

(1999) 09 OHC CK 0003

In the Orissa High Court

Case No : O.J.C. No's. 13842 and 17047 of 1997 and 6105 of 1998

G. Sreenivasan and Others, etc.

APPELLANT

Vs

Principal, Regional Engineering College, Rourkela and Others,
etc.

RESPONDENT

Date of Decision : 07-09-1999

Acts Referred:

Evidence Act, 1872 — Section 115

Citation : AIR 2000 Ori 56

Hon'ble Judges : A. Pasayat, Acting C.J.; C.R. Pal, J

Bench : Division Bench

Advocate : B. Routray, B. Dash, S.G. Kanungo, A.K. Baral, P.K. Desh, Milan Kanungo, Y.S.P. Babu, L. Kanungo, S. Das, D. Pradhan, P.K. Rath, B.S. Tripathy, H.S. Sahu and A.K. Baral, for the Appellant;

Final Decision : Dismissed

Judgement

A. Pasayat, Actg. C.J.

1. As dispute involved in all these writ applications is common, this judgment will govern each one of them.

2. Petitioners in these writ applications have challenged the notification issued by the Regional Engineering College, Rourkela (hereinafter referred to as the "College") refusing to allow their appearance at the higher semesters on the ground that they have not completed back (lower) semesters. Prayer in each case is to quash the aforesaid notification and to allow them to sit in the higher semesters. Dispute raised lies within a comparatively narrow compass as according to petitioners they are eligible to appear on the basis of "back paper"/ rechecking procedure.

3. Background facts so far as undisputed are as follows :

The College was established in the year 1961 and affiliated to Utkal University. Initially, regulations of the said University were being followed. After

establishment of Sambalpur University, the College was affiliated to Sambalpur University in the year 1967 and regulations of Sambalpur University were followed. In the year, 1990, the College became autonomous and since then regulations of the College are being followed. Regulation 4 of the College which is of importance for adjudication of dispute reads as follows :

"(i) If he/she satisfied the requirements mentioned in columns 2, 3 and 4 of the table, provided that any student who fails to satisfy the requirements under columns 2 and 3, becomes an ex-regular student and register for the subsequent examinations as a private candidate and appear in the corresponding theory papers in the next available chances.

TABLE

Semester Candidates should have passed the examination completely Candidates should have secured pass marks in the aggregate of sessional subjects of the examination. Candidate should have registered for the semester examination.

1 2 3 4

First As in Reg. 2 _

Second - - First Semester

Third - First Semester Second Semester

Fourth - Second Semester Third Semester

Fifth First Semester Third Semester Fourth Semester

Sixth Second Semester Fourth Semester Fifth Semester

Seventh Third Semester Fifth Semester Sixth Semester

Eighth Fourth Semester Sixth Semester Seventh Semester

A student is not allowed to appear at the higher semester if he has not passed the corresponding back (lower) semester completely.

4. After the College got academic autonomy in 1990, the College Academic Committee extended benefit to the students by permitting that they can apply for rechecking of their results by applying for the same and depositing requisite fees. Consequent upon the introduction of the aforesaid system, some students applied to the authorities for rechecking their answer scripts. As rechecking procedure was time consuming one and results of rechecking were not published before admission to the higher-semesters, students requested the Principal to allow them to continue in the higher semester, pending publication of results of rechecking. The applicants gave an undertaking to the effect that if their marks in the answer scripts were not enhanced, they will leave the higher semester and continue in the lower semester. Aforesaid request of the students was accepted by the Principal and the students were allowed to continue in higher semesters

pending publication of rechecking of answer scripts. This rechecking facility was introduced from academic session 1992-93 onwards. While this system was going on, present petitioners requested to continue in higher semester notwithstanding their non-clearance of the back semester, but they did not submit the requisite undertakings. According to the College, introduction of the aforesaid system in the College was never objected to by Sambalpur University and has to be held to have been ratified. Since the College is an autonomous one, its Academic Committee for greater interest of the students introduced the system. Unfortunately, intended results were not achieved, and a chaotic situation was created in the administration. Keeping that in view, Academic Committee stopped the aforesaid facility from the academic year 1996-97. By order dated 9-12-1997, the Principal of the College stopped the practice of rechecking.

5. Petitioners make a grievance that the students who took admission to the College in 1994-95 had availed benefits of rechecking, but unfortunately in the session 1997-98 when petitioners reached 5th/7th semesters respectively, they were not allowed to take admission in the higher semesters on the ground that they have not cleared 1st/3rd semesters. They make a grievance that Regulation 4 has been misinterpreted and misconstrued and academic career of the students is being affected in an arbitrary manner. College has relied upon Regulation 4 referred to above to justify its action.

