

(2001) 09 RAJ CK 0098

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4457 of 2000

Rajasthan Upbhokta Sanrakshan Samiti

APPELLANT

Vs

Unit Trust of India

RESPONDENT

Date of Decision : 04-09-2001

Acts Referred:

Unit Trust of India Act, 1963 — Section 21(1)

Citation : (2002) 2 RLW 936 : (2002) 1 WLC 48 : (2003) 1 WLN 93

Hon'ble Judges : P.P. Naolekar, J;K.S. Rathore, J

Bench : Division Bench

Advocate : Suresh Goyal and Ajay Gupta, for the Appellant; D.R. Dhanuka P. Sanvat, V.B. Agarwala and Sudhanshu Kasliwal, for the Respondent

Final Decision : Dismissed

Judgement

Naolekar, J.—The petitioners seek a writ of mandamus declaring the action of respondents in terminating the Rajlakshmi Unit Scheme -1992 (RUS'92), as illegal, arbitrary, violative of the principles of natural justice and being violative of the principle of promissory estoppel.

The Unit Trust of India (UIT) launched RUS'92 exclusively for the benefit of women. The scheme itself was proclaimed to be a tribute by the UTI to women. It provided for an investment that was to grow twenty-one times in twenty years. Investment of Rs. one thousand in the name of a female child up to and including the age of one year was to become Rs. twenty-one thousand after twenty years and Rs. five thousand was to become over one lac. Depending upon the age of the child for whom the investment was to be made, the maturity value was to vary from a minimum of Rs. eleven thousand to Rs. twenty-one thousand. The scheme further declared that the maturity value was to be given only to the beneficiary, till then nobody could touch it. It was supposed to be an irrevocable gift. On 1.10.2000 the UTI took a decision to terminate the scheme with effect from that date. It is the case of petitioners that the decision for termination of the scheme was arbitrary and violative of the principles of promissory estoppel.

The petitioners were let to believe that the scheme shall continue for the period it was mentioned and acting on the promise the petitioners altered their position and deposited the amounts under the scheme. Abrupt termination of the scheme without rhyme or reason was not only arbitrary act on the part of UTI but it amounted to breach of promise which was made to petitioners.

2. It is the case of UTI that decision to terminate the scheme was taken by the Board which is the highest decision making body consciously taking into account the prevailing volatile market conditions in equity and debt market and to safeguard the overall interests of the beneficiaries of the scheme. It was a bona fide decision. According to the UTI the scheme was terminated not to deny or avoid the future return to a minor child but to ensure that there was no erosion of the capital of the scheme to the detriment of the minor child. It was explained that any further continuation of the scheme might, in the ultimate analysis, result in grave consequences detrimental to the holders of the units. The UTI took a pragmatic decision in the best interest of the unit holders. The scheme was launched with the objective to invest in debt and equity when the return on debt investment was anticipated at 18% to 20% per annum and return on equity was expected at 15% to 20% per annum. In the said prevailing scenario, at the relevant time when the scheme was launched the UTI thought that a return of 16.16% to 16.75% on this scheme would be a feasible return and was a foreseeable possibility. On account of the globalisation of economy and in particular in the direction of opening up the economic and financial sectors led to a sharp decline in domestic interest rates. As a result of such transitory phase in an ever changing economy coupled with a consistent drop in the interest rates, it became impossible to sustain the potential returns envisaged in 1992 as indicated in the scheme.

3. On this submission of the UTI, whether termination of the scheme can be said to be arbitrary act on the part of government?

UTI is a statutory corporation constituted and established under the UTI Act, 1963. The corporation itself was established with a view to encourage saving, investment and participation in the income profits and gains accruing from acquisition, holding, management and disposal of securities. The Board of trustees is entrusted with the general superintendence, direction and management of the affairs and business of the Trust. The Board in discharge of its functions under the Act is mandated to act on business principles regard being had to the interest of the unit holders. The Board of trustees consists of experts in their respective fields and drawn from premier financial institutions. The Chairman is appointed by the Central Government in consultation with the Development Bank (Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1994). The Board makes, from time to time, various schemes for issuing units and for investment by the public. The schemes are made u/s 21(1) of the Act. The corpus of the scheme in turn is invested in debts, equities and/or other securities as per investment objectives of

