
(1995) 07 AHC CK 0059

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 8493 of 1986

Jagdish Prasad Khandelwal

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 27-07-1995

Acts Referred:

Citation : (1995) 07 AHC CK 0059

Hon'ble Judges : B.M.Lal, J and S.Rafat Alam, J

Final Decision : Dismissed

Judgement

S.R.Alam, J.—By means of this writ petition under Article 226 of the Constitution of India, the writ petitioner made a prayer for issuing a writ of mandamus commanding the IndoBurma Petroleum Company Limited (respondent No. 4) to issue a letter of intent and further to permit the petitioner to open a petrol pump at the site approved by the respondents.

2. Short facts giving rise to the present writ petition are that the petitioner made an application in the year 1977 before respondents for getting the dealership of Petrol Pump on DelhiMathura Road in the district of Mathura. The petitioner also proposed the site for opening such petrol pump which was subsequently approved by the respondent No. 4, but before a final decision could be taken, the said land was acquired by the State Government for the U P. State Industrial Development Corporation under the provisions of the Land Acquisition Act. Thereafter the petitioner approached the U. P. State Industrial Corporation Limited for allotment of a site to open the proposed petrol pump, which was subsequently allotted to him by the Corporation vide allotment letter dated 1121977 (Annexure 3 to the writ petition). Subsequently the petitioner applied for the dealership to the respondent No. 3 on 811978 and a formal agreement was made between the petitioner and the respondents vide agreement dated 621978 which has been annexed with this writ petition as Annexure 4. Thereafter by letter dated 3081978 the respondent No. 4 informed the petitioner that the present policy of the company does not permit progressing of the retail outlet

proposal at the proposed location any further therefore their letter dated 25/1/1977 may be treated as cancelled. The writ petitioner, thereafter made various representations before the respondents and when no final decision was taken the present writ petition was filed in the year 1986,

3. Learned counsel appearing on behalf of the petitioner urged that after the agreement dated 6/2/1978 made between the petitioner and the respondents, it is obligatory on the part of the respondents to issue a letter of intent for opening a petrol pump on the approved site. He further urged that the respondents are bound by the promise made, and the petitioner can invoke the doctrine of promissory estoppel against the respondents Nos. 2 to 5. In support of his submission he relied on the decision of the Apex Court in the case of *Union of India v. M/s. Anglo Afghan Agencies* reported in AIR 1968 SC 710 and *M. B. Sugar Mills Company v. State of U. P.*, reported in AIR 1979 SC 621.

4. The respondents Nos. 2 to 5 have filed a common counteraffidavit raising a preliminary objection about the maintainability of the writ petition, inter alia, on the ground of inordinate delay and laches on the part of the petitioner as well as that the respondents is a company registered under the Indian Companies Act and is not a State within the meaning of Article 12 of the Constitution of India. It was further contended that the letter dated 6/2/1978 (Annexure 4) is not a concluded contract and it does not bind the respondents. Moreover the petitioner having failed to comply with the terms given in the letter dated 6/2/1978 cannot now enforce the same. It was further submitted that the facts of the present case is not similar to that of *Anglo Afghan Agencies* (supra) or *M. P. Sugar Mills* (supra) and therefore it does not support the contention of the petitioner.

5. The petitioner made a proposal opening a petrol pump at the proposed site vide letter dated 8/1/1978 to which the respondents communicated their willingness vide letter dated 6/2/1978 to accept the grant of licence as a vendor of Company's product to enter upon the premises and to use the filling station/service station in common with the company on the terms and conditions mentioned therein. One of the condition was that the petitioner was required to sign the standard form of licence, which was sent alongwith the letter dated 6/2/1978, and returned back to the respondent. Clause 4 of the aforesaid letter further provides that the petitioner should sign the enclosed carbon copy of the letter in token of his acceptance and sent it back along with a bank demand draft of Rs. 26,000 as security deposit. Clause 4 of the letter dated 6/2/1978 runs as follows :

"If you are agreeable to the above terms, please sign and return the enclosed carbon copy of this letter in token of your acceptance, together with a bank demand draft for the security deposit of Rs. 26,000. This offer is open upto."

