
(1973) 02 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 683 of 1972

Gajanan Saw Mill

APPELLANT

Vs

The State of M.P. and Others

RESPONDENT

Date of Decision : 13-02-1973

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Forest Produce (Trade Regulation) Act, 1969 — Section 5

Citation : AIR 1973 MP 235 : (1976) ILR (MP) 123 : (1973) JLJ 733 : (1973) 18 MPLJ 766

Hon'ble Judges : P.K. Tare, C.J;G.P. Singh, J

Bench : Division Bench

Advocate : V.S. Dabir, for the Appellant; Y.S. Dharmadhikari, General and M.V. Tamaskar, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Tare, C.J.

This order shall govern the disposal of all the Writ petitions mentioned above. We propose to deal with these Writ petitions in two groups. In one group will be Writ Petition No. 684 of 1972-- Babulal & Co. v. The State of M. P. and Ors. In the other group will be all other Writ "petitions in which facts are similar. The only distinction between these two groups is that in the case of Babulal & Co. v. The State of M. P. (M. P. No. 684 of 1972), the forest authorities had communicated to the petitioner. Babulal. acceptance of his highest bid and he was delivered possession of the coupe and it is his allegation that work had already been started and subsequently he was asked to stop the work and hand back possession to the forest department. In all other cases either no orders were passed regarding acceptance of the highest bids or in some cases orders had been passed by the proper authorities and the same had been communicated to the subordinate forest officers. But. such orders were not despatched for being communicated to the forest contractors. Therefore, it is the contention of the

respondents that the contracts in all other Writ petitions were inchoate, which would not confer any rights on those petitioners. Whatever rights may have become choate would be in favour of M/s. Babulal and Co. alone.

On 21-7-1972 (Vide Annexure 5) there was a Gazette Notification intimating that forest contracts in respect of timber, firewood and charcoal for Sagar division would be auctioned on 4-8-1972 and 5-8-1972. The auctions were duly held on those two dates and the present petitioners were the highest bidders and their bids were higher than the upset price fixed by the department. The petitioners on 4-8-1972 deposited 10% of the auction price as required by the Rules. They also deposited security as required. So far as the case of M/s. Babulal and Co. is concerned, the competent authority, namely, the Conservator of Forests accepted his bid on 12-8-1972. He deposited 10% of the auction price as also the security and signed the contract on 12-8-1972. The acceptance of his bid was also communicated to him. But, in other cases, although orders about acceptance had been passed and, had been sent to the subordinate forest authorities, such orders were not at all despatched to the forest contractors. In some cases no such orders of acceptance had been passed, and further auction in respect of those contracts was suspended as the State intended to take action under the Madhya Pradesh Van Upai (Vyapar Viniyaman) Adhiniyam, 1969 (No. 9 of 1969) (Madhya Pradesh Forest Produce (Trade Regulation) Act, 1969). The said Act was extended to Sagar division with, effect from 14-9-1972. On that date the contract of M/s. Babulal and Co. alone was legally finalised and the said firm had started working the forest. But, in all other cases there was no such finalisation and work was suspended. A Notification dated 14-9-1972 (Vide respondents' Annexure 4) was issued applying the said Act to the Sagar division. Thereafter the petitioners made demands which were turned down by the respondents and consequently the present petitions were filed in October 1972, or thereabout and it was after filing of the Writ petitions that the petitioners were intimated by the forest authorities that their bids had not been accepted. A works order dated 21-8-1972 (Vide petitioners' Annexure B/I) had also been issued to M/s. Babulal and Co. But in all other cases no such order had been issued, nor acceptance of bids had been communicated by the competent authorities. The learned counsel for the petitioners urged that as the respondents had advertised sale of forest produce by public auctions and that auctions had already been held, the respondents could not thereafter withhold acceptance of the bid. In support of this contention the learned counsel invoked the doctrine of promissory estoppel and urged that the respondents could not so back on their public declarations under the guise of taking action under the M. P. Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969, which had come into force much before the auction sales were held and which was applied to the Sagar division after the auctions were held but before the acceptance could be communicated to the other petitioners except M/s. Babulal and Co. It is, therefore, necessary to examine as to how far the doctrine of Promissory Estoppel can be applied to auctions which might be termed either executive or quasi-legislative in the

matter of applying the provisions of a statute.

