
(2021) 11 KL CK 0212

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 27245 Of 2010, 39424 Of 2018

Asiya Latheef

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 30-11-2021

Acts Referred:

Citation : (2021) 11 KL CK 0212

Hon'ble Judges : P.V.Kunhikrishnan, J

Bench : Single Bench

Advocate : Sebastian Philip, Deepa Narayanan

Final Decision : Allowed

Judgement

P.V.Kunhikrishnan, J

1. One Mrs.Asiya Latheef filed these two writ petitions. Her family consists of her husband, the minor children and aged in-laws. Her husband is a cancer patient undergoing treatment at R.C.C., Thiruvananthapuram and her elder son Asif Muhammed is a mentally retarded boy. She is aggrieved because the respondents are not taking any action on her application to get licence for Authorised Retails Distributor (ARD) No.115 of Kozhencherry Taluk in Pathanamthitta Municipality. I will narrate the facts in W.P.(C). No.27245 of 2010:

2. Ext.P1 is a notification issued by the 3rd respondent inviting applications from eligible and willing candidates under category for Women or Women's Co-operative Societies for appointment of dealership of Depot No.115 of Kozhencherry Taluk in Pathanamthitta Municipality. The petitioner was the saleswomen of ARD No.115 of Kozhencherry Taluk in Pathanamthitta Municipality. The petitioner, being a woman and experience in conducting the ration shop, applied for the dealership in accordance to Ext.P1. Ext.P2 is the petitioner's application.

3. Based on Ext.P1 notification, except the petitioner, there was no other

applicants. The application and supporting documents of the petitioner were scrutinized and thereafter the enquiry was conducted by the authorities in accordance to the Kerala Rationing Order, 1966. After scrutiny of the documents and after necessary enquiry, it is found that the petitioner is eligible for appointment as Authorised Retails Distributor of ARD No.115 of Kozhencherry Taluk in Pathanamthitta Municipality. But, because of an interim order passed by this Court in Writ Appeal No.1217 of 2009, the respondents refused to appoint the petitioner as ARD. The same was delayed indefinitely. When that writ appeal was pending and based on the interim order passed in that writ appeal, the Controller of Rationing has filed a report showing the district wise compliance of the reservation followed in the appointment of ARDs. In that report it was found that in the District of Pathanamthitta, out of total 806 ARDs, 184 of them are women, and Scheduled Caste and Physically Handicapped were 16 and 5 respectively. According to the respondents, the women reservation is above the limit and they decided to re-notify the vacancy at ARD No.115. It is the case of the petitioner that the 184 women ARDs are not of persons appointed by reservation, but it includes such women appointed in the general category or as legal heirs of deceased ARD's. Thus, though there are 184 women ARD's, the number of appointment made by such reservation for women is not ascertained by the respondents is the case. Hence it is contended that the stand of the respondents are not sustainable. Therefore W.P.(C). No.27245 of 2010 was filed with following prayers:

i. To issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to appoint the petitioner as authorized retail distributor of Ration Depot No.115 in Ward No.21 of Pathanamthitta Municipality in accordance with Clause 45(2) (a) of the Kerala Rationing Order.

ii. Issue any other appropriate writ, order or direction as this Hon'ble Court deems fit and necessary in the facts and circumstances of the case.

4. When the above writ petition was pending, there was an attempt on the part of respondents to dispossess the petitioner and ARD No.115, and to allot the ration card holders of that ARD to the nearby ARDs. It was based on Order No.C.S.D.1.27016/17(1) dated 31.10.2018. Hence W.P.(C). No.39424 of 2018 was filed with following prayers:

i. Call for the records leading to Exhibit-P4 issued by 2nd respondent and quash that part of the order in Exhibit-P4 in relation to Sl. No. 1 ARD No.115 of Kozhencherry Taluk, Pathanamthitta District.

ii. Issue any other appropriate writ, order or direction as this Hon'ble Court deems fit and necessary in the facts and circumstances of the case.

