineer had acknowledged that the appellant is entitled for 25% rebate as provided in the notification. The amount of rebate was computed at Rs. 1,04,70,762 for the period from 02.09.1992 to 01.09.1996 and it was further stated that the amount of arrears be credited in 60 installments w.e.f. September, 1996 and each installment was of Rs. 1,74,513. The respondent had adjusted an amount of Rs. 53,78,594 as against the bills from September, 1996 to August, 1997 and further adjustment of Rs. 31,41,234 was also done subsequently thus leaving a balance of Rs. 73,29,528. The benefit of rebate was denied to the appellant for the remaining period on the basis of the notification dated 31.3.1998, whereby the extension of rebate in tariff was suspended. Pursuant to the judgment dated 21.1.1999, the appellant raised a fresh demand for rebate before the respondent no. 2 and as they failed to succeed, they approached the High Court for directions to seek implementation of the said judgment.

16) The present appeal is filed against the High Court's order dated 24.04.2001 and the letter issued on 25.05.2001 by the Department of Power to the appellant herein asking for refund of the rebate of Rs. 1,11,35,738 in one installment on or before 15.6.2001 pursuant to the order dated 24.4.2001.

17) The facts in Civil Appeal No.4214 of 2002 are :- The appellant -

Goa Glass Fibre Ltd. - has set up a manufacturing plant at Colvale, Bardez Goa and it had applied for electric power connection on 18.7.1994. Pursuant to the agreement signed on 7.12.1995 between the appellant and the respondent no. 2, the appellant's factory was given power supply for the first time on 16.3.1996. The appellant made a representation to respondent no. 2 on or about 3.7.1996 for the benefit of 25% rebate in tariff and another reminder was sent in that regard on 27.11.1996. The claim for rebate was made on the basis of the government notification dated 30.09.1991, 15.05.1996 and 01.08.1996. Pursuant to the Notification dated 01.08.1996, 25% rebate to this industry was granted w.e.f. February, 1997 along with the arrears of installment @ Rs. 1,24,520. Such rebate was adjusted in the monthly bill. This rebate was withdrawn by issuing a circular dated 31.3.1998. This circular was challenged in the High Court. The High Court in its judgment dated 21.01.1999, held the circular dated 31.3.1998 as invalid and inoperative. The appellant filed a Writ Petition No. 254 of 1999 in the High Court praying for the restoration of the 25% rebate.

18) The facts in Civil Appeal No.4217 of 2002 are :- The Alcon Cement Company Limited applied for power supply on 17.9.1992 and entered into an agreement with the respondent no.2 for supply of power on 29.9.1993. The appellant's factory at Surla in the State of Goa was given electricity supply for the first time on 1.3.1994. Sometime in October 1996, the Executive Engineer acknowledged the entitlement of 25% rebate and rebate in energy consumption was granted. The appellant was given adjustment of 13 installments quantified in sum of Rs. 2,90,342/- leaving a balance of 47 installments. In addition, the balance of subsidy for the months of March 1998 to July 1998 was worked out at the rate of Rs.4,24,671 thus making a total sum of Rs. 14,74,755. The benefit of rebate was denied to the appellant for the remaining period on the basis of the notification dated 31.3.1998, whereby the extension of rebate in tariff was suspended. Pursuant to the judgment dated 21.1.1999, the appellant raised a fresh demand for rebate before the respondent no. 2 and as they failed to

succeed, they approached the High Court seeking directions to implement the said judgment.

19) Before us the appellants urged various contentions and supported them with various grounds and the case laws. The questions of law according to the appellants are as under:

> 7 Whether there is any breach of judicial discipline by the High Court in not following it's own Judgment rendered by a Full Bench in the Case of Kharkanis wherein the Business Rules framed under Article 166 (3) were held to be directory in nature, but in holding that the Rules of Business are mandatory?
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> 7 Whether the High Court by the judgment impugned herein has set at naught the judgment dated 21.01.1999 rendered by the other Division Bench with reference to the same notifications impugned in Writ Petition No. 316 of 1999, the former of which has been affirmed by this Court by its order dated 13.02.2001 in Civil Appeal No. 3206-07 of 1999 and others?
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> 7 Whether the appellants as consumers of power seeking rebate in terms of the Notifications issued in the name of the Governor which have been duly gazetted, can be estopped from seeking relief of rebate under them on the ground that the said Notifications were void ab initio as they were not issued in compliance of Business Rules?
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> 7 Whether the High Court, in the writ petition filed by Manohar Parrikar, on the basis of the files produced before it by the State Government with Manohar Parrikar as the Chief Minister of the State at the time of such production, erred in concluding that the impugned notifications are non-est on the basis of such files which had also been examined by the earlier Division bench of the High Court?
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> 7 Whether the High Court by issuing directions to effect recovery of rebate granted on the basis of Notifications in issue has over ruled the decision of the earlier Division Bench which had held that relief under the notifications would be granted up to the date of rescission of the Notification by the Gazette dated 27.07.1998?
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> 7 Whether the High Court erred in allowing the Writ Petition of Manohar Parrikar based on the changed stance of the State Government contained in its affidavit dated 12.04.2001 which was different from that which was taken by the State in the Court before the 1st respondent herein became the Chief Minister of the State of Goa?
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> 7 Whether the High Court was justified in allowing the Writ Petition of Manohar Parrikar on the ground of Notifications being null and void for want of compliance with the Business Rules while its stand before the High Court in the present writ petition and earlier batch of writ petitions was that the notifications impugned had been rescinded due to financial crunch and in public interest which was upheld by the High Court and by this Court?

7 Whether the judgment impugned has been rendered in a case where the petitioner on his becoming Chief Minister of the State drew support of the State Government through his own Advocate General to settle scores with his political rival the 3rd respondent herein?

7 Is there any judicial indiscipline in the High Court in not following the judgment of this Court dated 13.02.2001 confirming the High Court judgment dated 21.01.1999, more so in view of the consistent stand taken by the State Government in Parrikar's case that the judgment of the High Court, dated 21.01.1999 covered the issues therein and that the High Court should await the order of this Court in Appeals pending and which was eventually disposed by order dated 13.02.2001?

7 Did the High Court erred in not permitting Manohar Parrikar [1st respondent herein] to withdraw his writ petition, when he himself had submitted that the issues in his writ petition were covered by the judgment of the High Court dated 21.01.1999 and that the appeals there against were pending in this Court?

20) These civil appeals are opposed by the State Government by filing a detailed Counter Affidavit. The contentions of the State Government in support of the impugned judgment can be summarized as under:

7 That the State has a vital interest in the outcome of the proceedings before this Court which have a bearing on the State's Finances as an order of this Court setting aside the judgment impugned will result in a loss of Rs. 50 Crores to the State's Exchequer.

7 That the State has already paid an amount of about 16 crores as rebate and it cannot afford to pay any more on account of financial crunch faced by it and also on account of the Notifications not being Government decision in the eyes of law, in as much as the matter was neither placed before the State Cabinet in terms of the Business Rules nor was the mandatory concurrence of the Finance Department under the Business Rules obtained and the High Court has rightly held that the Notifications cannot be termed as State Government's decisions for want of non-compliance of mandatory Business Rules and the decision and actions based on the notification are therefore non-est. 7 That there is no truth in the contention that the State Government has taken stand which is inconsistent with and contradictory to the one taken in the earlier affidavits filed in the proceedings.

7 That the earlier affidavits for and on behalf of the State were filed by Chief Electrical Engineer Nagarajan in virtual support of the Notifications impugned. However, the said Nagarajan himself was party to the entire matter including moving of the file, initiating the process and that his appointment was on ad-hoc basis overlooking the just and reasonable claims of various other senior, eligible and qualified candidates and that he had given benefit of rebate to an applicant whose application had been

rejected by his predecessor.

7 That investigation on a police complaint lodged by the petitioner in W.P 316 of 1999 disclosed that there was a conspiracy hatched between the said Nagarajan and the then Power Minister at whose instance the Notifications impugned were issued and that a charge sheet was laid before the Special Court set up under the Prevention of Corruption Act for offences under Section 120B of the Indian Penal Code and other provisions of the Prevention of Corruption Act and the said Nagarajan who filed the earlier affidavits was an accused in the said proceedings.

7 That when it comes to the involvement of public revenue and the effect on the State's Exchequer to the tune of Rs.50 Crores, one has to be bold enough to place the correct facts and law before the Court and the earlier affidavits filed on behalf of the State Government did not place before the Court correct facts of the matter and that the affidavit of Nagarajan which did not reflect correct position of law and did not place correct facts before the Court should be discarded and the one filed subsequently should not be considered as contradictory or inconsistent as correct facts borne out from the Government files were placed before the Court by the said affidavits. The said affidavits also reflected the fact that there was neither financial sanction nor was there a budgetary provision nor was there a Cabinet approval as mandatorily required under the provisions of Article 166 (3) of the Constitution and the said Notifications therefore could not be said to be the decision of the State Government in the eye of law. The affidavit dated 12.04.2001 was filed before the High Court after the State re-examined the entire matter at the highest level and after examining the legal aspects and as it was found that certain matters which go to the root of the matter and as the earlier affidavits filed before the High Court did not place all the facts emanating from Government files and records. The said affidavit was filed explaining the severe financial implications which the said Notifications incurred on the State in the form of rebate which could not be borne by the State's interest and which was detrimental to the State's Interest, more so in view of lack or absence of legal sanctity for the said notification. The affidavit was filed further to disclose that there was breach of mandatory Business Rules and to show that neither cabinet approval for the decision as required under law was obtained nor any budgetary allocation made for the rebate. The affidavit was filed to explain that the State Government could not bear liability of such magnitude.

21) The counter-affidavit of the respondent - State herein further reiterates the position of law flowing from various provisions of the Constitution and the Business Rules made there under and states that the impugned notifications did not comply with the requirements of the Business Rule 7 and were therefore totally vitiated and did not have any binding effect on the State Government. The decision contained in the said Notifications could not be the decision of the State Government in the strict and true sense of law. With these contentions the State Government seeks to support and sustain the judgment of the High Court against which appeal is filed in this Court.

22) A rejoinder is filed by the appellant - M.R.F Ltd. to counter various statements made by the State Government' in its Counter Affidavit filed in the appeal.

23) We have heard Shri F.S. Nariman, Dr. Rajeev Dhavan, Shri L. Nageshwar Rao, Shri K.N. Bhatt and Shri Shyam Divan, the learned senior counsel for the parties who have advanced elaborate arguments in support of the issues respectively raised by them in the pleadings.

24) The High Court by its judgment impugned herein has elaborately dealt with each of the contentions of the parties before it. Before the High Court the Writ Petition filed in public interest was opposed on various grounds. It was preliminarily objected to and opposed on the ground of maintainability which was dealt with by the High Court holding as under:-

> " We have no hesitation to hold that the Petition is not required to be dismissed on the ground of merger of the earlier decision dated 21st January, 1999 with the order of the Apex court or on the ground of res judicata. There is no dispute that the illegality of these Notifications were not challenged in the Petitions which came to be decided on 21st January, 1999 and, in fact, the said challenge could not have been raised for the simple reason that the Petitioners' claim was entirely based on the existence of these two Notifications. When the Petitioner moved Miscellaneous Civil Application No.637 of 1999 with the prayer to allow him to withdraw the Petition for the reasons stated therein, this court while rejecting the said application by order dated 27th January, 2000, gave the following reasoning:-
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> "It appears that at one stage the applicant had prayed for taking up the Writ Petition No. 316/98 along with the other batch of Writ Petitions, but the said prayer was withdrawn. In the said batch of Writ Petitions, challenge had been thrown to the decision of government of Goa communicated by the Chief Electrical Engineer vide Circular dated 31st March, 1998 to suspend the release of 25% rebate of power tariff to the industrial consumers. There was no challenge whatsoever to Notification dated 15th May, 1996, or Notification dated 1st August, 1996, or that the said Notifications were null and void and to nullify any effect given to them in the earlier batch of Writ Petitions which declaration is now sought by the Writ Petition No. 316/98. There was also no challenge to the guidelines framed by letter dated 12th December, 1995, which is sought to be challenged in the Writ Petition No. 316/98 on the ground that it is illegal to the extent it goes beyond the scope of 1991 Notification. No direction had been sought in the earlier batch of Writ Petitions for investigation into the grant of rebate, or for initiation of recovery proceedings against those units to whom 25% rebate had actually been paid, or adjusted, or to fix accountability of the concerned public servant, or authorities for causing loss to the State exchequer. After taking us through the Judgment, learned advocate for the applicant himself admitted that none of the declarations or directions claimed in Writ Petition No.316/98 had been sought in the earlier batch of Writ Petitions. Therefore, it cannot prima facie be said that the controversy in the earlier batch of Writ Petitions and the Writ Petition in question is the same.

