
(1983) 03 DEL CK 0039

In the Delhi High Court

Case No : Civil Writ Petitions No's. 310 of 1980 and 1432 of 1979

Bansal Export (P) Ltd. and another

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 03-03-1983

Acts Referred:

Citation : AIR 1983 Delhi 445 : (1984) 55 CompCas 224 : (1987) 30 ELT 361 : (1984) 145 ITR 642 : (1984) 55 STC 256

Hon'ble Judges : Prakash Narain, J;B.N. Kirpal, J;A.B. Rohtagi, J

Bench : Full Bench

Judgement

Avadh Behari Rohatgi, J.—This is a companion judgment to the one we have just delivered in *Bombay Conductors and Electrical Ltd. v. K. Chandramouli* (C.W.P. No. 1295 of 1980) (1984) 1 ECC 1 : (1984) 55 STC 162]. Its companionship resides in the fact that the petitioners in these two cases also found their claim on promissory estoppel as in *Bombay Conductors*. I will deal with the two petitions separately.

C.W.P. No. 310 of 1980.

2. The challenge in this writ petition is to the restrictions placed on the export of products wholly or mainly of silver with more than 50 per cent silver contents.

3. The petitioners entered into a contract dated 25th March, 1977, with the foreign buyers for the supply of 25 tonnes of Indian real zari badla. A part of the supply was made. Before the remaining supply could be made the Central Government changed the policy. The policy as laid down in the Exports (Control) Order, 1977, was that manufactures and products wholly or mainly of silver with more than 50 per cent of silver contents, excluding silver zari goods, were permitted to be exported under the open general license. This policy was changed on 30th March, 1979. Under the Exports (Control) 22nd Amendment Order, dated 30th March, 1979, this item was deleted from the open general license and was placed under the heading "on merits" which meant that the

exporter concerned will have to apply to the licensing authority for permission or license to export.

4. Contemporaneously with the amendment of the Exports (Control) Order the Central Government issued a public notice dated 30th March, 1979, informing the public about the change in the policy. This public notice stated that the provisions of paragraph 316 of the Hand Book of Import-Export Procedures will not be applicable to any "pre-ban commitments" consequent to this public notice. It was said that all such cases will be decided "on merits" only.

5. On 12th September, 1979, the Chief Controller of Imports and Exports issued another public notice setting out the new guidelines for deciding the "pre-ban" or "pre-control" cases affected by the public notice dated 30th March, 1979.

6. The case of the petitioners is that paragraph 316 of the Hand Book constitutes "statutory promises" (I use their term) and in accordance therewith they are entitled to export the balance quantity of the goods under their partially executed contract. Such a case, it is contended, is covered by paragraph 316 which saves "pre-control commitments". The petitioners, Therefore, say that the public notice dated 12th September, 1979, should be quashed and on the ground of promissory estoppel they should be allowed to export the remainder quantity in accordance with paragraph 316 of the Hand Book.

7. The Central Government in their affidavit have stated that the policy had to be changed to conserve the stocks of silver. It was necessary for the Government to restrict the export of manufactures of silver after taking into consideration all the relevant factors. The change, it was said, was necessitated by consideration of international trade and the need felt to conserve silver.

In my opinion, the petitioner's reliance on promissory estoppel is based on a misconception of the true nature of the doctrine. The Government policies framed under the Imports and Exports (Control) Act, 1947 (the Act), are liable to be changed in the public interest according to the needs of the country. By the Exports (Control) order of 30th March, 1979, the Government did not impose ban on export of the goods in question. The order only restricted the export to cases to be decided "on merits". To "pre-control" cases, paragraph 316 was made inapplicable and in place of that paragraph new guidelines were laid down on 12th September, 1979.

8. I cannot accept that paragraph 316 of the Hand Book constitutes a "statutory promise" against which the doctrine of promissory estoppel can be properly pressed. If they are "statutory promises", as the petitioners call them, they can be changed by the statutory authority. But I do not think they are "statutory promises" because sub-paragraph (6) of paragraph 316 itself says that these guidelines "shall not confer any right on the persona concerned to the grant of any export license or permission to export".

9. The petitioners cannot claim any right to the export of goods under paragraph

316 when those provisions have been made inapplicable by the Public notice dated 30th March, 1979. If u/s 3 of the Act the Exports (Control) Orders can be amended from time to time it is difficult to see why paragraph 316 of the Hand Book cannot be replaced by a new set of guidelines for conserving a certain commodity in the national or public interest. This is its "statutory birth right", to use a phrase of Lord Sumner : *Birkdale District Electric Supply Co. v. Southport Corporation* [1926] AC 355. The Government policy can be changed from time to time as the occasion arises and the needs of the country demand. This is why the Hand Book announces : "Instructions and guidelines contained in this book are applicable subject to such amendments/changes as may be made from time to time" (Ch. I, p. 1). So when the policy changes the guidelines can also be changed.

10. Assuming for a moment that paragraph 316 applies, I am of the opinion that the contract dated 25th March, 1977, is not a "pre-control commitment" in the sense in which that expression is used in paragraph 316. The term "commitment" means something which is not capable of change, revision or withdrawal : (Webster-Third International Dictionary). The contract in question was not such a commitment. It was neither firm nor irrevocable. It was flexible and variable. The importing company in London was acting throughout like a "sister concern" of the exporting house in India. This is proved by the fact that the delivery period has been extended from December, 1977, to May, 1983, at the convenience of the parties and on the requests made by the exporter from time to time and readily agreed to by the importer on the same terms and conditions as to price, etc., as stipulated in the contract dated 25th March, 1977. I am not impressed by the genuineness of the commitment.

11. The alleged contract, in my opinion, is not such a commitment as is contemplated by the Hand Book, paragraph 316. Apart from my finding that the doctrine of promissory estoppel has no application to the Exports (Control) Orders issued in exercise of the statutory power conferred on the Central Government u/s 3 of the Act, I have also come to the conclusion that the alleged contract dated 25th March, 1977, is not such a "pre-control commitment" to which the provisions contained in paragraph 316 would apply.

