

(1988) 02 CAL CK 0011

In the Calcutta High Court

Case No : C.O. No. 3298 (W) of 1984 & C.O. No. 8208 (W) of 1984

Balai Chand Manna

APPELLANT

Vs

Calcutta Metropolitan Development Authority and Others

RESPONDENT

Date of Decision : 11-02-1988

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Evidence Act, 1872 — Section 115

Citation : (1988) 2 CALLT 143 : 92 CWN 999

Hon'ble Judges : Umesh Chandra Banerjee, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Umesh Chandra Banerjee, J.—The doctrine of promissory estoppel cannot be termed to be of very recent origin as the doctrine had a well-laid foundation long prior to the decision of the *Hi-trees* case, where however the concept was re-stated as a recognised doctrine of law. Reference in this context may be made to the decision of this Court in the case of *Ganges Manufacturing Co. v. Surajmull* reported in 1880 ILR 5 Cal. 669 and the subsequent decision of the Bombay High Court 25 years later in the case of *Municipal Corporation of Bombay v. Secretary of State* reported in 1905 ILR 29 Bom 580.

2. So far as Indian Courts are concerned, there seems to be a steady refinement on this branch of law, since the decision in the case of *Anglo-Afghan Agencies* reported in AIR 1968 SC 718. In a later decision of the Supreme Court in the case of *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, the Supreme Court observed:

"That the doctrine of promissory estoppel is a principle evolved by equity to avoid injustice. It is neither in the realm of contract nor in the realm of estoppel. The true principle of promissory estoppel seems to be that where one party has by his word or conduct made to the other, a clear and unequivocal promise which is intended to create legal relationship or affect a legal relationship to 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 preexisting relationship between the parties or not. The Supreme Court further observed that there is no reason in logic or principle, why promissory estoppel should not be available as a cause of action if necessary to satisfy the equity. The Supreme Court, extended the applicability of the doctrine of promissory estoppel against the Government and the defence based on executive necessity has been categorically negated. A promise made knowing or intending that it would be acted on by the promise and in fact the promisee acting in reliance on it, alters his position, the government would be held bound by the promise and the promise would be enforceable against the government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required under Article 299 of the Constitution. The Supreme Court observed that it is elementary that in a Republic governed by the Rule of Law, no one howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the government is no exception and it is indeed the price of constitutional democracy and rule of law that the government stands on the same footing as private individual so far as the obligation of the law is concerned ; the former is equally bound as the latter. The government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise. made by it on the ground that such promise may letter its future executive action".

3. The decision of the Supreme Court in the case of M.P. Sugar Mills (supra) was considered in the case of Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, . Both the above-noted two decisions were subsequently considered by the Supreme Court in the case of Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., . In that decision the Supreme Court observed that the authority cannot act arbitrarily on its mere whim, ignore its promise on some undefined and undisclosed grounds of necessity or change the condition of the projects of a person who had acted upon such representation and put himself in a disadvantageous position. The Supreme Court observed that on this point both the decision, viz., M.P. Sugar Mill's case and Jitram's case concur. In that decision the Supreme Court pointed out that doctrine of promissory estoppel would certainly estop governmental agency from backing out its obligation arising from a solemn promise made to the petitioner.

4. Law, therefore, is now well-settled on this score and to the effect that where Government or Governmental Agency makes a promise knowing or intending that it would be acted upon by the promise and if the promisee acting in accordance therewith and thereby alters his position, the Government or Governmental Agency would be held to be bound by the promise and the

promise would be enforceable against the Government or the Governmental Agency at the instance of the promisee notwithstanding that there is no consideration for the promise.

5. . The Government or the Governmental Agency has a duty to the public in general to act fairly and reasonably so as to create a feeling amongst the general public that the later would not be deprived of justice and fair play. Fair play and justice ought to be the basic criterion on which a Governmental Agency should act (vide *Surendra Prasad Misra Vs. Oil and Natural Gas Commission*,). Having recapitulated the law in regard to the issue of promissory estoppel, let us now, therefore, see whether there was any such promise" and whether the petitioners have altered their position by reason of the promise.

6. The petitioners are all qualified Civil Engineers and are at present working as Assistant Engineers in the CMDA being a Statutory Body and a State within the meaning of Article 12 of the Constitution. In the year 1972 the petitioners joined the services of the Government of West Bengal in the Department of Development & Planning (Town & Country Planning Branch) and they were posted in Calcutta, Metropolitan Planning Organisation which was at that point of time discharging the duty of planning and executing various projects for the development of Calcutta Metropolitan Area. By the Act of 1972 the Calcutta Metropolitan Development Authority was constituted by the Government of West Bengal. By a Memorandum, dated 1st of September 1973 certain projects which were pending execution by the Calcutta Metropolitan Planning Organisation (CMPO for short) was transferred to Calcutta Metropolitan Development Authority (CMDA for short).

