(1993) 06 AP CK 0033

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11793 of 1990

M/s. Bajrang Industries — APPELLANT

Vs

The General Manager, District Industries Centre, Vizianagaram District — RESPONDENT

Date of Decision : 29-06-1993

Acts Referred:
Evidence Act, 1872 — Section 115

Citation : AIR 1994 AP 10 : (1993) 2 ALT 450

Hon'ble Judges : Immaneni Panduranga Rao, J

Bench : Single Bench

Advocate : M/s. Dube Mohan Rao, Duba V. Nagarjuna Babu and R. Ramachandra Rao, for the Appellant; Government Pleader for Industries, for the Respondent

Judgement

1. This petition for a writ of mandamus is filed by a Unit established in an industrially backward area in Vizianagaram District on the allegations that the Government of Andhra Pradesh have promised certain incentives like Investment Subsidy, Deferment of Sales Tax, 25% Power Rebate etc., in terms of G.O. Ms. No. 375 Industries and Commerce Department dated 23-8-85 (hereinafter referred to as ''G.O.Ms. No. 375); that the petitioner got registered with the respondent for the above incentives; that the respondent issued the Eligibility Certificate dated 31-3-88 for claiming the above incentives; that the District Level Committee in its meeting held on 3-10-88 sanctioned State Investment Subsidy of Rs. 41,535/- and Deferment of Sales Tax to the tune of Rs.62,302/-; that subsequently even the Director of Industries, Andhra Pradesh through his letter dated 30-3-89 informed the petitioner that the amount of Rs. 41,535/- has been released towards the State Investment Subsidy and directed the petitioner to collect the cheque through Andhra Pradesh State Finance Corporation after consulting the respondent and that when the petitioner approached the respondent, the respondent was maintaining absolute silence.

2. The respondent opposed the claim of the petitioner by pleading in the counter-

affidavit that no doubt Vizianagaram District is a growth centre identified for grant of incentives under New State Incentive Scheme for certain new Industries; that the petitioner''s unit was registered to avail the incentives; that the Annexure ''A'' to G.O.Ms. No. 375 lays down that as per Serial Numbers 32 and 65 the activities of Groundnut Decorticating and Jute Baling are included in the list of Industries which are not eligible for grant of incentives; that this fact was noticed while scrutinising the papers for release of subsidy; that when this fact was brought to the notice of the Director of Industries, Hyderabad, the latter issued instructions for cancelling the incentives granted to the petitioner, if not already released and to recover the amount, if disbursed to the petitioner; that the petitioner has established the Unit in Sativada village in view of the resources available such as raw material, labour and power etc., in and around the village and that the petitioner''s contention that the Unit was started keeping in view the incentives available is not correct.

3. The petitioner''s counsel submitted that it is only lured by the attractive incentives offered by the Government that the petitioner has established its Unit in an industrially backward area after spending huge amounts; that the respondent having issued the Eligibility Certificate, the District Level Committee having sanctioned the Investment Subsidy and even the Director of Industries having directed the petitioner to collect the amount through Andhra Pradesh Finance Corporation, the respondent is estopped by the "Doctrine of Promissory Estoppel" to contend that the petitioner is not entitled for the incentives promised under G. O. S. Ms. No. 375.

4. In support of his contention that the respondent is bound by the Doctrine of Promissory Estoppel, the learned counsel for the petitioner has placed reliance upon the decisions of the Supreme Court in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, and Pournami Oil Mills and Others Vs. State of Kerala and Another, . In Motilal Patampat Sugar Mills v. State of U.P. (supra), the Supreme Court held that the Doctrine of Promissory Estoppel is a principle evolved by equity to avoid injustice and that 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 effect 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 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 pre-existing relationship between the parties or not.

5. In Pournami Oil Mills v. State of Kerala (supra), the Government Order granted package of concessions to new Small Scale Industries in order to boost industrialisation in the State. The said concessions were curtailed "by the subsequent Order. The Supreme Court held that the Small Scale Units set up in

response to the first Order and before passing of subsequent order are entitled to plead estoppel and that such Units would be entitled to get all the concessions granted by first Order.

6. In the light of the specific allegation in the counter-affidavit filed by the respondent that as per Serial Nos. 32 and 65 of Annexure ''A'' to G.O.Ms. No. 375, the activities of Groundnut Decorticating and Jute Baling are not eligible for grant of incentives, I questioned Sri Duba Mohan Rao, the learned counsel for the petitioner, whether he has got the Annexure to G.O.Ms. . No. 375 in order to verify whether Serial Nos. 32 and 65 exclude the applicability of the G.O. to Groundnut Decorticating and Jute Baling activities. The learned counsel while submitting that he does not have the Annexure, however, stated across the Bar that it may be correct that those Serial Numbers in Annexure ''A'' lay down that Groundnut Decorticating and Jute Baling activities are not eligible for grant of incentives. In the light of that submission made during the course of arguments, I proceed on the basis that as per Serial Nos. 32 and 65 of Annexure ''A'' to G.O.Ms. No. 375 the activities of Groundnut Decorticating and Jute Baling are not eligible for grant of incentives.