12. In the referring order it is suggested that there is a conflict in two Bench decisions of this Court : *Hazi P. V. Mohd. Baramy Sons v. Union of India* (1979) 2 Delhi 686 (Prakash Narain and Leila Seth, JJ.) and *Nirmal Constructions & Finance Company v. Union of India* (1980) 1 Delhi 1 (V. S. Deshpande and Harish Chandra, JJ.) So far as *Hazi P. V. Mohd.*'s case (1979) 2 Delhi 686 is concerned, it is appeal before the Supreme Court (*Union of India v. Hazi P. V. Mohd.* - C. A. Nos. 395 and 396 of 1979). Special leave was granted by the Supreme Court and the operation of the order of this Court dated 14th December, 1979, was stayed. I do not think it proper to comment on that decision. On the view I have taken in this case it is unnecessary to discuss *Nirmal Constructions* (1980) 1 Delhi 1 or *Hazi P.V. Mohd.* 1979) 2 Delhi 686. I leave it at that.

13. The facts : The petitioners in this case challenge the validity of the amendment made to the Exports (Control) Order of 1977 by the Exports (Control) 43rd Amendment Order, 1979, and the public notice dated 13th August, 1979. The Exports (Control) Order, 1979, changed the policy of the Government. The earlier export policy was that an exporter of handicrafts with less than 50 per cent silver contents was allowed to export the same freely without any export license. On 13th August, 1979, the Central Government issued the Exports (Control) 43rd Amendment Order, 1979. Manufactures and products having 50 per cent or less silver contents were placed in the category of those cases where export was to be allowed "on merits". The provisions of paragraph 295 of the Hand Book were made inapplicable to "pre-control commitments" consequent to the public notice dated 13th August, 1979. The pre-control commitments were to be decided in the light of the new guidelines issued by the Central Government. These were :

"(i) Advance payment received through an authorised dealer in foreign exchange covering the full f.o.b. value of the consignment before the date of this public notice; or

"(ii) Where based on firm contracts, irrevocable letter of credit was opened by the foreign buyer and accepted by the Indian bank prior to the date of this public notice and in which shipping bills were passed and goods cleared by the customs but could not be exported because of this public notice."

14. The Government refused permission to export to the petitioners because they did not satisfy these new guidelines. Hence, this petition.

15. It is not disputed that the petitioners do not fulfill these conditions. They rest their case on paragraph 295 of the Hand Book and claim that their contract is a "pre-control commitment" saved by paragraph 295 and they are entitled to export permission in accordance therewith.

16. The petitioners maintain that when they entered into a contract with Emda International on 20th July, 1979, for the supply of 100 tonnes of silver handicraft items containing silver to the extent of not more than 49 1/2 per cent and not less than 46 per cent, the Government policy was to allow its export which later on was changed to their detriment. The petitioners invoke promissory estoppel in support of their claim.

17. The primary attack is on the Exports (Control) 43rd Amendment Order, 1979, and the new guidelines. The petitioners rely on Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , and say that it was not necessary for them to suffer a detriment inasmuch as the foreign buyer opened a letter of credit to the tune of Rs. 9 lakhs and thereby the parties had altered their position. Relying on the observations of Bhagwati, J., in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, that "the detriment in such a

case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee, if the promisor were allowed to go back on the promise", the petitioners contend that they are entitled to call in aid the doctrine of promissory estoppel and are entitled to export the contracted commercial commodity in accordance with the policy which prevailed before the 43rd Amendment.

Promissory Estoppel : Indo-Afghan

18. The doctrine of promissory estoppel came into prominence in India with the decision of the Supreme Court in *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., (Shah, Sikri and Shelat, JJ.)*. That case involved the consideration of an export scheme under which the respondents were entitled to get an import entitlement certificate equal to 100 per cent of the f.o.b. value of their exports. Without deciding the question whether the import policy was legislative or executive in character, the court held that even if it were executive in character, the courts had the power in appropriate cases to compel the performance of the obligations imposed by the scheme upon the authorities.

19. The Union of India contended that to enforce on it the policy announced by the Government would amount to enforcing contractual rights even though the contract did not comply with Article 299. The court rejected the argument, holding that the respondents did not seek to enforce a contractual right, but an equity arising in their favor after they had carried out their part under the policy announced by the Government. The court observed that the licensing authorities were not entitled at their whim to ignore the promises made by the Government : to concede such a power would be to strike at the very root of the rule of law.

20. Even if the scheme is executive in character, the court said, the respondents who are aggrieved because of the failure to carry out the promises of the scheme, are entitled to resort to the court and claim that the obligation imposed upon the Textile Commissioner by the scheme be ordered to be carried out. The Court held that an equity had arisen in respondents' favor as a result of the representation made on behalf of the Union of India in the export promotion scheme. The court relied upon the judgment of Denning, J., in *Robertson v. Minister of Pensions* [1949] 1 KB 227 and the following observations of Chandrasekhara Aiyar, J., in *Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others*, .

"Whether it is the equity recognised in *Ramsden's* case (1866) LR 1 HL 129, or it is some other form of equity, is not of much importance. Courts must do justice by the promotion of honesty and good faith, as far as it lies in their power."

21. The Textile Commissioner, the court held, was bound to act in a manner consistent with the "basic concepts of justice and fair play" and if he does not, the court can compel him to fulfill his obligation under the scheme. To say that public authorities are never bound by their representation, contract or

dispositions of land will be starting proposition. This exalted claim was condemned in Robertson. It was rejected in Indo-Afghan.

22. What Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., decided was this. Discretionary power is not arbitrary power. This was law's finest hour when the Supreme Court declared it. The case exemplifies that the limits of discretion may be so wide that almost anything may be ordered; this comes close to arbitrariness. But arbitrariness is incompatible with the rule of law. So discretionary power was sought to be controlled by the doctrine of promissory estoppel. Promissory estoppel is a new weapon in the armoury of the rule of law to check arbitrary executive action. The administration cannot do what it pleases; it can only do that which it has power to do. In this sense its power is not arbitrary. The law binds the administration. The rule of law is a moral concept synonymous with "justice". The individual claims allegiance to the supremacy of law. In fact it is the creature of law and subject to it. The rule of law becomes a banner under which opposing armies march to combat.

23. Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., is the "sheet anchor" of the doctrine of promissory estoppel : Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, . It decided that the Government is bound to honour its solemn promises and assurances made in the scheme, or a representation on the faith of which a person acts to his detriment. The assurances were enforced on grounds of equity. This was not an enforcement of a contract. It was the recognition and application of the basic concepts of honesty, fairness and justice in the field of public law. The claim cannot be defeated on some "undefined and undisclosed ground" of executive necessity. Indo-Afghan decisively rejected the plea that promissory estoppel did not bind the State or a policy statement of the Government cannot fetter its executive action. No public authority can be permitted to go back on its representation at the sheer convenience of the administration.

24. To do justice to the exporters the court pressed into service nearly all the well-known concepts of administrative law. (1) Rule of law; (2) judicial review; (3) natural justice; (4) access to the courts and the right of redress; and (5) promissory estoppel were all summoned to produce a just result. Indo-Afghan emphasised the duty of surveillance entrusted to the courts for the protection of the citizen. Shah, J., held that the Textile Commissioner's refusal to grant 100 per cent import entitlements was for no defined and disclosed reason. The export promotion scheme was made to further the purposes of the Act. Whenever the public authority acts arbitrarily the courts have a duty to interfere. The fact that the scheme was executive in character is no reason why the courts should give up the task and abandon their to protect the citizen, Shah, J., held.

Motilal Padampat Sugar Mills

25. Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., was followed in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others,

(Bhagwati and Tulzapurkar, JJ.). Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., was hailed as "an epoch-making decision" and as the "most eloquent exposition" of the doctrine of promissory estoppel in India. In Motilal Padampat Sugar Mills the State Government had granted an exemption to the mills from sales tax for a period of 3 years. The State Government was not allowed to resile from its promise because it worked injustice to the mills and conferred no corresponding benefit on the public. In fact the exemption was for the public good because section 4-A of the U.P. Sales Tax Act empowered the State Government to grant exemption "for increasing production of the goods in the state". By granting an exemption to the mills which the State Government as competent to grant as the donee of statutory power, it was neither fettering itself in the use of those powers nor in the exercise of discretion vested in it by the statute to be exercised for the public good. While applying the doctrine of promissory estoppel the court held that the State Government was bound by its promise because the mills had altered its position on the faith of the representation made to it. The maker of the representation, the court said, cannot be allowed to resile from its promise.

26. Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, is the true tradition of its modern architect, Lord Denning. It was largely through the labors of Lord Denning that the doctrine's application in public law grew in an incremental fashion; (see e.g., Robertson v. Minister of Pensions [1949] 1 KB 227, Wells v. Minister of Housing and Local Government [1967] 1 WLR 1000, Lever Finance Ltd. v. Westminster (City) London Borough Council [1971] 1 QB 222 and Prof. Wade's criticism of Lever in Administrative Law 4th Edn. at page 329. In India, Motilal Padampat Sugar Mills extended the frontiers of administrative law. It gave a wide berth. It placed the doctrine on the basis of the rule of law; equality before the law and justice and morality. It is no new doctrine in India. It emerged as early as 1880 : see Ganges Mfg. Co. v. Sourujmull (1880) 5 Cal. 669. It was applied against the Government by Jenkins, C.J., in 1905 [see Municipal Corporation of Bombay v. Secretary of State (1905) 29 Bom. 580]. Throughout its history the basic concepts of "justice and fair play", to use the words of Shah, J., or "honesty or good faith", to use the expression of Chandrasekhara Aiyar, J., have been largely responsible for the development of the doctrine in its modern form. "The accepted standards of right conduct", Justice Cardozo has said, have inevitably shaped the progress of law.

27. The modern doctrine of promissory estoppel is a recent advance in public law. The common law doctrine of estoppel contained in the Evidence Act has been discarded. Consideration is no longer necessary. You can found an independent cause of action on promissory estoppel now. Not only as a shield it can also be used as a sword. Detriment is no longer required to be proved. It is enough if the promise has altered the position on the faith of the representation. The desire to do justice through equitable possibilities is so strong that the old traditional concepts of private law are crumbling and giving rise to a new estoppel and a "new equity" in public law.

28. The courts in the United States have asserted that the Government, to the extent possible, ought to be held to the same standards of rectilinear rectitude that it demands from its citizen : see *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, . This is why the current trend of decisions is to protect the individual from sustaining loss as a result of maladministration by public authorities. *Motilal Padampat Sugar Mills* is a landmark in this direction. Estoppel was raised against the Government because estoppel neither prevented the performance of a duty nor the exercise of a discretion conferred on it for the benefit of the public. On the other hand, it advanced justice. The court held that promise must be honoured on the faith of which a party had acted and altered its position. It refused to allow the maker of the representation to act inconsistently with it. *Motilal Padampat Sugar Mills* was applied in Himachal Pradesh recently : see *Kundan Lal Ahuja v. State of Himachal Pradesh* [1981] 47 STC 135, per Misra, C.J., and Thakur, J.

Jit Ram Shiv Kumar

29. In *Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others*, (Murtaza Fazal Ali and Kailasam, JJ.) the doctrine of promissory estoppel again came up for consideration. *Motilal Padampat Sugar Mills* received a cold welcome in *Jit Ram*. But the correctness of *Indo-Afghan* was not doubted in *Jit Ram*, though the holding of *Motilal Padampat Sugar Mills* was subjected to a trenchant criticism by Kailasam, J. The correctness of *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd.*, , could not be doubted by two Judges because *Indo-Afghan* was a decision of three Judges. Such is the theory of numbers in the world of precedents. In common law systems, heads are counted. The Judges may differ in determining the true ratio decidendi of *Indo-Afghan*. But no one has questioned its correctness. So the authority of *Indo-Afghan* remains unshaken.

