
(1993) 07 KL CK 0088
In the High Court Of Kerala
Case No : O.P. No. 10918 of 1989-Y

P.V. Balakrishnan Nair

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 26-07-1993

Acts Referred:

Evidence Act, 1872 — Section 115

Citation : AIR 1994 Ker 6 : (1994) 2 ILR (Ker) 139

Hon'ble Judges : G.H. Guttal, J

Bench : Single Bench

Advocate : C.K. Manikantan and M. Ramesh Chander and M. Vijaya Kumar, for the Appellant; C.N. Radhakrishnan, Addl. Central Govt. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

G.H. Guttal, J.—This petition under Article 226 of the Constitution of India presents yet another dimension of the doctrine of estoppel --

which as the judicial decisions demonstrate, has many facets.

2. The petitioner, the owner of Kamala International Hotel, Cannanore, approved by the Tourism Department of the Government, seeks to compel

the respondents to pay Rs. 5.03 lakhs of subsidy under the Central Investment Subsidy Scheme, promised under the letter No. FC.F3/32598/89

dated 28-9-1989 (Ext. P2) written on behalf of the respondents 1 and 2, who are respectively, the State of Kerala, and the General Manager of

the District Industries Centre. The respondent No. 3 is the Union of India. The facts are set out in paragraphs 3 to 6 below.

3. According to the petitioner, the respondents 1 and 2 .by their letter No. FC.F3/32598/89 dated 28-9-1989 (Ext. P2) and acting under the

Scheme promised that the amount of Rs. 5.03 lakhs will be released to the petitioner through the District Cooperative Bank, Cannanore, towards the aforesaid subsidy.

4. The 10-15% Central Investment Subsidy Scheme of 1991 (Ext. R3(c)) -- the Scheme -- came into force on 26th August, 1971 and the valid

during the period of the Fourth Five-Year plan. Thereafter it was extended from time to time. The last such extension of its duration was from 1st

April, 1988 to 30th Sept. 1988. (Ext. R3(b) Notification). The scheme ceased to exist from 1st October, 1988. The object of the scheme was to

encourage development of industries in certain backward areas.

The substance of the scheme in so far as is relevant to this case is as under:

The industrial units duly registered with the concerned department of the State, may apply for grant of subsidy based on their project reports,

submission of the details of the project, assets required, letter of sanction from the financial institution, sanctioning the loan and so on.

The State Government constitutes a committee known as the State Level Committee -- S.L.C. for short -- consisting of the Secretaries to the

State Government in Industries Department and Finance Department and other officers. The authority to decide whether the industrial unit qualifies

for the grant of subsidy belongs to the S.L.C. It is the S.L.C. that determines the quantum of the subsidy. The limit of the authority of the S.L.C. to

determine the quantum is 15% of the value of investment up to a maximum of Fifteen lakhs rupees. The S.L.C. has the over all authority over the

disbursing agencies, like the respondent No. 2, who disburse the amount of subsidy sanctioned by the S.L.C. After disbursing the amount of

subsidy, the agency prefers a claim with the S.L.C. for reimbursement of the amount disbursed. The respondent No. 2 is such a disbursing agency.

It is the Central Government that finally disburses the amount of subsidy to the S.L.C.

The S.L.C. sanctions and the disbursing agency pays the amount of subsidy to the industrial unit. It is only, thereafter, that the Central Government

disburses to the agency the amount paid by it.

5. The petitioner applied for grant of central subsidy under the scheme. The application was made before 30th Sept. 1988 while the scheme was in

force. It was scrutinised by the State Level Committee. But the S.L.C. did not

sanction the subsidy while the scheme was in force. The ""sanction was accorded by the letter No. FC.F3/32598/89 dated 28-9-1989, when the scheme was not in force. The S.L.C. who ""sanctioned"" the central subsidy, was a creature of the scheme. When the scheme ceased to be in force on 1st October, 1988, the S.L.C. too ceased to exist.

