

(2011) 07 MAD CK 0240

In the Madras High Court

Case No : Writ Petition (MD) No. 5397 of 2011 and M.P. (MD) No's. 1 and 2 of 2011

S. Sundarapandian

APPELLANT

Vs

The Tamil Nadu Minerals Ltd.

RESPONDENT

Date of Decision : 06-07-2011

Acts Referred:

Citation : (2011) 07 MAD CK 0240

Hon'ble Judges : S. Mani Kumar, J

Bench : Single Bench

Advocate : Veera Kathiravan, for the Appellant; B. Pugalenth, Spl. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S. Mani Kumar, J.—Though the Petitioner has obtained an order of status quo on 29.04.2011, in the present writ petition filed after the expiry of contract period i.e., 12.03.2011, Mr. Veerakathiravan, learned Counsel for the Petitioner states that he is not ready to make submission on the writ petition. Nevertheless, considering the averments and the nature of the order passed by this Court, this Court is inclined to consider the merits of the case, with reference to the impugned order which clearly states that the Raising Agent agreement for Keelavalavu (297/5) "D" portion ends on 12.03.2011.

2. Pleading and the material on record show that the Government of Tamil Nadu issued an order granting lease in favour of the Tamil Nadu Minerals Limited, represented by its Chairman, Chennai, enabling the first Respondent company, owned by the State for conducting quarrying operation and also for marketing granites available in the survey site. According to the Petitioner, the Respondent is only a marketing agency of minerals in the State of Tamil Nadu. The Petitioner, who became a successful bidder, vide order, dated 12.03.2008, has been granted a contract to raise the minerals from quarry site by deploying machineries and to hand over the same to the marketing agency viz., TAMIN Limited. Even as per

the contract entered into between TAMIN and the writ Petitioner, the period expires on 12.03.2011. It is the case of the Petitioner, the first Respondent has promised that even after the expiry of the lease period, the contract to raise the minerals would be continued and on that basis, the Petitioner had invested more than one crore for engaging the machineries for scientific raising of granite blocks. When the Petitioner legitimately expected that the assurance made by the first Respondent would be honoured, the impugned order has been passed, violating the principles of promissory estoppel. It is the further submission of the Petitioner, even before the expiry of the period i.e., 12.03.2011, he has made a request on 28.02.2011 to the first Respondent to extend the lease period on the same conditions, as it was done earlier. However, no order has been passed. In the above said circumstances, he has submitted that the impugned order, directing the Petitioner to withdraw all his belongings from the site, would cause serious hardship, as he has invested huge money for purchasing machineries. In the pleadings, the Petitioner has also referred to an interim order passed in W.P. No. 23891 of 2006, in a similar case.

3. Though counter affidavit has not been filed by the Respondent, on instructions from the Respondents, Mr. B. Pugalenth, learned Special Government Pleader submitted that pursuant to passing of the impugned order, possession of the quarry site had already been taken. The said submission of the learned Government Counsel is placed on record. Though he attempted to justify the order on merits by contending that there was a breach of contractual obligations, in lifting the granite from the site, this Court is not inclined to advert to the same for the following reasons.

4. Pleadings and material on records disclose that the Petitioner had entered into an agreement with TAMIN, Government company on 13.03.2008 to wit that;

a)The raising agent shall carry out large scale development work and give a continuous and maximum production as assured by him from Keelavalavu 297/5 Portion-D While granite quarry over an extent of 2.76.0 hectares subject to a production of 500 CBM per month of approved production.

b)The raising agent shall actually deploy the machineries in the quarry as assured.

c)The production shall be only of bigger size blocks avoiding wastage of material.

2)... 3)The raising agency shall deploy machineries like excavators, dozers, tippers, cranes and compressors for production of blocks.

and subject to other conditions contended in the agreement.

5. Clause 10 of the agreement, dated 13.03.2008, states that the Raising Agency period is for three years 13.03.2008 to 12.03.2011 as per tender and renewal is at the sole direction of TAMIN. The performance will be reviewed in three months and if the raising agent has violated any of the conditions and found guilty of any serious charges or lack of fulfillment of production target etc. the raising agency

is liable to be cancelled and the raising agent has got no claim whatsoever. The decision of the Chairman and Managing Director, TAMIN is final and not open for any challenge by the raising agent for want of notice, etc., in the event of cancellation of this raising agency for any violation of these conditions.