> In the circumstances, in our opinion, there is no case made out for permitting the applicant to withdraw the Writ Petition No.316/98. Accordingly, the application is hereby dismissed."

There was no challenge whatsoever to the Notifications dated 15th May, 1996 and 1st August, 1996 and the declaration now sought in the instant Writ Petition was not in issue in the earlier batch of Petitions.

After taking us through the judgment, the learned senior counsel admitted that none of the declarations or directions in Writ Petition No.316/98 had been sought in the earlier batch of Writ Petitions. Therefore, it cannot be said that the controversy in the earlier batch of Writ Petitions and the present Writ Petition in question are the same. This Order dated 17th January, 2000 has now become final, though it was an interlocutory order rejecting Miscellaneous Civil Application No. 637 of 1999. This Court was more than convinced that the challenge raised in Writ Petition No. 316 of 1998 was not an issue for consideration before it while handing down the judgment dated 21st January, 1999, It is for these reasons, the principle of res judicata will not be applicable in the instant case.

25) As regards the objections raised by the respondents on the basis of concept of merger, the High Court has held that though the appeals challenging the judgment of the High Court dated 21.01.1999 have been dismissed by this Court, and the findings of the High Court on the relevant issues have been impliedly confirmed and though the principle laid down by this Court in the case of Kunhayammed Vs. State of Kerala, [(2000) 6 SCC 359], is squarely applicable on the issue of merger and the judgment dated 21.01.1999 of the High Court merged with the order of this Court dated 13.02.2001, the concept of merger will not come in its way in deciding the issues involved in this petition for the reasons, that, these issues were not raised and therefore not required to be decided by the High Court in its earlier judgment dated 21.01.1999 as was clear from the order passed by it on 27.01.2000 in Misc. Civil Application No. 637 of 1999. The High Court held, that, it had no occasion to address itself on the challenge raised to the notification impugned in the Writ Petition of Manohar Parrikar and the earlier batch of Writ Petitions proceeded solely against the order dated 31.03.1998, and subsequent Notification issued by the State Government on 24.07.1998. It is observed by the High Court, that, the State Government opposed those Writ Petitions without examining the legality of the Notifications dated 15.05.1996 and 01.08.1996 and it had contended that the benefit of rebate was withdrawn as the State Government was facing financial crunch and that the said benefit had been introduced as a policy of the State Government and when it was realized by the State that it was facing financial difficulties in extending the benefit of rebate it decided to withdraw the same which has been upheld by the High Court in the earlier batch of writ proceedings. The High Court therefore has concluded that it cannot now be said that State Government cannot take a stand that the Notifications impugned were issued without following the mandatory provisions of Rules of Business or that they were not Notifications issued by the State Government in the eyes of law. The High Court has also observed, that if the State had no occasion to address itself on the legality of these Notifications, it is not estopped either from raising a challenge or supporting the challenge at an appropriate time. It is also held by the High Court that as the 1st respondent herein was not a party to the earlier batch of Writ Petitions before the High

Court and as his application for hearing his petition with that batch of petitions was withdrawn, he is not estopped from continuing with his challenge against the Notifications dated 15.05.1996 and 01.08.1996.

26) Arguments were also advanced to the effect that the State Government should not be allowed to take contradictory stand as the stand taken by the State Government in its two affidavits filed through the Chief Electrical Engineer in the earlier batch of writ petitions was conflicting with each other. The said contention was sought to be raised by the respondents in view of the change of the Government during the intervening period and the 1st respondent herein was the Chief Minister at the relevant point of time. The High Court has repelled these contentions by stating that the challenge to the notifications impugned before by the 1st respondent herein in his petition cannot be decided on the touch stone of affidavits filed even if they are contradictory in nature and the challenge had to be decided on its own merits, on the basis of records and the Constitutional Mandate. The High Court has observed that in a democratic set up the decisions of the Governments decide the destiny of the people and therefore the validity of such decisions should be decided not on the basis of affidavits filed by the Officers of the Governments or on incomplete or inadequate information made available by them, but on the basis of Constitutional provisions and Business Rules framed thereunder. The High Court further felt that it was duty bound to examine the records to reassure itself that the decisions purported to have been taken by the Government are, in fact and in law, the decision of the Government and they are in conformity with the mandate of the Constitution. Thus the High Court has rejected the preliminary objection as to the maintainability of the Writ Petition and proceeded to decide the challenge made to the above mentioned two notifications on its merits.

27) In our view, the principle of merger essentially refers to the merging of the orders passed by the superior courts with that of the orders passed by a subordinate court. This Court in the case of Shankar Ramachandra Abhyankar Vs. Krishnaji Dattatreya Bapat (AIR 1970 SC 1) has laid down the condition as to when there can be a merger of the orders of the superior court with that of the orders passed by the lower court. This Court stated, that, if any judgment pronounced by the superior court in the exercise of its appellate or revisional jurisdiction after issue of a notice and a full hearing in the presence of both the parties, then it would replace the judgment of the lower court. Thus, constituting the judgment of the superior court the only final judgment to be executed in accordance with law by the Court below. The merger is essentially of the operative part of the order and the principle of merger of the order of the subordinate Court with the order of the superior Court cannot be applied when there is no order made by the superior Court on merits and the controversy between the parties has not been looked into by the superior Court.

28) The issue of merger has no bearing in the facts and circumstances of the present petitions, since, the issue that was decided by the High Court in the earlier batch of Writ Petitions and the issue that was raised and considered in the subsequent public interest litigation is entirely different. Secondly, in our view, the principles of res judicata is also not attracted since the issue raised and considered in the subsequent public interest litigation had not been raised and considered in the earlier round of litigation. It would be worthwhile to recall the observations made by this Court in the case of Madhvi Amma Bhawani Amma and Ors. Vs. Kunjikutty Pillai Meenakshi Pillai and Ors. (2000) 6

SCC 301, wherein the Court has observed that in order to apply general principle of res judicata, Court must find, whether an issue in a subsequent suit, was directly and substantially in issue in the earlier suit or proceedings, was it between the same parties, and was it decided by such Court. Thus, there should be an issue raised and decided, not merely a finding on any incidental question for reaching such a decision. So, if such issue is not raised and if on any other issue, if, incidentally any finding is recorded, it would not come within the periphery of principle of res judicata. However, Shri K.N. Bhatt, learned Senior Counsel appearing for the former Power Minister, would submit that the principles of res judicata and constructive res judicata bars the exercise of jurisdiction by the High Court as there is a bar not only on issues directly raised in a previous lis but the issue that ought to have been raised. It is further submitted that the record of decision culminating in notification dated 24.03.1998 was available and produced before the High Court in previous writ petitions and the same Finance Secretary who had opined in his cabinet note that Rules of Business stood violated due to non-consultation with Finance department had filed affidavit in previous Writ Petitions on the decision to issue notification dated 24.07.1998. Therefore, the learned senior counsel would contend that the High Court has erred in deciding this issue against this respondent. In aid of this submission, the learned senior counsel has pressed into service the observations made by this Court in the case of State of Karnataka vs. All India Manufacturer Organization and Others, [(2006) 1 SCC 32].

29) We are not impressed by the submission of the learned senior counsel Shri K.N. Bhatt. In our view, the subject matter of earlier Writ Petitions was completely different and distinct from the public interest litigation filed by Mr. Manohar Parrikar. In the earlier Writ Petitions, the challenge was against notification and the circulars issued by the State Government and in the present Writ Petitions the High Court was primarily concerned with validity or otherwise of the notifications dated 15.5.1996 and 01.08.1996. Therefore, we are of the view that the reasoning and conclusions reached by the High Court, on the aforesaid issue is in accordance with law and in accordance with the principles laid down by this Court. Therefore, we agree with the conclusion reached by the High Court.

30) The appellants herein have raised an issue with regard to the nature of Business Rules framed by the Government of Goa i.e. whether these Rules are directory or mandatory. Indeed it is their principal contention. Before the High Court also, their contention was that the Rules of Business of the State of Goa were directory and not mandatory and failure to comply with such Rules will not nullify the decision taken by the State Government. Shri F.S. Nariman, learned senior counsel submitted that it is now settled law, that, violation of conduct of Business Rules does not vitiate the decision or order, since the Rules of Business are only directory and not mandatory. The learned senior counsel has invited our attention to the decision of this court in the case of Dattatreya Moreshwar Pangarkar vs. State of Bombay - [(1952) SCR 612]. In the said decision, the court has observed :

> "It is well settled that generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general

inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done. The considerations which weighed with Their Lordships of the Federal Court in the case referred to above in the matter of interpretation of Section 40(1)of the 9th Schedule to the Government of India Act, 1935, appear to me to apply with equal cogency to Article 166 of the Constitution. The fact that the old provisions have been split up into two clauses in Article 166 does not appear to me to make any difference in the meaning of the article. Strict compliance with the requirements of Article 166 gives an immunity to the order in that it cannot be challenged on the ground that it is not an order made by the Governor. If, therefore, the requirements of that article are not complied with, the resulting immunity cannot be claimed by the State. This, however, does not vitiate the order itself. The position, therefore, is that while the Preventive Detention Act requires an executive decision, call it an order or an executive action, for the confirmation of an order of detention under Section 11(1) that Act does not itself prescribe any particular form of expression of that executive decision. Article 166 directs all executive action to be expressed and authenticated in the manner therein laid down but an omission to comply with those provisions does not render the executive action a nullity.

31) Reference is also made to the decision of this Court in Gulabrao Keshavrao Patil and Ors. Vs. State of Gujarat (1996) 2 SCC 26. It was noted as follows:

"Article 166(1) and (2) expressly envisage authentication of all the executive action and shall be expressed to be taken in the name of the Governor and shall be authenticated in such manner specified in the rules made by the Governor. Under Article 166(3), the Governor is authorised to make the rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business insofar as it is not a business with respect to which the Governor is by or under the Constitution required to act in his discretion. In other words, except in cases when the Governor in his individual discretion exercises his constitutional functions, the other business of the Government is required to be conveniently transacted as per the Business Rules made by Article 166(3) of the Constitution. If the action of the Government and the order is duly authenticated as per Article 166(2) and the Business Rule 12, it is conclusive and irrebuttable presumption arises that decision was duly taken according to Rules."

32) Mr. F.S. Nariman next relied upon the decision of this Court in R. Chitralekha and Others vs. State of Mysore, [1964 (6) SCR 368], wherein this Court has stated that it is "settled law" that provisions of Article 166 of the Constitution are only directory and not mandatory in character. And if they are not complied with it can be established as a question of fact that the impugned order was in fact issued by the Governor."

33) In Haridwar Singh Vs. Bagun Sumburui, [(1973) 3 SCC 889], it was noted as follows.

> "Several tests have been propounded in decided cases for determining the question whether a provision in a statute, or a rule is mandatory or directory. No universal rule can be laid down on this matter. In each case one must look to the subject-matter and consider the importance of the provision disregarded and the relation of that provision to the general object intended to be secured. Prohibitive or negative words can rarely be directory and are indicative of the intent that the provision is to be mandatory.
>
> Where a prescription relates to performance of a public duty and to invalidate acts done in neglect of them would work serious general inconvenience or injustice to persons who have to control over those entrusted with the duty, such prescription is generally understood as mere instruction for the guidance of those upon whom the duty is imposed."

34) In Montreal Street Rely Co. vs. Normandin - 1917 A.C. 170, it is held :

> "The statutes contain no enactment as to what is to be the consequence of nonobservance of these provisions. It is contended for the appellants that the consequence is that the trial was coram non judice and must be treated as a nullity.
>
> It is necessary to consider the principles which have been adopted in construing statutes of this character, and the authorities so far as there are any on the particular question arising here. The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at. The cases on the subject will be found collected in Maxwell on Statutes, 5th ed. P. 596 and following pages. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable not effecting the validity of the acts done."