Legislative powers of the administration

30. Whenever promissory estoppel is invoked what the court ought to ask is : Whether the communication (I use a neutral word) coming from the Government is legislative or executive in character. If the communication is legislative the doctrine of promissory estoppel cannot be invoked. In the exercise of its statutory powers the Government cannot fetter itself or its successors. It cannot divest itself of the freedom of action. A public authority created to exercise statutory powers vested in it in the public interest under the authority of the legislature cannot act inconsistently or incompatibly with the purposes for which the statutory powers have been granted. Estoppel would create contractual fetters. It would fetter the exercise of statutory powers.

31. This raises the question of relationship between this doctrine and the doctrine concerning the fettering of public powers. Would the doctrine of estoppel be excluded whenever its operation would fetter the powers of a public body in a way that could not be done by a contract ? It seems logical that it should be so : *Government and Law - Hertley and Griffith*, pp. 294-295.

32. The application of estoppel in such a case would infringe the rule concerning statutory duties. "The basic powers of Government cannot be subject to bargain". Earl of Birkenhead in a case decided by the House of Lords in 1926 [Birkdale District Electric Supply Co. Ltd. v. Southport Corporation [1926] AC 355] formulated the principle concerning public authorities in these words :

".... if a person of public body is entrusted by the legislature with certain powers and duties expressly or implied for public purposes, those persons or bodies cannot divest themselves of these powers and duties. They cannot enter into any contract or take any action incompatible with the due exercise of their powers or the discharge of their duties".

33. An estoppel cannot be raised to prevent the exercise of a statutory discretion or to prevent or excuse the performance of statutory duty : see Spencer Bower and Turner on Estoppel by Representation, 3rd Edn., 1977, p. 141, and Western Fish Products Ltd. v. Pen with District Council [1981] 2 All. ER 204 per Megaw L. J. A further extension of the doctrine of promissory estoppel would erode the general principle as set out in a long line of cases of which the decision of the Privy Council in Maritime Electric Co. Ltd v. General Dairies Ltd. [1937] AC 610 and the judgment of the English Divisional Court in Southhend-on-Sea Corporation v. Hodgson (Wickford) Ltd. (1962) 1 QB 416 are notable examples : Western Fish [1981] 2 All ER 204. Therefore, we have the rule, that a public authority cannot by contract (its own action) disable itself from exercising a statutory power. Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, emphasises this aspect of the doctrine of promissory estoppel.

34. Jit Ram takes the view that the application of promissory estoppel would disable the Government to assert its powers for the public good. It follows M. Ramanatha Pillai Vs. The State of Kerala and Another, Excise Commissioner, Uttar Pradesh, Allahabad and Others Vs. Ram Kumar and Others, , State of Kerala and Another Vs. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. etc., . Excise Commissioner v. Ram Kumar is a decision of four Judges, and according to Jit Ram, that represents the view of the Supreme Court (p. 1291).

35. As against the decision of four Judge in Ram Kumar's case our attention was drawn to a judgment of the Constitution Bench of five Judges in Seth Sat Narain v. Dominion of India (1968) 2 SCWR 335, where the pronouncements of Lord Denning on this doctrine were examined. It is not possible to accept the view that the doctrine does not apply against the executive power and the executive is free to do what it likes. Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., is a milestone on the road to the rule of law.

Control of the administrative powers

36. So much for promissory estoppel in the legislative domain. Now, we turn to the executive field. It is in the area of State action that promissory estoppel has produced most beneficial results in protecting the individual against the executive excesses.

37. If the communication is executive in character, on the authorities, it appears to me, that the doctrine of promissory estoppel can be properly pressed against public authorities, as was done in Indo-Afghan against the Textile Commissioner, and against the Chief Secretary in Motilal Padampat Sugar Mills. The State in both cases was held bound by its representation, in one case by the representation made to the exporters in the export promotion scheme and in the other by a written assurance given by the Chief Secretary under his own hand to the mills that it will enjoy a sales tax holiday for 3 years. In both cases the court come to the conclusion that to allow the public authority to act inconsistently with its representation would work injustice to the individual without any countervailing benefit for the public.

38. The right question to ask will be : Has an equity arisen in favor of the applicant ? Shah, J., answered it in the affirmative in Indo-Afghan. So did Bhagwati, J., in Motilal Padampat Sugar Mills. "A man should keep his word", Lord Denning has said. A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise (American Restatement).

Delegated legislation : Statutory orders

39. The main challenge of the petitioners is to the Exports (Control) 43rd Amendment Order, 1979, and the new guidelines laid down in the public notice dated 13th August, 1979. Section 3 of the Import and Export (Control) Act, 1947, delegates the legislative powers to the Central Government to prohibit, restrict or control the import or export of commercial commodities. In exercise of this delegated power the Government issues Export (Control) Orders from time to time.

40. The delegation of legislative power is inevitable and indispensable. It facilitates administration because every administrative change is in the nature of an experiment. The various Export (Control) Orders made u/s 3 of the Act from time to time are a standing proof of sudden need of legislative action. In a modern State there are many occasions when there is a sudden need of legislative action. For many such needs delegated legislation is the only convenient or even possible remedy. The use of delegated legislation is valuable because it provides for a power of constant adaptation to unknown future conditions without the necessity of amending legislation. Flexibility is essential. The method of delegated legislation permit the rapid utilisation of experience. The practice permits of experiments being made and thus affords an opportunity, otherwise difficult to ensure, of utilising the lessons of experience. "Parliament and Government would grind to a halt if there were not built into our Constitution an adequate system of executive legislation." : D. Foulkes Administrative Law, 5th Edn. (1982) p. 73. See Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. Vs. The Asstt. Commissioner of Sales Tax and Others, , Tata Iron and Steel Co. Ltd. Vs. The

Workmen and Others, . M.K. Papiiah and Sons Vs. The Excise Commissioner and Another, and Sita Ram Bishambhar Dayal v. State of U.P. AIR 1972 SC 1168.

