
(1992) 09 MP CK 0028
In the Madhya Pradesh High Court
Case No : M.P. No. 3230 of 1985

Dogar Tools (Pvt.) Ltd.

APPELLANT

Vs

State bank of India and Others

RESPONDENT

Date of Decision : 17-09-1992

Acts Referred:

Citation : (1993) J LJ 44

Hon'ble Judges : R.P. Awasthy, J; Gulab C. Gupta, J

Bench : Division Bench

Advocate : M.M. Agarwal, for the Appellant; N.S. Kale, A.K. Khaskalam, K.K. Trivedi and Gopal Jain, for the Respondent

Final Decision : Dismissed

Judgement

Gulab C. Gupta, J.—The Petitioner No. 1 is a company registered under the Companies Act, 1956 and runs a factory for manufacturing wood and steel cutting tools at Raipur. Other Petitioners are connected with petitioner No. 1 as per para 1 of the petition. They feel aggrieved by the refusal of the Respondent No. 1/State Bank of India, to advance loan as working capital and demand for repayment of loan already granted and have filed this writ petition challenging legality and validity thereof. They pray for a writ in the nature of mandamus or some other suitable writ of direction against the respondent No. 1 from this Court mainly on the ground of promissory estoppel and arbitrariness of their action.

2. It appears that the State of Madhya Pradesh with a view to secure industrial development of backward areas of the State had formulated an industrial policy and invited entrepreneurs to set up industries in specified areas including Raipur of the State. The State also promised several concessions, subsidy and assistance to such entrepreneurs. It also appears that the Petitioner's unit was approved by the Industries Department of the Respondent/State in terms of the said policy and this approval, according to the Petitioners entitled them to loan for construction of building and purchase of machinery and other infancy

benefits. There is no dispute that these loans and benefits were made available to the Petitioners. The Petitioner No. 1 seems to have applied to the Respondent No. 1 for working capital assistance on 10.9.1981 and as a consequence thereof the Respondent No. 1 sanctioned Demand Cash Credit limit of Rs. 10 Lakhs and Clean Cash Credit supply limit of Rs. 5 Lakhs on 14.2.1983 (Ann.-2). There is no dispute that the Petitioners enjoyed this credit with the Respondent No. 1 till it was withdrawn subsequently. Though the Petitioners have, in para 10 of the petition alleged that the aforesaid credit limit was granted in pursuance to a "written letter of undertaking" by Raipur Main Branch of Respondent No. 1 to Respondent No. 2, no such undertaking has been filed in this Court and the Respondent No. 1 have denied this allegation in their return. It, however, appears that the Petitioners signed an agreement (Annexure-R-1-A) in this behalf and agreed to this facility being extended for 12 months only. Para 2 of this letter mentions that the Petitioners will, after the expiry of the said period, submit information mentioned therein to enable them to arrange for renewal of this facility.

3. The Petitioners have submitted that there was undue delay on the part of Respondent No. 1 in sanctioning the aforesaid facility and hence they started production of saws and blades investing their own resources, from 25.11.82. (Para 1 of the Rajoinder to Return of Respondents No. 1). It, however, appears that the working capital assistance granted by the Respondent No. 1 proved inadequate and hence the Petitioners applied for enhanced limit of these facilities on 2.10.1983 (Annexure-3). One of the complaints of the Petitioners is that this application was not decided by the Respondent No. 1 and was illegally kept pending. The reply of the Respondent No. 1 as per their return, is that since the Petitioners had not followed the terms of existing agreement, there was no occasion for granting any enhanced limit.

4. The Petitioners further claim that because of undue delay on the part of Respondent No. 1 in sanctioning working capital assistance and illegal refusal to enhance the limit of the said assistance, they faced formidable financial crisis and their unit was untimely declared "sick" on 16.1.1989. Thereafter it became the statutory obligation of the Respondent No. 1 to undertake rehabilitation programme to make the unit healthy, which they have not done. That is how the Petitioners are seeking a writ of mandamus or some other suitable writ or direction against the Respondent No. 1 directing them-

- (i) not to recall the working capital facility already granted,
- (ii) to grant enhanced credit limit of working capital calculated on need- based basis, and
- (iii) to undertake rehabilitation programme to make their unit healthy and viable.

The aforesaid claims of the Petitioners are based on the doctrine of Promissory estoppel, which according to them apply to the facts and circumstances of the case and entitle them to reliefs aforesaid.

5. The Respondent No. 1 have denied the aforesaid claims of the Petitioners and have submitted that working capital assistance was granted to them in conditions mentioned in the agreement (Annexure-R-1-A) which were binding on the Petitioner and which they were bound to observe. It is submitted that there was systematic violation of these conditions by the Petitioners and hence the Respondent/Bank had to recall the facility. It is also submitted that the doctrine of promissory estoppel has no application to the present case as nothing whatsoever has been done by the Petitioners on any promise made to them by the Bank. It is also submitted that the money with the Respondent/Bank is not its own money and is held by them as custodian of depositors. Their relationship with their depositors makes it obligatory on their part to be careful and cautious while granting loans and not take any risk in the matter. The Respondent/Bank, therefore, defends its action as bona fide and in public interest on the basis of said obligation and prays that the petition be dismissed.