In Halsbury's Laws of England (Third Edition) Volume 15, at page 175, the doctrine of Promissory Estoppel is elucidated as under:--

"When one party has by his words or conduct made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relations as if no such promise or assurance had been made by him. but he must accept their legal relations subject to the qualification which he himself has so introduced. This doctrine, which is derived from a principle of equity enunciated in 1877, has been the subject of considerable recent development. It differs from estoppel properly so-called in that the presentation relied upon need not be one of present fact.

The doctrine may have been too widely stated in recent cases and its limits are not yet finally settled. The doctrine cannot create any new cause of action where none existed before, and it would seem that the person who has made the representation may once again enforce his legal rights after the other party has had an opportunity of regaining the position he held before the representation was made if that is possible. The doctrine is known variously as "equitable" or "promissory" or "quasi" estoppel".

The learned authors. Cheshire and Fifoot in their Treatise on the Law of Contract (Seventh Edition) at page 83, elucidated the doctrine as under:

"The doctrine would meet admirably the situation in the High Trees case but for one unfortunate and insuperable objection. In 1854 in Jorden v. Money (1854) 5 HLC 185, the House of Lords decided that estoppel may operate only upon a misrepresentation of existing fact; and it cannot be applied where, as in the High Trees case, a party seeks to rely on a promise of future conduct.

As the common law was thus barren Denning. L. J. sought to tap a slender stream of authority which had flowed in equity since the judgment of Lord Cairns in 1877 in Hughes v. Metropolitan Rly. Co.. (1877) 2 AC 439.

"In October. 1874, a landlord gave his tenant six months" notice to repair the premises. If the tenant failed to comply with it the lease could be forfeited. In November the landlord started negotiations with the tenant for the sale of the reversion, but these were broken off on December 31. Meanwhile the tenant had done nothing to repair the premises. On the expiry of six months from the date of the original notice, the landlord claimed to treat the lease as forfeited and brought an action of ejectment."

The House of Lords held that the opening of negotiations amounted to a promise by the landlord that as long as they continued he would not enforce the notice, and it was in reliance upon this promise that the tenant had remained quiescent. The six months allowed for repairs were to run, therefore, only from the failure

of the negotiations and the tenant was entitled in equity to be relieved against the forfeiture. Lord Cairns thus expressed the ratio decidendi of the case:

"It is the first principle upon which all Courts of Equity proceed, that if parties who have entered into definite and distinct terms involving certain legal results--certain penalties or legal forfeiture--afterwards by their own act or with their own consent enter upon a course of negotiations which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced or will be kept in suspense or held in abeyance, the person who otherwise might have enforced those rights will not be allowed to enforce them where it would be inequitable having regard to the dealings which have thus taken place between the parties."

This equitable principle was clearly akin to the common law doctrine of estoppel enlarging it to include promises as well as statements of fact, and it may be described without impropriety either as "promissory estoppel" or as "quasi-estoppel". It covered the promise of the landlords in the High Trees case not to insist upon the original rent, and Denning. L. J. was prepared to apply it. But as the plaintiffs in that case sued only for rent that had accrued after the expiry of their promise, the application was unnecessary to the decision, and it remained for a time uncertain if the courts would allow the rule in *Foakes v. Beer* 1884 19 AC 605 to be thus evaded. The position, however, was made clearer by the judgments of the Court of Appeal in *Combe v. Combe*. (1951) 2 KB 215 : 1951 1 All ER 767:

"A wife started proceedings for divorce and obtained a decree nisi against her husband. The husband then promised to allow her ? 100 per annum free of tax as permanent maintenance. The wife did not in fact apply to the Divorce Court for maintenance, but this forbearance was not at the husband's request. The decree was made absolute. The annual payments were never made and ultimately the wife sued the husband on his promise to make them."

Byrne. J. gave judgment for the wife. He held, indeed, that there was no consideration for the husband's promise. It had not been induced by any undertaking on the wife's part to forgo maintenance; and in any case, since it was settled law that maintenance was exclusively a matter for the Court's discretion, no such undertaking would have been valid or binding. But he thought that the principle enunciated in the High Trees case enabled the wife to succeed, since the husband had made an unequivocal promise to pay the annuity, intending the wife to act upon it, and she had in fact so acted.