41. The Exports (Control) Orders are legislative in character no one can dispute. It was so held in Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., . These statutory instruments, if we may call them, can be amended from time to time. The power to make statutory instruments or rules, regulation, by-laws, carries with it the power to revoke, amend or re-enact them. This power may be exercised or the duty performed from time to time as occasion arises. The petitioners' attack, Therefore, on the Export (Control) 43rd Amendment Order, 1979, dated 13th August, 1979, cannot be sustained. The short answer is that it is legislative in character.

42. Against the legislature the doctrine of estoppel cannot be pleaded. That the Exports (Control) Order is legislative in character is established by the fact that this document was published in the Official Gazette so that every one knows what the policy is as regards the export of manufactures and products having 50 per cent or less silver contents. In place of OGL the export of these product was put under the heading "on merits" under the licensing policy in the policy statement at page 22 of the Export Policy 1979-80.

43. Legislation has been defined as "the creation and promulgation of a general rule of conduct without reference to particular cases" : Sa de Smith - Judicial Review of Administrative Action 4th Edn. (1980), p. 71. An Act may delegate power to legislate. Delegated legislation should not be regarded as some form of inferior legislation - it carried out the maker's command as effectively as does an Act or Parliament.

Guidelines : Paragraph 295

44. Now I turn to the guidelines. The petitioners found their claim on paragraph 295 of the Hand Book of Import-Export Procedures 1979-80. They complain that the new guidelines which were laid down by the Chief Controller of Imports and Exports on 12th August, 1979, to replace paragraph 295 pre-judicially affect their right as their pre-control commitments were no longer saved in the new guidelines as was done under the old paragraph 295. They say that the Government should be held bound by the representation it made to them in paragraph 295 and their export should be allowed if they fulfill the terms of that paragraph. They submit that an equity has arisen in their favor under paragraph 295, and it will be unjust for the Government to say that paragraph 295 of the Hand Book will not be applicable to pre-control commitments and that all cases of pre-control commitments will be decided only if the condition of the new guidelines have been satisfied. These new guidelines I have already set out in an earlier part of judgment.

45. The question now is : What is the true character of paragraph 295 on which the petitioners base their claim ? Paragraph 295 is headed as "Pre-ban commitments" and opens with the words "Unless otherwise provided the

following types of pre-ban (including pre-control) commitments may be ordinarily honoured for export control purposes". Then as many as six types of pre-ban commitments are detailed. The petitioners' case is that paragraph 295 is a representation on the faith of which they acted to their detriment and altered their position and it would be unfair to them to allow the State to replace this paragraph by a new set of guidelines.

46. It is difficult to distinguish the legislative from the executive acts. Text book writers have laid down a miscellany of indicia to distinguish the one from the other. It is unnecessary to discuss them here. Here section 3 says : "The Central Government may, by order published in the Official Gazette, make provision for prohibiting, restricting or otherwise controlling", the imports or exports. So the Exports (Control) Orders are legislative in character. The export policy is evolved to facilitate the mechanism of the Act and the orders issued there under. The policy statement is "a jumble of executive instruction and matters which impose several restrictions on the rights of the citizens". The Government issues executive or administrative instructions in order to implement the policy declared by the statutory Orders : Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., .

47. I will assume, and that is the case of the petitioner, that paragraph 295 is executive in character and has a direct impact upon the right and the pre-ban commitments would "ordinarily" be honoured if certain conditions are satisfied. This was the policy announced for 1979-80. But in the middle of the year, i.e., on 13th August, 1979, the right available to the citizen under paragraph 295 was taken away and the new guidelines were framed placing severe restrictions on the export of products having 50 per cent or less silver contents. It appears to me, if there had been nothing else, the petitioners had a good case for the invocation of promissory estoppel against the maker of the representation, namely, the Central Government. There was a representation in paragraph 295. The petitioners had altered their position. They had acted on the faith of the representation. An equity had arisen in their favor. Only by enforcement of the promise could injustice be avoided. But two important factors - public interest and the changing character or guidelines - militate against the view which the petitioners pressed upon us.

Public Interest

48. When one turns to the affidavit of the Government one finds that the Government has pleaded that the policy with regard to the export of silver had to be changed in public interest. The Deputy Chief Controller of Imports and Exports says in his affidavit that the Government imposed the ban on the export of silver in order to conserve the country's stocks of silver for its own use. "There are no silver mines in India. The country's requirement of this metal for diverse industrial and other uses has to be protected by not allowing the export of the available stocks which have been accumulated over the centuries. When the export was permitted in 1974, there was a need to increase our foreign

exchange earnings, consequent to the oil crisis in 1973. The foreign exchange position today is comparatively sounder than in 1974. The ban has, Therefore, been imposed in the national interest for maintaining the balance in economy to meet any future contingencies". This affidavit shows that the reason for banning the export was that India had not silver mines and such silver stocks as we have are the result of accumulation over a period of centuries.

49. The history of silver has seen many ups and downs. Till 1974, the export of silver from the country was totally banned. The Government had imposed the ban on the export of silver for conserving the country's stocks of silver for its own use. But in 1974 export was permitted, because the country needed foreign exchange to meet the oil crisis. In 1979 the export of silver was sought to be controlled by placing the item of manufactures and products having 50 per cent or less silver contents in the licensing policy under the heading "on merits". This means that each case will be decided on merits, and if it is in public interest to allow export, permission will be granted.

50. So public interest is pleaded in defense by the Government. Is it a good defense to the petitioners' plea of promissory estoppel ? A public body has a right, may a duty, to exercise its discretion in the way in which it believes best promoted the public interest : *Southend-on-Sea Corporation v. Hodgson (Wickford) Ltd.* [1962] QB 416 (per Parker, C.J.). A citizen can say that he has acted on the faith of the representation of the announced policy so his detriment, and Therefore, the Government is bound by promissory estoppel to allow him to export certain commodities under the pre-amendment policy. But, if the overriding public interest requires the Government to act differently, the doctrine of estoppel may not be applied. The reason is that the doctrine may advance the interest of private contractors, but on the whole it will injure the public interest. It is for acting in public interest that the power u/s 3 of the Act is conferred on the Central Government.