(emphasis supplied)

35) In R v Immigration Appeal Tribunal Ex parte Jeyeanthan 1999 (3) AER 231, it is observed :

> "The issue is of general importance and has implications for the failure to observe procedural requirements outside the field of immigration. The conventional approach when there has been non-compliance with a procedural requirement laid down by a statute or regulation is to consider whether the requirement which was not

complied with should be categorised as directory or mandatory. If it is categorised as directory it is usually assumed it can be safely ignored. If it is categorised as mandatory then it is usually assumed the defect cannot be remedied and has the effect of rendering subsequent events dependent on the requirement a nullity or void or as being made without jurisdiction and of no effect. The position is more complex than this and this approach distracts attention from the important question of what the legislator should be judged to have intended should be the consequence of the non-compliance. This has to be assessed on a consideration of the language of the legislation against the factual circumstances of the non-compliance. In the majority of cases it provides limited, if any, assistance to inquire whether the requirement is mandatory or directory. The requirement is never intended to be optional if a word such as 'shall' or 'must' is used.

A requirement to use a form is more likely to be treated as a mandatory requirement where the form contains a notice designed to ensure that a member of the public is informed of his or her rights, such as a notice of a right to appeal. In the case of a right to appeal, if, notwithstanding the absence of the notice, the member of the public exercises his or her right of appeal, the failure to use the form usually ceases to be of any significance irrespective of the outcome of the appeal. This can confidently be said to accord with the intention of the author of the requirement.

There are cases where it has been held that even if there has been no prejudice to the recipient because, for example, the recipient was aware of the right of appeal but did not do so, the non- compliance is still fatal. The explanation for these decisions is that the draconian consequence is imposed as a deterrent against not observing the requirement. However even where this is the situation the consequences may differ if this would not be in the interests of the person who was to be informed of his rights.

Because of what can be the very undesirable consequences of a procedural requirement which is made so fundamental that any departure from the requirement makes everything that happens thereafter irreversibly a nullity it is to be hoped that provisions intended to have this effect will be few and far between. In the majority of cases, whether the requirement is categorised as directory or mandatory, the tribunal before whom the defect is properly raised has the task of determining what are to be the consequences of failing to comply with the requirement in the context of all the facts and circumstances of the case in which the issue arises. In such a situation that tribunal's task will be to seek to do what is just in all the circumstances (see Brayhead (Ascot) Ltd v Berkshire CC [1964] 1 All ER 149, [1964] 2 QB 303 applied by the House of Lords in London and a Clydesidc Estates Ltd v Aberdeen DC [1979] 3 All ER 876, [1980] lWLR 182).

By contrast, a requirement may be clearly directory because it lays down a time limit but a tribunal is given an express power to extend the time for compliance. If the tribunal grants or refuses an extension of time the position is clear. If the time limit is

extended the requirement is of no Significance. If an extension is refused the requirement becomes critical. It may, for example, deprive a member of the public of a right to appeal which if exercised in time would have been bound to succeed. In the latter situation a directory requirement has consequences which are as significant as any mandatory requirement.

A far from straightforward situation is where there is a need for permission to appeal to a tribunal but this is not appreciated at the time. The requirement is mandatory in the sense that the tribunal or the party against whom the appeal was being brought would have been entitled to object to the appeal proceeding without the permission and if they had done so the appeal would not have been accepted. However, what is the position if because they were unaware of the existence of the requirement no objection is made and the appeal is heard and allowed? Is the appellant, when the mistake is learnt of, to be deprived of the benefits of the appeal? If the answer is Yes the result could be very unjust. This would be especially so, if in fact the tribunal in error had told the appellant that permission is not needed and he would have been in time to make the application if he had not been misinformed. Could it have been the intention of the author of the requirement that the requirement should have the effect of depriving the appellant of the benefit of his appeal? Clearly not. In such a situation the non-compliance would almost inevitably be regarded as being without significance. It must be remembered that procedural requirements are designed to further the interests of justice and any consequence which would achieve a result contrary to those interests should be treated with considerable reservation."

36) In Attorney General's Reference (No 3 of 1999), 2001(1) AER 577, it is held :

"My Lords, I acknowledge at once that reasonable minds may differ as to the correct interpretation of a subsection which has no parallel in the 1984 Act or any other statute. Nevertheless, there do seem to be secure footholds which may lead to a tolerably clear answer. It is not along the route adopted by the prosecution of asking whether the relevant provision is mandatory or directory. In London and Clydeside Estates Ltd. Vs. Aberdeen DC [1979] 3 All ER 876 at 882- 884, [1980] 1 WLR 182 at 188-190, Lord Hailsham of St Marylebone L.C. considered this dichotomy and warned against the approach 'of fitting a particular case into one or other of mutually exclusive and starkly contrasted compartments'. In R v Immigration Appeal Tribunal, ex p Jeycanthan [1999J 3 All ER 231 at 237, [2000] 1 WLR 354 at 360, Lord Woolf MR, now Lord Chief Justice, echoed this warning and held that it is 'Much more important ... to focus on the consequences of non- compliance'. This is how I will approach the matter."

37) In R v Sekhon and others, 2003(3) AER 508, it is observed :

"25. There is no doubt that difficulties for courts exist in applying the distinction between mandatory requirements on the one hand, and directory requirements on the other. Even if the

terms `directory' and `mandatory' are not used the problem remains of answering the question : what is the effect of non-compliance with procedural requirements? What is necessary as indicated by Lord Campbell LC in Liverpool Borough Bank v.

Turner (1861) 30 LJ Ch 379 at 381, 45 ER 715 at 718, is `to try to get at the real intention of the legislature, by carefully attending to the whole scope of the statute to be construed."

38) Reference can be made to certain passages from HALSBURY'S Laws of England, 4th Edition Re issue Vol. 44(1) at para 1237 and 1238 :

> 1237. Substantive and procedural enactments. A distinction is drawn between enactments that have substantive effect and those that are merely procedural. Here 'substantive' means having to do with the substance of the law, in particular the nature and existence of legal rights, powers or duties, whereas procedure is concerned with formalities and technicalities, rather than substance. A procedural change is expected to improve matters for everyone concerned (or at least to improve matters for some, without inflicting detriment on anyone else who uses ordinary care, vigilance and promptness).
>
> The distinction governs such questions as whether a statutory requirement is mandatory or merely directory", whether the effect of an enactment is retrospective' and when a limitation period begins to run.
>
> The question may be whether, on the facts of the instant case, the enactment is substantive or merely procedural, bearing in mind that an enactment may be substantive in the light of some facts but merely procedural on others. Another use of the term 'substantive' is to indicate a 'permanent' provision of an Act, in contrast to merely temporary or transitional provisions.
>
> 1238. Mandatory and directory enactments. The distinction between mandatory and directory enactments concerns statutory requirements and may have to be drawn where the consequence off ailing to implement the requirement is not spelt out in the legislation. The requirement may arise in one of two ways. A duty to implement it may be imposed directly on a person; or legislation may govern the doing of an act or the carrying on of an activity, and compel the person doing the act or carrying on the activity to implement the requirement as part of a specified procedure. The requirement may be imposed merely by implication.
>
> To remedy the deficiency of the legislature in failing to specify the intended legal consequence of non- compliance with such a requirement, it has been necessary for the courts to devise rules. These lay down that it must be decided from the wording of the relevant enactment whether the requirement is intended to be mandatory or merely directory. The same requirement may be mandatory as to some aspects and directory as to the rest. The court will be more willing to hold that a statutory

requirement is merely directory if any breach of the requirement is necessarily followed by an opportunity to exercise some judicial or official discretion in a way which can adequately compensate for that breach. Provisions relating to the steps to be taken by the parties to legal proceedings (using the term in the widest sense) are often construed as mandatory. Where, however, a requirement, even if in mandatory terms, is purely procedural and is imposed for the benefit of one party alone, that party can waive the requirement. Provisions requiring a public authority to comply with formalities in order to render a private individual liable to a levy have generally been held to be mandatory.

Requirements are construed as directory if they relate to the performance of a public duty, and the case is such that to hold void acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, without at the same time promoting the main object of the legislature. This is illustrated by many decisions relating to the performance of public functions out of time, and by many relating to the failure of public officers to comply with formal requirements. On the other hand, the view that provisions conferring private rights have been generally treated as mandatory is less easy to support; the decisions on provisions of this type appear, in fact, to show no really marked leaning either way.

If the requirement is found to be mandatory, then in a case where a duty to implement it is imposed directly on a person, non-compliance will normally constitute the tort of breach of statutory duty, while in a case where it is to be implemented as a part of a specified procedure, non-compliance will normally render the act done invalid. If the requirement is found to be directory only then in either case the non-compliance will be without direct legal effect, though there might be indirect consequences such as an award of costs against the offender. It has been said that mandatory provisions must be fulfilled exactly, whereas it is sufficient if directory provisions are substantially fulfilled.

Where the requirement is complied with at the relevant time, the act done is not vitiated by later developments which, had they occurred before that time, would have meant that the duty should have been performed in a different way."

39) Per contra, Dr. Rajeev Dhavan and Shri Shyam Divan, learned Senior Counsel for respondents, apart from others, submitted that there can be no universal rule with regard to the violation of the Rules of Business and each case must be decided on facts; where the Rules of Business contain prohibitive or negative words, they are indicative of the intent that the provision is mandatory; in matters concerning revenue or finance rigorous observance of the rules is essential; when the cabinet alone is competent to take a decision or where the finance department has conveyed its disagreement or where there is no prior consultation with the finance department, the decision of the individual minister is liable to be quashed; where the Rules of

Business have not been complied with, then the decision/communication cannot be termed as a Government decision; and an individual functionary cannot by-pass the Rules of Business and the requirement for certain matters to be placed before the Council of Ministers. It is further submitted that the decision on which reliance is placed by learned senior counsel Shri F.S. Nariman does not specifically answer the issue whether the Rules of Business framed under Article 166(3) of the Constitution is mandatory or directory and in fact all those decisions are rendered in the context of Article 166(1) and (2) of the Constitution and the Courts have held that, the form of expression and authentication are only directory, and not mandatory.

In aid of their submission, the learned senior counsel relies on the observations made in the following decisions : -

40) In State of Kerala vs. A. Lakshmikutty, [(1986) 4 SCC 632], it is held :

"It must therefore follow that unless and until the decision taken by the Council of Ministers on January 30, 1985 was translated into action by the issue of a notification expressed in the name of the Governor as required by Article 166(1), it could not be said to be an order of the State Government. Until then, the earlier decision of the Council of Ministers was only a tentative one and it was therefore fully competent for the High Court (sic State Government) to reconsider the matter and come to a fresh decision." (pr. 41, pp. 659)

41) In CBI vs. Ravi Shankar Srivastava, [(2006) 7 SCC 188], it is observed :

"13.....has been rightly submitted by learned counsel for the appellant, there is no notification revoking the earlier notification. The letter on which great emphasis has been laid by Respondent 1 and highlighted by the High Court, the authority to write the letter has not been indicated. It has also not been established that the person was authorised to take a decision. In any event, the same does not meet the requirements of Article 166 of the Constitution. The letter is not even conceptually a notification. The High Court was, therefore, not justified in holding that there was a notification rescinding the earlier notification." (pr. 13, pp. 200)

42) In Punjab State Industrial Development Corpn. Ltd. vs. PNFC Karamchari Sangh, [(2006) 4 SCC 367], it is held :

"11. Reliance was placed on the so-called order of the Chief Minister permitting PSIDC to raise funds in order to meet the liability of PNFC towards salary of its workers for at least six months. We have carefully perused the note of the Chief Minister dated 25-8-2001. The said note cannot be said to be an order of the State Government and therefore is not binding on PSIDC. The orders of the State Government are issued in a prescribed manner and the note dated 25-8-2001 cannot be treated as one." (pr.11, pp. 371)

43) In State of Bihar vs. Kripalu Shankar, [(1987) 3 SCC 34], it is stated :

