(1986) 12 OHC CK 0020

In the Orissa High Court

Case No : Original Jurn. Case No''s. 427 to 430, 450, 509, 510, 591 and 592 of 1980

Adinarayan Naik and Others — APPELLANT

Vs

State of Orissa and Others — RESPONDENT

Date of Decision : 22-12-1986

Acts Referred:
Constitution of India, 1950 — Article 14, 15, 19, 226
Evidence Act, 1872 — Section 115

Citation : AIR 1987 Ori 115 : (1987) 63 CLT 339

Hon'ble Judges : R.C. Patnaik, J;B.K. Behera, J

Bench : Division Bench

Advocate : R. Mohanty, N. Patra, P.C. Patnaik and B.B. Mohanty, for the Appellant; R.K. Patra, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Behera, J.—These writ applications involving common questions of facts and law have been heard together, as agreed to by the learned counsel for both the sides and would be governed by this common order.

2. The case of the petitioner is that being the highest bidders in respect of some lots in the auction sale conducted by the Divisional Forest Officer, Ghumsur North Division, in the district of Ganjam, in respect of forest coupes for 1979-80, they had signed the agreements and had made necessary security deposits and complied with all the formalities and requirements as provided under the Orissa Forest Contract Rules as also Clause X(b) of the General Conditions of Sale and had made large scale preparations to work out the forest coupes, but their bids were not ratified by the State Government unreasonably and illegally , although some other bidders were given coupes for which they had given the highest bids and in violation of Clause 26 of the Special Conditions of Sale, the State Government settled the coupes, in respect of which the petitioners had given the highest bids, for being worked out by the Orissa Forest Corporation, a

Government of Orissa undertaking, although the Corporation had not deposited any earnest money and the State Government was estopped both by law and conduct from altering the decision and settling the coupes with the Corporation instead of with the petitioners. They have claimed settlement of the coupes with them.

3. In the counter affidavits, the opposite parties have traversed the allegations. According to them, it was open to the State Government not to ratify the bids of the petitioners and what has been done by the State Government is in consonance with the recommendations of the National, Commission on Agriculture and other expert bodies to the effect that forests should be worked out either by the Department or by the departmental undertakings or by the forest labour co-operative societies to prevent smuggling and depletion of forest wealth. According to the opposite parties, the Corporation, being a wholly State owned undertaking, was not ordinarily required to participate in the auctions and the coupes had been settled with the Corporation at reasonable amounts taking into consideration the previous bids and the upset prices.

4. The learned counsel for the petitioners has submitted that non-ratification of the bids in favour of the petitioners by the State Government has been actuated by mala fides as some other persons have been given some coupes in the same area by acceptance of their bids and the State Government has unreasonably backed out of its promise. It has been submitted that the petitioners have acted on the promise made by the State Government and their position cannot be altered to their prejudice by the application of the doctrine of promissory estoppel. In support of these contentions, attention of this Court has been invited to the decisions reported in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., Jagabandhu Jena and Others Vs. Land Allotment Committee and Others, Oriental Fire and General Insurance Co. Ltd. Vs. Ramanath Mohanty and Others, and AIR 1986 Guj 185, Asia Foundations & Constructions Ltd. v. State of Gujarat. According to the learned counsel for the opposite parties, no right had accrued to any of the petitioners as their bids had not been ratified by the State Government and no question of discrimination, or infringement of the fundamental rights of the petitioners is involved. It has been submitted on behalf of the opposite parties that the writ applications are not maintainable as contractual obligations are involved. The doctrine of promissory estoppel has no application in the cases on hand, as submitted on their behalf.

5. As laid down in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., , the doctrine of promissory estoppel is applicable against the Government in the exercise of its governmental, public or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel. Of course, there can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that

promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which is outside the authority or power of the officer of the Government or of the public authority to make. The doctrine of promissory estoppel, being an equitable doctrine, must yield when the equity so requires, if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it and the Court would not raise an equity in favour ol the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine is applicable if a person has altered his position to his prejudice. In the instant cases, the petitioner had not been given coupes for which they had given the highest bids at the auctions. After acceptance and ratification of the bids by the State Government, agreements were to be executed both by the State Government and the petitioners. Until that had not been done, it is not understood as to how it could reasonably be said that the petitioners had altered their position to their prejudice and that consequently, the State was estopped by the doctrine of promissory estoppel.

The case reported in Jagabandhu Jena and Others Vs. Land Allotment Committee and Others, related to allotment of Government lands in the Rourkela civil township and it has been held that the committee for allotment was not entitled to depart from the rules. This decision had been rendered on the facts and in the circumstances obtaining in that case and cannot further the case of the petitioners.

The case reported in Oriental Fire and General Insurance Co. Ltd. Vs. Ramanath Mohanty and Others, is clearly distinguishable, as in that case, the doctrine of promissory estoppel had been made applicable to the State Government as after granting exemption of sales tax and octroi in respect of certain industries for some period, it had withdrawn the exemption by changing its policy before the expiry of that period.

It has been held in AIR 1986 Guj 185 (supra) that Article 14 of the Constitution of India strikes at the arbitrariness in State action and fairness and equality of treatment are implicit in the rule of law. The rule postulates that the State action must not be arbitrary and must be founded on some rational and relevant principle which should not be discriminatory. The State should not allow itself to be guided by extraneous or irrelevant consideration since that would itself amount to denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore, act arbitrarily -in entering into relationship, contractual or otherwise, with a third party and its action must conform to some standard or norm which is rational and non-discriminatory.

6. In the instant cases, no question of 1 discrimination is involved. Some bids which could be ratified by the Divisional Forest Officer had been so done. In respect of the cases of the petitioners, the State Government was the authority to ratify the bids. The State Government did not do so and instead, for good reasons and as a matter of policy, as indicated above, thought it desirable to give the coupes in respect of which the petitioner had given the highest bids to a State Government undertaking, viz., the Orissa Forest Corporation. As already indicated before the ratification by the State Government of the bids of the petitioners and execution of agreements, the petitioners had not acquired any right which could legally be enforced. There has been no discrimination either by the application of Article 14 or Article 19 of the Constitution of India.

7. A writ application to enforce a right as the highest bidder before its ratification by the State Government or the competent authority cannot be maintained. In this connection, reference may be made to Raghunath Behera Vs. Revenue Divisional Commissioner (Southern Division) and Others, in which reference has been made to and reliance has been placed on the principles laid down by the Supreme Court and this Court in the cases referred to therein.

8. No person has a fundamental right to insist that the State Government must enter into a contract with him in terms of some rules framed or the administrative instructions issued by the State Government. A writ application is not the appropriate remedy for impeaching the validity of contractual obligations. No statutory rules have been violated in the instant cases. No legal duty imposed by a statute has been violated. No contract has been entered into. That apart, even when a contract has been entered, a writ of mandamus cannot be granted to enforce an obligation flowing from a contract. (See The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others,).

9. For the foregoing reasons, none of the contentions raised on behalf of the petitioners can prevail and the writ applications, besides being devoid of merits, are not competent.

10. In the result, the writ applications fail and are dismissed leaving the parties to these proceedings to bear their own costs.

R.C. Patnaik, J.

11. I agree.

