

(1991) 03 OHC CK 0021

In the Orissa High Court

Case No : Original Jurn. Case No. 1729 of 1985

Rabisankar Choudhury and Another

APPELLANT

Vs

Orissa State Financial Corporation and Others

RESPONDENT

Date of Decision : 15-03-1991

Acts Referred:

Evidence Act, 1872 — Section 115

Citation : AIR 1992 Ori 93

Hon'ble Judges : B.L. Hansaria, C.J;M. Dash, J

Bench : Division Bench

Advocate : A. Mukerjee, for the Appellant; S.S. Mohanty, for the Respondent

Judgement

Hansaria, C.J.—The Government slogan of "One thousand industries in one thousand days with one thousand crores" given in 1980 as a part of the 20-point economic programme caught the attention of petitioner No. 1 (hereinafter referred to as "the petitioner") who is an educated unemployed youth. He planned to set up a cold storage unit and for this purpose registered his company with the District Industries Centre as well as with the Orissa Small Industries Corporation. A feasibility report for the set up of the unit was prepared by the Orissa Industrial and Technical Consultancy Organisation which is a subsidiary of the Industrial Development Bank of India. The petitioner also purchased Ac. 1.12 of Sthitiban land on the southern side of Kathjori river at a price of Rs. 25,000/- for the establishment of the unit. This was in February, 1981. In September, 1981, he applied for a loan of Rs. 30,00,000/-. The loan came to be sanctioned vide communication of the Orissa State Financial Corporation (for short, "the Corporation") dated 23-10-1982 (Annexure 4). The sanction letter stated that the Corporation had agreed in principle to provide a term loan of Rs. 22,47,000/- to set up the cold storage unit at Urali. Certain terms and conditions were mentioned in the sanction letter which ended by saying that the intimation did not constitute a commitment on the part of the Corporation. It may be stated that before the loan had been sanctioned, a pre-sanction inspection report had

been prepared by an officer of the Corporation. The case of the petitioner is that after the loan was sanctioned, he invested about a sum of Rs. 3.5 lakhs some time in December, 1982 for making brisk preparation for building up infrastructure. But then, a bolt almost from the blue came when the petitioner was informed by the Corporation vide Annexure 8 dated 15/18-2-1983 that the loan sanctioned in his favour had been cancelled. The decision to cancel the loan came to be taken following the devastating flood in river Kathjori in September, 1982 which inundated the site of the proposed unit also. The petitioner thereafter made various efforts to persuade the Corporation to resanction the loan by stating that the flood in Kathjori which took place in 1982 was the highest ever recorded since 1770 and as such this unprecedented act might not be regarded as sufficient to fall back on the promise following which the petitioner had altered his position to his disadvantage.

2. Getting no favourable response, the petitioner approached this Court in O.J.C. No. 2795/84 wherein this Court observed on 4-3-85 that the grievance of the petitioner relating to the withdrawal of the loan needed to be considered afresh by the Managing Director of the Corporation. It was also desired by this Court that in doing so, the petitioner would be heard by the Managing Director. The petitioner thereafter made many efforts to satisfy the mind of the Corporation that the site selected for the purpose of installing the unit might not be regarded as unsuitable inasmuch as the site is about 40" above the river bed and is protected by stone packing and that the river remains dry for 10-11 months of the year. The petitioner also undertook to take any safety measures which may be suggested by the Corporation and also to get the unit insured from the inception. Despite all these pleadings, the petitioner failed to persuade the Board of Directors of the Corporation to accept his representation for extending finance by the Corporation to set up the unit at the particular site. The petitioner was communicated about this decision vide Annexure 22 dated 14-5-1985. Getting no relief at the hand of the Corporation, this Court has been approached again under Article 226 of the Constitution.