This decision was clearly an illegitimate extension of a principle which, if it is to be reconciled with orthodox doctrine, must be used only as a defence and not as a cause of action. To allow a plaintiff to sue upon such a promise is simply to ignore the necessity of consideration. The Court of Appeal therefore reversed the decision; and Denning. L. J. took the opportunity to restate the position.

"The principle stated in the High Trees case does not create new cause of

action where none existed before. It only prevents a party from insisting upon his strict legal rights, when it would be unjust to allow him to enforce them, having regard to the dealings which have taken place between the parties..... The principle, as I understand it, is that, where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance had been made by him; but he must accept their legal relations subject to the qualification which he himself has so introduced, even though it is not supported in point of law by any consideration but only by his word.

Seeing that the principle never stands alone as giving a cause of action in itself, it can never do away with the necessity of consideration when that is an essential part of the cause of action. The doctrine of consideration is too firmly fixed to be overthrown by a side-wind. Its ill effects have been largely mitigated of late, but it still remains a cardinal necessity of the formation of a contract, though not of its modification or discharge."

Thus, the position of Promissory Estoppel or quasi-estoppel in the English law has been changing from time to time and still its limits are uncertain.

It is to be noted that the doctrine of Promissory Estoppel contemplates the existence of a contract initially or in the alternative some obligation which a party is required to discharge. Subsequently that party resiles from its obligations and, therefore, the other party can invoke the doctrine of Promissory Estoppel, although there may not have been a concluded binding contract. The English Courts have applied this doctrine to such cases where despite the fact that there is no concluded binding contract, the contracting party has made some promise which it is bound to carry out because the other party has already relying on such representations acted to its own prejudice. This doctrine is certainly different from and in addition to the principle of estoppel as per the provisions of Section 115 of the Indian Evidence Act. It is applied not only to private parties but also to executive actions taken on behalf of the State, During arguments it was pointedly brought to the notice of the learned counsel for the petitioners whether the doctrine could be invoked against actions in the matter of applying the provisions of the statute. Such actions may either be executive in character or quasi-legislative in nature. The learned counsel for the petitioners contended that the doctrine could be applied even to such a situation. In this connection we might observe that if any rights have arisen in favour of a contracting party on the strength of a promise in praesenti and on the term of performance in future the doctrine can certainly be invoked by that party. But in no case, we feel, that the doctrine can be applied so as to prevent the action which may be quasi-legislative or to executive action in the matter of enforcement of the provisions of a statute or to judicial actions. In our opinion, the doctrine ought to be limited

to the actions of private parties or to the purely executive actions of the State and we are afraid that the doctrine cannot be extended any further as is now canvassed by the learned counsel for the petitioners. In this connection we may take note of the development of this doctrine of Promissory Estoppel under the English common law or in our country, as enunciated by their Lordships of the Supreme Court in some cases.

It may be interesting to note as to how the English Courts have applied this doctrine and with what limits. In *Tool Metal Mfg. Co. Ltd. v. Tungsten Electric Co. Ltd.* (1955) 2 All ER 657, Viscount Simonds J. agreeing with the opinion of Lord Cohen observed as follows :--

"It would not, however, be right in a case in which I find myself unable to agree with the decision of the Court of Appeal to say nothing on the far-reaching conclusion to which they have come. My Lords, the decision of the Court of Appeal in the first action was based on nothing else than the principles of equity stated in this House in (1877) 2 AC 439 and interpreted by Bowan, L. J. in *Birmingham & District Land Co. v. London & North Western Ry Co.* (1888) 40 Ch D 268 in these terms:

"It seems to me to amount to this, that if persons who have contractual rights against others induce by their conduct those against whom they have such rights to believe that such rights will either not be enforced or will be kept in suspense or abeyance for some particular time, those persons will not be allowed by a Court of equity to enforce the rights until such time has elapsed, without at all events placing the parties in the same position as they were before."

These last words are important, for they emphasise that the gist of the equity lies in the fact that one party has by his conduct led the other to alter his position. I lay stress on this, because I would not have it supposed, particularly in commercial transactions, that mere acts of indulgence are apt to create rights, and I do not wish to lend the authority of this House to the statement of the principle which is to be found in (1951) 1 All ER 767 at p. 770 and may well be far too widely stated."

Thus, in the said case the House of Lords modified the dictum laid down in (1951) 1 All ER 767 (supra).