5. Heard the counsel for the petitioner and the Government Pleader.

6. The counsel for the petitioner reiterated her contentions in the writ petition. The counsel submitted that based on Ext.P1 notification, the petitioner submitted

her application for getting licence. Even now her application is pending. Even now no other person is appointed for ARD No.115 of Kozhencherry Taluk in Pathanamthitta Municipality. The petitioner was on a legitimate expectation that she will get the appointment as Authorised Retails Distributor in ARD No.115 of Kozhencherry Taluk in Pathanamthitta Municipality and therefore she didn't go for any other job. Admittedly Ext.P1 notification was issued for women reservation. The petitioner alone was the applicant based on Ext.P1 notification. The counsel submitted that it is an admitted fact that the petitioner's application was in order and she was fit to be appointed as ARD based on the scrutiny of documents and the enquiry contemplated as per the Kerala Rationing Order. The counsel submitted that based on a subsequent order passed by this Court in a writ appeal, Ext.P1 notification may not be cancelled. The counsel also submitted that principle of promissory estoppel is applicable in the facts and circumstances of the case.

7. On the other hand, the Government Pleader conceded that no permanent licensee is appointed for ARD No.115 of Kozhencherry Taluk in Pathanamthitta Municipality even now. According to the Government Pleader, at present ARD No.115 is attached to ARD No.113 of Kozhencherry Taluk and it is functioning as sub-depot under the licensee of ARD No.113. The Government Pleader submitted that Ext.P1 notification for women reservation was based on reservation rotation basis as per the Rationing Order, without considering the existing women representation at the time of notification. The notification was made purely on rotation basis. While the appointment process was going on, this Court directed to make appointment of licensee only after ensuring reservation norms. Based on the directions issued by this Court, the existing status was examined and found that the women quota exceeds 20% as a whole and the representation of SC & ST is very low in number considering the total ARDs. Hence the appointment was stopped.

8. I considered the contentions of the petitioner and the Government Pleader. Admittedly Ext.P1 notification was issued on 10.06.2009 and the same is a notification inviting application for filling up vacancy for the category of women. It is also an admitted fact that the petitioner alone was the applicant and she was eligible as per Ext.P1 notification. It is also an admitted case that the selection process based on Ext.P1 notification proceeded and it is found that the petitioner is eligible to be appointed as Authorised Retails Distributor. Now the stand of the respondents is that based on an interim order passed by this Court in Writ Appeal No.1217 of 2009, the existing reservation status was examined and it was found that the women quota exceeds 20%.

Even now Ext.P1 notification is not cancelled and the application of the petitioner is pending. Writ Appeal No.1217 of 2009 is already disposed on 22.12.2009 without any general direction, but, directing not to reckon the vacancy of ARD at a place Karukutty as one available for physically disabled persons. Therefore, there is no general direction in Writ Appeal No.1217 of 2009 while finally

disposing the matter.

9. As I mentioned earlier, the exercise of finding out the existing reservation status was done by the respondents subsequent to Ext.P1 notification and that also after finding that the petitioner is eligible to be appointed as per Ext.P1 notification. The petitioner was working as a saleswomen in the ARD and even now she is continuing in that capacity on a bonafide belief that she will get appointment as Authorised Retails Distributor. Now the stand of the respondents is that, since the women quota exceeds 20% as a whole, the present vacancy at ARD No.115 is to be given to the SC/ST category. This is a decision taken by the respondents subsequent to Ext.P1 notification and after finding that the petitioner is eligible to be appointed as Authorised Retails Distributor based on Ext.P1 notification. In such circumstances, I think it will be injustice to the petitioner to deny licence for ARD No.115. According to me, the principle of promissory estoppel is also applicable in the facts and circumstances of the case. This Court, in Kerala Public Service Commission v. Reshmi K.R. and Others [2019 (5) KHC 875] considered the principle of promissory estoppel in detail. It will be better to extract paragraphs 35 and 36:

"35. The principle of promissory estoppel has come up for consideration in innumerable judgments before the Apex Court. (see Union of India v. Indo - Afghan Agencies Ltd., 1968 KHC 593 : AIR 1968 SC 718 : 1968 (2) SCR 366, Century Spg. & Mfg. Co. Ltd. v. Ulhasnagar Municipal Council, 1970 KHC 426 : 1970 (1) SCC 582 : AIR 1971 SC 1021; Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P, 1979 KHC 40 : 1979 (2) SCC 409 : 1979 KLT SN 8 : AIR 1979 SC 621 : 1979 (118) ITR 326 : 1979 (44) STC 42; Jit Ram Shiv Kumar v. State of Haryana, 1980 KHC 216 : 1981 (1) SCC 11 : 1980 KLT SN 64 : AIR 1980 SC 1285; Union of India v. Godfrey Philips India Ltd., 1985 KHC 734 : 1985 (4) SCC 369 : AIR 1986 SC 806; Indian Express Newspapers (Bom) (P) Ltd. v. Union of India, 1985 KHC 554 : 1985 (1) SCC 641 : AIR 1986 SC 515 : 1985 Tax LR 2451; Pournami Oil Mills v. State of Kerala, 1987 KHC 95 : 1986 Supp SCC 728 : 1987 (1) KLT 283 : AIR 1987 SC 590; Shri Bakul Oil Industries v. State of Gujarat, 1987 KHC 816 : 1987 (1) SCC 31 : AIR 1987 SC 142 : 1987 (165) ITR 6 : 1987 Tax LR 2059; Delhi Cloth and General Mills Ltd. v. Union of India, 1987 KHC 1145 : 1988 (1) SCC 86 : AIR 1987 SC 2414; Asstt. CCT v. Dharmendra Trading Co., 1988 KHC 1015 : 1988 (3) SCC 570 : AIR 1988 SC 1247 : 1988 (70) STC 59 : 1988 (172) ITR 395; Amrit Banaspati Co. Ltd. v. State of Punjab, 1992 KHC 826 : 1992 (2) SCC 411 : AIR 1992 SC 1075 : 1992 (59) ELT 13 and Union of India v. Hindustan Development Corpn, 1993 KHC 956 : 1993 (3) SCC 499 : AIR 1994 SC 988, State of H.P. v. Ganesh Wood Products, 1996 KHC 181 : 1995 (6) SCC 363 : 1996 (1) KLT SN 22 : AIR 1996 SC 149, Kasinka Trading v. Union of India, 1995 KHC 746 : 1995 (1) SCC 274 : AIR 1995 SC 874, Shrijee Sales Corpn. v. Union of India, 1997 KHC 508 : 1997 (3) SCC 398 : 1997 (2) KLT SN 16 : 1997 (89) ELT 452, Pawan Alloys & Casting (P) Ltd. v. U.P. SEB, 1997 KHC 1041 : 1997 (7) SCC 251 : AIR 1997 SC 3910, Ashok Kumar Maheshwari v. State of U.P, 1998 KHC 755 : 1998 (2) SCC 502 : 1998 SCC (L&S) 592 : AIR

1998 SC 966, *Sharma Transport v. Govt. of A.P.*, 2002 KHC 1134 : 2002 (2) SCC 188 : AIR 2002 SC 322, *State of Orissa v. Mangalam Timber Products Ltd.*, 2004 KHC 341 : 2004 (1) SCC 139 : AIR 2004 SC 297, *State of Punjab v. Nestle India Ltd.*, 2004 KHC 1449 : 2004 (6) SCC 465 : AIR 2004 SC 4559 : 2004 (136) STC 35 : 2004 (269) ITR 97, *Bannari Amman Sugars Ltd. v. CTO*, 2005 KHC 99 : 2005 (1) SCC 625 : 2005 (1) KLT 601, *M.P. Mathur v. D. T. C. and Others*, 2007 KHC 4302 : 2006 (13) SCC 706 : AIR 2007 SC 414 : 2007 (136) DLT 297 : 2006 AIR SCW 6320 : 2006 (12) SCALE 446, *Kusumam Hotels (P) Ltd. v. Kerala SEB*, 2008 (2) KHC 792 : 2008 (13) SCC 213 : 2008 (9) SCALE 448 : 2008 (3) KLT 276 : AIR 2008 SC 2796, *Monnet Ispat & Energy Ltd. v. Union of India*, 2012 KHC 4401 : 2012 (11) SCC 1.

