

(1993) 03 MAD CK 0022

In the Madras High Court

Case No : Writ Petition No. 19528 of 1992

M.M. Exports

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-03-1993

Acts Referred:

Constitution of India, 1950 — Article 15, 16
Contract Act, 1872 — Section 21, 72

Citation : (1993) 42 ECC 266

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Srinivasan, J.—The petitioner is a registered exporter. It applied for a value-based advance licence under the provisions of Import-Export

Policy, 1992-97. The licence was granted on 29.7.1992 for importing certain specified goods for CIF value of Rs. 4,28,591/- as against an export

obligation of Rs.15 lakhs within a period of 12 months from the date of first importation. The goods specified were;

(1) Crngo sheets Rs.1,37,027/-; (2) Poly Propylene Rs. 8,258/-; (3) Copper wire Rs. 66,121/-; (4) Aluminium Alloy Rs. 1,09,870/-; (5) M.S.

sheet Rs. 8,496/-; (6) Ball bearings 6201 Rs. 37.383.5G/-(7) Ball bearing 6202 Rs. 37,383.50; (8) Craft Paper Rs. 24,032/-. The petitioner

fulfilled the export obligation by 17.9.1992 and also realised the sold proceeds through various dealers. Along with the Advance Licence a Duty

Exemption Entitlement Certificate bearing No. 054512 was issued to the petitioner in which the customs authorities had made necessary

endorsements in Part "F towards proof of items of the export obligation.

2. The petitioner wrote a letter to the Joint Chief Controller of Imports & Exports, the fourth respondent herein, on 3.8.1992 as follows:

With reference to the above, we bring to your kind notice that we have been issued a Value Based Advance Licence with item-wise quantity

restrictions. Whereas, according to para 49 under Export & Import Policy AM 92-97, only CIF value of imports is to be mentioned without

mentioning the quantity restrictions.

So, we request your goodself to kindly do the needful and arrange to amend our Licence accordingly.

On receipt of the said letter, the licensing authority, deleted the value given against each item. Thus the licence as amended mentioned only the total

value CIF of Rs. 4,28,571/-. The petitioner applied on 23.9.1992 for opening an irrevocable letter of credit for CIF value of Rs. 4,27,630/-

through the Indian Overseas Bank, Sowcarpet, Madras, for the purpose of importing ball bearings from Romania. The letter of credit bearing No.

86/RBFT/92/92 was opened. The bank made the necessary endorsement in the copy of the licence. Then the petitioner requested the licensing

authority to enhance the value of the licence and accept the legal undertaking for the enhanced value after deducting the value of the export already

made. That request was also granted on 15.10.1992 and the value of the licence was enhanced to Rs. 11,54,601/- There is no dispute that the

issue of original licence as well as the amendments thereto were made by a competent authority. Pursuant to the terms of the said licence the

petitioner imported ball bearings for CIF value of Rs. 2,26,480/- from Romania. The goods arrived on 6.11.1992 and the petitioner filed bill of

entry bearing No.38640 dated 11.11.1992. On 20.11.1992 the Customs authorities granted an open inspection and samples were drawn.

However, the authorities did not do anything for assessing the bill of entry. Aggrieved thereby the petitioner filed this writ petition for issue of

mandamus directing the respondents the petitioner's bill of entry dated 11.11.1992 and direct the release of goods imported (sic).

3. Originally there were only three respondents, viz., Union of India represented by its Secretary, Ministry of Finance, Collector of Customs,

Madras and the Assistant Collector of Customs, Gr. VIIB, Madras. The petitioner filed W.M.P. No.8 of 1993 to implead the Joint Chief

Controller of Imports & Exports, Madras, as the fourth respondent and the same was ordered on 3.2.1993.