7. The learned counsel for the petitioner argued that in spite of the entries referred to above in Annexure ''A'' inasmuch as the respondent had issued the Eligible Certificate dt: 31-3-1988 for claiming the incentives granted under G.O.Ms. No. 375, the District Level Committee in its meeting held on 3-10-88 sanctioning the State Investment Subsidy and Deferment of Sales Tax and the further fact that the Director of Industries also through his letter dt: 30-3-89 informed the petitioner that he has released Rs.41,535/-towards State Investment Subsidy, the respondent is prevented by Docrine of Promissory Estoppel from withholding the payment through Andhra Pradesh Finance Corporation. The learned counsel for the petitioner, therefore, submitted that the ''respondent should be directed by a writ of mandamus to cause payment of the State Investment Subsidy already released in favour of the petitioner.

8. The learned Government Pleader for Industries vehemently opposed the writ petition by pleading that since as per G.O.Ms. No. 375, relied upon by the petitioner, the petitioner is not eligible for the incentives under the said G.O. Ms. No. 375, the question of estoppel much less promissory estoppel does not arise in the case. The learned Government Pleader submitted that before seeking the enforcement of the Docrine of Promissory Estoppel the petitioner must establish its entitlement. In support of his contention he relied upon certain decisions of the Supreme Court.

9. In M. P. Sugar Mills v. State of U.P. (supra), referred to by the learned counsel for the petitioner, the Supreme Court while explaining the scope of the Docrine of Promissory Estoppel and its applicability laid down that the Government or even a private party cannot be compelled by invoking the principle of Promissory Estoppel to do an act prohibited by law.

10. In Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, , the learned Judges held that the principles of Promissory Estoppel are not avaible in a case where the public authority acts beyond the scope of its authority or in other words, if the representation made by the authority is ultra vires its powers, plea of estoppel will not be available to enforce the representation so made.

11. In Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., , the Supreme Court once again reiterated the position that the Government or public authority cannot be compelled to carry out the representation or promise which is contrary to law and that it cannot also be compelled to carry out a representation or promise which is ultra vires the power of the officer of the Government or public authority who or which made the representation or promise.

12. In Vasantkumar Radhakisan Vora Vs. The Board of Trustees of the Port of Bombay, , the Supreme Court having once again considered the applicability of Promissory Estoppel held that the representation made by the Estate Manager of the Bombay Port Trust is beyond his authority and, therefore, Promissory Estoppel cannot be invoked to enforce the representation made by the officer which is ultra vires his powers.

13. From the above discussion it follows that the Docrine of Promissory Estoppel cannot be invoked to compel the Government or a public authority to carry out 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. In other words the Docrine of Promissory Estoppel cannot be pressed into service when the representation made by the officer or authority is beyond its powers and if it is ultra vires the powers of the officer or the authority.

14. Applying the above principles discussed in detail and decided by the Supreme Court in the decisions referred to above, to the facts of the present case it is seen that the Entries 32 and 65 specifically exclude the grant of incentives referred to in G.O.Ms. No. 375 to the activities of Groundnut Decorticating and Jute Baling. The petitioner is admittedly a Small Scale Industrial Unit carrying on the activities of Groundnut Decorticating and Jute Baling. When the G.O., specifically excludes the incentives to the nature of the activities to be carried on by the petitioner, the petitioner cannot be heard to contend that basing on the representation made in the G.O. promising certain incentives the petitioner has located its business in Sativada village which is located in growth centre of Vizianagaram District. The action of the respondent in issuing the Eligibility Certificate dt: 31-3-88, the decision taken by the District Level Committee in its meeting held on 3-10-1988 sanctioning State Investment Subsidy and Deferment of Sales Tax to the petitioner and the letter addressed by the Director of Industries dt: 30-3-1989 informing the petitioner that an amount of Rs. 41,535/-has been released towards State Investment Subsidy are all communications made or orders passed by the authorities which do not have power to issue the Eligibility Certificate or to sanction the incentives or releasing

the amount. Whether the said authorities have acted intentionally or inadvertently or even mischievously to help the petitioner, the above acts do not bind the Government.

15. In order to invoke the Docrine of Promissory Estoppel it is the primary duty of the petitioner to establish that it is eligible for certain incentives sanctioned under a particular G.O. and because of such eligibility and with a view to take advantage of the incentives under the G.O., the petitioner has located the industry in a particular growth centre. When admittedly such incentives are excluded for the nature of business established and carried on by the petitioner, there is no question of any promise made by the Government basing upon which the petitioner has changed its position thereby compelling the respondent to sanction the incentives under G.O.Ms. No, 375. The issuance of Eligibility Certificate or the sanction made by the District Level Committee or the letter addressed by the Director of Industries directing the petitioner to collect the amount through Andhra Pradesh State Finance Corporation are all issued or made without authority and the Docrine of Promissory Estoppel cannot be invoked when the acts of the public authority are ultra vires and beyond their powers. The mere fact that the matter has reached the final stage of issuing the cheque does not alter the situation in the matter of applicability of Docrine of Promissory Estoppel.

16. The writ petition is, therefore, dismissed. No costs.

17. Petition dismissed.