In *Beesly v. Hallwood Estates Ltd.* (1960) 2 All ER 314. Buckley. J. made the following observations with respect to the said doctrine:--

"On this part of the case counsel for the plaintiff referred me to *Central London Property Trust Ltd. v. High Trees House Ltd.* (1956) 1 All ER 256 to *Hughes v. Metropolitan Ry. Co.* (1877) 2 AC 439, and to the statement derived from (1951) 1 All ER 767 which is contained in 15 Halsbury's Laws of England (3rd Edn.) p. 175. As I understand this part of the law, which has been described as promissory estoppel, it is that where one party is under an existing legal obligation to another, who has so acted as to lead the former party to believe

that the latter will not enforce that obligation, or not enforce it to its full extent, or for the time being, intending the former party to act on that footing, and the former party has so acted, the later party may be restrained in equity from enforcing the obligation on any footing inconsistent with the belief so induced and may be so restrained notwithstanding that he has received no consideration for the modification of his rights. The doctrine may afford a defence against the enforcement of otherwise enforceable rights; it cannot create a cause of action. It cannot, in my judgment, be invoked to render enforceable a right which would otherwise be unenforceable, nor to negative the operation of a statute."

Thus, in the opinion of Buckley. J., the doctrine could be used as a shield and not as a weapon of offence, nor can it furnish a cause of action where none existed originally.

In Emmanuel Avodeji Ajayi v. R. T. Briscoe (Nigeria) Ltd.. (1964) 3 All ER 556 the Privy Council referring to the doctrine of Promissory Estoppel made the following observations:--

"The hire-purchaser's final contention was that having altered his position in the manner indicated the owners never gave notice that the period of suspension was at an end before issuing their summons and that accordingly the lorries never having been returned or made available for service he was entitled to rely on the equitable defence as defined by Bowen, L. J. in the Birmingham and District Land Co. case. (1886) All ER 627. Alternatively he went further and contended on the authority of the cases of (1956) 1 All ER 256 and (1951) 1 All ER 767 that the promise given by the letter of July 22 was irrevocable unless the lorries were made available for service and that, since this never happened the owners cannot enforce their claim.

Their Lordships are of opinion that the principle of law as defined by Bowen, L. J. has been confirmed by the House of Lords in the case of (1955) 2 All ER 657 where the authorities were reviewed, and no encouragement was given to the view that the principle was capable of extension so as to create rights in the promisee for which he had given no consideration. The principle, which has been described as quasi estoppel and perhaps more aptly as promissory estoppel, is that when one party to a contract in the absence of fresh consideration agrees not to enforce his rights an equity will however, subject to the qualification (a) that the other party has altered his position, (b) that the promisor can resile from his promise on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position, (c) the promise only becomes final and irrevocable if the promisee cannot resume his position."

However, their Lordships found that the hire-purchaser had failed to prove his case on merits and in that view the appeal filed by the hire-purchaser was dismissed."

Thus, the Courts in England have refused to extend the doctrine of Promissory

Estoppel except what had already been done and that too to the extent as enunciated in Halsbury's Laws of England (Third Edn.) Volume 15, at p. 175. Beyond that the English Courts have refused to extend the doctrine to other situations. We may examine as to what the Indian Courts say and how far the Indian Courts have applied this doctrine.

The learned author Field In his Commentary on Law of Evidence (Tenth Edn.). 1972, at page 4936, has discussed the doctrine by referring to the Halsbury's Laws of England (Third Edn.) Volume 15 at page 175 as also referring to the Supreme Court case of Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., and made the following comments:

"In my opinion, the equity which was recognised and enforced by the Supreme Court in the Anglo-Afghan Agencies case was none other than what has been rightly labelled by Halsbury in the passage quoted above as the doctrine of "promissory estoppel". It is, in fact, an extension of the principle of estoppel, and before it comes into play it must, as in the case of estoppel, be proved that the other side has acted upon the representation in question to its prejudice. No doubt, unlike the case of an ordinary estoppel the representation on which a promissory estoppel is founded is not a representation with regard to an existing fact, but is in regard to something promised to be done in the future. On a proper analysis, before the doctrine of promissory estoppel, can be invoked it must be proved (1) that there was a representation or promise in regard to something to be done in the future. (2) that that representation or promise was, as stated in the passage from Halsbury, quoted above intended to affect, the legal relations of the parties and to be acted upon accordingly, and (3) that it is one on which the other side has in fact, acted to its prejudice. In order to create estoppel the party asserting it has to show that it has been induced to act to its detriment or misled to its injury. It is an equitable defence when a party has deliberately led another to believe that a particular thing is true and to act upon such belief to its detriment. It is based on the theory that party setting up such defence has been misled or has been placed in a worse situation. A change of one's position for the worse because of reliance on another's act is an element of estoppel."