4. Respondents 1 to 3 have filed a counter-affidavit contending that the goods imported are sensitive items in terms of paragraph 49 of the Exports

& Imports Policy, 1992-97 and therefore, the licence ought to have specified the quantity restrictions. When they found that such restrictions were

not mentioned in the licence they sought clarifications from the fourth respondent on 25.11.1992 as to whether the advance licence produced by

the petitioner could be accepted for clearance of the goods. The fourth respondent informed the third respondent that the licence was being

recalled for making necessary amendments and instructed him not to clear the goods. Accordingly the licence and the DEEC Book were

forwarded to the fourth respondent. As there was no valid licence the question of the assessment of the petitioner's bill of entry and the release of

the goods would not arise. They prayed for a dismissal of the writ petition.

5. The fourth respondent filed a separate counter-affidavit contending that the writ petition had become infructuous as the advance licence is the

subject-matter of adjudication by him. Reference is made to a show-cause notice issued by him in terms of Clause 9(1) of Imports (Control)

Order, 1955 and it was submitted that pending adjudication it would/not be appropriate for the petitioner [to] clear the goods on the basis of the

said licence. As it appeared prima facie that the licence was not issued in accordance with the relevant Export & Import Policy and adjudication

proceedings have already been initiated, the question of permitting the release of the goods would not arise. On this ground he prayed for a

dismissal of the writ petition.

6. Paragraph 49 occurring in Chapter VII of the Export & Import Policy, 1992-97 reads as follows:

Duty Exemption Scheme

Value based advance licence 49. A value-based advanced licence shall specify:

(a) the names and description of items to be imported and exported;

(b) The CIF of value imports;

(c) the FOB value of exports; and

(d) the value addition in accordance with the standard Input-Output norms published by means of a public notice or, in respect of items for which such norms have not been published value addition as may be specified by the competent authority.

For the items described as sensitive items, or where the competent authority considers it necessary to do so, quantity or CIF value or both of each sensitive item intended to be imported shall also be specified in the licence.

A list of sensitive items is found in page 207 of the Input output norms of the Import Policy. As per paragraph 1, the licence shall be issued with

quantity restriction under value based licences with respect to twelve items set out therein. Item 3 is "Bearings and bushes". In the present case the

goods exported are complete ceiling fan with metal blades. Sl.Nos.147,148 and 149 refer to ceiling fan with metal blades of 48", 56" and 42

respectively. The quantity of ball-bearing/bush allowed for import is 2 Nos. per fan exported.

7. It is the contention of the respondents that the provisions in the Policy including paragraph 49 clearly prohibit issue of value based advance

licence without specifying the quantity restrictions on items to be imported. According to them the licence issued in favour of the petitioner does not

contain the quantity restrictions and it cannot be considered to be a valid licence in terms of the provisions in the Policy. It is submitted that though

the import of the goods is not prohibited the quantity of import free of duty is restricted and goods imported in excess of the said quantity are liable

to payment of duty. Thus according to the respondents, the petitioner will be liable to pay full duty of 110 per cent of the value of the goods for the

quantity in excess of 12,208 numbers of ball bearing.

8. My attention is also drawn to the show-cause notice issued by the fourth respondent on 1.2.1993. It is really after the admission of the writ

petition. In that notice the fourth respondent has averred that the licence was granted inadvertently without imposing quantity restrictions, and

therefore, it was proposed to amend the licence restricting the quantity of ball-bearings allowed to be imported as 12,208 Nos. The petitioner was

called upon to show-cause as to why such amendment should not be made in the circumstances set out in the notice. Thus the only case put

forward by the fourth respondent in the show-cause notice is that the failure to

impose quantity restrictions in the licence was due to inadvertence.

There is no allegation that the licence was obtained by fraud, undue influence or coercion or mistake. The petitioner has sent a reply to the said

show-cause notice on 10.2.1993. In that reply, reference is made to the present writ petition. The petitioner has taken a stand therein that the

licence was not issued inadvertently and even if it had been so issued it could not be amended after the arrival of goods in India or the opening of

the letter of credit. The petitioner has also prayed for a personal hearing in the matter.

