
(1982) 06 GAU CK 0010
In the Gauhati High Court
Case No : Civil Rule No. 537 of 1981

Dhansiri Saw Mills Pvt.Ltd.

APPELLANT

Vs

State of Assam & Ors.

RESPONDENT

Date of Decision : 10-06-1982

Acts Referred:

Citation : (1982) 1 GLR 550

Hon'ble Judges : D.Pathak, C.J. and K.N.Saikia, J

Bench : Division Bench

Advocate : A.K.Choudhury, B.N.Sarma, J.P.Bhattacharjee, R.Gogoi, Advocates
appearing for Parties

Judgement

Saikia, J.—The petitioner company herein impugns the decision of the Karbi Anglong District Council cancelling its Dhansiri Reserved Forest Lease.

2. The petitioner Company was granted a lease in respect of Compartments 3,4,9, 10, 11, 12, 13 and 14 of the Dhansiri Reserved Forest by the authorities of the Karbi Anglong District Council (shortly, the District Council) for a period of one year with effect from 1.6.77, later extended to 31.5.79. As the petitioner Company had to incur heavy unforeseen operation expenditure it could not profitably operate all the compartments; and, on its representation, it was granted an extension, but only in respect of Compartments No. 9, 10, 11 and 12 for a period of two years from 1.9.80 to 31.8.82 subject to its payment of all outstanding dues. On a further representation by the petitioner Company dated 22.10.80 before the Chief Executive Member of the District Council praying for reconsideration as to payment of all outstanding dues in installments, by order in letter dated 5.1.81, the petitioner Company was allowed to deposit Rs. 10,000/ as first kist of arrear and the remaining amount in one installment during the operation of its lease. Acting upon the said order the petitioner company deposited Rs. 10,000/, but complains that it was not allowed to execute the agreement and to operate the lease, and, on the other hand, it was served with notices directing it to deposit all the outstanding dues in one installment; and by

letter dated 28.4.81 it was informed about the decision of the District Council requiring it to deposit all the outstanding dues within 15 days failing which the lease was ordered to be cancelled. Despite a further representation dated 12.5.81, without giving the petitioner company any opportunity to show cause or to explain its case, the District Council by the impugned order dated 4.6.81 cancelled the petitioner's lease. Hence this petition.

3. Mr. J. P. Bhattacharjee, the learned counsel appearing for the petitioner, *inter alia*, submits that the District Council having directed by order dated 5.1.81 the petitioner company to pay Rs. 10,000/ as first installment of the outstanding dues and to pay the balance thereafter during the working of the lease, and the petitioner Company having acted in terms of the same order by paying Rs. 10,000/ the District Council was estopped, in law, from adopting any other course of action to the prejudice of the petitioner Company, and the impugned orders dated 28.4.81 and 4.6.81 in revocation of its earlier order dated 5.1.81, are completely without jurisdiction ; and that the impugned orders dated 28.4.81 and 4.6.81 having been passed without affording the petitioner Company any opportunity of explaining and/or showing cause, the said orders are violative of the principles of natural justice.

4. Mr. B.N. Sarma, the learned counsel appearing for the " District Council, submits that it is not correct that the District Council, did not allow the petitioner Company to operate the the lease after it deposited Rs. 10,000/ pursuant to the District Council's order dated 5.1.81, in as much as after the petitioner Company deposited Rs. 10,000/ it was allowed to operate and, in fact, issued Transit Passes No. 73 on 5.5.81 and No. 82 on 25.5.81; and out of 157 logs it already removed some logs and it wanted to pay the outstanding amounts billwise, and to cover amount of the first bill, it further paid Rs. 3,651.66 and as such there arises no question of promissory estoppel.

5. In reply Mr. Bhattacharjee has not denied that the petitioner further deposited Rs. 3651.66 and was issued the two transit passes and that the petitioner removed some logs, but submits that it did not constitute operation of the lease; and that the District Council ought to have allowed it to pay the balance during the working of the extended lease which was further extended up to 13.8.82.

