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**(1995) 05 OHC CK 0024**

**In the Orissa High Court**

**Case No :** Original Jurn. Case No. 7341 of 1993

Mangalam Timber Products Ltd.

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

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**Date of Decision :** 16-05-1995

**Acts Referred:**

Evidence Act, 1872 — Section 115

**Citation :** AIR 1996 Ori 13

**Hon'ble Judges :** G.B. Patnaik, Acting C.J.; D.M. Patnaik, J

**Bench :** Division Bench

**Advocate :** G. Rath, S. Vegata and L. Pangari, for the Appellant; P.K. Ray, A.G.A., for the Respondent

**Final Decision :** Allowed

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## Judgement

G.B. Patnaik, Ag.C.J.

1. The legality of the issuance of letter dated 2-9-1993 enhancing the rate of royalty as well as changing the weighment norms and stack measurment under Annexure-10 is under challenge on the ground that the same is arbitrary, irrational and that the State is bound by the unequivocal promise held out to the petitioner for setting-up the industry and doctrine of promissory estoppel applies.

2. The short facts of the case are that in April, 1993, a high-level committee presided over by the Chief Minister of Orissa decided that the petitioner should set up a Medium Density Fibre Board Project at Nowrangpur in the district of Koraput and the Forest Department as well as the Forest Corporation would supply the raw materials. On 19-8-1983 the said Committee further decided that 60,000 metric tonnes of hardwood would be available to the petitioner and the petitioner should be communicated the same. The Chief Conservator of Forests vide his letter dated 20th of October, 1983, intimated the pati-tioner as well as the Managing Director, IPICOL, about the Government decision. This letter was modified by letter dated 11-11-1983 wherein the Chief Conservator of Forests

intimated the Managing Director, IPICOL, of the Government decision to make available 60,000 M.Ts. of hardwood from 1985-86 onwards. The aforesaid communication has been annexed as Annexure-2 to the writ application. The Government then came out with a policy resolution of 1986 effective from 1-4-1986, commonly called as "I.P.R. 1986". In accordance with the aforesaid policy decision, the State Government decided to grant licence to the petitioner to utilise usufructs over an area of 9,000 hectares of Sycalyptus and Acacia plantation for a period of 20 years on certain terms and conditions, the terms and conditions being that the rate of royalty per Metric Tonne of hardwood was fixed at Rs. 159.37 with a provision of 6.25 per cent annual increase towards cost of escalation and the royalty would be calculated on the basis of stack of hardwood measuring 30 ft. x 6 ft. x 3 ft. as 7.3 M.Ts. The aforesaid Government letter has been annexed as Annexure-3. Relying upon the aforesaid commitment of the State Government and the declaration of the State Government in its letter dated 16-5-1986, the petitioner set up the Medium Density Fibre Board Factory and investing about more than Rs. 31 crore during 1986-1989 started manufacturing the product. It is only on 27th of April, 1989, the Principal Chief Conservator of Forests communicated the Government decision to enhance the rate of royalty to Rs. 330/- per M.T. for the year 1988-89 with a further increase by 6 1/4 per cent and for the purpose of calculation of royalty stack measuring 6 ft. x 3 ft. x 3 ft. was reckoned as equivalent to 1.00 metric tonne. Being aggrieved by the aforesaid unilateral decision of the Principal Chief Conservator of Forests, the petitioner made a representation and on the basis of that representation, Government of Orissa in Forest Department decided that pending consideration of the request of the petitioner against any revision of rate of royalty and change of norm of stack measurement, the petitioner should be provided wood under the pre-existing terms and conditions. On the basis of the representation of the petitioner, another high-level Committee of the Government reconsidered its decision and held that the earlier decision fixing royalty of Rs. 159.37 per M. T. with annual rise of 6 1/2 per cent is proper and should be continued, but only modified that instead of making this available for 20 years, it should be limited to 10 years from the year of actual production which started in 1987-88. So far as the norm of weightment and stacking is concerned, it was decided that the original decision of 30 ft. x 6 ft. x 3 ft. as equivalent to 7.3 M.Ts. should be followed. The aforesaid decision has been annexed as Annexure-17. The Forest Department intimated the same to the Principal Chief Conservator of Forests as is apparent from Annexure-9. But notwithstanding the same, the impugned letter dated 2-9-1993 having been served upon the petitioner as per Annexure-10, the petitioner has approached this Court. It is prayed that in view of the firm commitment of the State Government to provide hardwood at a specific rate for a specified period and the measurement of the stack having been fixed and relying upon such commitment, the petitioner having already invested more than Rs. 31 crore and having set up the factory, it is not permissible for the State Government to wriggle out of the same and the State and its officers are bound by the so-called promise which

had been held out to the petitioner and the impugned order under Annexure 10 is unsustainable in law.

