
(1995) 11 KL CK 0024
In the High Court Of Kerala
Case No : O.P. No. 7914 of 1994-P

Intrans Systems Pvt. Ltd.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 01-11-1995

Acts Referred:

Constitution of India, 1950 — Article 285
Evidence Act, 1872 — Section 115

Citation : AIR 1996 Ker 161

Hon'ble Judges : V.V. Kamat, J

Bench : Single Bench

Advocate : Panicker and Panicker, for the Appellant; S. Vijayan Nair and N. Balakrishna Pillai, for the Respondent

Final Decision : Dismissed

Judgement

V.V. Kamat, J.—The scheme floated by the State Government popularly known as "Tax for Growth Fund" by the G.O. No. 717/91-ID Taxes, was discontinued by the G.O. No. (MS) 14/94/TD dt. 15-2-1994. The subject matter of these two petitions is a challenge to this sudden discontinuance of the scheme urging for a writ of mandamus directing the State Government to continue the scheme taking resort to the principles of "promissory estoppel" against the State Government.

2. The guidelines relating to the principle and application of "promissory estoppel" are well settled by the decisions of the Supreme Court. The doctrine is a principle evolved by equity, to avoid injustice and though commonly named "promissory estoppel", it is neither in the realm of contract, nor in the realm of estoppel. The true principle of promissory estoppel is that where one party has by his words or conduct made to the other, a clear and unequivocal promise which is intended to create a legal relationship to arise in the future, knowing or intending that it would be acted upon the other party to whom the promise is made, and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if

that would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and, this would be so irrespective of whether there is any pre-existing relationship between the parties or not. Though the doctrine has been variously described as "equitable estoppel". "quasi-estoppel" and "new estoppel", it is a doctrine evolved by equity in order to prevent injustice.

3. The doctrine of promissory estoppel has also been applied against the Government and defence based on executive necessity has been categorically negated. Where the Government makes a promise knowing or intending that it would be acted upon by the promisee and, in fact, the promisee acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. But since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires.

4. If it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine 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, as the public interest would be prejudiced if the Government were required to carry out the promise and the Court would have to balance the public interest in the Government carrying out the promise made to a citizen. At the same time the Government cannot claim to be exempt from the liability to carry out the promise on some indefinite and undisclosed ground of necessity or expediency, nor can the Government claim to be the sole Judge of its liability and repudiate it on an ex parte appraisal of the circumstances. In this context a mere claim of change of policy would not be sufficient to exonerate the Government from the liability. The Court would not act on the mere ipsi dixit of the Government.

5. In spite of the above position, the doctrine cannot be applied in teeth of an obligation or liability imposed by law. Where the Government owes a duty to the public to act in a particular manner, a duty meaning a course of conduct enjoined by law, the doctrine cannot be invoked for preventing the Government from acting in discharge of duty under the law and as such the doctrine cannot be applied to compel anyone to do an act prohibited by law. Legislature cannot be precluded from exercise of legislative functions by a resort to the doctrine.

6. No law can be made, nor can an executive order be issued to refund tax. It would be invalid and ultra vires. In the matter of taxation in relation to the application of the doctrine of promissory estoppel, there is distinction between exemption of tax and refund of tax. An exemption is a concession allowed to a class or an individual for the general burden for valid and justifiable reasons. The

object is to enable the industry to stand up and compete in the market. Sales Tax is an indirect tax which is ultimately passed on to the consumer, and it is the consumer who is the ultimate beneficiary. The industry is allowed to overcome its teething period by selling its products at comparatively cheaper rates as compared to others. Such exemption is neither illegal nor against the public policy.

7. On the other hand, not even a legislature, much less a Government, can enact a law or issue an order or agree to refund the tax realised by it from the people, in exercise of its sovereign power, except where the levy or realisation is contrary to law validly enacted. A promise or agreement to refund tax which is under a statute and realised under a law would be a fraud on the Constitution and breach of faith of the people. Taxes like Sales Tax are paid even by a poor man irrespective of his savings with a sense of participation in the growth of national economy and development of the State. Its utilisation by way of refund not to the payer but to a manufacturer as an individual to set up his industrial* unit in the State in any form would be a breach of trust of the people amounting to deception under the law.

8. The above principles flow from the declaration of law through the flood-light of three Surpeme Court Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, ; Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., ; Amrit Banaspati Co. Ltd. and another Vs. State of Punjab and another, pronouncements. Refund or return of it or its equivalent, irrespective of the form is repayment or refund of Sales Tax. These principles when considered for application to the withdrawal of "Tax for growth fund" scheme, would lead to the conclusion that the withdrawal of the scheme is well justified and the petitioners in spite of their acting upon it on the basis of representations contained therein cannot resort to the doctrine of promissory estoppel.