6. As per the agreement stated supra, the period of Raising Agency expires on 12.03.2011. Though the Petitioner has contended that an assurance has been given by TAMIN Limited stating that the lease would be extended on such term as agreed to by TAMIN Limited, there is no material to substantiate such contention. Principle of promissory estoppel would apply only if there is any specific promise made by one party, based on which, any further action is taken by the other causing hardship to the latter. In this context, it is useful to refer some of the decisions of the Supreme Court.

7. In *Pine Chemicals Ltd. and Others Vs. Assessing Authority and Others*, , this Court held that a Finance Minister's statement referring to a proposal to continue the grant of exemption from payment of sales tax for a period of ten years is merely a budget proposal which could not give rise to any right to the parties and it did not amount to a decision, order or notification extending the period of exemption which was required to be the basis for promissory estoppel.

8. In *Kasinka Trading and another, etc. etc. Vs. Union of India and another*, , the Supreme Court, at paragraphs 12 and 13 has explained the "principle of promissory estoppel", as follows:

12. The doctrine of promissory estoppel or equitable estoppel is well established in the administrative law of the country. To put it simply, the doctrine represents a principle evolved by equity to avoid injustice. The basis of the doctrine is that where any party has by his word or conduct made to the other party an unequivocal promise or representation by word or conduct, which intended to create legal relations or effect a legal relationship to arise in the future, knowing as well as intending that the representation, assurance of the promise would be acted upon by the other party to whom it has been made and has in fact been so acted upon by the other party, the promise, assurance or representation should be binding on the party making it and that party should not be permitted to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealing, which have taken place or are intended to take between the parties.

13. It has been settled by the Court that the doctrine of promissory estoppel is applicable against the Government also particularly where it is necessary to prevent fraud or manifest injustice. The doctrine, however, cannot be pressed into aid to compel the Government or the public authority "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." There is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel clear sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and that bald expressions,

without any supporting material, to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine.

9. In *National Buildings Construction Corporation Vs. S. Raghunathan and Others*, , the Supreme Court held that the Doctrine has become a source of procedural as well as substantive rights. A person invoking the doctrine must be aggrieved and should have altered his position acting upon the State action/inaction. Whether or not expectation is legitimate is a question of fact. Legitimacy of expectation has to be determined keeping in view of the larger public interest and not according to the claimant's perception. The Apex Court further held that,

The Doctrine of legitimate expectation can be invoked if the decision which is challenged in the Court has some person aggrieved either,(a) by altering rights or obligations of that person which are enforceable by or against him in private law; or (b) by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that it will not be withdrawn without giving him first an opportunity of advancing reasons for contending that it should not be withdrawn. Indian scenario in the field of legitimate expectation is not different.

10. In *Dr. Ashok Kumar Maheshwari Vs. State of U.P. and Another*, , after considering a catena of decisions and explaining the Doctrine of promissory estoppel, the Supreme Court, at Paragraph 22, held as follows:

23. Applying the above principles to the instant case, even if it is accepted that the State Government or the Director, Medical Education & Training, assured the Appellant or any of his colleagues that they would be promoted to the posts of Lecturer, such a "promise" cannot be enforced against the Respondents as the avenue of promotion for Demonstrators to the post of Lecturers was not provided either under the Statute or any executive instruction. Moreover, if the post of Lecturer was filled up by promotion of Demonstrator, it would defeat the existing mode of recruitment, namely, that it can be filled up by direct recruitment only and not by promotion. It may also be stated that the Appellant did not make any clear, sound and positive averment as to which officer of the Government, when and in what manner gave the assurance to the Appellant or any of his colleague that they would be promoted as Lecturers. It was also not stated that the Appellant had, at any time, acting upon the promise, altered his position, in any manner, specially to his detriment. Bald Pleadings cannot be made the foundation for invoking the Doctrine of Promissory Estoppel.

(emphasis supplied)

11. In Union of India (UOI) and Others Vs. Ganesh Rice Mills and Another, , the Supreme Court was pleased to consider whether the statement made by the Hon"ble Finance Minister on the floor of the house should be held to be binding and the Union was estopped from realising the disputed cess. The short judgment of the above case is extracted hereunder.