6. During pendency of the writ application Additional District Judge, Rourkela was directed to submit a report on the controversy. The report has been submitted, we have referred to the said report in respect of some factual aspects noted therein. As evident from the report, 21 students of 5th semester and 28 students of 7th semester were covered by notification dated 13/14-8-1997. The students who were successful in the supplementary examination were allowed to continue in the College for which their names were not struck off. Petitioners were allowed to continue after their names were struck off subject to furnishing undertaking that in case of their failure in the supplementary examinations, their names would be struck off. Some of the students in respect of both semesters filed such undertakings and they were allowed to continue keeping the order striking off their names in abeyance. By notice dated 25-11-1997 names of 24 students in the 7th semester were struck off including 18 students (petitioners) of the 7th semester. According to the said notification, provisional admission of 18 students of 7th semester who are present petitioners was cancelled and their names were struck off from the College rolls. Admission of 10 students of 5th semester was cancelled as their same were also struck off from the College rolls. The notification became redundant when the students of both the semesters were allowed to take provisional admission and were allowed to appear in the mid-semester examination. Their names were subsequently struck off towards the last part of November, 1997 and first part of December, 1997 when they failed to clear up their back papers in the supplementary examination.

7. Engineering course is of four years duration with eight semester examination and for such semester there are two examinations. One is regular one and other is supplementary. Regular examination is otherwise called as "End Semester Examination", and 5th Semester Course starts in the third year, and 7th Semester Course begins in the 4th year. There are 8 papers in the 1st semester and at the time of admission to 5th semester, a student must have cleared all 8 papers of 1st semester. Similarly at the time of admission to 7th semester, a student is required to have cleared all papers of third semester. It was noticed that 9 students of the 5th Semester and 18 students of 7th Semester had not cleared back papers of the 1st Semester and third Semester respectively, and on that score, their names were struck off. Petitioners lay claim for admission to higher examination by seeking extension of benefit of procedure relating to rechecking of examination papers. It is stand of the College that after it became autonomous in 1990, College Academic Committee extended a new benefit to the students to the limited extent that they can apply for rechecking after deposit of requisite fees. Chain of events thereafter have been indicated supra. It is fairly accepted that there is no provision in the regulation for rechecking. The College Academic Committee felt that it had created more chaos and problems that it solved and therefore, facility was withdrawn for academic year 1996-97 and onwards. That is how the Principal by order dated 9-12-1997 indicated about stoppage of practice. Results of supplementary examination of third Semester was published on 13-11-1997. It appears that though option for rechecking was continued, admission to higher semester was stopped. It is of importance to notice that the College held special examination for some students in terms of direction of this Court.

8. The only question that needs adjudication is whether the College authorities while permitting rechecking could have permitted admission to higher semester without concerned student having cleared back papers. Obviously regulation does not provide for it. Merely because prescription has been made for rechecking that does not per se confer any right for admission to a higher semester. It is too well settled that in academic matters, Courts have very limited jurisdiction. It is impermissible for Courts to interfere in the number pertaining to admission and examination of the students. In *Krishna Priya Ganguly and Others Vs. University of Lucknow and Others*, it was observed that the provisional admission should not be directed as a matter of course, unless Court is satisfied that the petitioner has a cast iron case which is bound to succeed. Court should not devise its own criterion for admission, and import its own ideology in academic matters. As observed by the Apex Court in *Central Board of Secondary Education Vs. Nikhil Gulati and Another*, . Court should not pass orders which it cannot justify on principle and precept. It would be appropriate for the Court to desist from passing such orders which are against spirit of regulation otherwise rule of law would be substituted by rule of (sic). In that view of the matter, we do not find any infirmity in the action taken by the College authorities.

9. The petitioners have taken the plea that their cases are covered by the

principles of legitimate expectation and promissory estoppel. They have highlighted the earlier position to contend that there was no scope for departure.

10. We shall first deal with the plea relating to legitimate expectation. The principle of "legitimate expectation" is still at a stage of evolution as pointed out in *De Smith Administrative Law* (5th Ed.) (para 8. 038). The principle is at the root of the rule of law and requires regularity, predictability and certainly in government's dealings with the public. Adverting to the basis of the legitimate expectation its procedural and substantive aspects. Lord Steyn in *Piersons v. Secretary of State* 1997 (3) AllER 577 (at 606) (NL) goes back to Dicey's description of the rule of law in his "Introduction to the study of the Law of the Constitution" (10th Ed. 1959 p 203) is containing principles of enduring value in the mouth of a great Jurist. Dicey said that the constitutional rights have roots in the common law. He said :

"The "rule of law", lastly, may be used as a formula for expressing the fact that with us, the law of constitution, the rules which in foreign countries naturally form part of a constitutional code, are not the source but the consequence of the rights of individuals, as defined and enforced by the Courts; that, in short, the principles of private law have with us been by the action of the Courts and Parliaments so extended as to determine the position of the Crown and its servants, thus the constitution is the result of the ordinary law of the land."

This, says Lord Steyn, is the pivot of Dicey's discussion of rights to personal freedom and to freedom of association and of public meeting and that it is clear that Dicey regards the rule of law as having both procedural and substantive effects. "The rule of law enforces minimum standing of fairness, both substantive and procedural". On the facts in *Piersons* the majority held that the Secretary of State could not have maintained a higher tariff of sentence that recommended by the judiciary when admittedly no aggravating circumstances existed. The State could not also increase the tariff with retrospective effect.