6. Counsel for the petitioner based his case on the ""promise"" contained in the letter No.FC.F32598/89 dated 28th Sept. 1989, written by the

S.L.C. By this letter the S.L.C. informed the petitioner that the S.L.C. at its IVth meeting of 1989 held on 27-9-1989 sanctioned a subsidy of Rs.

5.03 lakhs payable through the District Co-operative Bank, Cannanore.

The only point urged by learned counsel for the petitioner is that the respondents 1 and 2 and their agency, the S.L.C., on whose promise, the

petitioner acted, are estopped from withholding or denying to the petitioner of the amount of subsidy.

7. The undisputed facts are these:

(i) The petitioner relied upon the scheme and expected that he would be granted the subsidy.

(ii) Acting on the letter dated 28-9-1989 (Ext. P2) the petitioner executed the requisite agreements and deposited Rs. 25,000=00 in Bhadrata

account as required by the respondents Nos. 1 and 2.

The arguments proceeded on the assumption that the petitioner, acting on the aforesaid letter, altered his position.

8. The basic principles of the doctrine of estoppel may be summarised.

Where a promise is made with the intention that the other party should act upon it, the promisor can be compelled to keep his word, if the

promisee has acted upon the promise. The promise need not prove that, acting on the promise, he suffered prejudice, detriment or damage, Motilal

Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, . However, the indispensable requirement of the rule of estoppel is that the

promise altered his position Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI), . The doctrine applies to all public authorities including

public corporations. Such corporation can be compelled to perform their obligations arising from a promise made by them. Gujarat State Financial

Corporation Vs. Lotus Hotels Pvt. Ltd., .

In the application of the doctrine of estoppel the limitations of its application cannot be lost sight of. The doctrine is not applicable irrespective of

the circumstances in which the promise was made and the situations which it was intended to meet. In public law the most obvious limitation on the

doctrine of estoppel is that it cannot be invoked so as to give an authority powers which it does not, in law, possess. In other words, no estoppel

can legitimise action which is ultra vires Administrative Law --H.W.R. Wade, Fifth Edition, Page 233. For instance, where an electricity authority,

by misreading a meter, undercharged its customer, it was held that the accounts it delivered did not estop it from demanding payment in full. The

reason is that the authority had statutory duty to collect the full amount and had no power to release the customer, expressly or otherwise.

Administrative Law -- H.W.R. Wade, Fifth Edition, page 233. Secondly, the promisor cannot be compelled to perform his promise if it is

inequitable to do so. Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, . Since the doctrine is an equitable doctrine

the promisor will not be bound to fulfil the promise if it is shown that equity lies in his favour Motilal Padampat Sugar Mills Co. Ltd. Vs. State of

Uttar Pradesh and Others, . Thirdly, promisory estoppel cannot be used 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 in the officer of the Government or the public

authority to make Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, ; (b) Vasantkumar Radhakisan Vora Vs. The

Board of Trustees of the Port of Bombay, .

A fifth limitation arises where Government's policy is concerned. Where Government changes its policy resulting in refusal to fulfil the promise, no

estoppel arises. Many people may be victims of such reversal of policy. But estoppel cannot be allowed to hinder the formation of policy, Laker

Airways Ltd. v. Department of Trade 1977 LLJ 643 .

9. In considering whether the respondents 1 and 2 are estoppel from denying the payment of subsidy, two striking facts about the promise

contained in the letter by the S.L.C. dated 28-9-1989 (Ext. P2) must be borne in mind:

(i) The scheme under which the S.L.C. derived its authority to sanction subsidies

to Hotel Industry ceased to exist on 1st October, 1988.

Consequently, the S.L.C. a creature of the Scheme ceased to exist with effect from 1 st October, 1988.

(ii) As a corollary, it follows that the sanction of the subsidy -- the promise -- was made by a body which had no authority to make it.