6. Admittedly the petitioner did not sign and return the enclosed carbon copy alongwith a bank demand draft for the security deposit of Rs. 26,000 in token of his acceptance as required in Clause 4 of the said letter dated 6/2/1978. Learned

counsel for the petitioner submitted that since no time limit was prescribed in the aforesaid letter dated 621978, nondeposit of the security amount and signing the carbon copy would not make the agreement invalid. We do not find any substance in the submission of the learned counsel for the petitioner.

7. In fact, by the said letter dated 621978 the respondents company only communicated their willingness to accept the proposal made by the petitioner regarding opening of the petrol pump at the site approved, provided conditions mentioned in the said letter are fulfilled or complied with by the petitioner. The petitioner having not complied with those terms and conditions agreed between the parties can not now enforce the said letter against the respondents company, by in yoking the doctrine of promissory estoppel. A contract would only be completed upon the fulfilment of the terms and conditions agreed between the parties. In the instant case, the respondents company agrees to grant licence to the petitioner for opening of a petrol pump provided certain requirements of formalities are completed by the petitioner. One of such requirements was that as a token of acceptance on the conditions enumerated in the letter dated 621978, he was required to sign the carbon copy of the said letter and send it back alongwith a bank draft of Rs. 26,000 as a security amount. The petitioner having failed to communicate his acceptance by signing the carbon copy of the said letter and sending it to the respondents company alongwith a bank draft of Rs. 26,000 the offer or the proposal made between the petitioner and the respondents stood terminated and does not bind the parties, it is not the case of the petitioner that he was persuaded to open a petrol pump on account of any assurance or promise made by word or conduct of the respondents Nos. 2 to 5 and acting on such undertook steps for the opening of the petrol pump and thereafter the respondents backed out from such promise by not providing dealership. Rather it is the petitioner who approached the respondents for giving dealership for opening a petrol pump, and on his request the respondents asked him to obtain a "no objection certificate" from the District Magistrate. The respondents also made a request to the District Magistrate in this regard but the fact remains that "no objection certificate" was not granted since the land was under acquisition. Then the petitioner again got the settlement of a piece of land from the Industrial Development Authority to which "no objection certificate" was granted by the District Magistrate, but before that the policy of the respondents were changed. Previously, the respondents were progressing the proposals for dealership of retail outlet freely and without any restrictions. The Ministry of Petroleum vide letter dated 2391977 proposed certain change in the guidelines for better distribution of petroleum products, keeping in view the interest of the general public and communicated it to all the oil companies including the respondents. Consequently, the new policy decision, guidelines was laid down regulating the distribution of petroleum products.

8. We further notice that even the allotment of plot by the Industrial Development Corporation in favour of the petitioner vide letter dated 1121977 (contained in Annexure 3) mentions that the application of the petitioner dated

18121977 for the allotment of land in the Industrial Area Site8, Mathura (opposite refinery) Plot No. C3 has been approved on the conditions mentioned in that letter for setting up a petrol/S. D. Filling Station. The relevant clause of the allotment letter are as follows:

"Clause 4. You shall deposit at our Ghaziabad Office an amount of Rs. 7,980 (less earnest money paid) towards reservation money in respect of the above plot latest by 111978. This amount is approximately equal to 10% of the total premium of the plot calculated at the provisional rate of Rs. 21 per square yard which is a purely tentative rate and is liable to be enhanced and adjusted on the basis of the compensation finally paid for the land and the expenditure incurred on the development works in the areas. You will have to execute an agreement that you will pay the premium at the rate finally fixed by the Corporation at the latter stage and will pay the total premium which is further subject to the adjustment according to actual measurement of the plot, if the above amount falls short of the amount equal to 10% of the total premium according to actual measurement the balance will be deposited by you within 7 days of the receipt of the demand from us. If payment is not made as stipulated above, this allotment will stand automatically cancelled and the whole amount or earnest money deposited by you will stand forfeited to this Corporation even if the area of the plot either exceeds or is less than the area applied for to the extent the area of 20% or less of the area applied for. However, if the area of the land allotted either exceeds the area applied for or falls short of the area applied for by an area, more than 20% of it the earnest money will not be forfeited if this allotment is not accepted, provided an intimation is sent to us in this respect by the date stipulated in clause (4) above."