6. Since the Petitioners based their claim mainly on the principle of promissory estoppel, legal limits of this principle may first be determined. Fortunately the Petitioners have themselves quoted several decisions of the Supreme Court on the subject and hence they may first be noticed. *Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others*, according to the Petitioner contains a precise statement of the principle which is as under-

When the officer acts within the scope of his authority under a scheme and enters into an agreement and makes a representation and a person acting on that representation puts himself in a disadvantageous position, the Court is entitled to require the officer to act according to the scheme and the agreement or representation. The officer cannot arbitrarily act on his mere whim and ignore his promise on some undefined and undisclosed grounds of necessity or change the condition to the prejudice of the person who had acted upon such representation and put himself in a disadvantageous position.

The aforesaid statement was reaffirmed by the Supreme Court in *Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.*, by quoting the following passage from *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*,

The true principle of promissory estoppel, therefore, seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations 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 whether there is any pre-existing relationship between the parties or not.

The Court also made the following observations regarding application of principle

of promissory estoppel to State owned or controlled Corporations:

Thus the principle of promissory estoppel would certainly estop the Corporation from backing out of its obligation arising from a solemn promise made by it to the Respondent. (Para 9)

The latest and perhaps the complete statement of this principle is contained in V.R. Vora v. Board of Trustees of Port of Bombay AIR 1941 SC 14 which treats it well established in the field of administrative law. The Court surveyed all earlier decisions on the subject and observed as under:

We have no hesitation to hold that before making the public authority responsible for acts of its subordinates, it must be established that the subordinate officer did in fact make the representation and as a fact is competent to make a binding promise on behalf of the public authority or the Government. (Para 14)

The decision also contain a very precise and concise statement of the principle, which is an under:

The principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relationship or affect a legal relationship to arise in future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation 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. (Para 11)

7. These decisions of the Apex Court sufficiently establish that doctrine of promissory estoppel operates as a part of equity and is enforced by law Courts with a view to do justice between the parties. Primary purpose of this doctrine is to save the Petitioner/Plaintiff from adverse consequences of the promise or representation after they have been accepted and acted upon. The doctrine does not seek to confer any new benefit on the Petitioner or Plaintiff and ceases to operate if instead of justice, injustice is likely to be caused. The doctrine does not form part of contract between the parties and is not available for specifically enforcing the terms of a contract. In order to ensure its benefit to a Petitioner or Plaintiff it is also necessary that such a Petitioner or Plaintiff should himself not be a defaulter in accepting and implementing the terms or conditions under which the promise or representation was made and his conduct should otherwise be just and fair. It is well established that he who seeks equity must himself do equity. In this view of the matter, it is necessary to ascertain with reference to facts of this case whether (i) The Respondent No. 1 made any promise or representation, (ii) whether the Petitioners have acted to their disadvantage, on the basis of that promise or representation, and (iii) whether the interest of justice requires that the Respondent No. 1 should be compelled to accept obligations arising out of its promise or representations.

8. Facts stated in para 4 onwards of the petition would show that the Respondent State of Madhya Pradesh had formulated an industrial policy and in implementing the same, had decided upon establishment of industries producing wood and steel cutting saws, blades and tools in the Chhattishgarh region. The State Government had also decided to give benefits specified in para 5 of the petition to entrepreneurs for this purpose. The Petitioners had accepted the said solemn, unequivocal and unambiguous representations and assurances of the responsible officers of the State Government and decided to establish their unit at Raipur as mentioned in para 6 of the petition. The petitioners do not allege that any assurance of any type was ever given by the officers of the Respondent No. 1. However, the Petitioners have, in para 10 of the petition alleged that the Raipur Main Branch of the Respondent No. 1 gave a written letter of undertaking addressed to the Respondent No. 2 whereby they tacitly agreed to meet the working capital requirements of the Petitioner No. 1 in full, in case term loan requirement of the Petitioner company was fully met by them. The Respondent No. 1 have denied this allegation in their return. Even the Respondent No. 2 have denied this allegation in their return, (see para 6). They have in para 2 of their return clarified that the Respondent No. 1 did not give any assurance or undertaking to provide working capital to the unit. The petitioners have not made any effort to get the said written letter produced in this Court. Apparently, therefore, there is no basis for the allegation that the Respondent No. 1 made, at any time, any promise or representation that they would meet working capital requirement of the industry. In the absence of such a promise or representation by the Respondent No. 1, the doctrine of promissory estoppel would not be applied. This, in fact, takes out the entire basis of this petition. In this connection, it is relevant to refer to a full bench decision of this Court in Jagdamba Industries v. State of M.P. 1988 J.L.J. 701 where this Court refused benefit of this principle to the Petitioners because they had not established their industry as a consequence of any promise or representation made by the State Government.