9. The question to be considered is whether the petitioner is entitled to have the goods cleared by the customs authorities without payment of duty

on the basis of the licence as it stands now. Learned Counsel for the petitioner contends that it is not open to the customs authorities to refuse to

take cognizance of the licence as it stands and assess the bill of entry. According to him the only function of the customs authorities is to verify

whether the goods are imported in accordance with the licence "as it exists and the necessary documents are filed by the petitioner. So long as the

licence is not cancelled the custom authorities are bound to honour it. Any proceedings to amend the licence would have only prospective

operation if ultimately the licence is amended. The goods have already been imported under the existing licence and any amendment of the licence

will not affect the present import. Even if the licence had been obtained by fraud or misrepresentation it is valid until it is cancelled.

10. Reliance is placed on the following passage in the judgment of the Supreme Court in *East India Commercial Company v. Collector of Customs*

AIR 1962 SC 1898:

Nor is there any legal basis for the contention that licence obtained by his-representation makes the licence non est, with the result that the goods

should be deemed to have been imported without licence in contravention of the order issued under S3 of the Act so as to bring the case within

Clause (8) of Section 167 of the Sea Customs Act. Assuming that the principles of law of contract apply to the issue of a licence under the Act, A

licence obtained by fraud is only voidable; it is good till avoided in the manner prescribed by law....

...The specified authority has not cancelled the licence issued in this case on the

ground that the condition has been infringed. We need not consider the question whether the Chief Controller of Imports or the Government of India, as the case may be, can cancel a licence after the term of the licence has expired, for no such cancellation has been made in this case. In the circumstances, we must hold that when the goods were imported they were imported under a valid licence and therefore, it is not possible to say that the goods imported were those prohibited or restricted by or under Ch.IV of the Act within the meaning of Clause (8) of Section 167 of the Sea Customs Act.

(vide par 135).

11. In Union of India (UOI) Vs. Tarachand Gupta and Bros, it is held that the Collector of Customs while examining the goods imported under licence and covered by entry 295 has only to ascertain whether the goods are of the description in that entry and has no jurisdiction to go beyond that. It is stated:

The result is that when the Collector examines goods imported under a licence in respect of goods covered by entry 295 what he has to ascertain is whether the goods are parts and accessories, and not whether the goods, though parts and accessories, are so comprehensive that if put together would constitute motor cycles and scooters in CKD condition. Were he to adopt such an approach, he would be acting contrary to and beyond entry 295 under which he had to find out whether the goods imported were of the description in that entry. Such an approach would, in other words, be in non-compliance of entry 295. (vide para 15).

The respondents' licence admittedly authorised them to import goods covered by entry 295. They could, therefore, legitimately import, on the strength of that licence, all and several kinds of parts and accessories of motor cycles and scooters. The only question, therefore, before the Collector was whether the respondents' licence covered the goods imported by them, i.e., whether the goods were parts and accessories. If they were, the imports were legitimate and no question of their being not covered by the licence or the respondents having committed breach of Section 3 of the Imports and Exports (Control) Act or Section 167(8) of the Sea Customs Act could possibly arise. (vide para 23)

12. In Lokesh Chemical Works v. M.S. Mehta, Collector of Customs (Preventive),

Bombay 1981 ELT 235, the Bombay High Court held that

when once the licence is issued no authority can prevent the import of items mentioned in the licence except by cancellation thereof under the

Import (Control) Order, 1955.

13. My attention is drawn to the judgment of CEGAT, Special Bench "A" New Delhi in 1993 (63) ELT 128 . The following passage is relevant:

The question, therefore, is whether the goods imported are unauthorised imports. The goods were imported under the bills of entry dt.31.10.1986

whereas the licences were cancelled on 18.12.1986. The relevant orders cancelling the licence read as follows:

I have carefully gone through the facts of the case and have come to the conclusion that the party has obtained the above licence by fraud and misrepresentation.