3. The sole submission of Shri Mukherjee is that having once promised to advance a loan of Rs. 22,47,000/-, following which the petitioner spent about Rs. 3.5 lakhs of his hard earned money, the Corporation may not be allowed to fall back on the promise. The doctrine of promissory estoppel is pressed into service strenuously by the learned counsel contending that the mere fact that the site was flooded in the worst ever flood of two centuries may not be regarded as a good ground to fall back on the promise held out by the Corporation. In this connection, strong reliance is placed by Shri Mukherjee on Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., On the facts of that case, it was stated that if the appellant had entered into a solemn contract in discharge and performance of a statutory duty and the respondent had acted upon it, the appellant could not be allowed to act arbitrarily so as to cause harm and injury flowing from its unreasonable conduct to the respondent. Being of this view, the Apex Court upheld the direction given to the appellant by the High Court to

perform its statutory duty to advance the loan which had been sanctioned in favour of the respondent.

4. Shri Monanty appearing for the Corporation urges that the aforesaid decision would have no application to the facts of the present case inasmuch as the cancellation of the loan cannot be regarded as arbitrary or due to any action flowing from unreasonable conduct on the part of the Corporation, as found in the aforesaid decision. It is also contended by Shri Mohanty that in the present case there being no clear and unequivocal promise, the doctrine of promissory estoppel has no application. In this connection, reference is made to the leading decision on the subject of promissory estoppel, the same being *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, Reference is also made to the statement of law in *Anson's Law of Contract*, 25th Ed., page 114, where it is stated that for an estoppel to arise, the promise must be clear and unequivocal and that no estoppel can arise if the language of the promise is indefinite or imprecise. We have also noted that in *Lotus Hotels'* case, the Court accepted, following what was stated in *Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others*, that if the changed situation is brought about on the mere whim of the officer on some undefined and undisclosed grounds of necessity, the party falling back can be bound by promissory estoppel.

5. Let it be seen whether there was clear and unequivocal promise in the present case on the part of the Corporation and whether the same was retraced thereafter arbitrarily and unreasonably on the mere whim on some undefined and undisclosed ground.

6. As to the promise being not clear and unequivocal, Shri Mohanty draws our attention to the sanction letter (Annexure 4) wherein it is stated that the loan had been sanctioned in principle with the further rider that the intimation of sanction did not constitute a commitment on the part of the Corporation. In this connection, the learned counsel also brings to our notice the relevant resolution of the Board of Directors by which the loan was sanctioned which has stated that the Board agreed in principle to sanction the loan on the terms and conditions contained in the memorandum "after verifying the suitability of the site and stipulating conditions regarding flood insurance". As to this Board's resolution mentioning specifically about the suitability of the site, Shri Mukherjee states that the petitioner was not aware as nothing was indicated in the sanction letter as issued by the Corporation about this; and so it cannot be held that the promise to sanction loan was not clear and unequivocal. There is force in the contention of Shri Mukherjee. In this connection, it is also brought to our notice that in the sanction letter the Corporation had stated that it had agreed to advance loan for setting up the unit at Urali, which would seem to suggest acceptance of the site at Urali as mentioned by the petitioner in his loan application. Even if some allowance is given for this submission of Shri Mukherjee, it cannot be forgotten that the sanction letter clearly stated that the intimation did not constitute a commitment on the part of the Corporation. There

is no ambiguity in the statement, and it should have put any investor on his guard. On the face of this statement in the sanction letter, we would not be justified in holding that there was clear and unequivocal promise to advance money, come what may.