the respective schemes. Rajlakshmi Unit Scheme 1992 was also one such schemes made by the UTI u/s 21(1) of the Act. The period of scheme was between sixteen to twenty years. By the impugned action what has been done by the Board is to reduce the period of scheme and close the scheme on 30.9.2000. There is no dispute whatsoever that the beneficiaries are offered amount due to them on the basis of the same return of about 16.16% to 16.75% per annum as provided for in the scheme itself while paying the redemption proceeds. No doubt the period of scheme has been reduced but that, as indicated above by the UTI, the reduction was made looking into the interest of the unitholders. The scheme has not been terminated to deny or avoid the future return to a minor child but it was thought by the experts on the basis of relevant material placed before them and on their examination that any further continuation of the scheme might in the ultimate analysis would result in grave consequences detrimental to the holders of the units. Board under the provisions of the Act is put with the responsibility to discharge its functions on business principles regard being had to the interest of unitholders. If the Board thought that the further continuation of the scheme would be detrimental to the interest of unitholders inasmuch as the return promised could not be given to the unitholders on original date of termination, then the action of the Board for UTI cannot be said to be arbitrary act on the part of the UTI and the decision so taken by the competent persons in the interest of unit holders cannot be said to be an arbitrary act.

4. The petitioners then challenged the action of Board being contrary to the principles of promissory estoppel. Estoppel is a principle which precludes a party from alleging or proving in legal proceedings that a fact is otherwise than it has appeared to be from the circumstances. Apart from estoppel from record and estoppel by deed, a promissory estoppel arises where a party has expressly or impliedly, by conduct or by negligence, made a statement of fact, or so conducted himself, that another would reasonably understand that he might act in reliance thereon, and has so acted, that the party who made the representation is not allowed to allege that the fact is otherwise than he has represented it to be.

It was Mr. Justice Denning, in England, who first rescued the doctrine from obscurity in *Central London Property Trust. Ltd. v. High Trees House, Ltd.*, (1); and laid foundation to its applicability in *Robertson v. Minister of Pensions* (2), reiterating and expanding the scope of its application even to the Crown in *Howell v. Falmouth Board Construction Co.*, (3); (referred in *Express Newspapers Pvt. Ltd. v. Union of India* (4), in the following words:-

"(1) that the assurances intended to be acted upon and in fact acted upon were binding, and

(2) that where a government department wrongfully assumed authority to perform some legal act, the citizen is entitled to assume that it had that authority."

But to apply the doctrine there must be a necessary factual foundation. It depends upon the facts of each case whether there was representation or not. The representation must be unambiguous and clear and there must be a nexus or a connection between the representation and action whereby the person alters his position. The doctrine of estoppel is also subject to limitations as held by the apex court in various judgments. The doctrine obviously-

Cannot apply against the State legislature, (held in *N. Ramanatha Pililai v. State of Kerala* (5); and *Union of India v. Godfrey Philips India Ltd.* (6) and

To Acts of Parliament because they are no representations, (held in *Godfrey Philips* (supra)).

The government or public authority cannot be compelled 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, (held in *Godfrey Philips* (supra)).

Where the liability or obligation is imposed by statute (held in *CIT v. B.N. Bhattacharijee* (7); or

Where there is statutory prohibition (held in *Godfrey Philips* (supra)); or

Where there is no representation or promise made out by government the principles does not apply (held in *Jatinder Kumar v. State of Punjab* (8), *Excise Commissioner v. Ram Kumar* (9);

The doctrine does not operate at the level of government policy, however it operates against public authority in minor matter of formality where no question of ultra vires arises (held in *Express Newspapers Pvt. Ltd. v. Union of India* (supra);

Similarly the advice given by a negligent officer cannot change the legal position and hence the doctrine has no application (held in *Assistant Custodian, Evacuee property v. U.K. Agarwala*, (10);

Where there is fraud or collusion (held in *D.R. Kohli v. Atul Products Ltd.*, (11);

Where the public interest suffers, (held in *CIT v. B.N. Bhattacharijee* (supra)); and

Where it would be inequitable to endorse the doctrine, it will not be applied (held in *Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.*, (12).