"15. Article 166(1) requires that all executive action of the State Government shall be expressed to be taken in the name of the Governor. This clause relates to cases where the executive action has to be expressed in the shape of a formal order or notification. It prescribes the mode in which an executive action has to be expressed. Noting by an official in the departmental file will not, therefore, come within this article nor even noting by a Minister. Every executive decision need not be as laid down under Article 166(1) but when it takes the form of an order it has to comply with Article 166(1). Article 166(2) states that orders and other instruments made and executed under Article 166(1), shall be authenticated in the manner prescribed. While clause (1) relates to the mode of expression, clause (2) lays down the manner in which the order is to be authenticated and clause (3) relates to the making of the rules by the Governor for the more convenient transaction of the business of the Government. A study of this article, therefore, makes it clear that the notings in a file get culminated into an order affecting right of parties only when it reaches the head of the department and is expressed in the name of the Governor, authenticated in the manner provided in Article 166(2)." (pr. 15, pp. 43)

44) In Haridwar Singh vs. Bagun Sumbrui, [(1973) 3 SCC 889], Rule 10 had been formulated under Article 166(3), it is observed :

"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 pre-requisite to the exercise of the power." (pr. 16, pp. 896)

45) In Dattatraya Moreshwar vs. State of Bombay, [1952 SCR 612] at pp. 624-65, per Das, J. :

"The fact that the old provisions have been split up into two clauses in Article 166 does not appear to me to make any difference in the meaning of the article. Strict compliance with the requirements of Article 166 gives an immunity to the order in that it cannot be challenged on the ground that it is not an order made by the Governor. If, therefore, the requirements of that article are not complied with, the resulting immunity cannot be claimed by the State. This, however, does not vitiate

> the order itself. The position, therefore, is that while the Preventive Detention Act requires an executive decision, call it an order or an executive action, for the confirmation of an order of detention under Section 11(1) that Act does not itself prescribe any particular form of expression of that executive decision. Article 166 directs all executive action to be expressed and authenticated in the manner therein laid down but an omission to comply with those provisions does not render the executive action a nullity. Therefore, all that the procedure established by law requires is that the appropriate Government must take a decision as to whether the detention order should be confirmed or not under Section 11(1). That such a decision has been in fact taken by the appropriate Government is amply proved on the record."

Evidence can be led to show that these actions are attributable to the government. But Article 166(3) is not verificatory and has to be followed. Even in this case at pp. 632-633, as per Mukherjea, J., it is held :

> "I agree with the learned Attorney General that non-compliance with the provisions of either of the clauses would lead to this result that the order in question would lose the protection which it would otherwise enjoy, had the proper mode for expression and authentication been adopted."

46) In Bachhittar Singh vs. State of Punjab, [1962 Supp (3) SCR 713] :

> "Rules of business under Article 166(3) required Revenue Minister to make the order against the petitioner, but the same was done by the Chief Minister. The said order of the CM was rescued by another rule of business which allowed him to call any fine before him. No mention of Article 166(3) being directory or mandatory."

47) In State of Sikkim vs. Dorjee Tshering Bhutia, [(1991) 4 SCC 243], it is observed :

> "14.....The government business is conducted under Article 166(3) of the Constitution in accordance with the Rules of Business made by the Governor. Under the said Rules the government business is divided amongst the ministers and specific functions are allocated to different ministries. Each ministry can, therefore, issue orders or notifications in respect of the functions which have been allocated to it under the Rules of Business."

48) In Gulabrao Keshavrao Patil vs. State of Gujarat, [(1996) 2 SCC 26], it is held :

> "14....It would, therefore, be clear that the decision of a Minister under the Business Rules is not final or conclusive until the requirements in terms of clauses (1) and (2) of Article 166 are complied with. Before the action or the decision is expressed in the name of the Governor in the manner prescribed under the Business Rules and communicated to the party concerned it would always be open by necessary

implication, to the Chief Minister to send for the file and have it examined by himself and to take a decision, though the subject was allotted to a particular Minister for convenient transaction of the business of the Government. The subject, though exclusively allotted to the Minister, by reason of the responsibility of the Chief Minister to the Governor and accountability to the people, has implied power to call for the file relating to a decision taken by a Minister. The object of allotment of the subject to a Minister is for the convenient transaction of the business at various levels through designated officers." (pr. 14, pp.35)

49) Dr. Rajeev Dhavan, learned senior counsel fairly submits, that, even if Article 166(3) were to be held directory, substantial compliance of the same would be required. In support of this contention, the learned senior counsel relies on the following decisions of this Court :

7 Bannari Amman Sugars Ltd. vs. Commercial Tax Office (2005) 1 SCC 625.

7 R. Chitralekha vs. State of Mysore (1964) 6 SCR 368 7 State of U.P. vs. Om Prakash Gupta (1969) 3 SCC 775 7 Dattatraya Moreshwar vs. State of Bombay 1952 SCR 612

50) The summary of the arguments canvassed by learned senior counsel Shri F.S. Nariman is that, the Rules of Business framed under Article 166(3) of the Constitution is only directory and by no stretch of imagination, it can be said to be mandatory and, therefore, non compliance of the Rules of Business cannot be declared as illegal or void ab-initio. In justification of the judgment of the Bombay High Court, it is the stand of Dr. Rajeev Dhawan, learned senior counsel that at-least some of the provisions of Rules of Business framed by Govt. of Goa are mandatory and non-observation of the same would vitiate the circulars/orders/notifications etc.

51) In order to appreciate the rival contentions canvassed by learned senior counsels, it would be appropriate, to extract Article 166 of the Constitution of India and the same is as under:

"Article 166 Conduct of business of the Government of a State - (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made on executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of

the said business insofar as it is not business with respect to which the Governor is by or under this Constitution to act in his discretion."

52) Clause (1) of Article 166 of the Constitution says, that, whenever executive action is to be taken by way of an order or instrument, it shall be expressed to be taken in the name of the Governor in whom the executive power of the State is vested. Under Clause (2), the orders and instruments made and executed in the name of the Governor shall be authenticated in the manner specified in the rules. Under Clause (3) of Article 166 of the Constitution, the Governor is authorized to make rules for the more convenient transaction of business of the Government of the State and for the allocation among its Ministers of the business of Government. All matters excepting those in which the Governor is required to act in his discretion have to be allocated to one or the other of the Ministers on the advice of the Chief Minister. Apart from allocating business amongst Ministers, the Governor can also make rules on the advice of the Council of Ministers for more convenient transaction of business.

53) In the case on hand, we are required to examine the contentions of the appellants on this issue with reference to the Business Rules framed by Governor of Goa under Article 166 (3) of the Constitution of India. Rule 7 (2) of the Business Rules of the Government of Goa states, that, a proposal which requires previous concurrence of Finance Department under the said Rule, but in which Finance Department has not concurred, may not be proceeded with, unless the Council of Ministers has taken a decision to that effect. The wordings of this Rule are different from the provisions of Rule 9 of the Business Rules of Maharashtra and have to be read in context with the provisions of Rule 3 of the Business Rules of Government of Goa which states that the business of the Government shall be transacted in accordance with the Business Rules. Under Rule 7 (2) thereof, the concurrence of the Finance Department is a condition precedent. Likewise Rule 6 of the Business Rules states, that, the Council of Minister shall be collectively responsible for all executive orders passed by any Department in the name of the Governor or contract made in exercise of the power conferred on the Governor or any other officer subordinate to him in accordance with the Rules, whether such orders or contracts are authorized by an individual minister on a matter pertaining to the Department under his charge or as the result of discussion at a meeting of the Council of Minister or otherwise. This Rule requires that an executive order issued from any department in the name of the Governor of the State should be known to the Council of Ministers so as to fulfill the collective responsibility of the Council of Ministers. Further Rule 7 of the Business Rules requires that no Department shall without the concurrence of the Finance Department issue any order which may involve any abandonment of revenue or involve expenditure for which no provisions have been made in the Appropriation Act or involve any grant of land or assignment of revenue or concession, grant, lease or licence in respect of minerals or forest rights or rights to water, power or any easement or privilege or otherwise have a financial implications whether involving expenditure or not. From a combined reading of the provisions of Rules 7, 3 and 6 of the Business Rules of the Government of Goa the conclusion would be irresistible that any proposal which is likely to be converted into a decision of the State Government involving expenditure or abandonment of revenue for which there is no provision made in the Appropriation Act or an issue which involves concession or otherwise has a financial implication on the State is required to be processed only after the concurrence of the Finance Department and cannot be finalized merely at

the level of the Minister in charge. The procedure or process does not stop at this. After the concurrence of the Finance Department the proposal has to be placed before the Council of Ministers and/or the Chief Minister and only after a decision is taken in this regard that it will result in the Decision of the State Government. Therefore the High Court has rightly rejected the arguments of the appellants herein based on the judgment of the Full Bench of the High Court. The High Court has observed, that the Rules of Business are framed in such a manner that the mandate of the provisions of Articles 154, 163 and 166 of the Constitution are fulfilled. Therefore, if it is held that the non- compliance of these Rules does not vitiate the decisions taken by an individual Minister concerned alone the result would be disastrous. In a democratic set up the decision of the State Government must reflect the collective wisdom of the Council of Ministers or at least that of the Chief Minister who heads the Council. The fact that the decisions taken by the Minister alone were acted upon by issuance of Notification will not render them decisions of the State Government even if the State Government chose to remain silent for a sufficient period of time or the Secretary concerned to the State Government did not take any action under Rule 46 of the Business Rules. If every decision of an individual Minister taken in breach of Rules are treated to be those of the State Government within the meaning of Article 154 of the Constitution, the result would be chaotic. The Chief Minister would remain a mere figure head and every Minister will be free to act on his own by keeping the Business Rules at bay. Further it would make it impossible to discharge the Constitutional responsibility of the Chief Minister of advising the Governor under Article 163. Therefore, it is difficult to accept the contentions of the appellants that Business Rules are directory.

54) We also subscribe to and uphold the view of the High Court that the Business Rules 3,6,7 and 9 are Mandatory and not Directory and any decision taken by any individual Minister in violation of them cannot be termed as the decision of the State Government.

55) We are fortified in our view by several decisions of this Court.

In K.K. Bhalla vs. State of M.P., [2006 (3) SCC 581], the facts were that the State of M.P. had allotted certain land under the Jabalpur Development Authority (JDA) to a person at concessional rates to set up a newspaper printing press, though the land was earmarked for commercial use. The Court held :

> "The purported policy decision adopted by the State as regards allotment of land to the newspaper industries or other societies was not a decision taken by the appropriate Ministry. If a direction was to be issued by the State to the JDA, it was necessary to be done on proper application of mind by the cabinet, the concerned Minister or by an authority who is empowered in that behalf in terms of the Rules of the Executive Business framed under Article 166 of the Constitution of India. Such a direction could not have been issued at the instance of the Chief Minister or at the instance of any other officer alone unless it is shown that they had such authority in terms of the Rules of the Executive Business of the State. We have not been shown that the Chief Minister was the appropriate authority to take a decision in this behalf."

(emphasis supplied)

56) In State of U.P. vs. Neeraj Avasthi, [2006 (1) SCC 667], this Court held that the power of the State Government was confined to issuing directions to State Agricultural Produce Market Board on the question of policy and observed :

> "Such a decision on the part of the State Government must be taken in terms of the Constitutional scheme, i.e., upon compliance of the requirement of Article 162 read with Article 166 of the Constitution of India. In the instant case, the directions were purported to have been issued by an officer of the State. Such directions were not shown to have been issued pursuant to any decision taken by a competent authority in terms of the Rules of Executive Business of the State framed under Article 166 of the Constitution of India. .... We are therefore of the opinion that the direction by the State was not strictly in accordance with law."

57) In Gulabrao Keshavrao Patil (supra), this Court held that a decision of a Minister was not an order of the Government in view of non-compliance with Article 166.

58) The decision of the Constitution Bench in Chitralekha has been misinterpreted. In that case this Court was considering a controversy in regard to an order which was not expressed in the name of the Governor in terms of Article 166(1) and (2). In that context, this Court observed that it is a settled law that the provisions of Article 166 of the Constitution are only directory and not mandatory in character. The context clearly shows that the observation that the provisions of Article 166 of the Constitution are only directory and not mandatory, referred only to clauses (1) and (2) of Article 166 and did not refer to clause (3) which was not under consideration at all. Chitralekha, therefore, cannot be relied upon to support the contention that Business Rules made under clause (3) of Article 166 are directory. We have earlier referred to all the decisions on which reliance was placed by learned senior counsel Shri F.S. Nariman. In our view, those decisions would not assist the appellant, since they were all rendered in the context of interpretation of Article 166(1) and (2) of the Constitution.