Having regard to what has been stated in the preceding paragraph, the undersigned is satisfied that the case appropriately falls under Clause 9 of

the ITC order and as such licence in question should be cancelled ab initio or otherwise rendered ineffective. Therefore, I, in exercise, of the

power vested in me under Clause 9 Sub-clause (a) of the Imports (Control) Order, 1955 hereby cancel the licence Nos.P/K/3160035 dated

31.7.1986 and P/K/3158010 dated 30.6.1986 ab initio which had been obtained by them.

Similar is the language used in the other orders relating to the cancellation of licences.

From a reading of the order cancelling the licences it is clear that the licences were cancelled on the ground that they were obtained by fraud and

misrepresentation. Considering a similar case, the Supreme Court in East India Commercial Company Limited v. Collector of Customs (Supra)

held that

Nor is there any legal basis for the contention that the licence obtained by misrepresentation makes the licence nan est with the result that the goods

should be deemed to have been imported without licence in contravention of the Order issued u/s 3 of the Act so as to bring the goods within

Clause (8) of the Section 167 of the Sea Customs Act. Assuming that the principles of law of contract apply to the issue of licence under the Act, a

licence obtained by fraud is only voidable, it is good till avoided in the manner

prescribed by law.

The next decision of the Supreme Court which has considered a similar issue is *Fedco Pvt. Ltd. (supra)*. The Supreme Court held,

the entire scheme of control and regulation of imports by licences is on the basis that the licence is granted on a correct statement of relevant fact.

That basis disappears if the grant of licence is induced by fraud or misrepresentation whether the licensee himself or some other party is responsible for the fraud or mis-representation the fact remains that in such cases the basis of the grant of licence has disappeared. It will be absolutely

unreasonable that such a licence should be allowed to continue.

From the above it follows that where a licence is obtained on the basis of fraud or misrepresentation it continues to be valid till it is avoided. Then,

once it is declared that the licence is obtained on fraud and mis-representation it should not be allowed to continue. In other words, the cancellation

did not operate with retrospective effect. Since on the facts of this case, it is clear that the cancellation of licence is subsequent to the imports of

goods, the cancellation has no effect on the imports and, therefore, the imports cannot be treated as unauthorised.

(vide paras 8, 9 & 10).

[The case of *Fedco Private Ltd.* referred to above is reported in *Fedco (P) Ltd. and Another Vs. S.N. Bilgrami and Others*,].

14. On the basis of the principles laid down in the above cases I find that the import made by the petitioner in the present case is in accord with the

licence as it exists and it is not open to the customs authorities to refuse to assess the bill of entry or release the goods. The adjudication

proceedings which are pending before the fourth respondent can have effect only prospectively and will not affect retrospectively the import which

has already been made by the petitioner. Till the licence is cancelled it is certainly open to the petitioner to import goods in accordance with the

same as it stands. Any amendment which may be made ultimately at the conclusion of the adjudication proceedings will have effect only with

reference to future imports.

15. Learned Counsel for the respondents contends that the cases referred to above will have no application as in all those cases goods had been

cleared by the customs authorities and the question had arisen only later. The

contention is based on a factual misapprehension. Even otherwise the clearance, of the goods will make no difference in the position. The question is whether the import is in accordance with the licence and whether the customs authorities can refuse to clear the goods. The question has to be answered in favour of the petitioner in view of the aforesaid rulings.

16. It is contended by learned Counsel for the respondents that in effect, the petitioner is invoking the principle of estoppel and it is not available as against the Government particularly, when the acceptance of it will be against public interest. It is submitted that the licence without specifying the quantity restrictions is clearly against the terms of paragraph 49 of the Policy and it cannot be treated as a valid one. It is also argued that the provision in paragraph 49 has been misunderstood and misinterpreted by the petitioner as well as the concerned authorities, and it is not open to the petitioner to take advantage of the error in the licence. It is also argued that the Government cannot be made responsible for an inadvertent mistake committed by one of its subordinates and if it is done it will be only inequitable.

