(1987) 01 AP CK 0016

In the Andhra Pradesh High Court

Radiant Cables Private Ltd. and Others APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 28-01-1987

Acts Referred:
Constitution of India, 1950 — Article 299
Customs Act, 1962 — Section 25

Citation : (1988) 32 ELT 333

Hon'ble Judges : Bhaskar Rao, J;A. Raghuvir, J

Bench : Division Bench

Judgement

Raghuvir, J.—The subject in the group of cases relates to a product called ''Polyvinyl chloride resins'' (PVC). In modern technology PVC is considered a wonder material. It is produced by a toxic gas called Vinyl chloride with Polymer, which is a good insulator, moisture resistant and non-inflammable. It costs more than a competing material, but typically finished goods cost less. PVC is found to produce pipes, upholstry, refrigerators, gaskets, flooring materials shower custains. In recent pat we have seen tumblers, pots of all sizes in the bazar. all these are products of PVC.

2. In India PVC is imported on large quantities. It is also manufactured indigenously. the exigencies of market warrant, the Government of India allowed PVC to import duty free by issuing appropriate notifications. In the above cases five each notifications are assailed where under imports were allowed free of duty at first and later were rescinded.

3. The impugned notification were promulgated u/s 25 of the sea Customs Act, 52 of 1962)''the Act"). The notifications after they are published, were placed before and ratified by the two Houses of Parliament as required in section 159 of the Act. The first of the five notifications was published on March 15, 1979. the duty payable on PVC in that was wholly exempted till March 31,1979, the exemption ws extended till March 31, 1980 in the second of the notification on August 29,1979. Again by another notification exemption was extended till March

31, 1981. The fourth notification NO. 205 of 1980 on October 16, 1980 exempted 60% duty payable on PVC and in the notification on NOvember 13, 1981 the fourth notification was rescinded.

4. The writ petitioners in the eight cases who were adversely affected by the last two or the last of the notification, have approached this Court to quash the notifications. their case is they have acted on the representation recited in the notification and imported PVC. When they were half way through their scheme of production, the exemption of promissory estoppel quash the appropriate notifications.

5. In resisting there cases the Government of India takes the stand the notifications were placed before the two House of Parliament and were approved. All the five notification which were processed through such a course for the reason of the approval of the Parliament, are statutes and are immune from any attacks including the attack on the ground of promissory estoppel. In defence of the these eight cases though equity is pleaded, the facts relevant to enquity are not stated in the counter, therefore, we restrict to consider whether the doctrines of promissory estoppel is not available to the writ petitioners. Five of the eight cases are appeals (disposed of by a common order) and in the order under appeal an error has crept in and we wish the error corrected. It is recited in the order under appeal: "It is not the case of the petitioners that only because of the exemption notification they placed orders abroad and that, but for the said notification they would have purchased it in the hom-market at a lesser prices." This is a factual error since at page 4 paragraph 8 of th affidavit it is averred:" ..... but for the earlier notification we would not have placed orders with the foreign manufacturers for importing the commodity and incurred the customs duty. We would have purchased the commodity from the Indian manufacturers and avoided duty." (vide the affidavit in WP NO, 6101 of 1980). Similar averments are found contained in affidavits of seven writ petitions. This we correct to put the record staight. Now we may recapitulate the genesis of the doctrine.

6. We have avoided in this opinion reference to english cases, for the doctrine in U.K. is still facing teething trouble because of the attitude of the apex court, the House of Lords, In India the doctrine of promissory estoppel passed that stage. To show that we may begin with two ancient cases. Ganges manufacturing Company v. Surujmull ILR (1880) Cal 669 and Municipal Corporation of the city of Bombay v. Secy. of STate for INdia ILR (1905) Bom 580 where promissory estoppel ws applied. In the BOmbay case the learned Judge searched for a name to this doctrine was a facet of estappel. In some common-wealth countries as to the name to this doctrine, some calll ''equitanle estoppel''. ''quasi estoppel, new estoppel,'' Some have called it ''Dennings EStoppel'', In few cases it is called;High Trees Estoppel; because of the name of the case in 1849.

7. The principle in Promissory estoppel was applied in the two old case. The Government in the two cases was compelled to cary out its representation. It ws

held an undisclosed ground of expediency cannot enable them to retract assurance which were acted upon. After the Constitution executive necessity was considered in Rai Ramkrishna and Others Vs. The State of Bihar, . It was emphasised even while levying taxes the rights of citizen are to be considered. In saying so, the principle in promissory estoppel was considered. In the next case Union of India v. Anglo Afghan Agencies AIR 1968 SC 718 the doctrine emerged with a bang. It was said "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 sound to protect the rights of the Aggrieved citizen." (para 10). Thus bar bones of the doctrine were shaped in the case and it was said: "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 indisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it: not claim to be judge of its own obligation to the citizen on an ex-parte appraisemtn of the circumstance in which the obligation has arisen." (para 23). Finally orders were issued to accord certificates though the Joint Chief controller of Imports and Exports represented the scheme was repealed. The Government desired no more to implemnt the scheme. The `executive necessity` was not sustained.