6. The precise question to be determined, therefore is whether the District Council having allowed the petitioner Company to deposit Rs. 10,000/ as first kist of arrear and the remaining amount in one installment during the operation of the lease, it was bound by promissory estoppel not to demand the entire outstanding amount within 15 days failing which in cancelling the extended lease, without giving the petitioner company any opportunity to show cause.

7. The law of promissory estoppel has been applied in India in several cases. In *Union of India vs. M/s. Anglo Afghan Agencies*, AIR 1968 SC 718, the Textile Commissioner published on October 10, 1962, a scheme called the Export Promotion Scheme providing incentive to exporters of woolen goods. By the

scheme as extended to exports to Afghanistan, the exporters were invited to get themselves registered with the Textile Commissioner for exporting woolen goods, and it was represented that the exporters would be entitled to import raw materials of the total amount equal to 100 per cent of the f. o. b. value of the exports. M/S. IndoAfghan Agencies exported to Afghanistan in September, 1963 woolen goods of the f, o. b. value of Rs.5,03,451.73 P. The Deputy Director in the Office of the Textile Commissioner, Bombay issued to the respondents an Import Entitlement Certificate for Rs. 1,99,459.00 only. The representations of the firm to the Deputy Director and to the Union Government that they be granted Import Entitlement Certificate for the full f.o.b. value of the goods exported failed to produce any response. In Court the State took the plea of executive necessity. The Supreme Court held that it could not be said that the executive necessity released the Government from honouring its solemn promises relying on which citizens have acted to their detriment. Their Lordships observed : "Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an exparte appraisalment of the circumstances in which the obligation has arisen". The Union Government and its officers were held not entitled at their mere whim to ignore the promises made by the Government.

8. In *Century Spinning & Manufacturing Co. Ltd. vs. The Ulhashagar Municipal Council*, AIR 1971 SC 1021, it has been held that "public bodies are as much bound as private individual to carry out representations of facts and promise made by them, relying on which other persons have altered their position to their prejudice. Relying on *Anglo Afgan Agencies*" case (supra) the following observation of Denning J. in *Robertson vs. Minister of Pensions* (1949) I.K.B. 227 was held to be applicable to India :

"The crown cannot escape by saying that estoppels do not bind the Crown for that doctrine has long been exploded. Nor can the Crown escape by placing in aid" the doctrine of executive necessity, that is, the crown cannot bind itself so as to better its future executive action". It has also been observed that different standards of conduct for the people and the public bodies cannot ordinarily be permitted. "A public body is in our judgment, not exempt from liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice. This would be so even if the Govt. Officer assumes authority beyond his limits. The citizen is entitled to rely on the Government Officers, having the authority which they assume. "He does not know, and cannot know, the limits of their authority, and he ought not to suffer, if they exceed it", as was observed in *Falmouth Boat Construction Co. Ltd., vs. Howell*, (1950) 1 All E.R. 538 by Denning L.J.

9. In the *D.F.O., South Kheri & others vs. Ram Senehi Singh*, AIR 1973 SC 205, at an auction held by the Forest Officers, Ram Sanehi Singh, respondent in the

appeal, purchased the right to cut timber for the period November 1, 1965 to October 31, 1966 from the forest lots in the Mailani and Gola. Ranges of South Kheri. On January 10, 1967 the Divisional Forest Officer, South Kheri Division, passed an order that the sleepers "against the tally" dated October 29, 1966 in the allotment of 196566 season being "wrong" since they were cut in the month of November 1966, do stand cancelled and that the sleepers be "passed against" the tally after getting the hammermarks cancelled and be "reinspected against the allotment for 196667 season". By that order the timber which the respondent claimed was actually removed by him with the sanction of the Forest authorities under the tally dated October 29, 1966 was to be treated as if it was removed in November, 1966. The respondent's petition was dismissed by a Single Judge of the Allahabad High Court holding that the D.F.O. acted in exercise of authority conferred upon by the terms of the contract and that the remedy of the respondent was to claim relief in a regular suit for enforcement of the agreement or for damages and not in a petition under Article 226. The Division Bench dismissed the appeal. Their Lordships of the Supreme Court held that the impugned order was passed by a public authority. By that order he has deprived the respondent of a valuable right. Their Lordships were unable to hold that merely because of the source of right which the respondent claimed was initially in a contract, for obtaining relief against any arbitrary and unlawful action on the part of all public authority he must resort to a suit and not to a petition by way of writ. The order was accordingly held to be illegal and liable to be set aside.