9. In fact in the counter it is stated that the Government was advised that in view of the Surpeme Court decision reported in Amrit Banaspati Co. Ltd. and another Vs. State of Punjab and another, Amrit Banaspati Co. v. State of Punjab, it was no longer possible to continue the scheme which in terms of the said judgment, is illegal.

10. Even an independent examination of the scheme would also lead to the same conclusion. This becomes necessary.

11. The scheme is available by Government order dated 1-11-1991 (Ext. P1 to O.P. 7914 and Ext. P2 to O.P. 11200 of 1994). According to the scheme, the small scale unit can collect general sales tax as per the prescribed rates and pay the same. Payments are to be deemed to have been paid into the tax for growth fund". The Fund was to be responsible for re-payment of long term loans availed of by the concerned unit from the Banks. The procedure and conditions thereof are laid down in details in the scheme. The scheme extended this facility to the existing units to opt for the Fund. The scheme specified opening of a Head of

Account to be operated for the purpose by the Secretary. Board of Revenue (Taxes), was held to be responsible for repayment to the term-lending institutions, to the extent of 150% of the term loan availed of by the concerned unit.

12. It would thus appear from the bare reading of the scheme that taxes collected from the consumers were to be utilised under the Scheme towards repayment of loans obtained by the Small Scale Industry Units --private industrialists -- an arrangement obviously in the nature of refund of tax to the units towards repayment of their long term loans taken by them on easy terms. The scheme displays that for paying Mr. Paul, all peters are sought to be robbed. This is obviously impermissible in the light of the above principles. This is prohibited by the Constitution, and has been described as a fraud on the Constitution and breach of trust of the consumers concerned. The State Government is wisely justified in withdrawing the scheme as stated in the counter.

13. It is averred in the petition (O.P. 7914/94) that the concerned unit, on 11-2-1993 purchased machinery worth Rupees 2,58,271/- on 5-9-1992 for Rs. 45,116/-; on 13-7-1993 for Rs. 63,796/-; on 12-10-1993 for Rs. 1,24,002/- and spent Rs. 18,962/- for structural work. It is then averred that as per the prescribed procedure of the Rule framed under the scheme, on 15-2-1993, the petitioner opted for the scheme vide communication dt. 18-11-1993 (Ext. P9). The petitioner availed of loan from the Travancore State Bank, Ernakulam -- the lending institution (respondent No. 5) and approached by submitting application dt. 29-11-1993 (Ext. P11). The request was accepted by the Deputy Commissioner (respondent No. 4) who also in turn intimated the Bank. It is averred, by referring to the correspondence annexed, that the petitioner was accepted and admitted to the scheme. There is no dispute. It is then averred that the petitioner remitted on 14-5-1994 an amount of Rs. 32,529/- and has urged that he is entitled to have benefit of the scheme and for orders of its continuance, and continuance of remittances. By an interim order dt. 16-3-1995, the petitioner has been permitted continuance of remittances, but it is necessary to note that no payment is made under the order passed by this Court (Kurup, J.) in C.M.P. No. 13775 of 1994.

14. It is also averred similarly in the petition (O.P. 11200/94) that the District Industries centre by the order dt. 4-1-1992 granted Sales Tax exemption up to Rupees 1,78,272/- for the period from 1-9-1991 up to 31-8-1994 (Ext. P2) and then exercised option of the scheme. The petitioner availed of long term loan of Rs. 1,42,000/- from the State Bank of Travancore, Chalakudy branch --the lending institution. It is averred that the petitioner remitted Rs. 1,31,158/- towards remittance under the scheme and continued the same making total remittances amounting to Rs. 1,99,759/- as on 24-3-1994. Out of this amount, only Rs. 1,31,158/- are credited to the Bank, leaving a balance of Rs. 68,601 / -. It is averred that thereafter the petitioner continued to pay, as specified in paragraph 10 of the petition, amounting to Rs. 21,826/- up to July 1994, which

is not released to the Bank.

15. The application of the principle would show that such credit, if any, has been made to the financing institutions under the scheme, it would be illegal payments amounting to refund under the scheme. The respondents dealing with the scheme as observed in the context, would have to take necessary legal steps according to law to call back the said amounts from the lending institutions forthwith and credit the said amounts to the State Treasury as early as possible, as such credits amount to a fraud on the Constitution and a breach of faith of the people who have paid Sales Tax as consumers by way of their participation in the development of the State, in an honest manner.

With the above observations and for the above reasons both these petitions stand dismissed, leaving parties to suffer their costs and consequences. Order accordingly.