11. The basic principles in this branch relating to "legitimate expectation" were enunciated by Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service* 1985 AC 374. It was observed in that case that for a legitimate expectation to arise, the decisions of the administrative authority must affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment, or (ii) he has received assurance from the decision maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. The procedural part of it relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made. The "substantive part of the principle is that if a representation is made that a benefit of a substantive nature will be granted or if the person is already in receipt of the

benefit that it will be continued and not be substantially varied, then the same could be enforced. In the above case, Lord Eraser accepted that the civil servants had a legitimate expectation that they would be consulted before their trade union-membership was withdrawn because prior consultation in the past was the standard practice whenever conditions of service were significantly altered. Lord Diplock went a little further, when he said that they had a legitimate expectation that they would continue to enjoy the benefits of the trade union membership. The interest in regard to which a legitimate expectation could be had must be one which was protectable. An expectation could be based on an express promise or representation or by established past action or settled conduct. The representation must be clear and unambiguous. It could be a representation to the individual or generally to class of persons.

12. The principle of substantive legitimate expectation, that is, expectation of favourable decision of one kind or another, has been accepted as part of the English Law in several cases. (De Smith, Administrative Law, 5th Ed.) (para 13.030); (see also Wade, Administrative Laws, 7th Ed.) (Pp. 418-419). According to Wade, the doctrine of substantive legitimate expectation has been "rejected" by the High Court of Australia in *Attorney General for N.S.W. v. Quinn* (1990) 93 ALR 1 (But see *Toor*'s case referred to later) and that the principle was also rejected in Canada in *Reference Re Canada Assistance Plan* (1991) 63 DLR 297 : 1991 (2) SCR 525 but favoured in *Ireland's Mission v: Minister for the Marine* AIR 1991 SC 82. The European Court goes further and permits the Court to apply proportionality and go into the balancing of legitimate expectation and the public interest.

13. Even so, it has been held under English law that the decision maker's freedom to change the policy in public interest, cannot be fettered by the application of the principle of substantive legitimate expectation. Observation in earlier cases project a more inflexible rule than is in vogue previously In *Re Findlay* 1985 AC 318 the House of Lords rejected the plea that the altered policy relating to parole for certain categories of prisoners required prior consultation with the prisoner. Lord Scarman observed :

"But what was their legitimate expectation.? Given the substance and purpose of the legislative provisions governing parole, the most that a convicted prisoner can legitimately expect is that his case be examined individually in the light of whatever policy the Secretary of State sees fit to adopt provided always that the adopted policy is a lawful exercise of the discretion conferred upon him by the statute. Any other view would entail the conclusion that the unfettered discretion conferred by statute upon the Minister can in some cases be restricted so as to hamper or even to prevent changes of policy."

14. To a like effect are the observations of Lord Diplock in *Hughes v. Department of Health and Social Security* 1985 AC 778 :

"Administrative policies may change with changing circumstances, Including

changes in the political complexion of Governments. The liberty to make such changes is something that is inherent in every constitutional form of Government."

(See in this connection Mr. Dutt's article "Why Administration should be bound by their policies" (Vol. 17) 1997 Oxford Journal of Legal Studies, p. 23). But today the rigidity of the above decisions appears to have been somewhat relaxed to the extent of application of the Wednesbury rule whenever there is a change in policy and we shall be referring to these aspects presently.

15. Before we do so, we shall refer to some of the important decisions of the Apex Court to find out the extent to which the principle of substantive legitimate expectation is accepted in our country. In *Navjyoti Co-operative Housing Society etc. Vs. Union of India and Others*, the principle of procedural fairness was applied. In that case the seniority as per the existing list of co-operative housing societies for allotment of land was altered by a subsequent decision. The previous policy was that the seniority amongst housing societies in regard to allotment of land was to be based on the date of registration of the society with the Registrar. But on 20-1-1990, the policy was changed by reckoning seniority as based upon the date of approval of the final list by the Registrar. This altered the existing seniority of the societies for allotment of land. The Apex Court held that the societies were entitled to "legitimate expectation" that the past consistent practice in the matter of allotment, will be followed even if there was no right in private law for such allotment. The authority was not entitled to defeat the legitimate expectation of the societies as per the previous seniority list without some overriding reason of public policy to justify change in the criterion. No such overriding public interest was shown. According to the principle of "legitimate expectation", if the authority proposed to defeat a person's legitimate expectation, it should afford him an opportunity to make a representation in the matter. Reference was made to Halsbury's Laws of England (p. 51, Vol. 1 (1) (4th Ed. re-issue) and to the case in *Council of Civil Service Unions 1985 AC 374*, already referred to. It was held that the doctrine imposed, in essence, a duty to act fairly by taking into consideration all relevant factors, relating to such legitimate expectation. Within the contours of fair dealing, the reasonable opportunity to make representation against change of policy, came in.