10. In the case of M/s. Motilal Padampat Sugar Mills Co. vs. State of Uttar Pradesh, AIR 1979 SC 621, the appellant, a limited Company, was primarily engaged in the business of manufacture and sale of sugar and had a cold storage plant and steel foundry. On 10th October, 1968 a news item appeared in the National Herald in which it was stated that the State of Uttar Pradesh had decided to give exemption from sales tax for a period of three years under Section 4A of the U. P. Sales Tax Act to all new industrial units in the state with a view to enabling them "to come on firm footing in developing stage". On the basis of the said announcement the appellant addressed a letter dated 11th October, 1968 to the Director of Industries stating that in view of the Sales Tax Holiday announced by the Government, the appellant intended to set up a Hydrogenation Plant for manufacture of Vanaspati and sought for confirmation that this industrial unit, which they proposed to set up, would be entitled to Sales Tax Holiday for a period of three years from the date it commences production. The Director of Industries replied by his letter dated 14th October, 1968 confirming that "there will be no sales tax for three years on the finished product of your proposed Vanaspati factory from the date it gets power connection for commencing production". The appellant thereupon relying on the clear and categorical assurance, started taking steps to set up the Vanaspati factory. The State Government having later gone back upon this assurance and taken a policy decision that new Vanaspati units of the State which went into commercial production by 30th September 1970 would be given partial

concession in sales tax at the prescribed rates, the company took the plea of promissory estoppel before the High Court which rejected it and the company appealed to the Supreme Court, where their Lordships, while allowing the appeal, discussed the question whether in view of the assurance given by the 4th respondent on behalf of the Government that the appellant would be exempted from the date of commencement of production, the Government's revised decision to impose sales tax could be interfered by Invoking the doctrine of promissory estoppel. The origin and growth of the principle of equitable estoppel, was elaborately discussed on the basis of English and American case law ; and applying the principle to the facts of the case, it was held that the principle of promissory estoppel seemed to be that where one party had by his words or conduct made to the other a clear and unequivocal promise which was intended to create legal relations or effect 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 was made, and it was in fact 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 had taken place between the parties, and this would be so irrespective of whether there was any preexisting relationship between the parties or not. This doctrine applies whenever a representation is made, whether of facts or law, present or future, which is intended to be binding, intended to induce a person to act on it and he does act on it. Promissory estoppel can now be the basis of a cause of action, despite the doctrine of consideration. In U.S.A. a promise may derive contractual enforceability if it has been made by the promisor intending that it should be acted on and the promisee has altered his position, relying on it notwithstanding that there was no consideration. There is also the recent view that the doctrine of promissory estoppel may apply to the Government when justice so requires. The law is settled that where the Government makes a promise knowing or intending that it would be acted on by the promisee 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 by Art. 299 of the Constitution. It is not necessary that the promisee should suffer any detriment. What is necessary is only that the promisee should have altered his position in reliance on the promise. But if by detriment we mean injustice, it will form an ingredient of promissory estoppel. It has been 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; and that 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 fetter future executive action.

11. The doctrine of promissory estoppel was held to be applicable against a public authority like a Municipal Council in *Century Spg. and Mfg. Co. Ltd. vs.*