The learned authors Pollock and Mulla in their Commentary on the Indian Contract and Specific Relief Acts (Ninth Edition) at page 48 have discussed the doctrine of Promissory Estoppel in the following words:--

"Lord Denning has extra-judicially suggested that where there is a deliberate promise which is intended to affect legal relations it would be inequitable to hold that the promisor is not bound when the promisee has acted on the promise. It is also implicit in modern cases in which the principle has been developed. Sometimes it is a plaintiff who is not allowed to insist on his strict legal rights. Thus, a creditor is not allowed to enforce a debt which he has deliberately agreed to waive if the debtor has carried on business or in some other way changed his position in reliance on the waiver. A landlord who has told his tenant that he can

live in his cottage rent-free for the rest of his life is not allowed to go back on it if the tenant stays in the house on that footing. Sometimes it is a defendant who is not allowed to insist on his strict legal rights. His conduct may be such as to debar him from, relying on some condition, denying some allegation, or taking some other point in answer to the claim. Thus, a Government department, who had accepted a disease as due to war service, were not allowed afterwards to say it was not, when the soldier, in reliance on the assurance, had abstained from getting further evidence about it. The Supreme Court in *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd.*, has held the observations in *Raderiaktiebolaget Amphirite v. R.* (1921) 3 KB 500 to be too wide and quoted with approval the observations of Denning, J. in *Robertson v. Minister of Pensions*. (1949) 1 KB 227, as to the Crown being bound by an estoppel. A buyer who had waived the contract date for delivery was not allowed afterwards to set up the stipulated time as an answer to the seller. --(*Charles Rickards Ltd. v. Oppenheim* (1950) 1 All ER 420. Referring to (1950) 2 All ER 420. (supra), the learned authors observed:--

"that the Court of Appeal held that he was entitled to do so. Although by his conduct he had impliedly waived the original stipulation as to time, he had given reasonable notice of his intention to reimpose a new time-limit. The plaintiffs having failed even then to perform the contract it was clearly discharged by their breach. Denning, L. J. said of the defendant's consent to postponement:

"Whether it be called waiver or forbearance on his part, or an agreed variation or substituted performance, does not matter. It is a kind of estoppel. By his conduct he evinced an intention to affect their legal relations. He made, in effect, a promise not to insist on his strict legal rights. That promise was intended to be acted on and was in fact acted on. He cannot afterwards go back on it."

This is consistent with his frequently expressed view that "we have got far beyond the old common law estoppel now. We have a new estoppel which affects legal relations. A tenant who had encroached on an adjoining building, asserting that it was comprised in the lease, was not allowed afterwards to say that it was not included in the lease. A tenant who had lived in a house rent-free by permission of his landlord, thereby asserting that his original tenancy had ended, was not afterwards allowed to say that his original tenancy continued. The principle of promissory estoppel operates only where there is an already existing legal relationship because "it is a shield not a sword", i. e. it may afford a defence against otherwise enforceable rights. Denning L. J. said in (1951) 1 All ER 767:

"Seeing that the principle never stands alone as giving a cause of action itself, it can never do away with the necessity of consideration when that is an essential part of the cause of action."

It has been held that promissory estoppel differs from estoppel properly so called in that the representation relied upon need not be one of present fact. It may be

of law, e. g. legal relations and as to the future.

But mere acts of indulgence, particularly in commercial transactions, do not create rights."