59) It is appropriate to further consider some of the Business Rules to deal with the issue brought before us. Though the High Court in the judgment impugned has referred to various Rules, we deem it necessary to refer to only those which are relevant for our purpose. Rule 10 of the Business Rule requires submission of all cases referred to in the Schedule to the Chief Minister after consideration by the Minister in charge so as to obtain the Chief Ministers' orders for circulation of the case or to bring it up for consideration at a meeting of the Council of Ministers. Rule 13 provides that when it is decided to bring the case before the Council, the department concerned should, unless otherwise directed by the Chief Minister, prepare a memorandum indicating precisely the salient facts of the case and points for decision and copies thereof circulated to the Council by the Secretary. Rule 14 requires in a case which involves or concerns more than one Department, the Minister by previous discussion to arrive at an agreement and if such agreement is reached the memorandum referred to in Rule 13 supra should contain the joint recommendations of the Ministers and if no agreement is reached the points of differences and views of each of the Minister should be stated in the

memorandum. Items No.5,9 & 30 in the Schedule to the Rules relate to proposal which have a bearing on the Finances of the State and which do not have the concurrence or consent of the Finance Minister's proposal involving important change in the policy and practice; proposals to vary or reverse a decision previously taken by the Council. Under Rule 16 the decisions of the Council in each case should be recorded and placed with the records of the case after their approval by the Chief Minister. Extracts of the decision should be sent to the Secretary of the Department who should take necessary action thereon. Rule 17 enables a Minister in Charge of a Department on the basis of standing orders to give such directions as he thinks fit for disposal of cases in his department and further requires the Secretary of the Department concerned to simultaneously submit to the Chief Minister and the Governor the statement showing the particulars of any important cases disposed of by the Minister. Rule 20 stipulates, that, when the subject involves or relates to more than one Department, no order should be issued or the case be laid before the council until the case has been considered by all the departments involved or concerned, unless the case is one of extreme urgency. In the case on hand, the decisions impugned involve and concern not only the department of power but also the departments of Industries and Finance and in view of the provisions of Rule 20, the decisions to finalize the Notifications at his level without placing the proposal before the Chief Minister or the Council of Minister fell out side the purview of the Power Minister.

60) The State Government in exercise of its power conferred on it under Section 23 read with Section 51-A of the Electricity Act issued a Notification dated 29.06.1993, published in the Official Gazette dated 30.06.1993, framing the revised electricity tariff for the State as specified in the Schedule appended to the Notification. By another Notification dated 6.12.1993, the State Government for the first time created a new and separate category viz. Extra High Tension Supply Consumers and was included as item No. 10 in the revised tariff framed under Notification dated 29.06.1993. Pursuant to the Notification dated 6.12.1993, the power department took a stand that as the Notification dated 30.09.1991 had covered only the Low Tension and High Tension Consumers of electricity and not the Extra High Tension Consumers and the claims of the Extra High tension consumers were rejected by specific orders passed in October 1995 i.e. after the Notification dated 31.03.1995, rescinding Notification dated 30.09.1991 was issued and the orders rejecting their claims had become final having not been challenged by the units. The State Government therefore felt a need to issue certain clarifications to process the claims of the units for grant of rebate of 25% for the period between 1.10.1991 to 31.03.1995. While issuing such clarification involving additional financial burden on the exchequer, the Government was required to process them in keeping with the requirements of the Business Rules. When the Rescinding Notification dated 31.03.1995 was issued the rebate of 25% was available only to Low Tension and High Tension consumers and the Extra High Tension Consumers got deleted pursuant to the Notification dated 6.12.1993. A decision, therefore, to include a new category of consumers for grant of rebate which necessarily involved extra financial burden on the State's finances more so by creation of a new category retrospectively was required to be finalized only after it was placed before the Council of Ministers or the Chief Minister in addition to obtaining the previous concurrence of the Finance and Industries Departments. The Notification dated 15.5.1996 which was argued by the appellants herein to be only clarificatory had imposed an additional burden on the State's Exchequer by introducing a new class of consumers for grant of rebate retrospectively and it was finalized by the Power Minister at his

level. In law the proposal for the decision leading to the Notification dated 15.5.1996 should have been placed before the Council of Ministers or the Chief Minister and since the same has not been done it is in violation of the Business Rules and hence the decision is non est. Even for the sake of arguments if it is assumed that the Notification dated 15.5.1996 was c1arificatory in nature the same violates Rule 19 of the Business Rules and there is nothing on record, as observed by the High Court to show that the department concerned attempted to seek ratification of the decision taken by the Power Minister before the Notification dated 15.5.1996 was issued.

61) At this stage, we find it necessary to refer to some of the Constitutional provisions to deal with the issue raised by the appellants. Under Article 154 of the Constitution of India, the Governor is vested with the Executive Power of the State and he shall exercise them either directly or through Officers subordinate to him in accordance with the provisions of the Constitution. The Governor is advised by the Council of Ministers with the Chief Minister at its head in exercise of his functions except those specifically stated in discharge of his functions as the head of the State. The Council of Minister is collectively responsible to the Legislative Assembly of the State. The Rules of business framed under Article 166(3) of the Constitution are for convenient transaction of the business of the Government and for allocation of the business among the Ministers. Article 166(2) of the Constitution requires the decision of the State Government to be authenticated as per the Rules framed thereunder. Any decision taken by the State Government therefore, reflects the collective responsibility of the Council of Ministers and their participation in such decision making process. The Chief Minister as the Head of the Council of Ministers is answerable not only to the Legislature but also to the Governor of the State. The Governor of the State as the Head of the State acts with the aid and advice of the Council of Ministers headed by the Chief Minister. The Rules framed under Article 166 (3) of the Constitution are in aid to fulfill the Constitutional Mandate embodied in Chapter II of Part VI of the Constitution. Therefore, the decision of the State Government must meet the requirement of these Rules also.

62) Before the High Court as also before us it was contended by the appellants herein, that, the Rules framed under Article 166(3) are only directory in character and failure to comply with them does not vitiate the decision taken by the State Government. The High Court after considering the various judgments cited before it has repelled the said contention to hold that the said Rules are mandatory and non- compliance thereof would be disastrous. The reasoning adopted by the High Court to arrive at such a conclusion is sound and in accordance with the constitutional mandate. The decisions of the State Government have to be in conformity with the mandate of Article 154 an 166 of the Constitution as also the Rules framed thereunder as otherwise such decision would not have the form of a Government decision and will be a nullity. The Rules of Business framed under Article 166(3) of the Constitution are for convenient transaction of the business of the Government and the said business has to be transacted in a just and fit manner in keeping with the said Business Rules and as per the requirement of Article 154 of the Constitution. Therefore, if the Council of Ministers or Chief Minister has not been a party to a decision taken by an Individual Minister, that decision cannot be the decision of the State Government and it would be non-est and void ab initio. This conclusion draws support from the Judgment of this Court in the case of Haridwar Singh Vs. Bagun Sambrui & ors (1973) 3 SCC 889. This Court in the said case was dealing with the Business Rules of the State Of Bihar framed under Article 166 (3) of the Constitution of India and the

observations of this Court on the issue apply to the case on hand in all force. This Court observed:

> " 14. Where a prescription relates to performance of a public duty and invalidate acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, such prescription is generally understood as mere instruction for the guidance of those upon whom the duty is imposed.
>
> 15. Where however, a power of 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.
>
> 16. 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 power".

63) As observed by us earlier, these observations apply equally to the case on hand and in light of this view, we have no difficulty in holding that the Business Rules framed under the Provisions of Article 166 (3) of the Constitution are mandatory and must be strictly adhered. Any decision by the Government in breach of these Rules will be a nullity in the eyes of law.

64) It is in this legal background that the issues raised before us have to be dealt with. The High Court has examined the files placed before it by the State Government and noted the facts reflected by the said records. As recorded by the High Court, the rebate of 25% in power tariff was sought to be withdrawn by the State Government with effect from 1.4.1995 pursuant to a Cabinet meeting held on 21.07.1994 and a Notification dated 31.03.1995 was issued therefor. The 1st respondent's motion in the State Assembly for a Calling Attention Notice evidently moved the State Government to evolve a Scheme for grant of rebate of 25% for the period between 1.10.1991 to 31.03.1995. The Power Minister therefore, on 08.07.1995 called upon the Chief Electrical Engineer to formulate such a scheme who prepared accordingly a note regarding the proposed scheme. Since the earlier Notification was rescinded by the Notification dated 31.03.1995, a clarification was sought from the Law Department on the extension of the period of rebate of 25%. On 25.08.1995, a note was put up by the Law Department indicating that the 25% rebate would be available only for the period between 01.10.1991 to 31.03.1995 and industrial units supplied with power on/or after 31.03.1995 would not be entitled for the same. On 14.02.1996, the Chief Electrical Engineer submitted a note containing a proposal to amend the rebate notification requesting to extend the benefit of the rebate of 25% to Extra High Tension consumers and sought approval thereof. The said draft when referred to the Law Department for its opinion, it was opined thereon that it was legally impermissible to

give retrospective effect to the proposed Notification. However, though the said amendment was approved by the then power minister, the same was not given effect to in view of the elections scheduled on 02.05.1996. On 03.05.1996, the Power Minister passed an order to issue the amendment Notification as by then the elections were over and the notification dated 15.05.1996 was accordingly issued, though the subject matter was never placed before the Council of Ministers or the Chief Minister. The Notification was issued solely on the directions of the Power Minister despite the opinion of the Law Secretary that retrospective effect to the proposed amendment could not be given as it involved additional class of consumers of power, which is in violation of the Business Rules of Government of Goa. Therefore the said Notification is unsustainable and the High Court has rightly held it be non-est and as void ab initio.

65) The Power Department once again took up the subject of re-

introduction of 25% of rebate in power tariff at the instance of the Industries Department and in view of the continued demands from the Industrial Units for such a rebate. This was considered by the Power department and proposal therefor was called from the Chief Electrical Engineer. A query was also raised regarding the role of the Industries and Electricity Departments in issuing the eligibility certificates. A note dated 25.07.1996 submitted by the Chief Electrical Engineer indicated that such certificates shall be issued by the Electricity Department as it was that Department which was giving the subsidy. Thereafter the Commissioner and Secretary (Power) submitted a detailed note on 30.07.1996 to the Minister of Power and the latter conveyed his approval with the substitution of words "all industrial units who apply for availing power on or after 1.10.1991" with the words "all industrial units who apply or avail on or after 10.01.1991" and the rebate was to be given on the energy charges on the prevailing tariff from time to time as against the earlier Notification where the rebate of 25% was to be given on tariff as per Notification dated 27.06.1988. As per the decision/approval of the Power Minister, the Notification dated 1.08.1996 came to be issued without there being any consultation with the Council of Ministers or without the proposal being placed before it or the Chief Minister or without the consultation with the Finance Department, though the draft of the notification was referred to the Law Department before its issuance.