Clause 11. Within the period of nine months from the date of this letter you must :

- (a) get the building plans for the construction of a factory on the aforesaid plot approved by the competent local authority ;
- (b) apply and obtain sanction for loans from a recognised financial institution or Bank;
- (c) place order for machinery ; and
- (d) complete all other formalities, which may be necessary to set up the unit and commence construction of actual factory building/shed on the plot.

Clause 15. The allotment will be cancelled if and when there happens any of the events mentioned below and the same consequences will follow as stated in clause (7) above :

- (a) If the requirement mentioned in clause 11 are not complied within the time stipulated in the clause being of essence ;

OR

(b) If you fail to execute the lease deed within the period of 30 days from the date of demand by the Corporation ;

OR

(c) If you fail to make payment of the first instalment on or before the due date, execute the lease agreement and taken owner possession of the plot aforesaid by the appointed date.

9. There is no pleading in the writ petition that after the allotment of the plot by the U. P. State Industrial Development Corporation Limited, the petitioner complied with the terms of allotment and has deposited the amount of reservation money, executed the agreement for the payment of premium etc. Further, there is no statement that compliance of clause 11, mentioned above, the petitioner got the building plans approved by the competent local authority and whether the possession of plots was delivered to him after fulfilling upon the terms and conditions mentioned therein.

10. Learned counsel appearing for the petitioner also in the course of argument failed to show us any document or the evidence to establish that the petitioner complied the terms of the letter of allotment and the plot was handed over to the petitioner for opening the petrol pump.

11. Now coming to the submission of the petitioner that the respondents are bound by the promise and the petitioner can invoke the writ jurisdiction of this court for issuance of a direction to the respondents to issue licence/permit for opening a petrol pump in view of the doctrine of promissory estoppel.

12. The doctrine of promissory estoppel is evolved on the principle of equity to avoid injustice where an unequivocal assurance is given with an intention to create legal relation or affect a legal relationship to arise in the future and the other party acting on it altered his position in relying upon it, such assurance or promise would be binding on the party making it. In that case the party who acted on the promise or assurance is entitled to enforce the assurance or promise made. This principle of estoppel is based on the rule of equity as recognised by the Courts of law to prevent fraud or manifest injustice. This in owner to invoke the doctrine or assurance and the other party acting on such promise altered his position.

13. In the case of Union of India v. M/s. Anglo Afghan Agencies (supra) the Textile Commissioner published a scheme providing incentive to exporters of woollen goods It provided that the exporters will be entitled to import raw material of total amount equal to 100% of the f. o. b. value of the Exports. The Anglo Afghan Agencies acted upon the representation made by the Export Promotion Scheme under the impression that the import license upto the value of the goods exported, will be issued but the Textile Commissioner contrary to the promise did not grant import certificate for the full value of the goods exported. The Hon"ble Supreme Court in the facts and circumstances of the case held that

even though the case does not fall within the term of Section 115 of the Evidence Act, it is still open to a party who has acted on a representation made by the Government to claim that the Government shall be bound to carry out the promise made by it, even though the terms are not recorded in the form of formal contract as required by Article 229 of the Constitution.

Similarly in the case of *M. P. Sugar Mills v. State of U. P.* (supra), the petitioner relying on the assurance given by the State of U. P. to give Sales Tax exemption for a period of three years to all newly set up industries invested huge amounts after getting financial assistance from different agencies but subsequently the State of U. P. withdrew such exemption of sales tax. The Apex Court held that since there was an unequivocal promise from the State Government relying on which the appellant acted upon and altered his position to his detriment and as such it would be inequitable to allow the State Government to go back upon his promise. It has further been laid down that in order to invoke the doctrine of promissory estoppel, it is enough to show that the promisee has acted in relying on the promises, altered his position and it is not necessary for him to further show that he has acted to his detriment.

14. From the facts of the present case, we are of the opinion that there was no promise or representation made by the respondents on which the petitioner acted rather, it is the petitioner who made an application for grant of licence to start petrol pump for which respondents agreed, provided the conditions prescribed in the letter dated 621978 (contained in Annexure 4 to the writ petition) are complied with by the petitioner, which admittedly the petitioner did not comply and therefore now in the absence of any enforceable promise the plea of promissory estoppel taken by the petitioner has no application to the present case.

15. In our opinion the letter dated 621978 was in the form of an offer to the petitioner which he never accepted by sending his acceptance as required and therefore, we are of the opinion that it was not a concluded contract which can be said to bind the parties.