17. Learned Counsel has drawn my attention to several rulings of the other High Courts and the Supreme Court. Though it is not necessary to consider them in extenso, I will point out one or two relevant matters. He referred to *Sursingji Dajiraj Thakorsaheb Vs. Secretary of State*, ; *The Secretary of State For India Vs. Fareedoon Jijibhai Divecha*, ; and *Nowranglal Agarwala Vs. State of Orissa*, . In that last of the judgments reference is made to the judgment of the Bombay High Court in *The Secretary of State For India Vs. Fareedoon Jijibhai Divecha*, , which in turn refers to its own earlier judgment in *Sursingji Dajiraj Thakorsaheb Vs. Secretary of State*, . In all the three cases the principle that a mistake committed by an Officer of the Government or a conduct of Government servant in violation of his duty will not operate as estoppel against Government has been applied. The applicability of the principle has depended on the facts of each case. That will have no bearing for the present case.

18. Strong reliance is placed on the judgment of the Supreme Court in *Assistant Custodian E.P. v. B.K. Agarwala* : [1975]2SCR359 . The Court held that the statement by the Assistant Custodian on enquiry of the party that

the property in question was not an evacuee property did not prevent the Government from establishing that it was an evacuee property. The case was decided by a Bench of two Judges. They referred to a statement of law found in *Robertson v. Minister of Pensions* 1949 1 KB 227 made by Lord Denning and proceeded to refer to the disapproval of the said statement by Lord Simonds in *Howell v. Falmouth Boat Constructing Co. Ltd.*, 1951 AC 837 : 1951 2 All ER 278. The Bench observed that the view taken by the House of Lords in the later case was the correct one and the view taken by Lord Denning was not correct. Unfortunately, two earlier judgments of the Supreme Court were not brought to their notice. In those two cases the Apex Court had quoted with approval the statement of Lord Denning. Both were judgments of three Judges each. In *Union of India v. Anglo-Afghan Agencies* AIR 1968 SC 718 the court after extracting the same statement from the judgment of Lord Denning proceeded to apply the principle contained therein and observed,

... We are unable to accede to the contention that the executive necessity releases the Government from honouring its solemn promises relying on which citizens have acted to their detriment. Under our constitutional set-up, no person may be deprived of his right or liberty except in due course of and by authority of law: if a member of the executive seeks to deprive a citizen of his right or liberty otherwise than in exercise of power derived from the law--common or statute--the Courts will be competent to, and indeed would be bound to, protect the rights of the aggrieved citizen. (vide para 10).

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 ground 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. (vide para 23)

19. In *Century Spinning & Manufacturing Co. Ltd. v. Ulhasnagar Municipal Council* AIR 1971 SC 021, the Court once again referred to

Robertson's case (1948) 2 ALL ER 667 : (1949) 1 KB 227 and quoted the statement of Lord Denning with approval. The Court also took note

of the observations of Lord Simonds in Howell's case (1950) 1 All ER (Supp) 538 disapproving the ruling of Lord Denning and observed,

If our nascent democracy is to thrive different standards of conduct for the people and the public bodies cannot ordinarily be permitted. A public body is in our judgment, not exempt from liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice. (vide para 12).

20. Learned Counsel referred to a judgment of the Punjab & Haryana High, Court in State of Punjab and Others Vs. Amrit Banaspati Co., Ltd.

and Others, . All the cases referred to above on the question of steppel were considered. The American law as well as English law was traced and it was said,

This kaleidoscope of precedents, Indian, American and English, shows us that in the final analysis the doctrine of equitable estoppel is but a rule of

fairplay founded on the principle of justice, equity and goods conscience. Good administration demands that rules of fairplay should be observed

by all Governmental and public authorities. Good administration requires that the Government and other public authorities should be bound by

promises made by them, upon which others have acted as much as parties are bound by similar promises. But there is a difference. The