66) It is also to be noted that by the Notification dated 01.08.1996 the State Government intended to re-introduce the benefit of 25% rebate in power tariff. If the State Government as a policy decision desired to re- introduce the said rebate, it was imperative that the said decision complied with the requirement of a Government decision and that it did not remain a Departmental Order or Instruction. The High Court has recorded after verifying the notes on record that the re-introduction of rebate was initiated at the instance of Industries Department and that the proposal for re-introduction attracted the provisions of Rules 9 & 10 of the Business Rules and it did not seek the concurrence of the Finance Department. From the file produced before it the High Court has found that the decision was finalized by the Power Minister at his level without any reference to the Council of Ministers or the Chief Minister. The High Court has also referred to the Statement in writing given by the Chief Minister to the Investigating Officer during the course of investigation launched pursuant to the complaint given by the 1st respondent, that the Power Minister at no point of time had placed the proposal regarding decisions dated 15.5.1996 and 1.8.1996. This apart, from

the records the High Court finds that the agency to certify the eligibility of industrial units for concessional tariff was yet to be identified and the issue whether the rebate for the period between 01.10.1991 to 31.03.1995 was to be made available as per the Notification dated 27.6.1988 or with reference to the tariff prevailing from time to time. The Note dated 8.7.1996 is referred to by the High Court. The High Court also refers to the reply of the Electrical Engineer dated 10.7.1996 wherein it was clarified that only the prospective industrial consumers who has applied and availed power supply on or after 1.10.1991 were eligible for concession. From the note of the Commissioner and Secretary, Department of Power dated 30.7.1996 the High Court records that the certification/ verification of the industrial units could be done by the Electricity Department as the concession was to be extended by the said department to the consumers. The said note refers to the meetings held in the chamber of Minister of Power. The Note also mentions about a constitution of a Screening Committee consisting of the Secretary of Ministry of Power, the Chief Electrical Engineer, Director of Industries and Joint Secretary, Finance, to ensure that only genuine and bona fide claims are entertained and paid the rebate and also examine and verify all doubtful claims. The Note also refers to a decision taken in one of such meetings to the effect that rebate should be given to units on energy charges only as per the prevailing tariff in force from time to time on which they are billed for a period of five years on the recommendations made by the Chief Electrical Engineer. The recommendations and/or the decisions did have bearing on the finances of the State Government and also amounted to change in policy decisions. Even then neither did the Minister of Power think it is proper and appropriate to place the proposals before the Council of Ministers or the Chief Minister, nor did the Secretary concerned deemed it appropriate to do so. The proposals were finalized by the Power Minister at his level as per the modifications suggested by him on 30.7.1996 which in our opinion are in violation of the Business Rules.

67) The High Court has perused the files relating to the issue and from them it has noticed that the file was forwarded to the Development Commissioner on or about 17.03.1998 as they were required for preparation of reply to a question in the Assembly and the Commissioner on 25.03.1998 submitted a note referring to the complaint filed by 1st respondent herein alleging illegalities and corruption in the matter of grant of rebate. The complaint of the 1st respondent was about the amendment of the Notification dated 31.09.1991 which had been rescinded by the Notification dated 31.3.1995 and he had alleged that the amendment was made with a mala fide intention of including a specific category of consumer and the amending notification had led to manipulation of records to the extent that some people had attempted to become beneficiaries of the Scheme within the notified period of 01.10.1991 and 31.03.1995. The note of the Commissioner raised certain issues relating to grant of rebate to industrial units after 31.03.1995. As per the objections raised in the note the cases of units which had applied for power but could not be supplied with power by 31.03.1995 were to be referred to the State Government. However, it was later decided to leave it to the Chief Electrical Engineer to allow release of said subsidy to all such units. The Note of the Commissioner had also raised an issue touching upon the number of industrial units entitled to subsidy and the liability per month on that count and fixed the same at Rs 80 lakhs per month and opined that the total amount of the subsidy by way of adjustment of bills would be in excess of Rs. 50 Crores. Having regard to these aspects the note suggested suspension of the rebate scheme immediately until the legal issues were sorted out. On 03.04.1998, the Joint Law Secretary gave his clarification after examining the matter in the light of the provisions of the Electricity Act and

opined that a Cabinet Decision was necessary for suspension of the rebate scheme and that before the notification dated 01.08.1996 was issued it required a decision of the cabinet and the concurrence of the Finance Department as it fell within the meaning of a policy decision involving financial implications. The note in conclusion said that the Notification dated 01.08.1996 was not in accordance with law and this conclusion was agreed to by the Law Secretary. The Development Commissioner further felt that the in view of this lacuna in the Notification dated 1.08.1996, the matter required a review by the Cabinet and that it should be taken to the Cabinet for its ratification or otherwise. The note of the Commissioner was placed before the Power Minister as the Chief Secretary was away on tour and the Power Minister directed the matter to be placed before the Cabinet and also directed the files of the Finance & Industries Department on the subject to be placed before the Chief Minister for his perusal. The file was placed before the Chief Minister on 27.05.1998 for his perusal who thereafter called for the opinion of the Finance Department and on the same day the Finance Secretary submitted the opinion of the Finance Department and the next day the matter was placed before the Cabinet. Ultimately the State Government took a decision to withdraw the benefit of rebate and issued the Notification dated 24.07.1998. This apart the material placed by the 1st respondent herein also indicated that there was an attempt to ratify the notification date 1.08.1996 and the same could have been done but for the legal hurdle and the State Government realized the legal hurdles in continuing with the rebate scheme on the basis of the Notification dated 01.08.1996. We fail to understand as to why the State Government did not bring these facts before this Court or the High Court in the earlier round of litigation where its power to withdraw the subsidy in exercise of its power under Section 21 of the General Clauses Act was upheld. Instead it chose to plead financial crunch faced by the State Government as the reason for withdrawal of rebate. It is further to be noted with regard to the Notification dated 01.08.1996, that it re-introduced the benefit of rebate on tariff and made it available to units on the prevailing tariff in force from time to time at which the units were billed for a period of five years from the date of supply of power was made available to them and who had applied or availed power supply on or after 01.10.1991. The notification dated 30.09.1991 on the other hand made available the rebate on the basis of tariff set out in the Notification dated 27.06.19888 and to Low and High Tension Power consumers who had applied for supply of power and were given power supply on or after 01.10.1991. The Notification dated 01.08.1996, it is seen, extended the scope of benefit of rebate as compared to the Notification dated 30.09.1991 which had been rescinded by the Notification dated 31.03.1995. It is on record and we notice from the judgment of the High Court that the State Government had paid as a result of the Notification dated 01.08.1996 a sum or Rs. 8 crores in excess as compared to the benefit available under the Notification of 1991 and the total amount of rebate would have been more than 30 crores had the benefit as made available by the 1996 Notification been continued.

68) Thus from the foregoing, it is clear that a decision to be the decision of the Government must satisfy the requirements of the Business Rules framed by the State Government under the provisions of Article 166(3) of the Constitution of India. In the case on hand, as have been noticed by us and the High Court, the decisions leading to the notifications do not comply with the requirements of Business Rules framed by the Government of Goa under the provisions of Article 166(3) of the Constitution and the Notifications are the result of the decision taken by the Power Minister at his level. The decision of the individual Minister cannot be treated as the decision of the State Government and the Notifications issued as a result of the decision of the individual Minister which

are in violation of the Business Rules are void ab initio and all actions consequent thereto are null and void.

69) The appellants contended before this court that another Division Bench of the High Court in its earlier judgment of 21.1.1999 had held that the Notification dated 1.8.1996 was clarificatory and that it did not create any extra financial liability on the State Government requiring approval of the Cabinet in compliance with the Business Rules before it was brought into force. In our opinion the said Notification cannot be treated as mere c1arificatory. It is a notification issued purportedly in terms of a Government decision. It was a decision finalized at the level of the Minister of Power alone and was taken in violation of the Rules of Business framed under Article 166(3) of the Constitution of India. The decision cannot be called a government decision as understood under Article 154 of the Constitution, though it may satisfy the requirements of authentication. Nevertheless mere authentication as required under Article 166(2) of the Constitution did not make it a government decision in law nor would it validate a decision which is void ab initio. The validity of the notification will have to be tested with reference to the constitutional provisions and Business rules and not by their form or substance. Therefore, this contention of the appellants is liable to be rejected.

70) The learned senior counsel Shri F.S. Nariman submitted that the doctrine of indoor management drawn from private law would apply analogously in the facts and circumstances of this case. In response to this submission, the learned senior counsel Dr. Rajeev Dhavan would submit that the concept of private law is not readily applicable in public law. It is further submitted that often private law and public law concepts are similar in name and text but needs to be differentiated. Reference is made to the observations of this Court in Shrisht Dhawan (Smt.) Vs. Shaw Bros. (1992) 1 SCC 534, wherein it is observed:

> "20.....But fraud in public law is not the same as fraud in private law. Nor can the ingredients which establish fraud in commercial transaction be of assistance in determining fraud in Administrative Law. It has been aptly observed by Lord Bridge in Khawaja that it is dangerous to introduce maxims of common law as to effect of fraud while determining fraud in relation to statutory law."

71) The doctrine of indoor management is also known as the Turquand rule after the case of Royal British Bank v. Turquand, [1856] 6 E. & B.

327. In this case, the directors of a company had issued a bond to Turquand. They had the power under the articles to issue such bond provided they were authorized by a resolution passed by the shareholders at a general meeting of the company. But no such resolution was passed by the company. It was held that Turquand could recover the amount of the bond from the company on the ground that he was entitled to assume that the resolution was passed. The doctrine of indoor management is in direct contrast to the doctrine or rule of constructive notice, which is essentially a presumption operating in favour of the company against the outsider. It prevents the outsider from alleging that he did not know that the constitution of the company rendered a particular act or a particular delegation of authority ultra vires. The doctrine of indoor management is an exception to

the rule of constructive notice. It imposes an important limitation on the doctrine of constructive notice. According to this doctrine, persons dealing with the company are entitled to presume that internal requirements prescribed in memorandum and articles have been properly observed. Therefore doctrine of indoor management protects outsiders dealing or contracting with a company, whereas doctrine of constructive notice protects the insiders of a company or corporation against dealings with the outsiders. However suspicion of irregularity has been widely recognized as an exception to the doctrine of indoor management. The protection of the doctrine is not available where the circumstances surrounding the contract are suspicious and therefore invite inquiry.

72) This exception was highlighted in the English case of J.C Houghton& Co. v. Nothard, Lowe & Wills Ltd, [1927] 1 KB 246 (CA) where the case involved an agreement between fruit brokers and fruit importing company. There was an allegation that the agreement was entered into by the company's directors without authority. It was held that the nature of transaction was found to have been such as to put the plaintiffs on inquiry. To this effect Lord Justice Sargant held:-

> "Cases where the question has been as to the exact formalities observed when the seal of a company has been affixed, such as Royal British Bank v. Turquand, 6 E. & B. 327, or the County of Gloucester Blank v. Rudry Merthyr, &c., Co., [1895] 1 Ch 629, are quite distinguishable from the present case. In re Fireproof Doors, Ltd., sup., tends rather against than in favour of the plaintiffs, since if a single director has as towards third parties the authority now contended for, the whole of the elaborate investigation of the facts in that case was entirely unnecessary. Perhaps the nearest approach to the present case is to be found in Biggerstaff v. Rowlatt's Wharf, [1896] 2 Ch. 93. But there the agent whose authority was relied on had been acting to the knowledge of the company as a managing director, and the act done was one within the ordinary ambit of the powers of a managing director in the transaction of the company's affairs. It is, I think, clear that the transaction there would not have been supported had it not been in this ordinary course or had the agent been acting merely as one of the ordinary directors of the company. I know of no case in which an ordinary director, acting without authority in fact, has been held capable of binding a company by a contract with a third party, merely on the ground that that third party assumed that the director had been given authority by the Board to make the contract. A limitation of the right to make such an assumption is expressed in Buckley on the Companies Acts, 10th Edition, at p. 175, in the following concise words: -- And the principle does not apply to the case where an agent of the company has done something beyond any authority which was given to him, or which he was held out as having."

73) This exception to the doctrine of indoor management has been subsequently adopted in many Indian cases. They are B. Anand Behari Lal v. Dinshaw and Co. (Bankers) Ltd, AIR 1942 Oudh 417 and Abdul Rehman Khan & Anr. v. Muffasal Bank Ltd. and Ors, AIR 1926 All 497. Applying the exception to the present scenario, there is sufficient doubt with regard to the conduct of the Power Minister in issuing the Notifications dated 15.5.1996 and 01.08.1996. Therefore there is definite suspicion of irregularity which renders the doctrine of indoor management inapplicable to the

present case.

74) It was also argued by the learned senior counsel for the appellant, that the Notification dated 01.08.1996 was rescinded by Notification dated 24.07.1998 and, therefore, there was no need for the High Court to adjudicate upon the impugned Notification dated 01.08.1996 and, should have dismissed the writ petition filed by way of public interest as having become infructuous. This issue need not detain us for long in view of our answer to the issue of "Doctrine of Merger" canvassed by learned senior counsel.

