

(1997) 02 DEL CK 0019

In the Delhi High Court

Case No : Civil Writ Petition No. 1082 of 1996

Samparan Charitable Trust

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-02-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 2 AD 366 : AIR 1998 Delhi 72 : (1997) 66 DLT 93 : (1997) 41 DRJ 132

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : R.K. Anand, Lokesh Sawhney, K.N. Bhat, A.K. Vali and Aditya Bhagat, for the Appellant;

Judgement

C.M. Nayar, J.

(1) This petition is directed against the respondents for issuance of a writ of mandamus to sanction and release the second Installment of the Grant to the petitioner Trust and for continuously providing the Grant/assistance in terms of the Scheme as framed.

(2) The averments as made are that the petitioner Trust is registered under the Societies Registration Act vide registration No. 3476 and came-to existence on February 21, 1993. The petitioner Trust started "Samparpan Vikiang Punarvas Kendra" at RAM-RAHIM Dham, 8 Kms from Bahraich on Bahraich-Lucknow Road, U.P. and has also established, recently, another unit at village Bisrekh, Greater Noida, Distt. Ghaziabad, U.P. It is alleged that the Samparan Trust which in itself means dedication, is engaged in providing artificial limbs/calipers/crutches and other aids to the handicapped people and also to rehabilitate by providing them alternative employment. With this aim in view, Samparpan Trust had established a rehabilitation centre at Bahraich having constructed covered area of 60,000 sq. ft. and having open area of 20 acres. The Government of India formulated a scheme known as "ASSISTANCE To Disabled Persons For PURCHASE/FITTING Of

AIDS/APPLIANCES". Copy is filed as Annexure P-6 to the writ petition. The provisions as incorporated in the scheme which are relevant for deciding the present controversy between the parties may be reproduced as follows:

"7.Mode of Assistance The Applicant will approach the implementing agency which will satisfy itself about the eligibility of the person and give him/her the necessary aid/appliance after recovering the balance amount, wherever applicable from the individual. In no case will assistance be given in cash/cheque to the applicant in lieu of the aid/appliance. 9. Procedure for Making the Application by Implementing Agencies: The Implementing agencies will submit their application in the prescribed form (Annexure-I) to the Ministry of Welfare, indicating their annual requirement, through the concerned State Governments/ Union Territory Administration once every year. The clarifications required by the Ministry of Welfare on these applications may be sent by the implementing agencies direct to the Ministry. The funds will be released in advance on half-yearly basis i.e. in two installments in a year. The implementing agencies will be required to submit accounts for the penultimate quarter to receive funds for the half year. In other words, the grant for the period April-September will be released after submission of accounts up to October-December quarter of the previous year: grants for the October-March will be released on submission of accounts up to April-June of the year. The application should be accompanied by the following information/documents:- (i) Number of beneficiaries expected to be covered during the year. (ii) Types of aids to be given. (iii) Estimated expenditure on the aids to be supplied. (iv) A Utilisation Certificate, when applicable on the prescribed form together with a list of beneficiaries who were assisted, in case of assistance taken earlier. (v) An undertaking that the funds will not be utilised for any other purpose. In the case of voluntary agencies, the following additional documents have to be furnished: (a) A copy of Registration Certificate. (b) A copy of rules, aims and objects of the organisation. (c) A copy of certified audited accounts for the last two years. 10. Conditions for Assistance (i) The quantum of assistance to be given to an implementing agency during a particular year will be decided by the Government of India. The implementing agencies would, Therefore, not incur any liability under this scheme unless the funds have been sanctioned to them for the purpose. (ii) Any expenditure on infra-structure staff, stationery, accommodation etc. Will not be debited to this scheme for implementing it. A voluntary organisation acting as implementing agency can, however, apply for assistance for this purpose under the Central scheme of Assistance to Voluntary Organisations for the Handicapped. Such applications may be directly made to the Ministry of Welfare. (iii) The implementing agency will be fully competent to satisfy itself about the income criteria mentioned in rule 6. (iv) The implementing agency will maintain a register in the prescribed proforma (Annexure-III) about the beneficiaries assisted under the scheme. (v) A certificate from the Head of the implementing agency to the effect that the funds have been utilised and the list of the beneficiaries as per proforma given in Annexure-IV assisted by the organisation from the funds given by the Ministry