It may then be of interest to see as to how our Law Courts and particularly their Lordships of the Supreme Court have applied the said doctrine. In *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, their Lordships of the Supreme Court elucidated the distinction between delegated legislation and conditional legislation in the following words:--

"Thus when the delegate is given the power of making rules and regulations in order to fill in the details to carry out and subserve the purposes of the legislation, the manner in which the requirements of the statute are to be met and the rights therein created to be enjoyed it is an exercise of delegated legislation. But when the legislation is complete in itself and the legislature has itself made the law and the only function left to the delegate is to apply the law to an area or to determine the time and manner of carrying it into effect, it is conditional legislation. To put it in the language of another American case:

"To assert that a law is less than a law because it is made to depend upon a future event or act is to rob the legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or the things future and impossible to be fully known." The proper distinction there pointed out was this:

"The legislature cannot delegate its power to make law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes or intends to make its own action depend. There are many things upon which wise and useful legislation must depend which cannot be known to the law making power, and, must therefore be subject of equity and determination outside the hall of legislature. -- (In *Locke's Appeal* 72 pa. 491; *Field and Co. v. Clark* (1892) 143 US 649)."

But the discretion should not be so wide that it is impossible to discern its limits. There must instead be definite boundaries within which the powers of the administrative authority are exercisable. Delegation should not be so indefinite as to amount to an abdication of the legislative function--Schwartz--American Administrative Law, page 21."

The learned counsel for the petitioners urged that this would be a case of conditional legislation and not of delegated legislation and, therefore, the act of making an Act operative from a certain date would purely be an executive act and, therefore, the principle of Promissory Estoppel should be made applicable. It was contended that when the auctions had already been held and the fact was known to the State Government, Notification dated 14th September, 1972, (Respondents' Annexure-4) should not have been issued applying the M. P. Van

Upaj (Vyapar Vini-yaman) Adhiniyam, 1969, to the Sagar Division. Presently, we propose to deal with this aspect after discussing the limits set out by their Lordships of the Supreme Court.

The case of Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., was a case where relying on the assurances given by the Government the respondent Company had exported goods to Afghanistan to the maximum limit permissible under the Export Promotion Scheme for Woollen Textiles and Woollen goods promulgated by the Central Government. After such exports the Government refused to sanction imports up to the permissible limit, but sanctioned it to the extent of practically one-third of that limit. It was under those circumstances that their Lordships adverted to the decided cases laid down that:--

"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 grounds 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 ex parte appraisal of the circumstances in which the obligation has arisen."

In that view their Lordships of the Supreme Court agreeing with the High Court dismissed the appeal of the Union of India and there by the order of the Textile Commissioner as affirmed by the Central Government imposing cut in the import entitlement by the respondents stood set aside and the Joint Chief Controller of Imports and Exports was directed to issue to the respondents import certificates to the extent of the exports actually made. Even so, we may observe that their Lordships applied the doctrine of Promissory Estoppel to a purely executive act of the Government, which pertained to a scheme framed by the Government in respect of which the Government had made a public declaration.

In the case of Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, , their Lordships of the Supreme Court made the following observations:--

"Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice. The obligation arising against an individual out of his representation amounting to a promise may be enforced ex contractu by a person who acts upon the promise: when the law requires that a contract enforceable at law against a public body shall be in certain form or be executed in the manner prescribed by statute, the obligation if the contract be not in that form may be enforced against it in appropriate cases in equity. In Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., this Court held that the Government is not exempt from the equity arising out of the acts done by citizens to their prejudice, relying upon the representations as to its future conduct made by the Government. This Court held that the following observations made by Denning, J., in (1949) 1 KB 227 applied in 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 praying in aid the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so as to fetter its future executive action.

We are in this case not concerned to deal with the question whether Denning, L. J., was right in extending the rule to a different class of cases as in *Falmouth Boat Construction Co. Ltd. v. Howell* (1950) 1 All ER 538, where he observed at page 542:--

"Whenever Government officers in their dealings with subject take on themselves to assume authority in a matter with which the subject is concerned, he is entitled to rely on their having the authority which they assume. He does not know, and cannot be expected to know, the limits of their authority, and he ought not to suffer, if they exceed it." It may be sufficient to observe that in appeal from that judgment *Howell v. Falmouth Boat Construction Co. Ltd.* (1951) 2 All ER 278, Lord Simonds observed after referring to the observations of Denning, L. J.;

The illegality of an act is the same whether the action has been misled by an assumption of authority on the part of a government officer however high or low in the hierarchy. The question is whether the character of an act done in face of a statutory prohibition is affected by the fact that it had been induced by a misleading assumption of authority. In my opinion the answer is clearly No".

In the said case the Municipal Committee had given assurances regarding octroi duty and the High Court had refused to apply the doctrine of Promissory Estoppel. Their Lordships of the Supreme Court, however, reversed the decision of the High Court and remanded the case for a proper decision.