51. The guidelines framed from time to time have only one object, namely, public interest. If public interest requires, the guidelines can also be changed. It must be remembered that the function of the Government is to consider public interest and to act accordingly. If we apply promissory estoppel in this case an injustice to the petitioners may no doubt be avoided but the public interest will suffer. The problem can be put in this way. On the one hand we have the applicant relying in all honesty on the communication he gets from the authority. To permit estoppel prevents an injustice to him. But there is a wider interest. The authority has a duty to act for the public good.

52. So we are faced with the problem of public good versus private injury. "Estoppel cannot be allowed to hinder the formation of the government policy", even if the citizen is a victim of a change of policy : *Laker Airways Ltd. v. Department of Trade* [1977] 2 All ER 182 (per Lawton, L.J.). The Government cannot be estopped from exercising its powers when it is doing so in the proper exercise of its duty to act for the public good even though it may work some

injustice or unfairness to a private individual : Laker Airways, per Lord Denning, P. 707 of [1977] 1 QB.

53. If the petitioners have suffered a loss as a result of the change it is unfortunate; they have been the victims of a change of Government policy. This often happens. Estoppel cannot be allowed to hinder the formation of Government policy in which so many matters, e.g., the difficult position of foreign exchange, protection of domestic industries, the general interest of the State have to be taken into account. *Ramchand Jagadish Chand Vs. Union of India (UOI) and Others*, . This is all for the public good. The Government is exercising its statutory powers for the public good and is entitled to do so, even though it works some injustice to individuals.

54. The principle always to be kept in mind is this : The needs of the community cannot be allowed to be overridden by the rights of the private contractor. If the common weal demands, the policy can be changed. The announcer of the policy, namely, the Central Government has not assured the exporters that the policy will not be changed. The opening chapter of the Export (Control) Policy, on the contrary, announces that any change in the policy will be duly notified by a public notice. Change in the land of the living is essential. The Export (Control) Orders issued from time to time are, so to speak, so many legislative experiments in the laboratory of international trade. They are the lesson of experience. So the Government cannot effectively contract not to exercise its statutory powers or to abdicate its statutory duties.

A sea of change

55. The export policy as declared in the statutory orders from time to time is indissolubly connected with the guidelines framed for "pre-ban commitments". Section 3 of the Act confers wide powers on the Government. The power is one and indivisible, although in the exercise of it, various Exports (Control) Orders are issued from, time to time. It is a fallacy to think that the Government enters into a contract when it announces its policy. There is no enforceable contract between the Government and the exporters. The Government can change the policy from time to time according to the needs of a developing economy. This is its "statutory birthright". If we apply estoppel it will prevent the public authority from performing its duty.

56. This is why the Government has categorically announced that it can change the policy from time to time and will inform the public about the change through public notices and the Gazette notification. In the Hand book the public is informed that "instructions and guidelines contained in this Book are applicable subject to such amendments/changes as may be made from time to time" (Ch. I, p. 1). It forewarns the exporter. It puts them on their guard. So, if the Government changes the export policy, it can also change the guidelines. This it has announced publicly. If there is a representation in paragraph 295 on "pre-ban commitments" it is a representation subject to this that the guidelines can

be changed, if there is a change in the policy. If there can be no estoppel against the Exports (Control) Orders there can be a fortiori no estoppel against the guidelines. The policy and the guidelines are parts of the same mechanism.

57. Paragraph 295 itself announces that the guidelines set-forth there "shall not confer any right on the person concerned to the grant of any export license or permission to export". So there is no representation on which a right can be founded. The announcer has informed the public unmistakably that the policy can be changed and guidelines and instructions also can be changed. No right to export is conferred even in pre-ban commitments. If change is made in the public interest and that public interest is disclosed to the court by proper and adequate material which constitutes its reason and justification it may not be possible apply promissory estoppel against the Government.

58. There is no dry land in this sea of change. Not even a patch. Everything is in a state of flux. In *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd.*, , what happened was this. There, rights had occurred to the citizen on the export promotion scheme. The Government was unable to show any justification for, or countervailing public benefit in, acting to the contrary to its representation. The court held that it hold not in equity be allowed to resile from its promise. The judgment of Shah, J., does not suggest that even if the foreign exchange position had radically changed against India, the promises made for the exercise of discretionary power would still be binding on the Union and would be enforced by the courts. If Shah, J.'s judgment did lay down such a proposition a leading authority suggest that it would clearly be wrong : (Seervai, *Constitutional Law of India*, 2nd Edn., Vol. I. p. 433).

59. It will be impossible to hold the there are any accrued rights under paragraph 295 of the Hand Book which the statutory power cannot alter. More so when the policy can be changed. More so when it is announced publicly that the guidelines also can be changed. Nothing confers rights which cannot be changed. Neither the statutory orders, nor the policy nor the guidelines. There is nothing permanent on which a plea of promissory estoppel can be successfully founded. There is no representation which can furnish the ground for an equitable estoppel. Everything is subject to change. Assuming there is a representation, the Government can always show that Public good requires the exercise of the power contrary to the representation.

60. In a word promissory estoppel will always be subservient to public interest. If its application is detrimental to public interest and produces result deleterious to the public good, the court would refuse to give effect to a plea based on it. Protection to the individual litigant cannot be given at the expense of the public interest. Contractual fetters - this is what promissory estoppel amounts to - have no place where public interest is the dominant consideration. The rights of the individual should be protected - but is the individual right to be favored against all public interest ? The answer to the question comes into prominence when the dispute is between the individual and the State.

61. As Bhagwati, J., pointed out a Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , the burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the court would insist on a highly rigorous standard of proof in the discharge of this burden. If is only :

"..... if the court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should be held bound by the promise but should be free to act unfettered by it, that the court would refuse to enforce the promise against the Government. The court would not act on the mere ipse dixit of the Government, for it is the court which has to decide and not the Government, whether the Government should be held exempt from liability. This is the essence of the rule of law." [p. 73 of 44 STC; p. 644 of AIR 1979 SC].