Government acts for the people. It acts in the public interest. The people, for whom the Government acts, require to be protected against the

unauthorised, prejudicial or mischievous acts of the persons who act for the Government The people cannot be bound by promises which are

unauthorised, or, which are productive of public mischief. Therefore, the need to restrict the application of the doctrine of equitable estoppel to

Governmental activity. Therefore, the unwisdom and inexpediency of applying the doctrine too widely. There are, of course, certain obvious

limitations: when the Government acts in sovereign capacity there can never be any question of estoppel. Nor can there ever be an estoppel to

prevent Parliament from making a law. Nor can the Government, while functioning as a delegate of Parliament, be estopped from legislating

contrary to the promises earlier held out by it in an executive capacity. Nor can there be an estoppel to prevent the Government from carrying out

the mandates of Parliament. Parliament is Supreme and the executive

Government cannot estop itself from discharging the obligations imposed upon it by Act of Parliament. Nor can the Government do something or be compelled to do something which is prohibited by statute or which is opposed to obvious legislative policy. And, the Government cannot be bound by an estoppel to do indirectly that which it cannot do directly, it cannot bind itself to circumvent a statute. Again a Government cannot bind itself or a succeeding Government, by an estoppel, to a fixed policy.

The political dynamism of the State requires review and revision of policy and a Government must have the right at all times to change its policy.

Accrued rights have to be honoured no doubt. But, no rights based on promissory estoppel can ever be considered to accrue which are against the

public interest and opposed to the public policy or which affect the public revenues. No one can be permitted to take undue advantage of a

representation made by a servant of the people and claim rights as against the people themselves and to their proven detriment, if such rights are

not consistent with the public good. A rule of evidence such as equitable estoppel may not be invoked against the people and the State if it is

shown to be against the general interest of the people and the State or against the advancement of their known social policy or if it affects the

public revenues. Precise definition of the limits is difficult as this branch of the law is yet evolving. Boundaries will have to be determined in

individual cases with reference to the facts of the cases. (vide para 46).

As pointed out in the above decision itself the question has to be decided on the facts of individual cases.

21. Reliance is placed on ruling in *Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others*, in which a Bench of the Judges disagreed

with the observations of another Bench of two Judges in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, . The

ruling in *Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others*, was disapproved by a Bench of three Judges in *Union of India (UOI)*

and *Others Vs. Godfrey Philips India Ltd.*, in the following words:

There can therefore be no doubt that the doctrine of promissory estoppel is applicable against the Government in the exercise of its Governmental,

public or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the

applicability of the doctrine of promissory estoppel. We must concede that the subsequent decision of this Court in Jit Ram Shiv Kumar and

Others Vs. State of Haryana and Others, takes a slightly different view and holds that the doctrine of promissory estoppel is not available against

the exercise of executive functions of the State and the State cannot be prevented from exercising its functions under the law. This decision also

expresses its disagreement with the observations made in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, that the

doctrine of promissory estoppel cannot be defeated by invoking the defence of executive necessity, suggesting by necessary implication that the

doctrine of executive necessity is available to the Government to escape its obligation under the doctrine of promissory estoppel. We find it difficult

to understand how a Bench of two Judges in Jeet Ram's case could possibly overturn or disagree with what was said by another Bench of two

Judges in Motilal Sugar Mill's case. If the Bench of two Judges in Jeet Ram's case found themselves unable to agree with law laid down in Motilal

Sugar Mills case they could have referred Jeet Ram's case to a larger Bench, but we do not think it was right on their part to express their

disagreement with the enunciation of the law by a co-ordinate Bench of the same Court in Motilal Sugar Mills. (vide para 12)

They proceeded to observe,

Of course, we must make it clear, and that is also laid down in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, ,

that there can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can the Government or public authority

be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel

the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power

of the officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel being an

equitable doctrine, it must yield when the equity so requires, if it can be shown by the Government or public authority that having regard to the facts

as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representations made by it, the Court

would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it. This aspect has been dealt with fully in Motilal Sugar Mills case (supra) and we find ourselves wholly in agreement with what has been said in that decision on this point. (vide para 14).