16. The next case in which the principle of "legitimate expectation" was considered is the case in *Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries*, : There the Food Corporation of India invited tenders for sale of stocks of damaged food grains and the respondent's bid was the highest. All tenderers were invited for negotiation but the respondent did not raise his bid during negotiation while others did. The respondent filed a writ petition claiming that it had a legitimate expectation of acceptance of its bid, which was the highest. The High Court allowed the writ petition. Reversing the judgment, the Apex Court referred to *Council of Civil Service Union case 1985 AC 374* and to *preston in re 1985 AC 835*. It was held that though the respondent's bid was the highest, still it had no right to have it accepted. No doubt, its tender could not be

arbitrarily rejected but if the Corporation reasonably felt that the amount offered by the respondent was inadequate as per the factors operating in the commercial field, the non-acceptance of bid could not be faulted. The procedure of negotiation itself involved the giving due weight to the legitimate expectation of the highest bidder and this was sufficient.

17. The Apex Court considered the question elaborately in *Union of India and others Vs. Hindustan Development Corpn. and others*, : There tenders were called for supply of cast-steel bogies to the railways. The three big manufacturers quoted less than the smaller manufacturers. The railways then adopted a dual pricing policy giving counter offers at a lower rate to the bigger manufacturers who allegedly formed a cartel and a higher offer to others so as to enable a healthy competition. This was challenged by the three big manufacturers complaining that they were also entitled to a higher rate and a large number of bogies. The Apex Court held that the change into a dual pricing policy was not vitiated and was based on "rational and reasonable" grounds. In that context, the Apex Court referred to Halsbury's Laws of England (4th Ed.) (Vo. 1(I) 151). The Apex Court referred to *Schmidt v. Secretary of State for Home Affairs* (1969) 2 Ch 149 which required an opportunity to be given to an alien if the leave given to him to stay in UK was being revoked before expiry of the time and to *Attorney General of Hong Kong v. Ng Yuen Shiu* (1983 (2) AC 629) which required the Government of Hong Kong to honour Its undertaking to treat such deportation case on its merits, the Apex Court also referred to *Council of Civil Service Unions v. Minister for the Civil Service* 1985 AC 374 which related to alteration of conditions relating to membership of trade unions and the need to consult the unions in case of change of policy as was the practice in the past, and to *Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, and Navjyoti Co-operative Housing Society etc. Vs. Union of India and Others*, . The Apex Court: then observed that legitimate expectation was not the same thing as anticipation. It was also different from a mere wish or desire or hope. Nor was it a claim or demand based on a right. A mere disappointment would not give rise to legal consequences. The Apex Court held as follows :

"The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Such expectation should be justifiably legitimate and protectable."

After quoting Wade, *Administrative Law* (5th Ed.) (Pp. 424, 522), the Apex Court referred to the judgment of the Australian High Court in *Attorney General for New South Wales v. Quin* (1990) 64 Aust LJR 327 in which the principle itself, according to Wade, did not find acceptance. In that case a Stipendiary Magistrate in charge of a Court of Petty Sessions under the old Court system was refused appointment to the system of local Courts which replaced the previous system of Petty Sessions Courts. In 1987 the Attorney General who was hitherto recommending former Magistrates on the ground of "fitness" for appointment to

the new local Courts, deviated from that policy and decided to go by assessment of merit of the competing applicants. The Court of Appeal had directed that the case of Mr. Quin must be considered separately and not in competition with other applicants, but it was reversed by the majority of the High Court of Australia (Mason, C.J., Brennan & Dawson, JJ.) (Goane and Zoobay, JJ. dissenting). Mason, C.J. held that the Court could not fetter the executive discretion to adopt a different policy which was better calculated to serve the administration of justice and make it more effective. The grant of substantive relief in such a case would effectively prevent the executive from giving effect to the new policy which it wished to pursue in relation to the appointment of Magistrates. Brennan, J. observed very clearly that the notion of legitimate expectation (falling short of a legal right) was too nebulous to form a basis for invalidating the exercise of power. He said that such a principle would "set the Courts adrift on a featureless sea of pragmatism." Dawson, J. held that the contention of the respondent exceeded the bounds of procedural fairness and intruded upon the freedom of the executive. The Apex Court in Hindustan Development Corporation's case (supra) then proceeded to refer to *R. v. Secretary of State for the Home Department ex parte Ruddock* (1987) 2 All ER 518 and *Findlay v. Secretary of State for the Home Department* (1984) 3 All ER 801 and to *Breen v. Amalgamated Engineering Union* (1971) 1 All ER 1148. The Apex Court accepts that the principle of legitimate expectation give the applicant sufficient locus standi to seek judicial review and that the doctrine was confined mostly to a right to a fair hearing before a decision which resulted in negating a promise or withdrawing an undertaking, was taken. It did not involve any crystallised right. The protection of such legitimate expectation did not require the fulfillment of the expectation where an overriding public interest required otherwise. However, the burden lay on the decision maker to show such an overriding public interest. A case of substantive legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfill. The Court could interfere only if the decision taken by the authority was arbitrary unreasonable or not taken in public interest. If it is established that a legitimate expectation has been improperly denied on the application of the above principles, the question of giving opportunity can arise if failure of justice is shown. The Court must follow an objective method by which the decision making authority is given the full range of choice which the legislature is presumed to have intended. (In this connection we shall advert to a similar view of Laws, J. and also to the contrary view of Sedley, J.). If the decision is reached fairly and objectively, it cannot be interfered with on the ground of procedural fairness. An example was given that if a renewal was given to an existing licence-holder, a new applicant cannot claim an opportunity based on natural justice. On facts, it was held that legitimate expectation was denied on the basis of reasonable considerations.