62. In the hands of Shah, J., as also of Bhagwati, J., promissory estoppel became a strong ally of the rule of law. Rule of law a mere catchword or incantation. It is perhaps the most powerful and flexible instrument to control the exercise of discretionary power. When power is exercised "on some undefined an undisclosed ground of necessity or expediency", in the words of Shah, J., it is naked arbitrary power. This was the dominant theme of Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., . If the method of exercise of power of mere whim and not legality, the Government cannot repudiate the promissory liability. As Bhagwati J., said :

"Mere claim of change of policy would not be sufficient to exonerate the Government from the liability; the Government would have to show what precisely is the changed policy and also its reason and justification so that the court can judge for itself which way the public interest lies and what the equity of the case demands [p. 73 of 44 STC : AIR 1979 SC 644 (Col. 2)].

63. In Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, as in Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., , one finds a fuller development of the doctrine of rule of law that permeates our whole constitutional system - here, there are less of nuts and bolts, and more of theoretical framework in which promissory estoppel is woven into the fabric of rule of law. But it must not be forgotten that "promissory estoppel is an equitable doctrine, it must yield when the equity so requires". : Motilal Padampat Sugar Mills AIR 1979 SC 644.

64. Promissory estoppel is a brake on the exercise of discretionary power. Repudiation of promissory liability by the State for no goods reason is synonymous with arbitrary power. This is what Indo-Afghan holds. This is our commitment to the rule of law. There is one lasting benefit of Indo-Afghan. It "established the supremacy of the law" : Motilal Padampat Sugar Mills AIR 1979 SC 643.

Indo-Afghan revisited

65. Server suggests that it was not necessary to invoke the doctrine of promissory estoppel in Indo-Afghan (Constitutional Law, Vol I, p. 433). The truth is that Shah, J., was dealing with the perennial problem of power. The starting point of his enquiry is that "power is of an encroaching nature, not necessarily because it is unscrupulously pursued and exercised, but because that is a quality inherent in it." (C. K. Allen, Law and Orders, 3rd Edn., p. 21). When Parliament delegates absolute powers in general terms to an executive body it believes that such powers will be reasonably exercised.

66. The fact is that nobody on earth can be trusted with power without restraint. The need for control, and control according to law, will remain so long as men believe that uncontrolled power is an evil to be eradicated from civilised society. (Lord Scarman : English Law - The New Dimension, Hamlyn Lectures p. 62). This was the major premise of Shah, J. The exercise of governmental authority affects individual rights and liberties, he said. On this executive power he imposed restraint by applying the principle of promissory estoppel as of the rule of law. He found that there was trust, obligation, morality and justice in requiring the executive to keep its word. He introduced the "principle of legality" in administrative discretion. In promises made by the executive he found a new route of reasoning by which to do justice to the man. The doctrine enunciated by Denning, J., in *Robertson v. Minister of Pensions* [1949] 1 KB 227 was in air. He applied it to the facts of the case before him.

67. The "principle of legality", as Prof. de Smith calls it, in the exercise of governmental authority affecting individual rights is an important aspect of the doctrine of the rule of law. (Halsbury's Laws of England, 4th Edn., Vol. I, para 2, Vol. 8, paragraph 805). One of the merits of the rule of law is that it is a curb upon power - irrespective of the person or institution who wields it. (Scarman, p. 68). Promissory estoppel, as I view it, is but an extension of the rule of law. It is a remedy in public law.

68. *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, is a homage to Shah, J. There is more meat and marrow in *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd.*, than I have found anywhere else in one single decision. The exercise of executive powers is the subject of the decision. The main issue is the concern of every citizen. Indo-Afghan discusses the rule of law, judicial review of doctrines of executive necessity and promissory estoppel. And, what not ? The menu is so varied that there is something or the other to suit the taste of every lover of liberty.

Conclusion

69. Promissory estoppel is rooted in equity. The gist of the equity lies in the fact that one party has by his conduct or representation led the other to alter his position. If injustice can be avoided only by an enforcement of the promise it is a case of estoppel. But the doctrine of promissory estoppel cannot be applied

against the stature. Nor can it be applied in manner that the State becomes paralyzed in promoting the good of the greatest number. It strikes at executive action. Not legislative action. In other words, the doctrine can be properly pressed against administrative action. It strikes at executive action where, in the name of State necessity, individual interests are affected adversely for no disclosed reason. *Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others*, emphasises that promissory estoppel cannot be invoked against the legislative or statutory powers of the *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, holds in positive terms that it applies to the executive action and admits that it has no application against the statute. The two aspects of the doctrine dealt in these two cases are obverse and reverse of the same coin.

70. What is the distinction between a legislative and an executive document ? This is one of the most teasing problems in the whole of our administrative law. But there is not much of difficulty in this case. Orders made u/s 3 of the Act have statutory force. The Central Government in exercise of the powers conferred by Section 3 of the Act makes statutory orders and is required to publish them in the Official Gazette. But public notices are policy statements administratively made by the Government for public information. The notification u/s 3 of the Act regulate the rights of the parties. The public notices give information to the public. The administrative instructions do not create rights : See *East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of Customs, Calcutta, and Joint Chief Controller of Imports and Exports, Madras Vs. Aminchand Mutha Etc.,* .

71. In promises made in these executive instructions, Shah, J., found promissory obligation. He shepherded the scattered principles of administrative law and applied them to this welter of instructions to protect the individual's rights and liberties.

72. Section 3 of the Act applies the acid test of publication in the Official Gazette as the distinguishing mark of a legislative documents. So what is published in the Official Gazette "prohibiting, restricting or otherwise controlling" imports or exports is legislative in character. In this class will fall Export (Control) Orders. They are really the corpus Jurisdiction of the law of imports and exports, an are of immense importance to every trader. The rest are executive or administrative instructions. If the document is executive in character the doctrine of promissory estoppel will apply. In the application of the doctrine the court is guided by equitable considerations. Has an equity arisen in favor of the applicant ? Will injustice be avoided only by enforcement of the promise ? The principle is this : "The court must look at all the circumstances in each case to decide in what way the equity can be satisfied." See *Plimmer v. Wellington Corporation* (1884) 9 AC 699, *Chalmers v. Pardoe* [1963] 1 WLR 677, *E. R. Ives Investment Ltd. v. High* [1967] 2 QB 379, *Pascoe v. Turner* [1979] 1 WLR 431. There is, however, one important exception. Against public interests promissory estoppel will not prevail.