10. In view of the two facts set out in paragraph 9 above, the promise by the S.L.C. becomes without authority and estoppel cannot be invoked to

legitimate action which is ultra vires. Realising that the S.L.C. had no legal existence after 1st October, 1988 making its promise unauthorised,

learned counsel for the petitioner called in aid the judgment in *Robertson v. Minister of Pensions* (1949) 1 KB 227. The circumstances in which the

doctrine of estoppel was applied explain the rationale of the judgment. Robertson, a colonel in the Army suffered a permanent physical disability

during the war in 1940. Two departments of the Government, the War Office and the Ministry of Pensions, were concerned with the grant of

pension to Robertson. Robertson based his claim on the certificate of disability issued by the Army Medical Board. The Director of Personnel

Services of the War Office, on 8th April, 1941 wrote to Robertson that ""your case has been duly considered and your disability has been

accepted as attributable to military service."" The acceptance of attribut-ability of the disability to military service entitled Robertson to pension. But

the letter dated 8th April, 1941 was written without even consulting the Department of Pensions who declined to pay. If the war office were to

hold that the disability was not attributable to war service, Robertson would have obtained independent medical opinion which he did not do. He

thus altered his position, acting on the letter from the Director of Personnel Services. Denning, J. made these findings:

(i) Robertson, an officer in the Army who naturally dealt with the war office was entitled to assume that the war office had issued the letter after

consulting the Minister of Pensions.

(ii) The war office assumed authority over the matter and made the assurance contained in the letter dated 8th April, 1941, which, in the

circumstances, was authoritative decision intended to be binding and intended to be acted upon.

(iii) The citizen is not expected to know the limits of the authority to make the

promise.

(iv) If a Government Department in its dealings with a subject takes upon itself to assume authority upon a matter with which he is concerned, he is entitled to rely upon it.

(v) The war office is an agent of the Crown. Its letter binds the Crown through whom it also binds the Minister of Pensions.

11. There are clear features which distinguish Robertson's case with the case which I am called upon to decide. The assurance by the war office

was held authoritative, as Robertson, an officer in Army naturally looked to the war office to whom he was subordinate. The relation was of

employer and employee. In the present case, there is no such relationship between the petitioner and the S.L.C. Secondly, the Crown was held

bound by the promise by the Director of Personnel Services, irrespective of whether the latter acted within his authority. In this case the Central

Government which provides the funds for disbursement of the subsidy is not bound by the sanction by the S.L.C. unless it acts within the scheme.

Thirdly, it has not been held in Robertson that a promise by a department who lacks the authority to certify attributability to military service, by

itself estops the Crown. Denning, J. construed the circumstances such as the relationship between the Minister of War, and the Minister of

Pensions or. the one hand, and the Crown on the other, and read in the letter an authority in the war office to make the promise. A fourth

distinguishing feature is that whether the Ministry of Pension had authorised it or not, the Crown was held bound by what the war office promised.

While these distinguishing features are sufficient to make, Robertson, Roberlson v. Minister of Pensions (1949) 1 KB 227 inapplicable to the facts

of the case before me they do not end the matter. The question of authority of the promisor continues to raise its head and demands an answer.

The assumption of authority by the Director of Personnel Services of the war office, was the dominant feature of the case. By analogy, it has been

urged that S.L.C. too assumed such authority when it sanctioned the subsidy. But this argument is not tenable. The war office has continued

authority to deal with cases of the members of the armed forces. Its authority did not flow from a temporary scheme nor was It limited by time, as

in this case. Secondly, the war office was not altogether without authority to

determine the cases of pensions of the army personnel. Its letter would have been authoritative if the Ministry of Pensions had concurred with it. In Robertson, the question of authority arose because the letter was written without the concurrence of or consultation with the Ministry of Pensions who was concerned with the payment of pensions. In the case of S.L.C., it cannot be said that it would have acquired the authority to sanction the subsidy, if it had consulted any other department of the Government. A close scrutiny of the case of Robertson and this original petition shows that the rule laid down in Robertson is not applicable, to the circumstances of this case.

12. I will now examine the validity of the principle laid down in Robertson, Robertson v. Minister of Pensions (1949) 1 KB 227. For this purpose

I will examine whether the principle is accepted in England. The basic postulate of Robertson was that where a Government Department

wrongfully assumes authority to perform some legal act, the citizen is entitled to assume that it has that authority Administrative Law -- H.W.R.