7. The above is not the end of the matter inasmuch as the Corporation was definitely seized with the question as to whether in view of the flooding of the site, it would be wise and safe to invest a huge sum of Rs. 22,47,000/-. A burnt child dreads the fire. To satisfy the mind of the officers of the Corporation about the safety of the investment, the site was inspected many a time. The first such inspection was in December, 1982 -- the flood having taken place in September, 1982. It was found that the strip of land on which the unit was proposed to be set up was situated in between the southern bank of Kathjori and the protection dyke running along the river. The highest level of the land was found to be 5-6" below that of the dyke. The Deputy General Manager and the Secretary of the Corporation, therefore, took the view because of this and other reasons recorded in Annexure 11 that it would not be advisable to have a cold storage building at the site. It was stated in this report that even if there would be due insurance against flood and cyclone, the building on such land would be most hazardous. The second inspection was in June, 1983, when the Managing Director of the Corporation and the Managing Director of the Industrial Development Corporation (IDCO) inspected the site. The two functionaries in their report dated 2-6-83 (Annexure C/1) came to the conclusion that the land in question was completely unsuitable for the purpose of setting up a cold storage having an investment of about 35 lakhs because of which it was suggested that the party may approach the IDCO for an alternative plot of land where the unit would not be affected by flood. When this inspection was made, one Shri G.C. Patra was the Managing Director of the Corporation. Thereafter, Shri S.K. Patnaik became the Managing Director and he inspected the site again in the month of November, 1983. He also came to the conclusion that the site was unsafe and unsuitable for a heavy building like cold storage. It was further observed in his tour note (Annexure E/1) that there was apprehension of erosion of land by scouring. It was stated that because of the construction of the new embankment, already some scouring was visible.

8. Shri Mohanty has also stated in this connection that after the joint inspection report of the Managing Directors of the Corporation and IDCO was brought to the notice of the Government, a communication was addressed by the Deputy Secretary to the Government in the Industries Department to the Managing Director of the Corporation as at Annexure D/1 dated 23-6-1983 by stating that the Corporation should not finance the proposed unit for cold storage to be set up at the particular site at Urali.

9. In view of all that is stated above, we would not be justified in stating that the action of cancellation of the loan was arbitrary or was due to mere whim on the part of the Corporation. The ratio of Lotus Hotels" case, therefore, cannot assist

the petitioner.

10. Shri Mukherjee has, however, strenuously contended that the view taken by the officers of the Corporation is not sound. To satisfy the mind of this Court, he pleaded that an Expert Committee may be constituted by the Court to go into this aspect of the matter. At one stage we ourselves thought that it would be appropriate if such a committee is formed and so vide our order passed on 6-2-1991, we invited (SIC), of persons who could be the members of the committee. The petitioner furnished some names. The Corporation however took the stand that in view of the various reports of its officers and the direction of the Government referred above, it was not agreeable to finance the project if it were to be located at the site in question. We have reconsidered the matter. Having noted that the site is in between the river and the embankment, we think no amount of expert view would inspire unflinching faith in the mind of the Corporation leading to investment of money running into several lakhs at the present site. As the Corporation's mind must be hundred per cent satisfied about the safety of the investment, and as the site is after all situated between the river and its embankment, we do not think if a very unreasonable stand has been taken by the Corporation that it would not lend money to build industry on the site at hand. Its obstinancy has some justification. After all, as is said, it is easy to prevent a horse from drinking water; it is difficult to make it drink water. Another factor has also deterred us from conceding to this request of the petitioner. The same is that having found that there was no clear and unequivocal promise on the part of the Corporation to lend money, we could not have ordered, with the aid of promissory estoppel, to advance the money in question to the petitioner against the wishes of the Corporation, even if the Expert Committee would have found the site as suitable. So, the labour undertaken by the Committee would not have been productive.

11. All told, we are of the view that the present is not a fit case where, by invoking the doctrine of promissory estoppel, we could justifiably ask the Corporation to release the loan, which had been sanctioned once in principle to the petitioner without finally committing the same. We have, however, no doubt, and Shri Mohanty appearing for the Corporation made this position very clear, that if the petitioner would approach the Corporation with a proposal to locate his unit at some other suitable site, the same would be favourably examined by the Corporation and it would do all that is possible on its part to see that the Government's slogan of "One thousand industries in one thousand days with one thousand crores" does not remain a paper promise but is given practical shape and form. Indeed, by Annexure 6 dated 15/18-2-83, the petitioner was asked to suggest an alternative plot of land. We add that it for establishing the unit, sanction of more money would be needed because of escalation of prices and changed circumstances, the same would also be not refused.

12. The petition is disposed of with the aforesaid observations.

B.N. Dash, J.

13. I agree.