18. The next case in which the question was considered is *Madras City Wine Merchants' Association and Another Vs. State of T.N. and Another*, In that case

the rules claiming to renewal of liquor licences were statutorily altered by repealing existing rules. It was held that the repeal being the result of a change in the policy by legislation the principle of non-arbitrariness was not invocable. In that context, the Apex Court referred to a large number of authorities on the question.

19. The Apex Court in *M.P. Oil Extraction and Another Vs. State of M.P. and Others*, considered the question again. In that case, it was held that the State's policy to extend renewal of an agreement to selected industries which came to be located in Madhya Pradesh on invitation of State, as against other local industries was not arbitrary and the said selected industries had a legitimate expectation of renewal under renewal claims which should be given effect to according to past practice unless there was any special reason not to adhere to the practice. It was clearly held that the principle of substantive legitimate expectation was accepted by the Apex Court earlier. Reference was made to *Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries*, : *Navjyoti Co-operative Housing Society etc. Vs. Union of India and Others*, and to *Union of India and others Vs. Hindustan Development Corpn. and others*,).

20. Lastly we come to the three-Judge judgment of the Apex Court in *National Buildings Construction Corporation Vs. S. Raghunathan and Others*, : This was a service matter. The respondents were appointed in CPWD and they went on deputation to the NBCC in Iraq and they opted to draw, while on deputation, their grade pay in CPWD plus deputation allowance. Besides that, the NBCC granted them Foreign allowance at 125% of the basic pay. Meanwhile their basic pay in CPWD was revised w.e.f. 1-1-1986 on the recommendation of the 4th Pay Commission. They contended that the abovesaid increase of 125% should be given by NBCC on their revised scales. This was not accepted by NBCC by orders dated 15-10-1990. That contention of the respondents based on legitimate expectation was rejected in view of the peculiar conditions under which NBCC was working in Iraq. It was observed that the doctrine of "legitimate expectation" had both substantive and procedural aspects. The Apex Court laid down a clear principle that claims on legitimate expectation required reliance on representation and resultant detriment in the same way as claims based on promissory estoppel. The principle was developed in the context of "reasonableness" and in the context of "natural justice." The Apex Court referred to *R. v. IRC exp Preston* 1985 AC 835, *Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries*, : *Union of India and others Vs. Hindustan Development Corpn. and others*,), the Australian case in *Quin* (1990) 64 Aust LJR 327 and *M.P. Oil Extraction and Another Vs. State of M.P. and Others*,), the *Council of Civil Service Union's case* 1985 AC 374 and *Navjyoti Co-operative Housing Society etc. Vs. Union of India and Others*,).

21. The above survey of cases shows that the doctrine of legitimate expectation in the substantive sense has been accepted as part of our law and that the decision maker can normally be compelled to give effect to his representation in

regard to the expectation based on previous practice or past conduct unless some overriding public interest comes in the way. The judgment in *National Buildings Construction Corporation Vs. S. Raghunathan and Others*,) requires that reliance must have been placed on the said representation and the represented must have thereby suffered detriment.

22. The more important aspect, in our opinion, is whether the decision maker can sustain the change in policy by resort to *Wednesbury* principles of rationality or whether the Court can go into the question whether decision maker has properly balanced the legitimate expectation as against the need for a change? In the latter case the Court would obviously be able to go into the proportionality of the change in the policy.

23. This aspect has come up for consideration recently in the English Courts. The debate was started by Laws, J. in *R. v. Secretary of State for Transport ex parte Richmand upon Thames*, London EC (1994) 1 WLR 74 where the learned Judge laid down that the *Wednesbury* reasonableness test alone applied for finding out if the change from one policy to another was justified. That was a case in which, in relation to airports a new system of night flying restrictions were imposed. The new policy related to the fixation of the maximum number of take off and landing movements variable according to the type of aircraft involved and the noise the aircraft generated during the night time. The *Wednesbury* test was held applicable. Laws, J. stated :

"The Court is not the Judge of the merits of the decision maker's policy the public authority in question is the Judge of the issue whether "overriding public interest" Justifies such a change in policy... .But that is no more than saying that a change in policy, like any discretionary decision by a public authority, must not transgress *Wednesbury* principles."