Wade, Fifth Edition Page 342. The British judicial decisions have not accepted this proposition. When the same proposition was repeated by

Denning, L. J. in a later case, the House of Lords repudiated it in these words:

..... I know of no such principle in our law nor was any authority for it cited. The illegality of an act is the same whether, or not the actor has been

misled by an assumption of authority on the part of the Government officer however high or low in the hierarchy

Howell v. Falmouth Boat Construction Co. Ltd. 1951 AC 837.

If the promise by an official who has no legal power is given the force of law, ultra vires acts will gain legitimacy which is a negation of the

fundamental canons of administrative law Administrative Law -- H.W.R. Wade, Fifth Edition, Page 345. Where a public authority without having

real or ostensible authority sold the property of the Crown, it was held that the Crown was not bound by the sale. The burden of ascertaining

whether the officer has such authority is on the purchaser A.G. For Ceylon v. A.D. Silva 1953 AC 461 at page 480).

In Western Fish Products, Western Fish Products Ltd. v. Penwith D.C. (1981) 2 All ER 204, the planning officer without having the authority,

stated that Western Fish Products had the existing user right in respect of the

site in question and that the District council who had the statutory authority would grant planning permission. Acting on the planning officer's statement Western Fish Products proceeded to renovate and rebuild the old buildings. The District Council in exercise of its statutory authority rejected the applications for established use certificates and issued stop notices. It was held that since there was nothing apart from the position held by the Planning Officer on which the Western Fish Products could have assumed that the officer could bind the council, the council was not estopped by anything the planning officer had said, from refusing the applications by Western Fish Products.

13. The analysis of the law in England made in the last paragraph may be summed up.

The House of Lords in *Howell, Howell v. Falmouth Boat Construction Co. Ltd.* 1951 AC 837, expressly and emphatically rejected the

proposition laid down in *Robertson, Robertson v. Minister of Pensions* (1949) 1 KB 227. In *A.G. for Ceylon, A.G. For Ceylon v. A.D. Silva*,

1953 AC 461 at page 480, the sale of Government's property by an officer having no authority was held not binding on the Government. This

judgment is a rejection of the claim of legitimacy by ultra vires acts. *Western Fish Products, Western Fish Products Ltd. v. Penwith D.C.* (1981) 2

All ER 204 also demonstrates that unauthorised promises do not create estoppel.

Denning, J. assumed that the citizen is not expected to know the limits of the authority to make promises. Considerations of hardship to the citizen

led him to this conclusion. But in *A.G. for Ceylon, A.G. For Ceylon v. A.D. Silva* 1953 AC 461 at page 480 this very proposition was rejected.

I therefore conclude that *Robertson, Robertson v. Minister of Pensions* (1949) 1 KB 227 which has been rejected in England does not lay down

the correct law. Its assumption that an unauthorised promise creates estoppel is contrary to the fundamental principle of administrative law that

estoppel cannot be invoked to legitimise ultra vires actions. Again the proposition that a citizen is not expected to know the limits of the authority of

an officer to make the promise tends to legitimise unauthorised promises. To hold that a citizen, acting on an unauthorised promise without

enquiring into the limits of such authority, can bind a public authority, is to create a power which does not exist.

14. In the present case the S.L.C. wrote the letter dated 28-9-1989 (Ext. P2) at a time when the scheme which created the S.L.C. was not in force. The termination of the scheme with effect from 1-10-1988, automatically terminated the S.L.C. The ""promise"" or ""sanction"" contained in the letter dated 28-9-1989 (Ext. P2) was therefore an assurance by a non-existent body. Even if the existence of the S.L.C. is assumed, the letter dated 28-9-1989 (Ext. P2) was without the authority of the scheme. The ""sanction"" or ""promise"" was ultra vires of the authority of the S.L.C. and therefore no estoppel arises out of such a promise. The submission of the petitioner that the respondents are estopped from denying the payment of the subsidy is without merit.

15. In view of my conclusions recorded above it is not necessary to consider whether equity lies in favour of either of the parties.

16. The petition is dismissed.