Ulhashagar Municipal Council (Supra). There can, therefore, be no doubt that it will apply against the District Council, if the facts and circumstances of the case justify. In the instant case we start with the proposition that the petitioner company had outstanding dues in respect of the extended Dhansiri lease. Even then, by order dated 5.1.81 it was allowed to deposit Rs.10,000/ as first kist of arrear and the remaining amount in one installment during operation of the extended lease in respect of 4 compartments. The preexisting relationship and the liability of the petitioner company towards the District Council, according to the foregoing principles, should not otherwise affect the obligation arising out of the order dated 5.1.81, namely, to allow the petitioner company to deposit Rs. 10,000/ as first kist and the remainder in one Installment during operation of its lease. On 28.4.81 the Executive Committee of the District Council decided to give only 15 days" time to clear all outstanding dues, and to remove the logs already lying inside forest lease area, failing which, it was decided that the lease would stand cancelled. In its representation dated 11.5.81 the petitioner company stated that as per order dated 5.1.81 it deposited Rs. 10.000/ but the lease agreement had not yet been executed. The petitioner company was informed by Memo dated 4.6.81 that the District Council was pleased to cancel its Dhansiri Lease. We may appropriately now consider the statements in the respondents (2,3,4) counter affidavit that out of 300 Nos. of trees under Permit No,42/56 dated 8.5.79 the petitioner could operate only 131 numbers of tree; of these 131 Nos felled trees Bill No. 1/1 dated 19.7.79 for Rs.7,393.62 aid Bill No. 1/9 fit Rs. 7,517.07 remained outstanding and the total outstanding amounted to Rs. 43,012.65 p ; and that the amount of Rs. 10,000/ paid by the petitioner Company as the first installment was adjusted against. the Bill No. 1/7 for Rs. 7,718.55 and accordingly Transit Pass was issued by the Forest Department and that the petitioner company paid Rs. 3 651.66 p. only on 55.81 which had also been adjusted against Bill No. 1/8 for Rs. 5,913.11 and with the balance amount of Rs. 2,281.45 p. and after adjustment against Bill No. 1/7 from Rs. 10,000/ paid by the petitioner.

12. Mr. Sarma clearly states at the Bar that Transit Pass No. 63 was issued on 5.5.81 and Transit pass No. 82 was issued on 25.5.81 after the petitioner company deposited Rs. 10,000/, which go to show that the petitioner company operated the lease and in fact, removed some logs. This statement has not been denied. It is, therefore, clear that though the petitioner company operated the lease instead of paying Rs. 3,651.66 p. only in the second installment it ought to have paid the entire outstanding balance in that installment as per the order dated 5.1.81. The petitioner company having failed to act fully in accordance with that order the doctrine of promissory estoppel would not apply. Counsel for the petitioner company, however, submits that the lease was extended upto 31.8.82 and the petitioner company should have been allowed to clear the outstanding by the end of that period. That, however, does not appear to be the purport of the order dated 5.1.81 which mentioned only of two installments. The submission that the removal of already felled logs would not tantamount to

operation of the lease is also not reasonable in view of the lease being an extended and not a new one. Under these circumstances it could not be said that the District Council was bound to wait till 31.8.82 and accept the outstanding in several installments rather than in two installments. The District Council could not be said to have bound itself to wait till then. The District Council bound itself by its order dated 5.1.81 to take the particular course of action, namely, to accept the outstanding in two installments, the second being during the operation of the extended lease. Considering the matter from another angle, the District Council could not be said to have bound itself to act ultra vires its rules and to the prejudice of its revenue. The petitioner company itself having deposited the first installment but having not cleared the arrear dues in the second installment, the District Council while demanding payment within 15 days could not be said to have repudiated its earlier undertaking or estopped from acting according to law. Whether the District Council could have assured the petitioner Company that it would not collect the outstanding dues till the tenure of the extended lease expired on 31.8.82 would be doubtful as it would verge on ultra vires and against the interest of revenue. But even then, if it was the case, the District Council might be bound by it.