The case of *State of Orissa and Others Vs. Harinarayan Jaiswal and Others*, was a case of liquor contracts having been auctioned and subsequent refusal of the Government to confirm those auction sales; wherein their Lordships made the following observations:--

"It was next urged that having had recourse to the auction method once, the Government was precluded from either calling for tenders or to sell by negotiation. The High Court has accepted that contention. We are unable to agree with the High Court in its conclusion. Neither the provisions of the Act nor the order issued by the Government lends any support to such a conclusion. Once the Government declines to accept the highest bid, the auction held became useless. Similar is the effect when the Government refused to accept the highest tender. That left the Government free to have recourse to other methods. The power given to the Government by the Act to sell the exclusive privilege in such other manner as it thinks fit is a very wide power. That power is unrestricted. It undoubtedly includes the power to sell the privileges in question by private negotiation."

In that case their Lordships upheld the action of the Government by observing that the Excise Act gave power to the Government to sell the exclusive privilege of trading in liquor in any other manner as it might think necessary and such power, according to their Lordships, would be unrestricted and it would include the power to sell the privileges by private negotiation. This case would be an authority for the proposition that even though auction sales might be held the Government would not be precluded from refusing to confirm the auction sale and instead resorting to any other method of selling the privileges.

The learned counsel for the respondents, however, invited attention to the observation of a Division Bench of this Court in *Rangram and Co. v. State of M. P.*, M. P. No. "616 of 1971, D/- 20-1-1972 (Madh. Pra.); wherein the Division Bench considered the said Supreme Court cases relating to the doctrine of Promissory Estoppel and particularly the cases, namely, *State of Assam v. Keshab Prasad Singh* ATR 1953 SC 309 ; *K.N. Guruswamy Vs. The State of Mysore and Others*, ; *Badri Prasad Vs. State of Madhya Pradesh and Another*, ; *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., and Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another*, . It is true that the Division Bench in the said case refused to apply the doctrine of Promissory Estoppel as in the opinion of the learned Judges no rights had accrued in favour of the petitioner Company. However, in the present case we have clearly expressed the opinion that the doctrine cannot be made applicable to legislative or quasi-legislative functions. But all the same we would rely on the observations made by the said Division Bench to hold that no rights whatsoever accrued in favour of the other petitioners excepting M/s. Babulal and Company and, therefore, even if it were to be assumed that the doctrine might be applied to such a situation, we would decline to apply the doctrine of Promissory Estoppel as no rights accrued in favour of the other petitioners. As regards the petitioner, M/s. Babulal and Co. (M. P. No. 684 of 1972), the remedy would be elsewhere and not by invoking the prerogative powers of this Court as presently we propose to illustrate.

Thus, there is no doubt that their Lordships of the Supreme Court have applied the doctrine of Promissory Estoppel to certain situations. Even so, we are of the opinion that the doctrine can be applied only to executive acts and not to legislative acts or quasi-legislative acts. We might go a little further and assert that even if the action necessary for application of conditional legislation be considered to be an executive act, still, in our opinion, the principle of Promissory Estoppel cannot be applied to such actions because the power conferred on the Government would be the power given by the legislature and at any rate even acts in the nature of applying statutes as per the provision made by the legislature, in our opinion, would be more or less quasi-legislative acts and not purely executive acts. We feel that there can be no estoppel against legislature and similarly the doctrine of estoppel cannot be applied against any authority which is trying to carry out the intention of the legislature in the matter of applying statute in the manner provided by the legislature. For this reason we

would decline to apply the doctrine of Promissory Estoppel to such actions of the Government, which may either be considered to be executive in nature or quasi-legislative in nature, but which originate in the power conferred by the legislature in the matter of applying enactments to areas or from certain dates or upon fulfilment of certain conditions.

This doctrine is the only basis of the relief sought by the present petitioners. Even assuming that M/s. Babulal and Co., in whose favour certain rights were created, might be entitled to some relief against the respondents, we may observe that the provisions of the M. P. Van Upaj (Vyapar Viniya man) Adhiniyam, 1969, create an absolute monopoly in the State and prohibit any private trading except in the manner laid down by Section 5 of the said Act. We may usefully reproduce Section 5 of the said Act, which is as follows:--

"Section 5-- Restriction on purchase or trans port of specified Forest produce.-

(1) On the issue of a notification under Sub-section (3) of Section 1 with respect to any area, no person other than,--

(a) the State Government;

(b) an officer of the State Government authorised in writing in that behalf, or

(c) an agent in respect of the unit in which the specified forest produce is grown or found;

shall purchase or transport such specified forest produce in such area.