9. The submission of the Respondent No. 1 that the relationship between them and the Petitioners is based on the agreement Ann. R-1-A appear to be fully justified. The Petitioners have themselves filed a part of this agreement as Annexure-2, but have kept back that portion which imposes obligations on them. The Respondent No. 1 has alleged that the Petitioners have systematically violated those conditions and have, therefore, rendered themselves liable to the consequences mentioned therein. That this Respondent sent the Petitioners their letters Annexures R-1-C, R-1-D, R-1-E, R-1-F, R-1-G and R-1-H is not denied by the Petitioners though they have rather vehemently contested the correctness of facts stated therein. That there was some default on the part of the Petitioners in carrying out their obligation under the agreement is apparent from their Rejoinder even though the Petitioners have made serious efforts to show that the default, under the circumstances was of no significance. This Court does not have either the know-how or the expertise to decide the controversy raised by

the Petitioners in their rejoinder. Then, this Court is of the view that the Respondent Bank owes an obligation to the depositors to take precautions so that their interests do not suffer. It would, therefore, not be proper for this Court to substitute its own opinion for the opinion of the Respondent Bank. This Court does not, as matter of prudence, decides factual controversies while exercising its extraordinary writ jurisdiction. Since the Respondent Bank has recalled the outstanding loan and has filed a Civil suit for its recovery, this Court would not like to undertake such an exercise even if it had the option to do so. The parties must be left to produce evidence in support of their respective submissions before the lower Court, which would without doubt decide the same in accordance with law.

10. In this connection, it is necessary to Mention the decision of this Court in *Gopaldas v. Municipal Corporation Gwalior* 1991 J LJ 431 wherein it has been clarified that the doctrine of promissory estoppel does not operate in the realm of contract, and the beneficiary of a contract cannot invoke the doctrine for obtaining benefits under the contract. In this view of the matter, this Court would not be able to help the Petitioners in obtaining benefits under the agreement Annexure R-1-A. They must seek their remedy in this behalf elsewhere.

11. Since the Petitioners claim for enhanced credit limit of working capital assistance and rehabilitation action are not based on any agreement like Annexure R-1-A, the same may be examined to ascertain whether the Petitioners are entitled to any relief on those counts. The Petitioners submit that the Respondent No. 1 Bank is a statutory corporation and hence bound to act in accordance with industrial policy of the Central Government. The industrial policy formulated by the State/Respondent, according to the Petitioners, is in line with the industrial policy of the Central Government and hence the Respondent No. 1 is bound to follow the same and grant need-based working capital assistance to the Petitioners. In addition, it is submitted that the industrial policy requirements have been incorporated in the orders of the Reserve Bank of India which has statutory right to issue instructions to the Respondent No. 1 from time to lime. If the Petitioners claim was based on enforcement of statutory right in their favour it would have required determination in that light. There is, however, no statutory order of any authority much less of the Reserve Bank of India in exercise of any statutory powers in favour of the Petitioners and, therefore, the question of enforcing, a statutory right does not arise. An industrial policy is formulated in terms of executive decision of the Government. The fact that all instrumentalities of the State are required to help implementation of that policy does not convert it into a statutory obligation. Under the circumstances, this Court is not able to find any statutory basis of the Petitioners so called right to obtain enhanced working capital assistance from the Respondent No. 1. As regards promissory estoppel, it is sufficient to mention that the promise or representation under the aforesaid principle must be clear and unequivocal. The general promise of setting up industry with the help of financial institutions may be a promise of the Government but that would not be a promise or

representation by the Respondent No. 1. The Respondent No. 1 has denied giving any promise or making any representation. Under the circumstances, general promise contained in the industrial policy cannot be treated to be a promise or representation made by the Respondent No. 1 satisfying the basic requirement of principle of promissory estoppel. What is true about enhanced working capital assistance is also true about rehabilitation of a "sick" unit. The papers submitted for consideration of this Court by the Petitioners alongwith their rejoinder to the return of Respondent No. 1 indicate that the Petitioners unit was declared "sick" by the local authority and not by the Respondent No. 1. Those who declare a unit "sick" have to carry out their own obligation based on the aforesaid declaration to make it healthy. The said declaration in the opinion of this Court does not amount to a promise or representation by the Respondent No. 1. Under the circumstances, there is no basis whatsoever for grant of these reliefs to the Petitioners.

12. The petition fails and is dismissed with costs. Counsel fee Rs. 500/- half of which will be given to the Respondent No. 1 and the other half equally between Respondents 2 and 3.