will be furnished along with the yearly application as per procedure indicated in para 9. (vi) The final accounts for a financial year will be rendered through Utilisation Certificate signed by Chartered Accountant and audited accounts within six months of the close of the financial year. (vii) the agency implementing the scheme will obtain an undertaking from the beneficiary that he/she has not obtained such aid from any other agency/source during last two years and that he/she will keep it for his/her bonafide use. (viii) The agency implementing the scheme will be open to inspection by an officer authorised by the Union Ministry of Welfare of the State Government. (ix) The implementing agency will maintain a separate record about the assistance disbursed by them and these records will be open to inspection by the Government of India. (x) When the Government of India have reasons to believe that the sanction is not being utilised for the approved purpose the amount would be recovered from the Implementing Agency" and no further assistance would be given to the agency."

(3) The assistance was released to the petitioner Trust for the year 1994-95 for a sum of Rs. 69,43,000.00 on the terms and conditions as specified in the communication dated March 23, 1995, which is filed as Annexure P-8 to the writ petition. The following paragraphs of this communication may be reproduced as follows:

"1. The grant is subject to the following conditions:- (a) The grant should be used for purpose for which it is intended. The Organisation would not incur any liability under this scheme unless the funds have been actually sanctioned to in case it is used for purposes other than those for which the grant is given, the Government of India will have the right to claim refund of the grant. (b) Separate accounts in respect of the grant arc to be maintained and these accounts will be open to audit by the Comptroller and Auditor General of India and inspection by an Officer authorised by the Union Ministry of Welfare or the Stale Govt. (c) Further assistance will be considered when the list of beneficiaries as per annexure Iv of the Scheme and the Utilisation Certificate signed by the Head of the Institution, as required under the scheme are furnished. The implementing agency will also submit the Audited Accounts and Utilisation Certificate signed by Chartered Accountant. In respect of the total grant sanctioned for the purpose during the financial year by June 1995. (d) Assets acquired wholly or substantially out of Govt. grant should not without the prior sanction of the President be disposed of encumbered or utilised for purpose other than those for which the grant has been sanctioned. The Institution is required to maintain a register of such assets and furnish an annual statement in the prescribed proforma to this Ministry at the end of the financial year. 2. I am to add that the institution will have to execute a Bond in favor of the President of India to the effect that they will abide by the terms and conditions attached to the grant and that in case they fail to abide by the same, they will refund to the Govt. the total grant paid to them for the purpose. Two copies of the Bonds arc being sent to the institution for their completion and return to this Ministry."

(4) The respondent wrote a letter dated July 12, 1995 conveying the approval of the Competent Authority to revalidate the unspent balance of 1994-95 for utilising during 1995-96. Thereafter the respondent wrote a letter to the petitioner on November 9, 1995 giving direction not to utilise any amount out of unspent balance. The said communication may be reproduced as under:

"To The Chairperson, Samparan Charitable Trust, B-10, May Fair Garden, New Delhi-110016. Sub: Re-Validation of Unspent balance of 1994-95 expenditure during 1995-96 Regarding. Sir, I am directed to refer to this Ministry's letter of even number dated the 12th July, 1995 regarding revalidation of unspent balance of amount from the last year under A dip Scheme. You are directed not to utilise any amount out of unspent balance from the last year release to your Organisation under A dip scheme till further orders from this Ministry. Yours faithfully, sd/- (K.S.Kainth) Desk OFFICER"

(5) The respondent has filed the counter affidavit to this petition in which the following pleas have been taken:

" A. The affairs of the petitioner Trust were being investigated by the C.B.I. in Rc 1(A)/95 ACU-6/CBI, New Delhi dated 4.3.1995 under the directions of the Supreme Court of India. In the course of investigation of aforesaid regular case, the C.B.I, by its communication dated 18.9.1995 directed the Ministry of Welfare to hand over certain documents pertaining to the Trust. Another communication received from the C.B.I, dated 22.9.1995 to the same effect is annexed herewith as Annexurc-R1. It is sub milled that on the basis of aforesaid Fir, charge-sheet has been filed on 10.1.1996 in which allegations of acquisition of properties are contained against Mr. Arif Mohd. Khan and Mrs. Reshma Khan. In view of the fact that affairs of the Trust were under investigation by the C.B.I., the Department considered it appropriate to interdict utilisation of unspent amount granted to them under the Scheme. The aforesaid trial is pending in the Court of Id. Additional Sessions Judge;"

"B. The petitioner does not have any right under the Scheme for continuous assistance. The application for assistance is made every year and has to be examined by the Department in accordance with provisions of the Scheme. Since the petitioners has failed to submit audited accounts and utilisation certificate till date, it has disintitled itself to any further assistance until their accounts are fully regularised. The assistance is granted to the parties on assessment of their past performance and needs of the beneficiaries."

"C. As there is a serious doubt about the petitioner having utilised the assistance amount for the purpose for which it was granted, the petitioner cannot claim a direction from this Court for release of assistance. There are serious disputed questions of fact involved in this case and, Therefore, deserves to be dismissed;"

"D.A total grant of Rs. 69.43 lakhs was sanctioned in favor of the Petitioner on 23.3.1995 as against a sum of Rs. 1,28,27,000 applied for by the Petitioner. The grant was sanctioned for the year 1994-95 under Scheme of Assistance to

Disabled Persons for Purchase/Fitting of Aids/Appliances. The Petitioner gave a utilisation certificate for the financial year 1994-95 amounting to Rs. 2.37 lakhs. On request of the Petitioner the balance amount of Rs. 67,05,963 was revalidated in favor of the Petitioner in July, 1995 for the year 1995-96. It is worth mentioning here that the total sum of Rs. 69.43 lakhs was released in favor of the Petitioner in lumpsum. The provision of two installments was not applied in the case of Petitioner. By the impugned order dated 9.11.1995 the Petitioner was directed not to utilise any amount out of unspent balance. Second Installment never fell due and no grant was pending for release for which the relief has been sought against the answering respondent."

"E. To make the operation of the scheme more broad based and to reach out to the maximum number of areas possible, last year it has been decided by the government of India that the maximum amount of grant which will be given to any of the implementing agency during a particular year will not ordinarily exceed Rs. 6 lakhs and Rs. 10 lakhs in exceptional circumstances. This decision was taken in best public interest with a view to arrange equitable distribution of benefits throughout the country."

(6) The learned counsel for the petitioner has sought reliance on the judgments of the Supreme Court as reported in Navjyoti Coo-Group Housing Society etc. Vs. Union of India and Others, and R. Vijayakumar and Others Vs. Commissioner of Excise and Others, . From the first judgment reference is made to paragraph 15 to highlight the principles of "legitimate expectation". The same reads as follows:

"15.It also appears to us that in any event the new policy decision as contained in the impugned memorandum of January 20,1990 should not have been implemented without making such change in the existing criterion for allotment-known to the Group Housing Societies if necessary by way of a public notice so that they might make proper representation to the concerned authorities for consideration of their viewpoints . Even assuming that in the absence of any Explanation of the expression "first come first served" in Rule 6(vi) of Nazul Rules there was no statutory requirement to make allotment with reference to date of registration, it has been rightly held, as a matter of fact, by the High Court that prior to the new guideline contained in the memo of January 20, 1990 the principle for allotment had always been on the basis of dale of registration and not the date approval of the list of members. In the brochure issued in 1982 by the Dda even after Gazette notification of Nazul Rules on September 26, 1981 the policy of allotment on the basis of seniority in registration was clearly indicated. In the aforesaid facts the Group Housing Societies were entitled to legitimate expectation" of following consistent past practice in the matter of allotment, even though they may not have any legal right in private law to receive such treatment. The existence of legitimate expectation" may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat the legitimate expectation" without some overriding reason of public policy to justify its doing so. In a case of legitimate