Explanation I-- Purchase shall include purchase by barter.

Explanation II-- Purchase of specified forest produce from the State Government or the aforesaid Government Officer or agent or a licensed vendor shall not be deemed to be a purchase in contravention of the provisions of this Act.

Explanation III-- A person having no interest in the holding who has acquired the right to collect the specified forest produce grown or found on such holding shall be deemed to have purchased such produce in contravention of the provisions of this Act.

(2) Notwithstanding anything contained in Sub-section (1)-

(a) a grower of forest produce other than Mahua may transport his produce from any place within the unit wherein such produce is grown or is found to any other place in that unit and a grower of Mahua may possess and transport Mahua from any place within the district where such Mahua is grown or is found to any place within that district;

(b) any person may transport the specified forest produce not exceeding the quantity as may be prescribed from the place of purchase of such produce to the place where such produce is required for his bona fide use or for consumption;

(c) specified forest produce purchased from the State Government or any officer or agent specified in the said Sub-section by any person for manufacture of goods within the State in which such specified forest produce is used as raw material or by any person for sale outside the State or by the licensed vendor may be transported by such person in accordance with the terms and conditions of a permit to be issued in that behalf by such authority and in such manner as may be prescribed; and

(d) any person having right of nistar in any forest in respect of any specified forest produce under any law for the time being in force may transport such produce for his domestic use for consumption in such quantity and subject to such terms and conditions as may be prescribed.

(3) Any person desiring to sell the specified forest produce may sell them to the aforesaid Government Officer or agent at any depot situated within the said unit;

Provided that the State Government, the Government Officer or agent shall not be bound to repurchase the specified forest produce once sold,"

Thus, no petitioner can claim to trade in the said forest produce notified with effect from the date of notification, i.e. from 14-9-1972 onwards. As there is an absolute ban on any private trading, we are of opinion that no law Court would grant the petitioners the relief of specific performance of contract, which the petitioners want by seeking writs in the present cases. They in fact want a Writ of Mandamus requiring the respondents to confirm their auction sales and to allow them to work out the forests, for the period of auction. In view of the statutory ban imposed on private trading, such a relief can evidently not be granted. Thus, even if it were to be assumed that certain rights were accrued in favour of M/s. Babulal and Company, the remedy would be elsewhere. If the said petitioner so chooses and if any legal remedy be available under the law, it is for M/s. Babulal and Company to enforce it by claiming damages for a breach of contract. But, in no case can the said petitioner claim any specific relief much less any Writ of Mandamus of the kind prayed for. As regards others, no rights have accrued in their favour because the acceptance was never communicated to those petitioners.

It was, however, contended by the learned counsel for the petitioners that the fact that an order of acceptance had been passed by the competent authority should be sufficient to hold that certain rights accrued in favour of the other petitioners. We may observe that in a case of contract communication to the other side or putting the communication in transit which would be beyond the control of the sender, would be a necessary ingredient for creation of any right in favour of the party who is sought to be communicated to. Therefore, unless by some communication made to the petitioner any rights in their favour are sought to be created it is futile to contend that their case is on a par with the case of M/s. Babulal and Co. To accept this contention would be to give a go by to the principles of the Indian Contract Act, 1872,

It was also argued by the learned Advocate-General on behalf of the respondents that there was no contract as prescribed by Article 299(1) of the Constitution of India. In this connection we may only observe that their Lordships of the Supreme Court have departed from the traditional notion and have laid down that under certain circumstances a contract might be inferable if there be something in writing from which the terms can be ascertained and its acceptance can be determined. However, in the view that we take regarding applicability of the doctrine of Promissory Estoppel, we do not think it necessary to discuss the question of compliance with Article 299(1) of the Constitution of India.

As a result of the discussion aforesaid, these petitions fail and are accordingly dismissed with costs. Counsel's fee in each case shall be Rs. 200/-, if certified. The outstanding amount of the security deposit after deduction of costs shall be refunded to the petitioner in each of these cases.