7. By another Memorandum, dated 20th October 1973 issued by the Commissioner, Town & Country Planning, Government of West Bengal and addressed to the Executive Director and Chief Engineer of CMPO, the decision of the Government of West Bengal relating to transfer of Assistant Engineers working in various projects under CMPO in regard to their transfer to CMDA and issuance of letters of appointment in respect of them as communicated. Subsequently, by another Memorandum, terms and conditions were placed on record culminating in the letter, dated 11th September 1976 whereunder all Assistant Engineers were called upon to indicate their option for absorption in the service of CMDA, in pursuance of which the petitioners duly communicated their options for absorption in the service of CMDA.

8. It is at this juncture that the petitioner's contention in regard to the absorption in CMDA ought to be noted. Strong reliance was placed by Mr. Lahiri appearing for the petitioner on the decision of this Court in the case of *Calcutta Metropolitan Development Authority and Anr. v. Ujjal Kumar Ghosh* reported in 1982(2) CHN 16 wherein this Court observed :

"There cannot be any manner of doubt that this transferee- deputationist although they have shadow in the parent departments from which they have

been transferred with works to CMDA, cannot go back to the parent departments inasmuch as for all practical purposes the same have been abolished in view of the one umbrella scheme of the Government, of West Bengal".

"Thus it appears that service of these deputationists were indispensable in view of the exigency of public service. These deputationists are much more experienced than the direct recruits. When CMDA was created, they were already in service either under the government or under the statutory or local authorities. In that sense they are seniors in service to the direct recruits. In our opinion, it will be unreasonable to ignore the past services of the deputationists after their integration into the regular service of CMDA".

9. The decision, however, recognised three "kinds of personnel as regards CMDA, viz., (i) direct recruits; (ii) regular deputationists; (iii) transferee deputationists. This Court in that regard observed : "In pursuance of the decision of the CMDA taken at its 56th meeting held in January 21, 1978 a Service Committee was set up on May 6, 1978 to examine some aspects and service conditions of the employees of CMDA. The Service Committee submitted its report on June 20, 1979. One of the matters being Item No. 2 (iii) that was referred to the Service Committee for its consideration was about fixing up of percentage of vacancy in respect of the various posts to be filled up by various modes of recruitment, viz., direct recruit, (ii) deputation; (iii) absorption; (iv) promotion".

10. The recommendation of the service Committee as regards Reference 2 (iii) provides that there cannot be any question of fixing up any percentage of vacancies by the deputationists. It further provides that terms of absorption in CMDA are to be given to the transferee who came with transfer of work and some terms may be offered to select few regular deputationists of the State Government whom the CMDA wants to retain in the interest of work.....

11. From the above enunciation of the recommendations of the Service Committee, it appears that at all material times CMDA was having 3 sets of employees, viz., direct recruit, regular deputationists and transferee deputationists. As a matter of fact, from the very inception of CMDA this practice has been followed. Permanent absorption of employees, it was contended by Mr. Panja appearing for CMDA, however, ought to be left with the concerned employer and before adjudicating thereon, the Court ought to consider the Service Regulations as framed by the employer since the same have been in discharge of its administrative function and the Court ought not to intervene or interfere with such a function unless there are apparent inconsistency with recognised principles of law. Mr. Panja further contended that the administration would come to a grinding halt if the Court interferes with the administrative functions at every other step in regard to the policy matters. How to treat the employees is clearly laid down in the Service Regulations and the Court ought to be slow in interfering therewith, and I am in agreement with Mr. Panja's submission in regard thereto that unless the administrative functions can be

termed to be an administrative ipse dixit and contrary to law or the same be termed to be mala fide, the Court ought not to intervene or interfere. The Court cannot assume the role of a Supervisor of administrative actions. Let us now, therefore, consider the factual aspects in slightly more greater detail as to whether in, fact there was an offer and acceptance of the permanent absorption in CMDA and whether the doctrine of promissory estoppel can be made applicable thereon ?

12. By a letter, dated 11th, September 1976 the Director of Service and Deputy Secretary, CMDA intimated the Engineers and Assistant Engineers to the following effect:

"You are requested to let us know by 15-10-76 whether you are agreeable to get absorption in the service of the authority in the post of Assistant Engineer carrying at pay scale of Rs. 475-30-685-35-1000-50-1150 on the following terms and conditions.....".