expectation" if the authority proposes to defeat a person's legitimate expectation". It should afford him an opportunity to make to the discussions on legitimate expectation" at page 151 of Volume 1 (1) of Halsbury's Laws of England, 4th edn. (re-issue). We may also refer to a decision of the House of Lords in Council of Civil Service Unions v. Minister for the Civil Service. It has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reasons."

(7) The facts of the second case in R. Vijay kumar and others supra) are not of any relevance to the points raised in this petition and it will, Therefore, not be necessary to discuss this judgment any further.

(8) The learned counsel for the respondent has contended that there is neither a statutory nor legal right vested in the petitioner to claim grant and the plea of legitimate expectation is of no consequence as it does not form the basis of the scheme. In any case, the petitioner has clearly violated the terms of the grant as it has not filed the audited accounts nor submitted the utilisation certificate. These documents were only submitted by the petitioner after reply to the show cause was filed in this Court by the respondent. The conditions of assistance as incorporated in paragraph 10 of the scheme clearly lay down that the quantum of assistance to be given to an implementing agency during a particular year would be decided by the Government of India. The implementing agency would, Therefore, not incur any liability under this scheme unless the funds have been sanctioned to them for the purpose. It is, Therefore, clear that some clement of discretion is vested in the Government and the plea of legitimate expectation cannot be raised as no positive promise has been held out by the Government in the present case. The matter is to be considered on its own merits and it is always open for the Government to reject the pica of the petitioner for assistance. The points as made out in the present case have formed the basis of rejection and the decision cannot, in any manner, be held justifiable. The State is not to distribute the largess when it is not satisfied that the amount will be used for the purpose for which it has been disbursed. In this background, the plea of legitimate expectation and the legal rights of the petitioner as agitated in the present petition under Article 226 of the Constitution of India can not be entertained.

(9) The principles of legitimate expectation have been elaborately explained by the judgment of the Supreme Court as reported in Union of India and others Vs. Hindustan Development Corpn. and others, as cited by learned Additional Solicitor General. Paragraphs 33,34 and 35 may be reproduced as under:

"33.On examination of some of these important decisions, it is generally agreed that legitimate expectation gives the applicant sufficient locus standi for judicial

review and that the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negating a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular decision then decision maker should justify the denial of such expectation by showing some overriding public interest. Therefore, even if substantive protection of such expectation is contemplated, that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfill. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the courts cannot interfere with a decision. In a given case whether there are such facts and circumstances giving rise to a legitimate expectation, it would primarily be a question of fact. If these tests are satisfied and if the court is satisfied that a case of legitimate expectation is made out then the next question would be whether failure to give an opportunity of hearing before the decision affecting such legitimate expectation is taken, has resulted in failure of justice and whether on that ground the decision should be quashed. If that be so then what should be- the relief is again a matter which depends on several factors.

34. We find in Attorney General for New South Wales case that the entire case-law on the doctrine of legitimate expectation has been considered. We also find that on the elaborate and erudite discussion it is held that the courts' jurisdiction to interfere is very much limited and much less in granting any relief in a claim based purely on the ground of legitimate expectation". In Public Law and Politics edited by Carol Harlow, we find an article by Gabriele Gann in which the learned author after examining the views expressed in the cases decided by eminent judges to whom we have referred to above, concluded thus: "The confusion and uncertainty at the heart of the concept stems from its origin. It has grown from two separate roots, natural justice or fairness and estoppel, but the stems have become entwined to such an extent that it is impossible to disentangle them. This makes it very difficult to predict how the hybrid will develop in future. This could be regarded as giving the concept a healthy flexibility, for the intention behind it is benign; it has been fashioned to protect the individual against administrative action which is against his interest. On the other hand, the uncertainty of the concept has led to conflicting decisions and conflicting

interpretations in the same decision."