But this view of Laws, J. was dissented by Sedley, J. in *R. v. Ministry of Agriculture Fisheries and Food ex parte Mamble Coffshore Fisheries Ltd.* (1995) 2 All ER 714. As learned Judge observed that if the outcome is challenged by way of judicial review, he "did not consider that the Courts" criterion was restricted to consider the rationality of the policy maker's conclusions. He held that while policy was for the policy maker alone, the fairness of his or her decision remained the Courts' concern. He said that to say so did not amount to placing the Judge in the seat of the Minister.

24. The judgment of Sedlay, J. has since been overruled in *R. v. Secretary of State for the Home Department ex parte Hargreaves* (1997) 1 WLP 906 (A). In that case, the facts were that the eligibility for "home leave" of prisoners was initially one-third of the term of sentence as per in earlier decision of the Government of 1994 (accepting Lord Woolf's Report, 1990) and Hargreaves would attain that eligibility by 12-6-1995 to put in his application. But the Home Secretary felt that the scheme was being abused and therefore he modified the eligibility to one-half of the period of sentence by notice dated 20-4-1995. This

postponed Hargreaves eligibility to 12-6-1995. Though the application had "become eligible" by 20-4-1995, the Courts rejected his plea of legitimate expectation because eligibility merely enabled consideration of the application for home leave. The case was similar to Findlay 1985 AC 318 (which related to change in parole policy and which was held valid. It was held that the change in home leave policy did not violate the earlier policy. In the Court of Appeal, Hirst, LJ said described the principle laid down by Sedlay, J. or based on "heresy" and stated :

"On matters of substance (as contrasted to procedure) Wednesbury provides the correct test. It follows that . . . his (Sedlay, J.) ratio in so far as he propounds a balancing exercise to be undertaken by the Court should, in my opinion, be overruled."

The result is that change in policy can defeat a substantive legitimate expectation if it can be justified on Wednesbury reasonableness. We have noticed that in Union of India and others Vs. Hindustan Development Corpn. and others,) also it was laid down that the decision maker has the choice in the balancing of the pros and cons relevant to the change in policy. It is, therefore, clear that the choice of the policy is for the decision maker and not for the Court. The legitimate substantive expectation merely permits the Court to find out if the change in policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made.

25. The Court of appeal considered the question again in a tax case in R. v. Commissioner of Inland Revenue, ex parte Unilever P1c (1990) 68Tax Cases 209 : 1996 STC 681. A particular loss relief was being granted at a second stage on more than 30 occasions during 20 years though the relief was not claimed within the stipulated period of two years. In respect of 1986, the relief claimed beyond time was for the first time refused. It was contended that there was a substantive legitimate expectation that the revenue would continue to follow the previous practice in regard to claims for loss relief. It was held that the Court was still confined to Wednesbury principles but that on facts it a case of "exceptional" circumstances and it would be unfairness amounting to abuse of power to refuse to follow past practice. Lord Woolf MR agreed that no doubt the Revenue was the best Judge of what was fair. But on facts, the learned Judge treated the case as exceptional. Simon Brown, LJ also agreed with this view. He in addition emphasised the detrimental test as did the Apex Court in Raghunathan's case (p. 231). Noting that substantive legitimate expectation was rooted in the theory of "legal certainty," he observed as follows (p. 233) :

"Of course legal certainty is a highly desirable objective in public administration as elsewhere. the Central Wednesbury principle is that an administrative decision is unlawful if ". . . . so outrageous in its defiance of logic of or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it." The flexibility necessarily inherent in that guiding principle should not be sacrificed on the altar of legal

certainty."

On facts, the case was treated as one containing occupational circumstances which, even going by the Wednesbury principle required relief to be granted.

26. Thus both in *ex parte Hargreaves* (in which the challenge failed) and *ex parte Unilever* (in which the challenge succeeded), the protection for substantive legitimate expectation was based on Wednesbury unreasonableness. In sum, this means that the judgment whether public interest overrides the substantive legitimate expectation of individuals will be for the decision-maker who has made the change in the policy and the Courts will intervene in that decision only if they are satisfied that the decision is irrational or perverse (See 1997 Public Law, 375 "Wednesbury Protection of Substantive Legitimate Expectation by Christopher Forsyth). The observations of the Apex Court in *Union of India and others Vs. Hindustan Development Corpn. and others*, :in *M.P. Oil Extraction and Another Vs. State of M.P. and Others*, and in *National Buildings Construction Corporation Vs. S. Raghunathan and Others*, :are more or less to a similar effect, though no specific reference was made to the Wednesbury rule.