13. The terms and conditions were set out in the letter wherein pay & allowances, contributory provident fund, service condition, seniority and confirmation were all detailed; whereas, Annexure "F" to the petition said to be a specimen letter accepting such an absorption, the other letters which were placed before this Court by Mr. Panja contained certain conditions and as correctly described by Mr. Panja as a counter offer or at best a conditional acceptance. In this context Mr. Panja placed strong reliance on the language used in the letters exercising option. For convenience sake the same is set out hereinbelow in extenso :

" (1) I am a permanent employee of the Calcutta Metropolitan Planning Organisation temporarily transferred to CMDA. I have not yet received any advice from my parent department authorising me to exercise any such option to CMDA. No such option can perhaps be exercised at this stage without getting necessary clearance from my parent department.

(2) It is not clear from your memo under reference whether I shall be covered by the provisions of G.O. No. 2567-G dated 30-3-76 and whether my parent department is being moved for issuing necessary G.O. for permanently transferring my service to CMDA in the interest of public service. After the points raised above are clarified, I may opt for CMDA service provided it is ensured that :-

(i) my pay shall be fixed in such a manner that I do not have to suffer any financial loss.

(ii) my interse seniority in the CMDA Cadre will be fixed having due regard to my age, professional experience, sincerity in parent department and sincerity in CMDA.

(iii) I shall be exempted from being on probation and shall be treated as a permanent employee of the CMDA from the date of absorption.

(iv) CMDA will allow me to enjoy pensionary benefits of my parent department in addition to the benefits that may be available in CMDA (vide letter exercising option from Sri P. G. Bit being the petitioner No. 10).

14. Can it then be said that the above would indicate an unequivocal acceptance of permanent absorption ? Mr. Panja contended that it cannot" be termed to be so and I am also in agreement with Mr. Panja's contention that the same cannot be termed to be an unequivocal acceptance of the offer for being permanently absorbed so as to enable the petitioners to enforce the same on the ground of Doctrine of Promissory Estoppel. The doctrine has its due application only in the event of there being an unequivocal acceptance of a promise in the absence of which there cannot be any enforceable right.

15. It is now well settled that public bodies are as much bound as private individuals to carry out the representation of fact and promise made by them relying on which the other persons have altered their position to their prejudice (Vide Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another,). Admittedly different standards of conduct for the people and public bodies cannot be permitted by the Law Courts. But the issue arises in the facts of the case under consideration as to whether there is in fact such a representation by reason of which the petitioners have altered their position and can seek the remedy before a writ court on the ground of promissory estoppel. I am afraid, there is no factual support on that score. One Deputy Secretary's note had been treated as the representation, but in my view, it cannot be termed to be so, merely because of the fact that an option was sought for, that by itself cannot be termed to be a promise. The significant feature to be noted, however and as contended by Mr, Panja and in my view rightly, the reply to the option letter contains a counter offer and the two read together cannot constitute a promise in the common parlance. Admittedly no letter of confirmation has been sent to the petitioners in pursuance of the counter, offer and until such a letter is sent in regard to the absorption in the Calcutta Metropolitan Development Authority, the petitioners in my view, cannot claim to have acquired any right enforceable in a Court of Law in an application under Article 226 of the Constitution. There is no intimation that the petitioners were absorbed as regular employees of the authority or that they had ceased to be Government servant and unless the facts depict the same, no right can said to be created. The fact that the authority at an earlier stage wanted the petitioners to exercise its option for permanent absorption, that by itself would not lend any assistance to the petitioners" case. Mr. Lahiri strenuously contended inclusion of the name of the petitioners in the Gradation List would unmistakably suggest that the respondent CMDA had in fact accepted the cases of the petitioners. From the record produced in Court, it appeared that the gradation list was only a draft gradation list and was not made final at any point of time. As a matter of fact the gradation list could not given effect to as the records depict by reason of the non-finalisation of the issue as regards the absorption of the deputationists. As such, preparation of a draft gradation list cannot be termed to be a decisive factor in

the matter of absorption,

16. Various decisions have been cited from the Bar in support of the respective contentions. But I am afraid, none of the decisions cited lend any assistance to this Court. As such, I refrain myself from dealing with the same in greater detail.