8. In the case of Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, it was held: "public bodies are as much bound as private individuals to carry out representations of facts when ... .. other persons have altered their position to their prejudice." The next year in 1972 in Turner Morrison and Co. Ltd. Vs. Hungerford Investment Trust Ltd., the doctrine was considered a rule in equity. There was, however an observation that the incidence of the doctrine were not spelled out completely by the courts. In State of Kerala and Another Vs. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. etc., a company purchased lands in Nilambhuri vogila Kannan estate in Kerala. The purchase was made on representation - the state will not legislate, TO ACQUIRE THE FOREST land for sixty years, if only the company used timber in the forest for production of rayon cloth. Contrary to the agreement, the land was acquired. The company pressed for enforcement of doctrine of promissory estoppel. The attempt was in vain. It is not necessary to state what should have been done in that case at this distance of time.

9. The doctrine of promissory estoppel appeared in full shape in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, . the State in that case assured a sugar manufacturing company exemption from sales tax for three years from the date of production. The State when retracted the undertaking given, they were ordered to honour the assurance given by them. The contention that a State is not inhibited from formulating and implementing its policies in public interest, was thrown out. It was declared: "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 in it, nor claim to be the judge of its own obligation to the citizen on an ex-parte appraisement of the circumstances in which the obligation has arisen". The assurance of the State even if it was sans consideration, or even if not recorded as require in Article 299, nevertheless the State was ordered to redeem their promise. In a reverberating tone it was proclaimed no one, howsoever high or low, is above the doctrine of promissory estoppel. "It is indeed the pride CONSTITUTIONAL democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned, the former is equally bound as the letter". It is heartening to read what was said later: "Let it be said to the eternal glory of this Court, this doctrine was emphatically negatived in the Indo-Afghan-Afghan Agencies Case (AIR 1968 SC 718) and the supremacy of the rule of law was established". Thus we hold the promissory estoppel is a part of our legal culture and the doctrine is fully entrenched in our jurisprudence.

10. This declaration,however, suffered a tremor in Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, . in this case five principles were evolved, which would show the principle in the doctrine is not good law: (1) promissory estoppel is no available against the statute. 920 the doctrine cannot prevent the state discharge its functions. (3) when the officer of the Government acts outside the scope of this authority, the plea of promissory estoppel is not available, (4) when the Officer acts with in the scope of his authority, the doctrine has no application. (5) The officer is justified if foreign exchange position warrants not to redeem the promises made. That is said in one, four and five, no doubt,cut the root of promissory estoppel . the doctrine thus from its roots in that case was shake, See what is said in that case: " contracts and covenants entered into by the Crown are not to be construed as being subject to implied terms that would exclude the exercise of general discretionary powers for the public good:..... Courts cannot allow the Crown to evade compliance with ostensible binding obligations whenever it thinks fit : if a public authority lawfully repudiates or departs from the terms of a binding contract in order to exercise its overriding discretionary powers or if it is held never to have been bound in law by a ostensibly binding contract....... no estoppel can operate to prohibit legitimate action which it ultra vires. " (para 49) .

11. The promissory estoppel doctrine would have gone by the board but for the case in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., .,where the doctrine was reiterated.

12. The above passages show where the Government is in a position to offer and the Court in its discretion is statisfied, the principle may not be enforced. The case of Delhi High court in Jain Shudh Vanaspati Ltd. & Another v. Union of India & Others 1983 ELT 1688 (Delhi) is a case where equity was considered. In that case the Court found till November,1977 the duty was 60 % on PVC .The duty was reduced to 30% till the end of March 14, 1979 . Between April to July 26,

1978 it was 100%, thereafter it was 60% upto March 14,1979 . then it was reduced to 40% upto October 16,1980 .,the average price was 950 dollars in June 1980 and 700 dollars in July, 1980 .It was in this fluctuation to prevent dumping operation form abroad, duty was exempted and levied. Full exemption was granted on March 15,1979 . Parial duty was levied upto October 16, 1980.These facts were considered in equity. It was also held pursuant to Section 159 the adoptions of if procedure in notification were placed before the parliament, therefore the doctrine was inapplicable.

13. We see the impugned notification were processed u/s 159 of the Act. Since we hold the five notifications were placed before the two Houses of Parliament, therefore, no relief can be granted to the Writ Petitioners. we however, are left with an uneasy feeling. we feel exceptions to the rule are very widely stated. The notifications are in substance representations for the citizen to modulate his course of business and when the parliament approves its imprimature should not immunise the doctrine from promissory estoppel. We consider the Supreme Court may restate exemptions in suitable notifications to strengthen the doctrine rather to dry it not in jargon.

14. For all the said reasons, the writ appeals and writ petitions are dismissed. No costs.

15. We consider a substantial question of law is inherent in the cases. Therefore,oral leave to appeal to the Supreme Court is granted. Status quo as on to-day to continue for four weeks.