27. After *Hargreaves*, Wednesbury principle is now consistently followed in England. We shall refer to two recent cases. Lapse of time resulted in a changed policy in *R. v. Cardiff County Council, ex parte Scars Group Properties Ltd.* (1998 PLaw 518). The position there was that a company was granted planning permission in 1993 and the relevant highway authority had indicated that it had no objection to entering into a highway improvement agreement u/s 278 of the Highways Act, 1990. The proposed highway scheme was approved in 1995. But in 1996, there was a reorganisation of local Government in Wales, and the successor authority withheld its authority for the approved scheme until an updated traffic impact analysis had been submitted and was considered. It was held by Carnworth, J. that where a formal decision had been made in relation to a subject-matter affecting private rights, that decision would be considered binding unless and until there had been some change which undermined the foundation of the original decision; the question whether there could be such a change was for the authority, subject to Wednesbury unreasonableness test. In that case, the highway authority had not rejected the agreement outright but had requested a new traffic analysis, which was *prima facie* reasonable because of lapse of time. In yet another case in *Mc Phee v. North Lanarkshire Council* (1998 SLT 1317) (See 1999 Public Law 152-153), the petitioner was a traveller who consented to vacate a site after receiving a letter from the Director of Housing telling her that she would be offered a pitch at the site after the refurbishment work had been carried out. The Council subsequently refused to grant her a pitch. She sought a "declarator" that she was "entitled to be offered accommodation by way of a petition on the site and that on the same terms and conditions as any other family seeking accommodation from the respondents." It was held by Lady Congrove. J. that an authority providing an assurance as to a substantive right may depart from it but will fail to be scrutinised by reference to

Wednesbury reasonableness. Since It could not be said that no reasonable authority could do anything other than grant her application, the remedy of declarator was inappropriate.

The position has been illuminatingly highlighted in Punjab Communications Ltd. Vs. Union of India and Others, :The factual position highlighted above makes it clear that the principle of legitimate expectation has no application to the facts of the present case.

28. So far as the plea relating to promissory estoppel is concerned, as indicated above, great emphasis is laid on the practice relating to earlier years and it is submitted with emphasis that sudden withdrawal of the benefit is barred by the principles of promissory estoppel. 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 relations or affect a legal relationship to arrive in the 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 been taken place between the parties. The doctrine of promissory estoppel is now well established one in the field of administrative law. The foundation for the claim based on the principle of promissory estoppel in public law was laid by Lord Deane in 1999 in *Robertson v. Minister of Pensions* (1999) 1 KB 227, Prof. De Smith in his "Judicial Review of Administration Action" (4th Edition at page 103) observed that "the citizen is entitled to rely on their having the authority that they have asserted."

29. Doctrine of "Promissory Estoppel" has been evolved by the Courts, on the principles of equity, to avoid injustice.

"Estoppel" in Black's Law Dictionary, is indicated to mean that a party is prevented by his own acts from claiming a right to the detriment of other party who was entitled to rely on such conduct and has acted accordingly. Section 115 of the Indian Evidence Act is also, more or less couched in a language which conveys the same ?

30. "Promissory Estoppel" is defined as in Black's Law Dictionary as an estoppel which arises when there is a promise which promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of promisee. and which does induce such action or forbearance, and such promise is binding if injustice can be avoided only by enforcement of promise.

31. These definitions in Black's Law Dictionary which are based on decided cases, indicate that before the Rule of "Promissory Estoppel" can be invoked, it has to be shown that there was a declaration or promise made which induced the party to whom the promise was made to alter its position to its disadvantage.

32. In this backdrop, let us travel a little distance into the past to understand the evolution of the doctrine of "Promissory Estoppel."

33. Dixon, J., an Australian jurist, in *Grundt v. Great Boulder Pty Gold Mines Ltd.* (1938) 59 CLR 641, laid down as under :

"It is often said simply that the party asserting the estoppel must have been induced to act to his detriment. Although substantially such a statement is correct and leads to misunderstanding, it does not bring out clearly the basal purpose of the doctrine. That purpose is to avoid or prevent a detriment to the party asserting the estoppel by compelling the opposite party to adhere to the assumption upon which the former acted or abstained from acting. This means that the real detriment or harm from which the law seeks to give protection is that which would flow from the change of position if the assumption were desorted that led to it."

The principle, set out above, was reiterated by Lord Denning in *Central London Properly Trust v. High Trees House Ltd.* (1947) 1 KB 130, when he stated as under :

"A promise intended to be binding, intended to be acted upon, and in fact acted upon is binding."

Lord Denning approved the decision of Dixon, J. (*supra*) in *Central Newbury Car Auctions Ltd. v. Unity Finance Ltd.* (1956) 3 All ER 905. Apart from propounding the above principle on judicial side, Lord Denning wrote out an article, a classic in legal literature, on "Recent Developments in the Doctrine of Consideration," *Modern Law Review*, Vol. 15, in which he expressed as under :

"A man should keep his word. All the more so when the promise is not a bare promise but is made within the intention that the other party should act upon it. Just a contract is different from tort and from estoppel, so also in the sphere now under discussion promises may give rise to a different equity from other conduct. The difference may lie in the necessity of showing "detriment." Where one party deliberately promises to waive, modify or discharge his strict legal rights, intending the other party to act on the faith of promise, and the other party actually does act on it, then it is contrary, not only to equity but also to good faith, to allow the promisor to go back on his promise. It should not be necessary for the other party to show that he acted to his detriment in reliance on the promise. It should be sufficient that he acted on it."