(10) However, it is generally accepted and also clear that legitimate expectation being less than right operates in the field of public and not private law and that to some extent such legitimate expectation ought to be protected though not guaranteed.

"35. Legitimate expectations may come in various forms and owe their existence to different kind of circumstances and it is not possible to give an exhaustive list in the context of vast and fast expansion of the government activities. They shift and change so fast that the start of our list would be obsolete before we reached the middle. By and large they arise in cases of promotions which are in normal course expected, though not guaranteed by way of a statutory right, in cases of contracts, distribution of largess by the Government and in somewhat similar situations. For instance discretionary grant of licences, permits or the like, carry with it a reasonable expectation, though not a legal right to renewal or non-revocation, but to summarily disappoint that expectation may be seen as unfair without the expectant person being heard. But there again the court has to see whether it was done as a policy or in the public interest either by way of G.O., rule or by way of a legislation. If that be so, a decision denying a legitimate expectation based on such grounds does not qualify for interference unless in a given case, the decision or action taken amounts to an abuse of power. Therefore the limitation is extremely confined and if the according of natural justice does not condition the exercise of the power, the concept of legitimate expectation can have no role to play and the court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. For instance if an authority who has full discretion to grant a license prefers an existing license holder to a new applicant, the decision cannot be interfered with on the ground of legitimate expectation entertained by the new applicant applying the principles of natural justice. It can therefore be seen that legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. It would thus appear that there are stronger reasons as to why the legitimate expectation should not be substantively protected than the reasons as to why it should be protected. In other words such a legal obligation exists whenever the case supporting the same in terms of legal principles of different sorts, is stronger than the case against it. As observed in Attorney General for New South Wales case: "To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover, the notion of a

legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law." If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is "not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which shuts the court out of review on the merits", particularly when the element of speculation and uncertainty is inherent in that very concept. As cautioned in Attorney General for New South Wales case the courts should restrain themselves and restrict such claims duly to the legal limitations. It is a well-meant caution. Otherwise a resourceful litigant having vested interests in contracts, licences etc. can successfully indulge in getting welfare activities mandated by directive principles thwarted to further his own interests. The caution, particularly in the changing scenario, becomes all the more important."

(11) In Ghaziabad Development Authority and State of U.P. Vs. Delhi Auto and General Finance Pvt. Ltd. and Maha Maya General Finance Co. Ltd. and another, it has been held that legitimate expectation does not form an enforceable right to provide an independent ground of challenge. Paragraph 10 of this judgment reads as follows:

"10.As earlier indicated, the decision in Food Corp. of India v. Karndhenu Cattle Feed Industries clearly says that legitimate expectation does not form an enforceable right to provide an independent ground of challenge. The modified stand taken by the learned counsel for respondents on this aspect is equally met by this proposition. In substance the contention of learned counsel for the respondents is that the planning commitments and the investments made by the two private colonisers confer on them or at least on Maha Maya the indefeasible right to grant of the permission and sanction of their lay-out plan which cannot be defeated by exercise of the power of amendment of the master plan u/s 13 of the U.P. Act. The fallacy in this connection is that it upgrades the so-called legitimate expectation, assuming it to be so in the present case, to a legally enforceable right which a legitimate expectation is not, it being merely a part of the rule of non-arbitrariness to ensure procedural fairness of the decision. It is clear that the requirements of public interest can outweigh the legitimate

expectation of private persons and the decision of a public body on that basis is not assailable. This contention of learned counsel for the respondents fails."

(12) The law is, Therefore, well settled as referred to above and for the reasons as stated, it cannot be said that the withholding of grant to the petitioner Trust is violative of any provisions of law or, in any manner, arbitrary or based on extraneous considerations. There are good reasons which justify the action of the respondent. The petition is, Therefore, dismissed. There will be no order as to costs.