The above passage again reiterates that the question of estoppel depends on the facts of each case.

22. My attention was drawn to a judgment of a Full Bench of the Patna High Court in Chetlal Sao and Another Vs. State of Bihar and Others, in

which reliance is placed on the observations made in Jit Ram's case AIR 1980 SC 285 in preference to those in Motilal Padampat Sugar Mills

Co. Ltd. Vs. State of Uttar Pradesh and Others, . Probably the judgment of the larger Bench in Union of India (UOI) and Others Vs. Godfrey

Philips India Ltd., was not made available to the Full Bench as it was delivered only three months earlier.

23. Finally, learned Counsel for the respondents relies on the observations made by a two-Judge Bench of the Supreme Court in Vasantkumar

Radhakisan Vora Vs. The Board of Trustees of the Port of Bombay, . The Court said,

It is equally settled law that the promissory estoppel cannot be used compelling the Government or a public authority to carry but a representation

or promise which is prohibited by law or which was devoid of the authority or power of the officer of the Government or the public authority to

make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must [yield] place to the equity, if larger

public interest so requires, and if it can be shown by the Government or public authority, for having regard to the facts as they have transpired that

it would be inequitable to hold the Government or public authority to the promise or representation made by it. The Court on satisfaction would

not, in those circumstances raise the equity in favour of the persons to whom a promise or representation against Government or the public

authority.

Equally promissory estoppel should not be extended, though it may be founded on an express or implied promise stemmed from the conduct or

representation by an officer of the State or public authority when it was obtained to play fraud on the Constitution and the enforcement would

defeat or tend to defeat the constitutional goals. For instance a right to reservation either under Article 15(4) or 16(4) in favour of the Scheduled

Castes, Scheduled Tribes or Backward Classes was made with a view to ameliorate their status socially, economically and educationally so as to

assimilate those Sections into the mainstream of society. The persons who do not belong to those classes, but produce a certificate to mask their

actual status and secure an appointment to an office or post under the State or public employment or admission into an educational institution

maintained by the State or receiving aid from the State, on later investigation, though belated, was found that the certificate produced was false and

the candidate was dismissed from the post or office or debarred or sent out from the institution or from the balance course of the study, the plea of

promissory estoppel would always be found favour with the Courts and being easily extended in favour of the candidate or party that played fraud

on the Constitution. It would amount not only putting a premium on the fraud on the Constitution but also a denial to a reserved candidate and the

general candidate as well. Therefore, the plea of promissory estoppel should not be extended to such areas.

Though executive necessity is not always a good defence, this doctrine cannot be extended to legislative acts or to acts prohibited by the statute,

(vide para 12).

24. The statement of law found in the above passage does not help the respondents in the present case. Here, the petitioner does not seek to

enforce any promise or representation made by the officers of the Government. He has obtained a licence and made imports under the same.

Insofar as the present import is concerned it is strictly in terms of the licence and it is not outside the scope of the licence If the contention is raised

by the petitioner in the adjudication proceedings that the authorities are not entitled to amend the licence as they are bound by the principle of

promissory estoppel, the above rulings cited by learned Counsel to the.

respondents may be relevant. But insofar as the present import is concerned there is no doubt whatever that it is within the four corners of the licence already issued and existing. As stated earlier, until it is amended or cancelled the petitioner is entitled to make imports in terms thereof.