2. The only point decided by the High Court is that the Finance Minister's statement on the floor of the House must be held to be binding and the Union was stopped from realising the disputed cess from the Appellants. It has been stated that the writ Petitioner had acted to his prejudice on the basis of the promise made by the Finance Minister. We are of the view that speech made in Parliament by the Finance Minister cannot be treated as a promise or representation made to the writ Petitioner and the principle of promissory estoppel was wrongly applied by the High Court. No case of promissory estoppel has been made out on the facts of this case.

3. In that view of the matter, the judgment under appeal is set aside. The appeal is allowed.

12. In a decision of the Supreme Court in State of Karnataka and Another Vs. K.K. Mohandas and etc., , the Supreme Court held that there cannot be a case of promissory estoppel, merely on the basis of the speech made by the Minister in the Assembly of a proposal to ban sale of toddy in the State.

13. In the above case, the Petitioners claimed that the concerned Minister had given an assurance in a TV channel. No order or direction has been issued by the Government, pursuant to the alleged speech said to have been made. In the absence of any express promise held out by the concerned, it is not open to the Petitioners to harp on the principle of promissory estoppel.

14. In Executive Engineer, Uttaranchal Power Corporation Vs. Kashi Vishwanath Steel Ltd. and Others, , at para 27, the Apex Court held that it is trite that before a party can rely upon on the doctrine of promissory estoppel it must make a specific averment and place material on record to demonstrate that a promise was indeed made to it. There is neither any averment nor any material to support the plea of promissory estoppel in the case at hand.

15. In State of Bihar and Others Vs. Kalyanpur Cements Ltd., , the Supreme Court, at para 35, 37 & 38, held as follows;

35. In our opinion, the aforesaid statement of law covers the submissions of Dr. Dhavan and Mr. Dwivedi that in order to invoke the aforesaid doctrine, it must be established that:

(a) a party must make an unequivocal promise or representation by word or conduct to the other party;

(b) the representation was intended to create legal relations or affect the legal relationship, to arise in the future;

- (c) a clear foundation has to be laid in the petition, with supporting documents;
- (d) it has to be shown that the party invoking the doctrine has altered its position relying on the promise;
- (e) it is possible for the Government to resile from its promise when public interest would be prejudiced if the Government were required to carry out the promise;
- (f) the Court will not apply the doctrine in abstract. However, since the judgments have been cited, we may notice the law laid down therein.

36. ...

37. In *Bakul Cashew Co. v. STO* reported in 1986 (2) SCC 572 it is observed that:

5. ...In cases of this nature the evidence of representation should be clear and unambiguous. It must be certain to every intent". The statements that are made by ministers at such meetings, such as, "let us see", "we shall consider the question of granting of exemption sympathetically", "we shall get the matter examined," "you have a good case for exemption", etc. even if true, cannot form the basis for a plea of estoppel.

38. In *Sharma Transport Rep. by D.P. Sharma Vs. Government of Andhra Pradesh and Others*, it is observed that:

13. ...There is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel, clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and that bald expressions, without any supporting material, to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine.

16. In the light of the principles underlined in the judgments cited supra, this Court is of the considered view that the principle of promissory estoppel has no application to the facts of the case.

17. In the case on hand, there is absolutely no material to support the contention of the writ Petitioner that a specific promise has been made and acting on the promise, the Petitioner had acted and consequently put to hardship. Law is well settled that mere averments do not stand the test of proof. The contract period has expired on 12.03.2011. The writ petition has been filed on 28.04.2011, after the expiry of the period. When the terms and conditions of the contract specifies a particular period during which, the parties can discharge their obligations, the Petitioner has no legal or statutory right to claim the continuance or squat over the quarry site, without there being any extension of contract and any interim order permitting the Petitioner to remove the quarry materials by deploying the machineries in the site would virtually amounting to extending the period of lease, without any legal or statutory basis on the

determination of the contract period agreed upon by the parties. Courts cannot enlarge the period by granting interim orders.

18. At this juncture, it is also to be noted that the possession of the site has been taken over by the Respondents. Though an application dated 28.02.2011 is stated to have been made to the first Respondent for extension of contract beyond 12.03.2011, mere submission of an application for extension does not amount to granting extension. Appropriate orders have to be passed by the Competent Authority, on the application. Without there being any extension of contract, the Petitioner has no legal or statutory right to seek for any interim orders from this Court. The interim order granted on 08.06.2011 is vacated. Consequently, for the reasons stated supra, the writ petition filed after the expiry of the period is liable to be dismissed and hence dismissed. Consequently, connected miscellaneous petitions are also dismissed. No costs.