The principle stands on honesty and good faith of public bodies. As observed by A.P. Sen, J., in *Express Newspapers* (supra) relying on Prof. Smith and Prof. Wade-Estoppel is often described as a rule of evidence, but more correctly it is a principle of law. As a principle of law it applies only to representations about past or present facts. But there is also an equitable principle of "promissory estoppel" which can apply to public authorities.

5. On aforesaid principles and the limitations applied, we have to see whether the principle of promissory estoppel applies in the present case. On 2.10.1992 the scheme RUS"92 was announced by the UTI. The maturity period of scheme ranged from sixteen years to twenty years. It was made u/s 21 of the Act coupled with the provision for amendment of the scheme u/s 21(3) of the Act. The scheme was duly gazetted on 17.4.1993. Copy of the scheme was available to all potential investors from very beginning. The scheme was terminated on 1.10.2000. The scheme provided that applications for units shall be made by any adult, a Company, a Body Corporate, Registered Society, an eligible Trust, Central/State Government or a Court appointed guardian, desirous of participating in this Scheme in favour of the female child not exceeding five years of age on the date of application, in the form prescribed by the UTI. Thus, the application-for purchase of units was to be filed as per the application form prescribed by the UTI and approved by the Chairman of the Trust. The trust had a right to accept or reject the applications. Clause XXVI gives authority to the Board to add to or otherwise amend the scheme and any amendment/addition thereof was to be notified in the Official Gazette. Clause XXVII was in regard to termination of the scheme, which reads thus:-

"The Scheme may if circumstances so prevail not being in the interest of the unitholders or the Trust be terminated with sufficient notice to the Government. All unitholders who have participated in the Scheme shall be paid the value of the units standing to their credit at the final repurchase price fixed for the purpose. Besides receiving the final repurchase price so determined no further benefit of any kind either by way of Increase in the repurchase value or by way of dividend for any subsequent period shall accrue. The unit certificate received for repurchase shall be retained for cancellation."

Clause XXVIII reads thus:-

"The terms of the scheme including any amendments, changes thereto from time to time should be binding on each unitholder and even other person claiming through him as if he had expressly agreed that they should be so binding notwithstanding anything contained in the provisions of the scheme."

Under Clause XXX, a copy of the scheme incorporating all amendments thereto was to be made available for inspection at the offices of the Trust at all times during its business hours and might be supplied by the Trust to any person on application and payment of Rupees five. In Clause 9 of the application form reads thus:-

".....All securities investments carry market risk. Consult your investment adviser or agent before investing."

It was also mentioned in the application form that the units were to be issued subject to the provisions of RUS"92.

6. The aforesaid facts indicate that the investors were given notice that the

scheme might be terminated in the midst by the Trust in order to mitigate hardship. The investors also had notice that the investments made under the scheme carry market risk. The scheme was terminated in the midst considering the interest of unitholders. Unitholders before investment in the scheme had the notice that if UTI thinks that continuation of the scheme would not be in the interest of unitholders, it could terminate it with sufficient notice to the Government. The scheme was launched as a balanced fund with the objective to invest in debt and equity when the return on debt investment was anticipated at 18% to 20% per annum and return on equity was expected at 15% to 20% per annum. As such, taking the said picture into account, the thought that a return of 16.16% to 16.75% on the Scheme would be a feasible return and was a foreseeable possibility, could not be said to be a mistaken act on the part of UTI. However, when the Board found that the steps taken towards the globalisation of the economy and in particular in the direction of opening up the financial sectors to greater multi-national participation led to a sharp decline in domestic interest rates, and as a result thereof the interest rates had gone down, termination of the scheme was a just and fair decision by the UTI. As the investors had notice of the scheme might be terminated in the midst in the interest of unitholders it could not be said that representation was made to them that in all circumstances the RUS" 1992 shall terminate only after the period prescribed in the scheme was completed. It could not also be said that the petitioner has altered its position to the detriment of his interest on the basis of representation made that the RUS" 1992 shall complete its term. For the decision taken to terminate the scheme in the midst, of which the petitioners had notice, the respondent cannot be estoppel on the principle of promissory estoppel. For the aforesaid reasons the petitioners are dismissed. No order as to costs.