25. In the same case it is pointed out by the Apex Court that when the Government seeks to relieve itself from the application of principle of

estoppel, it is bound to place before the Court the material, the circumstances or the grounds on which it seeks to resile from the promise made or

the obligation undertaken by insistence of enforcing the promise, how the public interest would be jeopardised against private interest. In the

present case the counter-affidavits filed by the respondents do not contain any such materials. There is absolutely no whisper as to how public

interest would suffer if the goods imported at present are allowed to be cleared by the petitioner. In fact, there is no plea that the licence in question

was issued on account of a mutual mistake of fact or law or that it was inadvertently issued. The case of inadvertence is found only in the show-

cause notice issued to the petitioner on 1.2.1993 and in the counter-affidavit the stand taken by the fourth respondent is that it is the subject matter

of the adjudication proceedings and this Court cannot go into it. In the absence of any specific plea in the counter-affidavits, learned Counsel for

the petitioner is quite justified in submitting that learned Counsel for the respondents should not be permitted to address arguments on the basis of

mutual mistake or inadvertence. He relies on the ruling in Shiva Prasad Singh Vs. Maharaja Sris Chandra Nandi, in support of the said contention

that a pleading is necessary for raising a question of mistake.

26. Even if the contention of the respondents' counsel that the licence was issued on account of a mutual mistake of law is accepted, that will not

invalidate the licence or make it null and void. In Dhanyalakshmi Rice Mills and Others Vs. The Commissioner of Civil Supplies and Another, the

Apex Court dealt with the question of mutual mistake and stated the law thus:

A contract entered into under a mistake of law of both parties falls u/s 21 of the Contract Act and not Section 72. If a mistake of law had led to

the formation of a contract, Section 21 enacts that the contract is not for that reason voidable. If money is paid under that contract, it cannot be

said that the money was paid under mistake of law, it was paid because it was

due under a valid contract, if it had not been paid payment could have been enforced. See AIR 1949 297 (Privy Council) See also Pollock and Mulla "Contract Act" 9th Ed. by J.L. Kapur pp.519-51.

27. If the principle underlying Section 21 of the Contract Act is applied, though the licence is not a contract as such, it goes without saying that the licence is valid and enforceable until it is cancelled or modified.

28. As submitted by learned Counsel for the petitioner the law of estoppel would, if at all, come into play only with reference to the adjudication proceedings and future transactions. It must also be noted that though as a general rule the doctrine of estoppel may not be applied against the State in its governmental, public or sovereign capacity, an exception has always been recognised in cases where it is necessary to prevent fraud or manifest injustice. Vide M. Ramanatha Pillai Vs. The State of Kerala and Another, .

29. It has also been held by a Division Bench of the Court in K.K. Jacob Vs. The Madurai University and Another, that silence and delay on the part of the concerned authorities would justify the invocation of the doctrine of estoppel.

30. In the present case I have already pointed out that the licence issued to the petitioner went before the authorities concerned at atleast two times, once for considering the request of the petitioner in its letter dated 3.8.1992, and again, on acceptance of the petitioner's request for enhancement of the value of the licence. The authorities had ample time to realise the mistake, if any, and take proceedings for amending the licence suitably long before the import. Moreover, as pointed out by learned Counsel for the petitioner, in the letter dated 3.8.1992 a request was made for removing the quantity restrictions but actually the authorities removed the value restriction which was alone mentioned in the licence earlier. On receipt of the letter dated 3.8.1992 the authorities could well have discovered that quantity restrictions were not specified in the licence as issued originally.

31. Taking all the circumstances in the case into consideration I have no hesitation to grant the prayer made by the petitioner, insofar as the present import is concerned. A mandamus will issue directing the respondents 1 to 3 to assess the petitioner's bill of entry bearing No.38640 dated 11.11.1992 and release the goods. Consequently the fourth respondent is also

directed to return the licence and the D.E.E.C. Book within two weeks from to-day to respondents 2 and 3 so that they could complete the assessment of the bill of entry. The assessment should be completed within one week from the date of receipt of the licence and D.E.E.C. Book from the fourth respondent. After completion of the assessment and release of the goods, respondents 2 and 3 may send back the licence and the D.E.E.C. Book to the fourth respondent for proceeding further with the adjudication proceedings. The writ petition is allowed on the above terms. No costs.