17. Before, however, proceeding further in the matter, the last submission of Mr. Lahiri ought to be noted in regard to one Umbrella Scheme of the Government. It was submitted that the matter in that direction was considered by this Court in the case of Calcutta Metropolitan Development. Authority and Anr. v. Ujjal Kumar Ghosh and Ors. reported in 1982(2) CHN 16. Mr. Lahiri submitted that it was the specific finding of this Court in appeal that there cannot be any manner of doubt that these transferee deputationists, although they have shadow lien in the parent department from which they have been transferred with works to CMDA cannot go back to the parent department inasmuch as for all practical purposes the same have been abolished in view of one umbrella scheme of the Government of West Bengal. In my view, however, the observation does not have any manner of applications in the facts of the case under consideration and in no way lend any assistance to the petitioners herein. There must be an acceptance of the offer on the part of the Development Authority in the absence of which there cannot be any enforceable right as regards the petitioners. In this context, however, the observations of this Court in the case noted above ought also to be noted:

"30. Before we part with this case, we may dispose of a contention of the petitioners that there cannot be on block absorption of deputationists in view of Regulation 11(1) of the Recruitment Regulations. This contention is unsound and we are unable to accept the same. If all the deputationists are found suitable, we fail to understand why all of them cannot be absorbed. These deputationists are highly skilled and efficient and it will not at all be surprising if all of them are absorbed. The absorption of deputationists should, be made in accordance with the provision of Regulation 11 of the Recruitment Regulations and for that purpose, a special Selection Committee should be constituted by the CMDA in accordance with Regulation 11(3.) .of the Recruitment Regulations. In considering the question, the cases of direct recruits should also be considered along with the deputationists in accordance with the provision of Regulation 17 of the Service Regulations".

18. The other aspect of the matter is the silence on the part of the respondents which is said to have created a right in favour of the petitioners as contended by Mr. Lahiri. In this context Mr. Lahiri relied upon Article 55 of "Spencer Bower And Turner"s Estoppel Representation" (3rd Edn.). Article 55 as noted above reads as follows:

35. "It is well established that under certain conditions silence or inaction may constitute a representation, as much as positive language or conduct, for the purpose of an estoppel.

The main condition subject to which alone silence or inaction counts as a representation is that a legal (nor a mere moral or social) duty shall have been owed by the representor to the representee to make the disclosure, or take the steps, the omission of which is relied upon as creating the estoppel. The theory is this, The parties to a transaction are entitled to assume, as against one another, *omnia rite esse acta*; each of them is entitled to suppose that the other has fully discharged all such obligations (if any) of disclosure or action towards himself as may have been created by the circumstances. If, therefore, he receives from that other no intimation, by language or conduct, of the existence of any fact which, if existing, it would have been the latter's duty, having regard to the relation between them, the nature of the transaction, or the circumstances of the case, to reveal, he has legitimate ground for believing that no such fact exists, or that there is no other so abnormal or peculiar in the nature of the transaction, or in the circumstances of the case, as to give rise to any duty of disclosure, and to shape his course of action on that assumption; in other words, he is entitled to treat the representor's silence or inaction as an implied representation of the non-existence of anything which would impose or give rise to, such a duty, and, if he alters his position to his detriment on the faith of that representation, the representor is estopped from afterwards setting up the existence of such suppressed or undisclosed fact. The terms, "lying by", "standing by", "acquiescence", "waiver", "laches", and "encouragement", are often used, in preference to "estoppel", for the purpose of enunciating and justifying the rule under discussion;- "lulling to sleep" is another term that appears in the cases-but it is really one and the same doctrine which is the subject of these terminological variants. The estoppel in question is also very generally described in many (indeed in most) of the authorities as "estoppel by negligence"; but, for reasons to be set forth hereafter this particular term seems an unfortunate one, and in this treatise it is accordingly, as far as possible avoided. The classes of cases in which such a duty to speak or act has been held to exist are dealt with in the paragraphs now following".

19. There cannot be any dispute as regards the statement of law as enunciated above, but the definition of estoppel by Representation ought also to be noted. Judicial pronouncement on the subject of Estoppel by Representation provide that where one person in words or by acts or conduct or by silence or inaction with the intention and with the result of inducing the representee on the faith of such representation to alter his position to his detriment, the representor in any litigation may afterwards take place between him and the representee is estopped as against the representor from making or attempting to establish any averment substantially at variance with his former representation - (The above definition has, however, been duly adopted as accurate by Sir Raymond Evershed MR. in *Hobgood v. Brown*; 1955(1) All E.R. 550). It is, therefore, to be seen whether in, fact there was any alteration of position to the detriment of the petitioners. In my view, however, on the facts disclosed, it does not appear to be so. As such, question of Estoppel by Representation or estoppel by reason of

silence does not and cannot arise in the facts and circumstances of the case under consideration.

20. As regards the submission of "loss of pay and future chance of promotion", I am unable to agree with the contentions of Mr. Lahiri since definite Rules have been framed as regard promotion for the deputationists and the conditions of service in regard thereto ought to be looked into and considered for the same. There is no evidence on record to suggest contra-action by the respondents.

21. In the result, the writ petition fails and is dismissed. All interim orders are vacated. There will be, however, no order as to costs.

22. A prayer for stay of operation of the order is made on behalf of the petitioners. Such stay is granted for a period of one week from date.