This principle has been evolved by equity to avoid injustice. It is neither in the realm of contract nor in the realm of estoppel. Its object is to interpose equity shorn of its form to mitigate the rigour of strict law. In *Union of India v. Anglo Afghan Agencies* AIR 1968 SC 718 it was *inter alia* observed as follows :

"We are unable to accede to the contention that the executive necessity releases the Government from honouring its solemn promises relying on which citizens have acted to their detriment. Under our constitutional set up no person may be

deprived of his authority of law, if a member of the executive seeks to deprive a citizen of his right or liberty otherwise than in exercise of" power derived from the law common or statute -- the Courts will be competent, to and indeed would be bound to protect the rights of the aggrieved citizens."

It was further held in its summing up thus :

"Under our jurisprudence the Government is not exempt from liability to carry but 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, not claim to be the Judge of its own obligation to the citizen on an ex parte appraisalment of the circumstances in which the obligation has arisen."

In Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, :this doctrine of promissory estoppel against public authorities was extended thus :

"This Court refused to make a distinction between a private individual and a public body so far as the doctrine of promissory estoppel is concerned."

In Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, the doctrine of promissory estoppel was applied to the executive action of the State Government and also denied to the State of the doctrine of executive necessity as a valid defence. It was held that in a republic governed by rule of law, no-one high or low, is above the law, Every one is subject to the law as fully and completely as any other and the Government is no exception. The Government cannot claim immunity from the doctrine of promissory estoppel. Equity will, in a given case where justice and fairness demands, prevent a person from exercising on strict legal rights even where they arise not in contract, but on his own title deed or in statute, it is not necessary that there should be some pre-existing contractual relationship between the parties. The parties need not be in any count of legal relationship before the transaction from which the promissory estoppel takes its origin. The doctrine would apply even where there is no pre-existing legal relationship between the parties, but the promise is intended to create legal relations and effect a legal relationship which will arise in future. It was further held that it is indeed pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned. The former is equally bound as the latter. Therefore, the Government cannot claim any immunity from the doctrine of promissory estoppel and it cannot say that it is under no obligation to act in a manner, i.e., fair and just or that it is not bound by the considerations of honesty and good faith. In fact, the Government should be held a high standard of rectangular rectitude while dealing with citizens. Since the doctrine of promissory estoppel is an equitable doctrine, it must yield where the equity so requires. If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government

or public authority to the promise or representation made by it, the Court would not arise an equity in favour of the promise and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government should be held bound by the promise made by it. But the Govt. must be able to show that in view of the facts as have been transpired, public interest would not be prejudiced. Where the Govt. is required to carry out the promise the Court would have to balance, the public interest in the Government's carrying out the promise made to the citizens, which helps citizens to act upon and alter his position and the public interest likely to suffer if the promises were required to be carried out by the Government and determine which way the equity lies. It would, not be enough just to say that the public interest required that the Govt. would not be compelled to carry out the promise or that the public interest should suffer if the Govt. were required to honour it. In order to resist its liability the Govt. would disclose to the Court the various events insisting its claim to be except from liability and it would be for the Court to decide whether those events are such as to render it equitable and to enforce the liability against the Govt.

It is equally settled law that the promissory estoppel cannot be used compelling the Government or a public authority to carry out a representation or promise which is prohibited by law or which was devoid of the authority or power of the officer of the Government or the public authority to make. Doctrine of promissory estoppel being an equitable doctrine, it must yield place to the equity, if larger public interest so requires, and if it can be shown by the Government or public authority for having regard to the facts as they have transpired that it would be inequitable to hold the Government or public authority to the promise or representation made by it. The Court on satisfaction would not, in those circumstances raise the equity in favour of the persons to whom a promise or representation is made and enforce the promise or representation against Government or the public authority. These aspects were highlighted by the Apex Court in *Vasantkumar Radhakisan Vora Vs. The Board of Trustees of the Port of Bombay*, *Sales Tax Officer and Another Vs. Shree Durga Oil Mills and Another*, *Dr. Ashok Kumar Maheshwari Vs. State of U.P. and Another*, :

34. The Regulation 4 being clear and rechecking permitted being not in terms of any provision holding the field cannot bring in application of principles relating to promissory estoppel, In OJC No. 17047 of 1997 an additional ground has been stated by opposite parties to opposite petitioner's claims. It has been stated that petitioner did not possess minimum percentage of attendance required to appear in the examination. Reference has been made in this context to Regulation 7(iv) which mandates minimum of 75% attendance of classes separately of each of the theory and sessional classes, during the semester. 15% of attendance can be relaxed by the attendance committee of the college on medical grounds and on the ground of representing the college in extra curricular/athletic/cultural activities when the students have represented College/University or the State on deputation for specific purpose during the working days of the College to be

recorded in writing. There is dispute by learned counsel for petitioner in the said case about shortage of attendance. That is of academic Interest in view of our conclusion that petitioners were not eligible to be admitted to the higher semester. The Inevitable result is dismissal of the writ applications which we direct. In view of specific direction given by this Court and undertaking given by petitioners not to claim any equity even if they had appeared at the examination on the basis of Court's order, that will not be of any consequence. No costs.

C.R. Pal, J.

35. I agree.