13. De Smith in *Judicial Review of Administrative Action*, Fourth Edition, page 102 observes :

"The legal consequences of unauthorised and erroneous assurances or advice given by officials upon which members of the public rely to their detriment are far from clear. At one time it could be safely said that they were simply nugatory (unless they fell within the scope of agency in contract, although a negligent misstatement or course of conduct causing economic loss might give rise to liability in tort. Thus if a local government officer to whom the necessary powers have not been delegated assures a builder that planning permission is not required for what he proposes to do, this assertion, though acted upon by the inquirer, does not affect the power of the local authority to arrive at and act on an opposite decision. However, there is a growing body of authority, attributable in large part to the efforts of Lord Denning, to the effect that In some circumstances when public bodies and officers, in their dealings with a citizen, take it upon themselves to assume authority on a matter concerning him, the citizen is entitled to rely on their having the authority that they have asserted if he cannot reasonably be expected to know the limits of that authority; and he should not be required to suffer for his reliance if they lack the necessary authority. But it is extremely difficult to define with any degree of precision the circumstances in which the courts will be prepared, in the interest of "fairness" to the individual, to derogate from orthodox notions of ultra vires. First, public authorities have been held bound by assurances given in disregard of formal or procedural statutory requirements, upon which individual have relied to their detriment.It is unlikely, however, that the body will be estopped altogether from effecting a change of policy through an otherwise lawful exercise of discretion.....The general principle remains that a public authority may not

very the scope of Its statutory powers and duties as a result of its own errors or the conduct of others. Exceptions that are inspired by a desire to ensure that public bodies that "fairly" should be made with circumspection, especially when the interests of third parties may be prejudiced by holding the public authority estopped."

14. Similarly H. W. R. Wade in his Administrative Law, Fourth Edition, page 219, observes that the legal rules about estoppel and waiver are applicable to public authorities as well as to other persons. "But, just as with contracts, the ordinary rules must give way where their application become incompatible with the free and proper exercise of an authority's powers or the due performance of its duties. Where the normal principles of justice are forced to give way, hard cases naturally result. It is possible for a citizen to be seriously misled by a public authority in a manner which ought, under the normal rules, to give rise to an estoppel which would compel the authority to stand by its representations ; but nevertheless there may be no legal remedy." "The basic principle of estoppel is that a person who by some statement or representation of fact causes another to act to his detriment in reliance on the truth or it is not allowed to deny it later, even though it is wrong Justice here prevails over truth. Estoppel is often described as a rule of evidence, but more correctly it is a principle of law. As the principle of common law it applies only to representations about past or present facts. But there is also an equitable principle of "promissory estoppel" which can apply to public authorities. In public law the most obvious limitation on the doctrine of estoppel is that it cannot be invoked so as to give an authority powers which it does not in law possess. In other words, no estoppel can legitimate action which is ultra vires". Thus where an electricity authority, by misreading a meter, undercharged its customer for two years it was held that the accounts it delivered did not estop it from demanding payment in full ; for the authority had a statutory duty to collect the full amount, and had no power to release the customer, expressly or otherwise. Estoppels have, however, been allowed to operate against public authorities in minor matters of formality, where no question of ultra vires arises. As Lord Denning observed in Wells vs. Minister of Housing and Local Government, (1967) 1 WLR 1000 at 1007 : "Now I know that a public authority cannot be estopped from doing its public duty, but I do think it can be estopped from relying on technicalities....."

15. In M/s. Motilal Padampat Sugar Mills Co's case (supra) It has been observed that if the Government wants to resist the liability, it will have to disclose to the Court what are the subsequent events on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those events are such as to render it inequitable to enforce the liability against the Government. 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. It is only if the Court is satisfied, on proper and

adequate materials placed by the Government, that overriding public interest requires that the Government should not 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 ipso dicit 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 assence of the rule of law. 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. But even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise "on giving reasonable notice, which need not be formal notice, giving the promisee a reasonable opportunity of resuming his position" provided of course it is possible for the promisee to restore status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable.

16. In the instant case the liability of the petitioner Company was preexisting one and it was allowed to pay in two installments after the lease was extended and it having paid two installments but having failed to clear the entire outstanding, the District Council could not be debarred from acting according to the Rules in cancelling (he extended lease after it gave notice allowing the petitioner company 15 days to clear the arrears. The District Council having allowed the petitioner Company to remove the already felled logs, issuing two Transit Passes it cannot reasonably be said not to have acted in accordance with the expectation created by its order dated 5.1.81. It cannot also be said that the District Council did not act in the interest of its revenue, which it was bound to. Having regard to the dealings between the parties, we feel that it would be inequitable to compel the District Council to wait till 31.8.82.

17. For the foregoing reasons this petition is found to be without merit and it is dismissed, but under the facts and circumstances of the case without costs. The Rule is discharged. The stay order stands vacated.