75) Arguments have been advanced before us based on the principles of res judicata, Doctrine of Estoppel and the principles underlining the provisions of Order II Rule 2 of the Code of Civil Procedure that the High Court in earlier batch of writ petitions has gone into and given findings with regard to the Notifications dated 30.9.1991; 31.3.1995; 15.5.1996; 1.8.1996 and 24.7.1998 and the judgment of the High Court dated 21.1.1999 rendered therein had merged with the order of the Supreme Court dated 13.2.2001 and the Notifications questioned in the present round of litigation are Notifications dated 15.5.1996 and 1.8.1996 and the State at no point of time before any Court having raised the issue of these two Notifications being void ab initio for want of compliance with the provisions of the Business Rules framed under Article 166(3) of the Constitution of India, the High Court ought to have rejected the plea of the State Government that the Notifications were illegal or were in violation of the Rules of Business and dismissed the Writ Petition on the principles of res judicata, Doctrine of Estoppel and the principles embodied in Order II Rule 2 of the Code of Civil Procedure. It was urged that the State not having raised this at any point of time before any court should not be allowed to do so. We do not find any merit in these contentions. As noticed by us earlier in the judgment, the issue regarding the validity or legality of the Notifications dated 15.5.1996 and 1.8.1996 was never raised in the earlier batch of writ petitions before the High Court and the High Court never had an opportunity or occasion to look into, consider and pronounce upon the validity of the same with reference to the Business Rules framed under Article 166 (3) of the Constitution. These principles pressed into service by the appellants cannot operate against the State Government merely because the State did not agitate either before the High Court or this Court the legality or validity of these notification in the earlier round of litigation when it had an occasion to do so and the State Government cannot be deemed to have accepted the legality of the Notification and waived its objection or challenge thereto. The Doctrine of Estoppel therefore has no application at all more so, in view of the illegality the notifications dated 15.05.1996 and 01.08.1996 suffer from in view of their non-compliance with the provisions of the Business Rules. In our opinion the fact that the State Government did not raise these objections in the earlier batch of Writ Ptitions does not disentitle it to such a stand or prevents it from raising its objections based on legal provisions. This contention of the appellants requires to be turned down for yet another reason in that the 1st respondent herein was not a party to the earlier batch of Writ Petitions before the High Court or this Court. Therefore the principles of res judicata or for that matter even the Doctrine of Estoppel will not apply to or operate against him. Further the contention that the Notification dated 1.8.1996 did not create any additional financial liability on the State Government warranting approval by the Cabinet or the compliance of the Business Rules before it was brought into effect deserves to be rejected having regard to the figures placed on record which the High Court has noticed in its judgment. These figures of additional liability likely to be brought on the State by

Notification dated 1.8.1996 falsify the statement of the appellants. Therefore the same deserves to be rejected.

76) Before parting with these appeals, we make it clear that the observations made by us in the course of our judgment is only for the purpose of disposing of these appeals and shall not be treated as an expression on the conduct of the then the Power Minister.

77) The Appellants have not been able to show any infirmity or illegality in the order of the High Court warranting our interference. In the result, civil appeals are dismissed. Parties are directed to bear their own costs.

.....J. [R.V. RAVEENDRAN] .....J. [H.L. DATTU] New Delhi, May 03, 2010.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION) NO.200 OF 2002

Goa Glass Fibre Ltd. ..... Petitioner

Versus

State of Goa and Anr. ..... Respondents

WITH

WRIT PETITION) NO.199 OF 2002

M.R.F. Ltd. ..... Petitioner

Versus

State of Goa and Anr. ..... Respondents

JUDGMENT

H.L. Dattu,J.

The above writ petitions are filed under Article 32 of the Constitution of India, inter alia calling in question the vires and Constitutional validity of "The Goa (Prohibition of Further Payment and Recovery of Rebate Benefits) Act, 2002 (hereinafter referred to as `the Act') enacted by the Legislature of the State of Goa. The petitioners seek a declaration from this court that the Act is ultra vires of the Constitution of India and in the alternative seek a limited declaration that Sections 2,3,5 and 6 of the Act are unconstitutional and liable to be struck down.

2) The Act is attacked as unconstitutional mainly on the following grounds:

7 That it seeks to nullify a judgment of this Court dated 13.02.2001 affirming the view taken by High Court of Bombay Goa Bench, in its judgment dated 21.01.1999.

7 That it seeks to give effect to the decision of the High Court of Bombay dated 19/24th April 2001, which judgment has the effect of over ruling the judgment of this Court dated 13.02.2001.

7 That it seeks to give effect to the judgment of High Court of Bombay Panaji Bench, dated 19/24th April 2001, when the said judgment is the subject matter of appeal before this Court in several Special Leave Petitions and thus seeks to frustrate the rights of the petitioners herein under Article 136 of the Constitution of India.

7 That it seeks to take away the fundamental rights guaranteed to the petitioners under Article 14 and 19(1)(g) of the Constitution of India.

7 That it is contrary to plethora of judgments of this Court.

7 That as an Explanatory Memorandum and the Statement of Objects and Reasons of the Act relies upon the decision of the High Court of Bombay Panaji Bench, rendered on 19/24th April 2001 which held the Notifications dated 15.5.1996 and 1.8.1996 were issued without complying with the requirements of Article 166 (3) of the Constitution of India, when the very judgment is under appeal before this Court and the State without getting a Judgment rendered by this Court and frustrating adjudication by this Court has passed the Act impugned.

7 That the Act does not seek to validate any action which has been held to be invalid by any Court of Law, but only seeks to nullify the judgment of this Court [under Section 2 of the Act].

7 That the Act under Section 3 gives power to the State to recover rebate already given to consumer like petitioners, which grant has already been upheld by the High Court by its judgment dated 21.1.1999 and affirmed by this Court by its judgment

dated 13.2.2001.

7 That the Act is unconstitutional because of non-application of mind, as Section 5 thereof speaks of consequences of non-

refund and Section 2 which prohibits further payments. 7 That the Act seeks to nullify a judgment of this Court and to give effect to judgment of High Court which has the effect of overruling the judgment of this Court, inasmuch as, the law of validation as settled by this Court in a catena of decisions stipulates that the Legislature is not competent to nullify a judgment of a Court of competent jurisdiction except where the judgment is rendered by a Court of law on the basis of any invalidity or illegality in the Act because of which the Statute or Act is declared invalid, in which event the Legislature is Competent to enact a validating Act by removing the basis of that invalidity or illegality in the earlier Statute. If the Legislature chooses to enact a law only for the purpose of nullifying a judgment that the same is impermissible.

3) The respondent - State of Goa has joined issues with petitioners and has filed a detailed Counter-Affidavit, inter alia, in support of the constitutionality of the impugned Act.

4) The State in its Counter-Affidavit after setting out the factual background leading to the issue of the Notifications dated 15.05.1996 and 01.08.1996 and the filing of Writ Petition No. 316 of 1998 and the judgment of the High Court of Bombay Panaji Bench therein, has contended, that, the State deemed it expedient not only to prohibit any further payment under the said Notification, but also deemed it expedient to recover the benefits already availed of by certain consumers including the petitioners in terms of the earlier Notifications, having regard to the fact that the action in issuing the notifications was unauthorized and wholly illegal and that the parties could not be allowed to reap the benefits of an illegal act. It is stated by the respondent State, that, with this intent and object, the State Assembly passed the Bill known as Goa (Prohibition of Further Payments and Recovery of Rebate Benefits) Bill 2002, which was introduced in the House on 16.01.2002.

5) With reference to the principal contention of the petitioners that the Act impugned is unconstitutional and it seeks to nullify the judgment of this Court in G.R. Ispat's case, the State contends that the Act impugned is constitutionally valid and has been passed by the Legislature keeping in view the objects behind the Bill; that even assuming but not admitting in any manner that the impugned Act nullifies the judgment of this Court, the Legislature under the Constitution of India has the power to enact a law which may result in nullifying the Judgment or Order passed by the Courts, if the public interest and public welfare demands the Legislature to exercise its legislative power within the constitutional parameters as held by this Court in various pronouncements on the issue.

6) It is further stated that what is sought to be achieved by the impugned Act is to declare that the two notifications dated 15.05.1996 and 01.08.1996 as illegal, unauthorized, and to prohibit any further payments thereunder, in order to save public exchequer from getting denuded of its coffers. It is further stated, that, the decision of the State Government to issue Notifications mentioned above was not authorized by law in as much as the Council of Ministers had rescinded the

Notification and despite this, the Power Minister himself had issued a Notification at his own level without making a reference to either the Chief Minster or the Council of Ministers or consulting the Finance Department as mandatorily required under the Rules of Business. The decision of the then Minister for Power to issue the Notifications was wholly unauthorized as he had no authority in law to issue them at his level and as the subject matter was required to be placed before the Cabinet in view of the huge financial implication involved therein and in view of the fact that the Cabinet had earlier rescinded the Notification giving rebate and any modification or variation of such decision of the Council of Ministers, it had to place it before the Council of Ministers in view of the Business Rules framed under Article 166 (3) of the Constitution of India. The two notifications had imposed a heavy burden on the State Exchequer and under the Rules Of Business, concurrence of Finance Department of the State Government was mandatory and there was neither concurrence of the said Department nor was there any reference of the said Notifications to the said Department. The then Power Minister had made a note on the file concerned that he had consulted the Chief Minister which was found to be false as per the police investigation conducted and that the then Chief Minister had clearly stated that neither he was ever consulted by the Power Minister nor was the file ever shown to him and that this fact was taken note of by the High Court of Bombay Panaji Bench in its Judgment dated 19/24.04.2001 in Writ Petition No. 316 of 1998, which is appealed against and pending in SLP (Civil) No. 4233 of 2001 before this Court.

7) The State also contends, that, the impugned Act is not aimed at giving effect to the Order of the High Court of Bombay dated 19/24.04.2001 in W.P No.316 of 1998 nor is it passed because the abovementioned Special Leave Petition is pending before this Court, but has been passed and aimed to save the coffers of the State and to prevent further abuse and payment out of the State Funds which the State can ill afford. The State had lost almost an amount of about Rs.16 Crores and a further sum of Rs.50 Crores of public money might have to be paid and there was neither any budgetary allocation nor any provision made for such payments and therefore instead of the monies coming into the State Exchequer by way of receipts by Government in accordance with Article 266 (1) of the Constitution of India, these payments were sought to be diverted to the private industrialists by virtue of the two notifications mentioned above and with a view to put an end to this illegality the impugned Act has been enacted in the larger public interest to safe the Public Exchequer from being drained off.

8) The State also contends, that, this Court and the High Court in the earlier round of litigation have dealt with and interpreted the rights of the Consumer to be paid the rebate on electricity tariff in view of the two notification being in force and not their validity and that such benefits could not be withdrawn by a mere administrative circular. In fact what was challenged in those writ petitions was the administrative order of the Chief Electrical Engineer dated 31.03.1998 and that the High Court held in those writ petitions that the two notifications could not be withdrawn by a mere administrative Order and it was on that basis, the High Court had sustained those two notifications. Now what is sought to be done by the present legislation, it is contended by the State, to cure the defect of any kind and thereby to ensure that public funds are not drained by resorting to dubious methods and it is in larger public interest that this Act is enacted.

9) It is reiterated by the State, that, the State of Goa is facing financial crunch and it is not possible for the State Government to bear such financial burden and therefore it is imperative that the amounts paid are recovered and further loss of public funds avoided and its payment prohibited and that it is on this ground that the legislation impugned has been enacted.

10) The State reiterates that there is nothing illegal about the impugned legislation and that the same has been passed in the larger public interest and with a view to sub serve the pubic cause and to prevent abuse of public exchequer and to remedy the fraud played by an individual Minister on the public exchequer. It is further urged by the State Government that the balance of interest is in favour of the State as the petitioners on their own showing have become the beneficiaries of an illegal act of an individual Minister which cannot be allowed.

11) The State further asserts in response to the challenge made by the petitioners to the validity of the Act, that, it is a well settled law that the legislature can render the judicial decision ineffective by enacting a valid law on the subject within its legislative field by removing the base on which the decision was rendered and that the impugned Act squarely meets and satisfies the Constitutional Test and parameters laid down by this Court in various judgments and as illustration have referred to the Judgments of this Court in the case of S.S Bola Vs. B.D. Saldhana reported in AIR 1997 Supreme Court 3127 and Indian Aluminium & Others Vs. State Of Kerala reported in 1996(1) SCC 637. It is reiterated by the State, that, the State Legislature is competent to enact the Act impugned under Entry 38 of List III to the VIIth Schedule of the Constitution of India.