16. So far the contention of the petitioner is that in the absence of any time limit fixed in the aforesaid letter dated 621978, the petitioner could not communicate his acceptance and if he conveys his willingness of acceptance even by now along with the security deposit, the same would be binding on the respondents company and it would be obligatory to fulfil his promise as made by the aforesaid letter. This submission of the petitioner is devoid of merit. Even if no time limit was prescribed, the petitioner should have communicated his acceptance in terms of letter within a reasonable period of time. It is well settled that where no time limit is prescribed then the party must act and perform its part within a reasonable period of time. Surely, now after lapse of a period of 16 years if the petitioner conveys his acceptance and deposits the amount, it cannot be said to be a reasonable period of time by any stretch of imagination.

17. It was then urged on behalf of the petitioner that the respondent Corporation has rejected the allotment dealership, in view of change in the policy at their stance of the Central Government. The IndoBurmah Petroleum Company Limited provided retailed outlet proposals till 1977 freely and without restrictions. The Ministry of Petroleum issued the guidelines to all the oil companies vide letter dated 29/9/1977, whereby it was proposed to fix the quota of retailed outlet for each Oil Company. It was further proposed that all the appointments of the dealers were to be made in accordance with the uniform policy and guidelines formulated thereof by the Ministry of Petroleum for better distribution of petroleum products. It was contended that since the petitioner made an application in the year 1977 for allotment of dealership, his such proposals was to be examined and disposed of under the old policy, but the respondents wrongly rejected his proposal by applying the new policy retrospectively. In this context our attention was drawn to the decision of the Hon'ble Supreme Court in the case of P. Mahendran v. State of Karnataka, reported in AIR 1990 SC 405 and in the case of A. A. Cohort v. Director of Education, reported in AIR 1983 SC 1143. The submission made was that since the aforesaid new policy came into existence in the year 1978 and the petitioner being applicant of 1977, his proposal or application ought to have been disposed of on the basis of the old policy. Our attention was further drawn to the statement made in paragraph 22 of the writ petition that under the similar facts and circumstances another person known as M/s. Alembic Cooperative Society Baroda applied for the dealership of a petrol pump to be set up at Govra now Baroda (Gujarat) with the IndoBurman Petrol Company, and dealership of let out to the said society was granted on 26/2/1979. Therefore, there is no justification not to permit the petitioner when he stands on the similar footing inasmuch as he also applied for the dealership in the year 1977. The fact has been denied by the respondents in their counteraffidavit, stating therein that till the year 1977 M/s. I. B. P. Company Limited has been progressing retail outlet proposals freely and without any restrictions whatsoever. Thereafter the Ministry of Petroleum issued the guidelines providing certain changes in the existing policy to all the oil companies and fixed the quota of retailed outlet for each oil company. It was further incorporated that in future all the appointments of dealers were to be made with the uniform policy/guidelines. The said guidelines proposed by the Ministry of Petroleum was subsequently implemented as a policy decision for better distribution of petroleum products and a person desires to get dealership has to comply all the formalities, prescribed in the guidelines but where commitments were already made by the respondents prior to, the introduction of the revised guidelines, and where no objection certificate was already obtained from the concerned District Magistrate and retailed outlets, were already under construction as on 30/4/1978, as the special cases permission was given to progress and finalise such case only. Since the petitioner could not obtain "no objection certificate" till 30/4/1978, the company respondents had no option but to cancel his proposals for retail outlet vide letter dated 30/4/1978.

18. The ratio of the judgment of the Apex Court given in *A. A. Gallon v. Director of Education* (supra) is that no retrospective effect should be given to any statutory provisions SC as to impair or take away any existing right, unless the statute either expressly or by necessary implications directs that it could have such retrospective effect. Similarly in the case of *P. Mahendran v, State of Karnataka* (supra), the Apex Court held that where the candidates applies for a post in response to the advertisement issued by the Public Service Commission in accordance with the recruitment Rules, he acquires rights to be considered for selection in accordance with the ten existing Rules. This right cannot be affected by amendment of any Rules unless the amending rules is of retrospective in nature. The Apex Court observed in para 5 as follows:

"It is wellsettled rule of construction that every statutory Rules is prospective unless it is expressly or by necessary implication made to have retrospective effect Unless there are words in the statute or in the Rules showing the intention to effect existing rights. The Rule must be held to be prospective. If a Rule is expressed in language which is fairly capable of other interpretation it ought to be construed as prospective only. In the absence of any provisions or necessary intendment the Rule cannot be given retrospective effect except in matter to procedure. The amending Rules 1987 does not contain any express provisions giving the amendment retrospective effect nor there is anything there is showing the necessary intendment for enforcing the Rule with retrospective effect. Since the amending Rule was not retrospective it could not adversely affect the right and those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules come into force. The amendment Rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules, should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subjectmatter."

19. It is a settled legal position that unless the rules is not expressly or impliedly made effective retrospectively it can be made applicable prospectively and no retrospectivity can be given in the absence of such intention to make it applicable with retrospective date. In the instant case the admitted position is that the earlier proposal of the petitioner could not be finalised as the petitioner failed to obtain "no objection certificate" from the concerned District Magistrate and further proposed site was subsequently acquired under the land acquisition proceedings and then the petitioner made another proposal to the respondents vide his application/letter dated 811978 in response to which the respondents Nos. 2 to 5 vide letter dated 621978 (Annexure 4 to the writ petition) informed the petitioner that his proposal for grant of licence as a vendor of the companies products and opening the filling station/service station is accepted on the terms and conditions mentioned thereof which petitioner did not comply and therefore that proposal was never finalised and cancelled by the respondents tide letter

dated 30/8/1978 (contained in Annexure 7 to the writ petition). The respondents have asserted in their counter affidavit that the only such proposals were finalised under the old policy where the applicant had obtained the "no objection certificate" prior to 30/4/1978 and where the construction of the petrol pump was also started before that date.

20. In the facts and circumstances of the case, the argument regarding the retrospective application of the new policy does not arise. Had it been a case where "no objection certificate" were obtained and construction would have been started prior to 30/4/1978, only then the petitioner would have been entitled to insist upon the respondents to dispose of his proposal under the old policy. The petitioner having failed to obtain "no objection certificate" prior to the introduction of the new policy cannot now insist to consider his claim under the terms and conditions of the old policy and therefore, cannot complain of any discrimination.

20A. The other submission advanced on behalf of the petitioner was that refusal to grant the letter of intent for running of the proposal petrol pump amounts to violation of the fundamental rights guaranteed to the petitioner under Article 19(1)(g) of the Constitution of India and it amounts to putting restrictions on the freedom of the petitioner to carry on the trade or business of his choice.

21. Article 19(1)(g) has given a right to every citizen to choose his employment or to take up any trade or business but such right is subject to any existing law or restriction and further in the interest of general public. This right to choose own employment, practice any profession or any occupation, trade or business is subject to control provided under Article 19(6). In the present case the petitioner wants permit to open petrol pump to sell the petroleum products i. e. petrol, diesel etc. Nowadays petroleum products are essential articles and if the same is not regularised the individual citizen may suffer and therefore to ensure the better supply and equal distribution to its citizens the Government of India has framed guidelines and issued directions to the respondent company to grant permit for the sale of petroleum products accordingly. The guideline does not restrict a citizen's right to carry on business in the petroleum products but it only regulate the supply of petroleum products keeping in view the public interest and provides that permission to open petrol pumps should be granted in such a manner that the petroleum products, such as petrol, diesel, kerosene oils, which are now necessity of life, should be equally distributed even in the remote areas. Thus there is no substance or merit in the submission of the petitioner that by the impugned letter refusing to grant permit or licence to open the petrol pump amount to infringement of his fundamental right guaranteed under Article 19(1)(g) and the same is rejected.

22. Apart from the aforesaid discussion it is pertinent to note that the petitioner wants to quashing of an order, which was passed as far back as in the year, 1978 vide letter dated 30/8/1978. The present writ petition was filed in the year 1986, after a lapse of about 8 years. No explanation has been given in the writ petition

for such unreasonable and abnormal delay except that he had filed several representations before the concerned authority. Looking to the facts and circumstances of the present case, we are not satisfied with this lame explanation.

23. In view of the facts and circumstances and the discussions made above, we do not see any merit in this writ petition. It is accordingly dismissed but without any costs.