3. Pursuant to notice issued, a counter affidavit has been filed wherein it has not been disputed about the so-called commitment and promise held out to the petitioner, but the stand taken in the counter affidavit is that as the neighbouring States have enhanced the royalty for similar transactions, the State also in order to augment its revenue has taken the decision of changing the royalty. The further stand is that since no agreement has been executed between the State and the petitioner, the principle of promissory estoppel has no application. It is, however, not disputed in the counter affidavit that pursuant to the earlier order of commitment, the petitioner has been getting the supply of hardwood at the rate provided for even if no written agreement has been executed.

4. In view of the rival stands of the parties, the only question that arises for consideration is whether in the facts and circumstances of the present case, the principle of promissory estoppel would be applicable and whether there is any rational basis on which the State Government changed the method of measurement ? The law in relation to the doctrine of promissory estoppel has been laid down by the Supreme Court in the case of *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, and even in that case their Lordship had repelled the argument advanced by the Government to the effect that lack of a formal contract militates against the applicability of the doctrine. Their Lordships in the aforesaid case quoted the earlier view of the Supreme Court in the case of *Union of India v. Indo-Afghan Agencies* AIR 1968 SC 718, and we also think it appropriate to extract the passage since the main contention advanced by the learned Additional Government Advocate, Mr. Ray, is that since there has been no concluded contract, the principle of promissory estoppel will have no application. Their Lordships in paragraph 23 of their judgment held as follows :--

"It was also contended on behalf of the Government that if the Government were held bound by every representation made by it regarding its intention. When the exporters have acted in the manner they were invited to act, the result would be that the Government would be bound by a contractual obligation even though no formal contract in the manner required by Article 299 was executed. But this contention was negatived and it was pointed out by this Court that the respondents

"are not seeking to enforce any contractual right: they are seeking to enforce compliance with the obligation which is laid upon the Textile Commissioner by the terms of the Scheme, and we are of the view that even if the Scheme is executive in character, the respondents who were aggrieved because of the failure to carry out the terms of the Schemes were entitled to seek resort to the Court and claim that the obligation imposed upon the Textile Commissioner by the Scheme be ordered to be carried out."

It was thus laid down that a party who has, acting in reliance on a promise made by the Government, altered his position, is entitled to enforce the promise against the Government, even though the promise is not in the form of a formal contract as required by Article 299 and that Article does not militate against the applicability of the doctrine of promissory estoppel against the Government."

In view of the aforesaid authoritative pronouncement, we see no substance in the stand taken by the learned Additional Government Advocate.

5. As has been laid down by the Supreme Court, the true principle of promissory estoppel seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties and this would be so irrespective of whether there is any preexisting relationship between the parties or not. This being an equitable principle evolved by the Courts for doing justice, it is not inhibited by the same limitation as estoppel in the strict sense of the term.

In the case of Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI), , their Lordships of the Supreme Court held that alteration of position by promisee is the sole requirement or rather the indispensable , requirement of the doctrine. It is no doubt true that the principle cannot be invoked if it is found to be inequitable or unjust in its enforcement. But the State Government has not come forward taking any such plea in the case in hand. The plea that the neighbouring States have fixed a rate which is different from the State of Orissa cannot be a ground for wriggling out of the promise held out to the petitioner. On the facts and in the circumstances of the present case, having given an anxious consideration to all the materials on record, we have no hesitation to come to the conclusion that the State and its officers have held out a promise to the petitioner to supply specified quantity of wood at a specified rate and it should be measured in a specified manner as per Annexure-3 and the State is bound to supply the materials in accordance with the terms and conditions contained in Annexure-3 and. the unilateral decision communicated to the petitioner under Annexure-10 is hit by the principle of promissory estoppel and we accordingly quash the same.

Even so far as the measurement of stack is concerned, the initial decision to measure wood with a stack of 30 ft. x 6 ft. x 3 ft. as 7.3 M.Ts. has been altered to 10 Metric Tonnes under Annexure-10, but there is no reason or basis for the same and, on the other hand, the same is arbitrary and irrational. No justifiable basis has been indicated in the counter-affidavit for the aforesaid change in question and, therefore, the same is unsustainable in law.

6. In the aforesaid premises, we quash the communication under Annexure-10 and direct that the opposite parties are bound by their terms held out to the petitioner in their letter dated 16-5-1986 under Annexure-3 and must supply the materials in accordance with the terms and conditions contained therein. The writ application is allowed. There will, however, be no order as to costs.

D.M. Patnaik, J.—7. I agree.