12) The petitioner has filed a rejoinder which reiterates more or less what is stated in the Writ Petition. In short, in the rejoinder the petitioner seeks to counter the reason and other grounds offered by the State Government in support of the Legislation impugned. It also disputes the correctness of certain statements made by the State Government in its affidavit in reply to the Writ Petition.

13) We have heard learned senior counsel Shri F.S. Nariman for the petitioners and Dr. Rajeev Dhavan and Shri Shyam Diwan, learned senior counsel for State of Goa. We also had the advantage of going through several rulings of this court cited by the learned counsels.

14) The Act impugned is attacked principally on the ground, that, it seeks to nullify a judgment of this Court dated 13.02.2001, affirming the view taken by High Court of Bombay Panaji Bench, in its judgment dated 21.01.1999 and that it seeks to give effect to the decision of the High Court of Bombay dated 19/24th April 2001, which judgment has the effect of over ruling the judgment of this Court dated 13.02.2001, more so when the said judgment is the subject matter of appeal before this Court in several Special Leave Petitions and thus seeks to frustrate the rights of the petitioners herein under Article 136 of the Constitution of India.

15) It is well settled that a Statute can be invalidated or held unconstitutional on limited grounds viz., on the ground of the incompetence of the Legislature which enacts it and on the ground that it breaches or violates any of the fundamental rights or other Constitutional Rights and on no other grounds. (See State of A.P. vs. McDowell and Co., [(1996) 3 SCC 709], Kuldip Nayar vs. Union of

India and Ors., [(2006) 7 SCC 1].

16) The scheme of the Act appears to be simple. The Act imposes a Prohibition [under Section 2], requires recovery [under Section 3] and "extinguishes" all liabilities of the State that accrue or arise from the Notifications dated 15.05.1996 and 01.08.1996.

17) From the language of the Act it becomes clear that the Act is not influenced by the out come of the Judgment of the High Court in Manohar Parrikar's case. By the enactment, the Legislature has imposed prohibition of further payments under the Notifications, provides for recovery of rebate benefits from the beneficiaries and extinguishes the State's Liability under the Notifications mentioned supra. This exercise by the Legislature is independent of and de hors the results of the PIL of Manohar Parrikar and can be said to be uninfluenced by the said judgment. It was well within the Legislative power of the State to respond to the undisputed and disturbing facts which had enormous financial implication on the State's Finances to enact the Law with an object of remedying the unsatisfactory state of affairs which were known to the Legislature.

18) That the object of the Act is not to undo or reverse the judgments of either this Court or that of the High Court. On a reading of the Act as a whole, it does not appear that the Legislature seeks to undo any judgment or any directions contained therein. As observed earlier the Act imposes a Prohibition [under Section 2], requires recovery [under Section 3] and "extinguishes" all liabilities of the State that accrue or arise from the Notifications dated 15.05.1996 and 01.08.1996. Therefore, no exception can be taken to the constitutionality of the Act impugned, on the ground, that it seeks to undo or reverse any judgment. The Legislature in its competence has enacted the Act to achieve the purposes indicated therein and not to frustrate any judgment of any court including that of this Court. It is to be noted that State Legislature was competent to enact the Act in its present form even before the judgment of the High Court in the PIL and the fact that it has come after the judgment in PIL does not render it unconstitutional on the ground that it seeks to nullify the judgment of this Court in the earlier proceedings.

19) The State, in the factual background leading to the issue of the Notifications dated 15.5.1996 and 01.08.1996 and the filing of Writ Petition No. 316 of 1998 and the judgment of the High Court of Bombay Panaji Bench therein, thought it fit and expedient to prohibit any further payment under the said Notifications and to recover the benefits already availed of by certain consumers including the petitioners towards the rebate in terms of these two notifications and having regard to the fact that the action in issuing the notifications was unauthorized and wholly illegal and that the parties could not be allowed to reap the benefits of an illegal act enacted the Act impugned. Thus the intent and object of the State Legislature in enacting the Act impugned is clear and unassailable. Therefore, the contention of the petitioners that the Act impugned is unconstitutional and it seeks to nullify the judgment of this Court requires to be rejected.

20) The impugned Act is not aimed at giving effect to the Order of the High Court of Bombay dated 19/24.04.2001 in W.P No.316 of 1998 nor is it passed because the abovementioned Special Leave Petition is pending before this Court, but has been passed with an object or aim to sustain the State Coffers and to prevent further abuse and payment out of the State Funds. It has been enacted in the

larger public interest to save the Public Exchequer from being drained off. These amounts always belonged to the State and, therefore, it has every right to recover the same, by resorting to legislative measures within the parameters of the Constitutional provision from the beneficiaries who cannot be permitted to retain the benefits.

21) The impugned Act is not aimed at giving effect to the order of the High Court of Bombay dated 19/24.04.2001 in W.P No.316 of 1998 as has been argued by the learned senior counsel for the petitioner. It is not passed because the abovementioned Special Leave Petition is pending before this Court. It has been passed with an aim to sustain the State Coffers and to prevent further abuse and payment out of the State's Exchequer. It is placed on record by the State Government, that, the coffers of the State had already lost an amount of almost 16 Crores which the State could not afford and a further sum of Rs. 50 Crores of public money would have been lost, had it not been checked and prevented by the Act impugned. In this regard it is necessary take notice of the reiteration of the State in its affidavit that the earlier affidavits filed for and on behalf of the State Government before the High Court in the earlier round of litigations did not reflect correct and true factual position, It is stated by the State Government that there was neither financial sanction nor budgetary provision nor cabinet approval as required under Article 166(3) of the Constitution of India and therefore the two notifications dated 15.05.1996 and 01.08.1996 in issue could not be said to be the decision of the State Government in the strict sense of law and the claims for rebate under these Notifications which run into several Crores of Rupees could not be borne by the exchequer, more so when they are devoid of any legal sanctity and that it was impossible for the State to meet or bear such an enormous liability of such a magnitude. The respondent State in its affidavit draws support from certain observations from the Judgment of the High Court of Bombay dated 19/24.04.2001, to say that the Notifications mentioned above were non-est and action taken thereunder was null and void. It is the stand of the State, that, the High Court in W.P. No. 316 of 1998 has also dealt with the issue as to why the State had failed to bring before the High Court in the earlier batch of Writ Petition decided on 21.01.1999, wherein the High Court upheld the power of the State Government to withdraw the rebate by invoking provisions of Section 21 of the General Clauses Act. According to the State, the High Court in the earlier round of litigation gave a decision as regards the financial crunch faced by the Court and that the affidavits filed for and on behalf of the State Government therein by the then Chief Electrical Engineer of Goa Mr. T. Nagarajan, who as disclosed from the police investigations was himself a supporter of the illegal act of abuse of power and he could not be expected to place all facts before the High Court. The State further contends that the High Court in its judgment in W.P No. 316 of 1998, has noted that even the attempts to have the Notifications ratified by the cabinet failed and there being legal dissent, the Cabinet refused to ratify the decision and withdrew the same. Therefore, it cannot be said that the State had enacted the Act impugned to give effect to the judgment of the High Court in Writ Petition No. 316 of 1998.

22) It is also placed on record that there was neither any budgetary allocation nor any provision made for such payments and these payments were sought to be diverted to the private industrialists by virtue of the two notifications mentioned above and with a view to put an end to this illegality, the impugned Act has been enacted in the larger public interest to save the Public Exchequer from being drained off. These amounts always belonged to the State Government and the State had every right to recover the same, by resorting to legislative measures from the beneficiaries of an illegal Act,

who cannot be allowed to retain the benefits. In the earlier round of litigation before the High Court, the State had taken the stand that there was financial crunch being faced by the State Government and that it was the primary reason for the State Government to withdraw the rebate. This Court and the High Court in the earlier round of litigation merely dealt with and interpreted the rights of the Consumer to recover and be paid the rebate on electricity tariff in view of the two notifications being in force. This Court and the High Court in those proceedings did not deal with or decide their validity. The question there was, whether the benefits granted by the Notifications could be withdrawn by a mere administrative circular of the Chief Electrical Engineer dated 31.03.1998 and the High Court held in those writ petitions that the two notifications could not be withdrawn by a mere administrative Order and on that premise the High Court had directed the State to pay the amounts and this Court confirmed the same in its Order. What the Legislature seeks to do by the Act impugned is to cure the defect of any kind and thereby to ensure that public funds are not drained and it is in larger public interest that this Act is enacted. The Act which has been passed in the larger public interest and with a view to sub serve the public cause and to prevent abuse of public exchequer and to remedy the fraud played by an individual on the public exchequer and to recover the amounts paid under these two Notifications and to prevent further loss of pubic funds cannot be termed as unconstitutional. It cannot therefore be said that the Act impugned is aimed at nullifying a judgment of this Court dated 13.02.2001, affirming the view taken by High Court of Bombay Panaji Bench, in its judgment dated 21.01.1999. It can not also be said that the Act impugned seeks to give effect to the decision of the High Court of Bombay dated 19/24th April 2001, in Writ Petition No 316 of 1998.

23) The Act stands totally on a different footing and the judgment of the High Court dated 19/24.04.2001 has no bearing on it. The Act stands independent of the judgment of the High Court and its validity cannot be tested on these grounds. The petitioners have strongly relied upon the different stands allegedly taken by the State in the earlier proceedings and the present proceedings in support of their challenge to the constitutionality of the Act. This Court in Sanjeev Coke Manufacturing Company Vs. MIs. Bharat Coking Cool Ltd & Anr, [(1983) 1 SCC 147 (172)], has held that the validity of the Legislation is not to be judged by what is stated in an affidavit filed on behalf of the State and that it should fall or stand on the strength of its provisions.

24) It is no doubt true that the Judgment dated 19/24.04.2001 is in appeal before this Court in a batch of Special Leave Petitions and the validity of the impugned Act does not depend upon the result of the said Special Leave Petitions. In our opinion, the Act must stand or fall on its own strength. It cannot also be said that the Act seeks to give effect to the judgment dated 19/24.04.2001 of the High Court having regard what the State aims at or seeks to achieve by it. It is a well settled law that the legislature can render the judicial decision ineffective by enacting a valid law on the subject within its legislative field by removing the base on which the decision was rendered. The impugned Act meets and satisfies the Constitutional Test completely. The Act also satisfies parameters laid down by this Court in various judgments. Further the competence of the State Legislature to enact the Act impugned is traceable to Entry No. 38 in List III to the VII Schedule of the Constitution of India. The petitioners have not challenged the competence of the State Legislature to enact the Act impugned. Therefore, the challenge made by the petitioners to the constitutionality of the Act on this ground must fall.

25) The next contention urged by the petitioners is that, the Act does not seek to validate any action which has been held to be invalid by any Court of Law, but only seeks to nullify the judgment of this Court. This contention should also fail for the reasons already explained in the preceding paragraphs.

26) The next contention of the petitioners is that the impugned Act is unconstitutional, because it seeks to take away the fundamental rights guaranteed to the petitioners under Article 14 and 19(1)(g) of the Constitution of India. While the argument based on Article 19(1)(g) of the Constitution of India was not urged seriously by the petitioners and rightly so, as no citizen is before this Court with a complaint that his fundamental rights guaranteed under this Article of the Constitution is violated by the State under the Act impugned. As regards the challenge to the validity of the Act on the allegations of violation of Article 14 of the Constitution of India, the petitioners have laid no basis thereof. There is nothing in the Act which suggests invidious discrimination, unreasonable classification or manifest violation of equality clause. In the absence of any valid ground under Article 14 of the Constitution of India, the Writ Petition under Article 32 itself is not maintainable and liable to be dismissed.

27) In view of the above discussion, we are of the opinion that the Act impugned does not suffer from any invalidity and the challenge made by the petitioners to its constitutionality fails. Accordingly, the Writ Petitions are dismissed without any order as to costs.

.....J. [R.V. RAVEENDRAN] .....J. [H.L. DATTU] New Delhi, May 03, 2010.