73. In my opinion the State has discharged the burden of showing that its action in changing guidelines of paragraph 295 to a new set of guidelines was dictated by public interest and nothing else. If the public good outweighs the private interest of an individual the doctrine cannot be applied. Whenever and wherever the element of public interest enters into the performance of statutory duties the doctrine of promissory estoppel cannot be invoked. Because it is an instrument of justice. When the State is able to show that it was required to act differently because the public interest demanded it, the doctrine of promissory estoppel cannot be properly pressed against it. The Government, I think, has succeeded in showing that its action was in the best public interest. The arguments that the Government cannot replace paragraph 295 by a new set of guidelines is specious rather than sound.

74. When a distinguished twentieth-century Chinese scholar was asked to give his opinion on the effect of the French Revolution of 1789, he replied "It is too soon to tell". Similarly it is too early to tell the future of the doctrine of promissory estoppel : See *Woodhouse A. C. Israel Cocoa Ltd. v. Nigerian Produce Marketing Co. Ltd.* [1972] AC 741, per Lord Hailsham, L. C. Promissory estoppel is essentially "a child of equity." It is still a delicate child, with an uncertain future, but it is beginning to take the shape of manhood. In an essentially equitable doctrine no equity can be claimed in favor of an individual when public goods requires the State to act differently. Promissory estoppel is a tool fashioned by the Judges for preventing injustice. It is a product of "legal smithy", to use a happy phrase of Maitland. It is a unique handwork of equity Judges. The new formulation of this doctrine in England and India is the work of "bold spirits" to use Lord Denning's phrase : [*Candler v. Crane Christman & Co.* - [1951] 2 KB 164], cited in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, . It can safely be predicted that the doctrine has good prospect for a long and happy voyage and only the "timorous souls" (to use Lord Denning's phrase) are likely to question its seaworthiness.

75. For these reason I would dismiss the writ petitions with costs.

JUDGMENT

Prakash Narain, C.J. for himself and for Kirpal, J.

76. We have had the benefit of reading the learned judgment of our brother, Avadh Behari Rohatgi, J. While we generally agree with him, we would like to make some observation for ourselves.

77. Our learned brother has dealt at length with the various decisions of the Supreme Court as well as of the courts in England wherein the theory of promissory estoppel has been elaborately expounded. From the reading of the aforesaid decisions, in our view, the following principles emerge :

78. The doctrine of promissory estoppel is not attracted where the Government exercises its legislative or statutory power. The doctrine may be attracted where

the Government has acted in exercise of its administrative or executive power.

79. The Government and its officers are not entitled at their mere whim to ignore the promises made by the Government and the Government is bound to honour its solemn promises and assurances, if on the basis of representations a person has acted to his detriment or, as said in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, , even altered his position. The Government would be bound even though the promise made is not recorded in the form of a formal contract as required by the Constitution.

80. The doctrine of promissory estoppel is evolved by equity in order to do justice or, to put it in other words, to prevent injustice, where a promise is made by a person knowing that it would be acted upon by the person to whom it is made, and in fact it is so acted upon, and where it will be inequitable to allow the party making the promise to go back upon it. This doctrine would be applicable notwithstanding that there is no consideration for the promise which has been made by the Government.

81. The detriment which is to be suffered is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee if the promisor were allowed to go back on the promise. The guidelines and the Handbook of Import Export Procedures as well as the Import and Exports Policy, referred to by the learned counsel in this case cannot be regarded as statutory though the Import and Export (Control) Orders issued under the Imports and Exports (Control) Act are statutory. Policies are framed by the Government in exercise of power other than statutory or legislative power. Likewise, procedures and guidelines for the benefit of importers and exporters as also the administrative departments are issued in administrative capacity, which cannot be regarded as exercise of any statutory or legislative power.

82. It is thus clear and it was not disputed that the doctrine of promissory estoppel requires that, when any party wants to invoke that said doctrine, equities between the two parties, namely, the promisor and the promisee be weighed.

83. In Civil Writ No. 1432 of 1979, a firm contract was no doubt entered into by the petitioners. The petitioners, however, did not manufacture any goods to be exported from India. On the other hand, the Government, in its affidavit have categorically stated that the ban on the export of silver was imposed in order to conserve the country's stock of silver. In this connection it was averred that there were no silver mines in India and the country's requirement of this metal for its own use had to be protected by prohibiting the export of the commodity which had been accumulated over the centuries. It was also averred that originally the export was permitted in 1974, with a view to increase the foreign exchange earnings. Therefore, the foreign exchange position became comparatively sound and public interest demanded that the export of this metal should be banned.

84. We see no reason as to why the aforesaid averments should not be believed. On the facts of this case we find that the equities weigh heavily in favor of the Government. It has acted in public interest in conserving a precious metal by banning the export. The petitioner have not suffered any loss as would compel us to come to the conclusion that the equities in their favor were greater. In fact except for entering into a contract, whereupon the foreign purchaser no doubts had opened the letter of credit, the petitioners did not incur any expense for manufacturing the goods which were meant to be exported. In other words, the petitioners were not actually out of pocket. In these circumstances the benefit of the doctrine of promissory estoppel is not available to the petitioners to claim any relief.

85. In Civil Writ No. 310 of 1980, we find that there was in a fact no firm commitment or contract between the petitioner and the foreign buyer. The petitioners seek to invoke the provisions of paragraph 316 of the Hand Book. The pre-condition for invoking the said provision is that there should be a firm commitment by an exporter. The facts as enumerated by our learned brother clearly show that the contract dated 25th March, 1977, was altered and amended from time to time at the sweet will and pleasure of the parties. The said contract could not be regarded as any firm commitment. On this ground alone the petitioner is not entitled to any relief.

86. The petitions are dismissed with costs.