36. In *Motilal Padampat Sugar Mills Co's case* (supra), it was held that the true principle of promissory estoppel would apply where one party has by his words or conduct made to the other a clear and unequivocal promise with the intention to create legal relations or to effect a legal relationship that may arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not. In *Godfrey Philips India Ltd.*, the Apex Court held that the doctrine of promissory estoppel being an equitable doctrine, it must yield when equity so requires; if it can be shown by the Government or public authority that it would be inequitable to hold the Government or public authority to the promise or representation made by it. In *Amrit Banaspati case* it was held that the basic purpose of promissory estoppel is to promote justice founded on fairness and relieve a promise of any injustice perpetrated due to the act of the promisor going back on his promise. But it was also held that it cannot be enforced in a court of law if the promise which furnishes the cause of action or the agreement, express or implied, giving rise to a binding contract, is statutorily prohibited or is against public policy. In the judgment in *Kasinka Trading*, the Apex Court explained the doctrine as follows:

"11. The doctrine of promissory estoppel or equitable estoppel is well established in the administrative law of the country. To put it simply, the doctrine represents a principle evolved by equity to avoid injustice. The basis of the doctrine is that where any party has by his word or conduct made to the other party an unequivocal promise or representation by word or conduct, which is intended to create legal relations or effect a legal relationship to arise in the future, knowing as well as intending that the representation, assurance or the promise would be acted upon by the other party to whom it has been made and has in fact been so acted upon by the other party, the promise, assurance or representation should be binding on the party making it and that party should not be permitted to go back upon it, if it would be inequitable to allow him to do so, having regard to

the dealings, which have taken place or are intended to take place between the parties.

12. It has been settled by this Court that the doctrine of promissory estoppel is applicable against the Government also particularly where it is necessary to prevent fraud or manifest injustice. The doctrine, however, cannot be pressed into aid to compel the Government or the public authority 'to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make'. There is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and that bald expressions, without any supporting material, to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. In our opinion, the doctrine of promissory estoppel cannot be invoked in the abstract and the Courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the Courts have to do equity and the fundamental principles of equity must for ever be present to the mind of the Court, while considering the applicability of the doctrine. The doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation." (underline supplied)

10. As I observed earlier, the husband of the petitioner is a Cancer patient. One of the children of the petitioner is a mentally retarded boy. She is now working as a saleswomen in ARD No.115 on a bonafide belief that, she will get appointment. The respondents are going to deny licence to the petitioner for a reason which is not attributable to the petitioner. The petitioner was given a promise to give appointment as Authorised Retails Distributor and she was found to be eligible. Subsequently for a reason which is not attributable to her, respondents are going to deny the same even though she is fully eligible as found by the respondents as per Ext.P1 notification. Considering the peculiar facts and circumstances of the case, I think the respondents can be directed to give appointment to the petitioner as Authorised Retails Distributor of Ration Depot No.115 based on her application which is submitted in tune with Ext.P1 notification, within a time frame.

Therefore, these writ petitions are allowed in the following manner:

1. Respondents 3 and 4 are directed to appoint the petitioner as Authorised Retails Distributor of Ration Depot No.115 in Ward No.21 of Kozhencherry Taluk in Pathanamthitta Municipality.
2. Respondents 3 and 4 will pass necessary orders appointing the petitioner as

directed above, as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment.