Delhi Cloth & General Mills Ltd

Vs

Union of India

Civil Appeal No. 223 of 1974

(Sabyasachi Mukhrji, Jagannatha Shetty JJ)

08.10.1987

JUDGMENT

JAGANNATHA SHETTY, J. –

1.This appeal, with special leave, is against the order and judgment dated July 13, 1973, of the Railways Rates Tribunal Madras, in complaint filed by the appellant under Section 41(1) of the Indian Railways Act 9 of 1890. The background facts are these :

2. The appellant is a company. It has set up a fertilizer factory at Kota in Rajasthan. It is said to be an industrially backward area. The factory manufactures Urea for which the main raw material is Naptha. Naptha has to be transported from Koyali Refinery of Indian Oil Corporation. The nearest railway station is Bajuva near Baroda. The nearest railway station serving company's factory is Dadhevi in Rajasthan. The distance between Bajuva and Dadhevi is about 520 Kms. For transportation, the Naptha has been classified by the Railway under Clause 110-B of the tariff.

3. Before the actual setting up of the factory, the company, by its letter dated September 5, 1966 requested the Railway Board for a concessional freight rate for the carriage of Naptha. It requested the Railway Board for fixed station to station rate equivalent to classification 62.5-B. That would have meant reduction of about 43 per cent in the normal tariff under clause 110-B. In that letter it was pointed out that if such concessional rate was not fixed, the company would be put to disadvantageous position as against the other factories located at ports or near the refineries. The Railway Board by its letter Ex. C-5 dated November 5, 1966 agreed to quote station to station rate equal to 85-B (special). In the said letter it was also stated that as the special rate was being quoted ahead of the actual setting up of the factory the freight rate need to be reviewed when the traffic actually begins to move.

4. When the factory was almost ready for operation the company wrote a letter dated June 5, 1967 requesting the Railway Board for charging the rate under classification 62.5-B instead of 85-B (Special). The Railway Board did not accede to the request. On May 31, 1968 the company wrote another letter informing the Railway Board that the movement of Naptha would commence from June/July 1968 and pending decision of the company's earlier request, the Railway Board may permit charging the rate equivalent to 85-B (Special) already offered in terms of the letter Ex. C-5. The Railway Board refused to grant that request also. The Railway Board, however, informed the company in the letter dated July 11, 1968 as follows :

> However, if on the basis of facts and figures your cost of production (date to be furnished for at least one complete year) vis-a-vis the sale price of fertilizers, it can

be established that production of fertilizers at Kota is uneconomical, until freight concession on the movement of Naptha from Bajuva/Trombay to Kota is granted, the Railway Board would be prepared to reconsider the question.

5. On April 19, 1969, the company filed a complaint under Section 41(1)(a) and (b) of the Railways Act, 1890 before the Railway Rates Tribunal Madras. The principal contentions raised in the complaint are as follows :

(i) The Railway Board was estopped and/or precluded from going back on the assurance of quoting station to station concessional rate 85-B when the company had invested a large amount of capital in setting up the factory at a place away from the refinery or port (ii) The rate charges by the Railway for the carriage of Naptha between two stations - Bajuva and Dadhevi was unreasonable under Section 41(1)(b) of the Indian Railway Act, 1890, and (iii) The Railways were showing undue preference or advantage in respect of other traffic and contravening the provisions of Section 28 of the Indian Railways Act, 1890.

6. With these and other contentions, the company requested the tribunal to declare the rate charged for the carriage of Naptha as unreasonable and to fix a reasonable rate for such carriage.

7. The Railway Board in its reply maintained that while quoting the concessional rate equal to 85-B (Special) it was made clear to the company that the rate was subject to review when the traffic starts moving and that concessional rate was provisional in character. The company did not construct the factory relying solely on the concessional rate offered by the Railway Board. There was no scope for any such understanding since the Railway reserved its right to determine the correct rate when the traffic started moving. It was later found that the chemicals have been advisedly given low class rate with a view to encourage fertilizer industry and no further concession was necessary to the company. It was further stated that the question of any undue prejudice or undue favour to any party does not arise when charging the respective class rates for specified commodities.

8. On these pleadings the Tribunal considered among others, the following issues :

(1) Whether freight charges, now charged, for the carriage of a company's traffic in Naptha from Bajuva to Dadhevi station are unreasonable under Section 41(1) of the Indian Railways Act, 1890 ?

(2) Whether the Railways are contravening Section 28 of the Indian Railways Act in charging the respective class rates for commodities Naptha, chemical manures, divisions A & B, Urea and Gypsum ?

(3) Whether the Railways are estopped by the doctrine of promissory estoppel in view of the assurance given in the letter Ex. C-5 ?

9. The Tribunal determined all these questions against the company. It was held that there was no unreasonableness in the rate charged for the carriage of Naptha from Bajuva to Dadhevi. The Railways are not contravening Section 28 of the Railways Act. The rate charged has not caused any prejudice to the company. On the question of promissory estoppel, the Tribunal held that the assurance given by the Railway Board in the letter Ex. C-5 was not mainly responsible for setting up of fertilizer factory at Kota. It was further held that even if Ex. C-5 was an assurance to the company the withdrawal of that assurance has not adversely affected the interests of the company.

10. Upon the submissions made by learned counsel on both sides, the following questions arise for out consideration :

> (1) Whether the Railway Board was bound to give the concessional rate offered to the company under Ex. C-5 dated November 5, 1966 ?
>
> (2) Whether the rate charged for the carriage of Naptha between Bajuva and Dadhevi is unreasonable ?
>
> (3) Whether the Railways are showing undue preference or advantage in respect of other traffic and contravening the provisions of Section 28 of the Railways Act ?

11. We may conveniently take up third question first for consideration.

12. The relevant provisions of the Railways Act, 1890, which have a material bearing on the question are these :

Section 41 provides for filing complaints against Railway Administration. The section provides as follows, so far as it is material :

> 41(1) Any complaint that a railway administration
>
> (a) is contravening the provisions of Section 28 or
>
> (b) is charging for the carriage of any commodity between two stations a rate which is unreasonable, or
>
> #(c) * * *##

may be made to the Tribunal and the Tribunal shall hear and decided any such complaint in accordance with the provisions of this chapter.

Section 28 provides :

> 28. A Railway administration shall not make or give any undue or unreasonable preference or advantage to, or in favour of, any particular person or railway administration, or any particular description of traffic, in any respect whatsoever, or subject any particular person or railway administration or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

13. The third question formulated by us relates to the contravention of Section 28 of the Railways Act. The scope of this section has been considered by this Court in Rajgarh Jute Mills Ltd. v. Eastern Railway (1959 SCR 236 at 241, 242). There it was observed that a party who complains against the railway administration that the provisions of Section 28 have been contravened must establish that there has been preference between himself and his goods on the one hand and his competitor and his goods on the other. Gajendragadkar, J. (as he then was) observed :

> Section 28 is obviously based on the principle that the power derived from the monopoly of railway carriage must be used in a fair and just manner in respect of all

> persons and all descriptions of traffic passing over the railway area. In other words, equal charges should normally be levied against persons or goods of the same or similar kinds passing over the same or similar circumstances; but this rule does not mean that, if the railway administration charges unequal rates in respect of the same or similar class of goods travelling over the same or similar areas, the inequality of rates necessarily attracts the provisions of Section 28. All cases of unequal rates cannot necessarily be treated as cases of preference because the very concept of preference postulates competition between the person or traffic receiving preference and the person or traffic suffering prejudice in consequence. It is only as between competitors in the same trade that a complaint of preference can be made by one in reference to the other.

14. In the light of these principles, the Tribunal considering the material on record held that there is no evidence produced by the company to justify any grievance under Section 28. We see no reason to disagree with this conclusion. It is, in our opinion, perfectly justified. In fact Mr. K. K. Jain learned counsel for the appellant also did not seriously dispute the correctness of that finding recorded by the Tribunal.

15. We may now turn to the second question. Mr. K. K. Jain urged that the rate charged by the Railway Administration is per se unreasonable. Here again the onus to prove the alleged unreasonableness of the freight rests on the company. It is for the company to establish that the rate charged by the Railway Administration for the carriage of Naptha is unreasonable. Of course, this onus could be discharged by relying upon the material produced by the Railways. Mr. Jain, therefore, relied upon a statement Ex. C-46 in support of his case. Ex. C-46 is a statement of surplus "working cost" in respect not necessary to analyse the statement. Even assuming that the Railways are earning some surplus income after deducting the operation cost that by itself is no ground to hold that the freight charged is per se unreasonable. It must be borne in mind that the Railways are run as a commercial undertaking and at the same time it being an instrumentality of the State, should serve the national interest as well. There is however, no obligation on the Railways to pass on the extra amount realised by the carriage of goods to customers. Nor it is necessary to share the profit with the commuters. As Mr. Barua learned counsel for the Railways said that in the case of commodities of national needs such as foodgrains, crude oil etc., it may be necessary for the Railways to charge below the operation cost. To offset such a loss the Railways may charge higher freight for certain other classified commodities. Therefore, it seems to us, that the cost of operation cannot by itself be the basis for judging the reasonableness of the rate charged.

16. It was next urged by Mr. K. K. Jain that the crude oil and Naptha are considered as comparable commodities for the purpose of carriage. The crude oil carries the rate equal to class 85-B (old), 85 (new) while Naptha carries rate 110-B (old), 105-B (new). In terms of amounts it works out at Rs. 59.45 for crude oil as against Rs. 73.13 for Naptha. The counsel urged that there is no justification shown for this wide disparity in the first place. Secondly, the freight rate of crude oil was the rate offered to the company under Ex. C-5 and the denial of that rate without any good reason is arbitrary. This argument though attractive does not carry conviction if one analyses the evidence on record. Crude oil has been clubbed with glycerine, fruit juices and syrups, fibres, flax etc. Naptha has been clubbed with aviation spirit, petrol, petroleum, ether and solvent oil. From the evidence produced by the Railways Naptha has been classified as a dangerous commodity with the flash point below 24.4 0C spontaneously. The crude oil has no such dangerous characteristics. It is also on record that Naptha requires special type of tank wagons and the Railways have to take special precautions for transportation. These and other relevant factors have been taken into account by the

Tribunal for rejecting the demand of the company for parity in freights. This Court cannot interfere with such a finding in this appeal under Article 136 of the Constitution. On the merits also, we see no justification to demand that Naptha should take the same freight rate as that of crude oil.

17. We may now revert to the first question. It relates to the correctness of the view taken by the Tribunal on the doctrine of promissory estoppel resulting by the letter Ex. C-5 of the Railway Board. The Tribunal has rejected this claim of the company by summarising its conclusion in the following terms :

> We must, therefore, hold that the assurance contained in Ex. C-5 was not mainly responsible for the setting up of the Fertilizer Factory at Kota.
>
> 15.3. Even if it was held that Ex. C-5 was a definite encouragement to the complainant to set up the Kota factory, there is no evidence on record to show that the withdrawal of the concession by Ex. C-12 has adversely affected the complainant.

We will show in the succeeding paragraphs that the complainant has suffered no material injury by virtue of the withdrawal of the concessional rate and the charging of the normal rate. It is well settled that the principle of estoppel can show that he has been prejudiced by the conduct of the party on whose assurance he has acted.

18. Here the Railways Rates Tribunal apparently, appears to have gone off the track. The doctrine of promissory estoppel has not been correctly understood by the Tribunal. It is true, that in the formative period, it was generally said that the doctrine of promissory estoppel cannot be invoked by the promisee unless he has suffered 'detriment' or 'prejudice'. It was often said simply, that the party asserting the estoppel must have been induced to act to his detriment. But this has now been explained in so many decisions all over. All that is now required is that the party asserting the estoppel must have acted upon the assurance given to him. Must have relied upon the representation made to him. It means, the party has changed or altered the position by relying on the assurance or the representation. The alteration of position by the party is the only indispensable requirement of the doctrine. It is not necessary to prove further any damage, detriment or prejudice to the party asserting the estoppel. The court, however, would compel the opposite party to adhere to the representation acted upon or abstained from acting. The entire doctrine proceeds on the premise that it is reliance based and nothing more.

19. This principle would be clear if we study the cases in which the doctrine has been applied ever since it burst out into sudden blaze in 1946. Lord Denning in Central London Property Trust Ltd. v. High Trees House Ltd. (1947 KB 130 : (1956) 1 All ER 256), sitting as a trial judge, asserted : A promise intended to be binding, intended to be acted upon, and in fact acted upon is binding.

20. The history of the High Trees (1947 KB 130 : (1956) 1 All ER 256) principle is too well known to bear repetition. It will be enough to make the following points. The promisor is bound because he led the promisee to commit himself to change the position. If the promisee has acted upon the promise, the promisor is precluded from receding (sic resiling from) his promise. No further detriment to the promisee upon his temporary interests need be established. This position has been made clear by Lord Denning himself in his article "Recent Developments in the Doctrine of Consideration" (Modern Law Review, Vol. 15 at p. 5) :

> A man should keep his word. All the more so when the promise is not a bare promise

> but is made with the intention that the other party should act upon it. Just as contract is different from tort and from estoppel, so also in the sphere now under discussion promise may give rise to a different equity from other conduct.

The difference may lie in the necessity of showing "detriment". Where one party deliberately promises to waive, modify or discharge his strict legal rights, intending the other party to act on the faith of promise, and the other party actually does act on it, then it is contrary, not only to equity but also to good faith, to allow the promisor to go back on his promise. It should not be necessary for the other party to show that he acted to his detriment in reliance on the promise. It should be sufficient that he acted on it.

21. The principle governing this branch of the subject cannot be better put then in the words of a great Australian jurist, Dixon, J. in Grundt v. Great Boulder Pty. Gold Mines Ltd. ((1938) 59 CLR 641 (Aus)). There he said :

It is often said simply that the party asserting the estoppel must have been induced to act to his detriment. Although substantially such a statement is correct and leads to no misunderstanding, it does not bring out clearly the basal purpose of the doctrine. That purpose is to avoid or prevent a detriment to the party asserting the estoppel by compelling the opposite party to adhere to the assumption upon which the former acted or abstained from acting. This means that the real detriment or harm from which the law seeks to give protection is that which would flow from the change of position if the assumption were deserted that led to it. So long as the assumption is adhered to, the party who altered his situation upon the faith of it cannot complain. His complaint is that when afterwards the other party makes a different state of affairs the basis of an assertion of right against him then, if it is allowed, his own original change of position will operate as a detriment. His action or inaction must be such that, if the assumption upon which he proceeded were shown to be wrong, and an inconsistent state of affairs were accepted as the foundation of the rights and duties of himself and the opposite party, the consequence would be to make his original act or failure to act a source of prejudice.

22. This passage was referred to, with approval, by Lord Denning in Central Newbury Car Auctions Ltd. v. Unity Finance Ltd. ((1956) 3 All ER 905 at 909). The said passage has also been quoted, with approval, by Bhagwati, J. (as he then was) in Motilal Padampat Sugar Mills Co. Ltd. v. State of U. P. ((1979) 2 SCR 641 at p. 695 : (1979) 2 SCC 409). The learned Judge had said : (SCC p. 452, para 33)

We do not think that in order to invoke the doctrine of promissory estoppel it is necessary for the promisee to show that he suffered detriment as a result of acting in reliance on the promise. But we may make it clear that if by detriment we mean injustice to the promisee which could result if the promisor were to recede from his promise, then detriment would certainly come in as a necessary ingredient. The detriment in such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee, if the promisor were allowed to go back on the promise.

23. The view taken in Motilal Padampat Sugar Mills case ((1979) 2 SCR 641 at p. 695 : (1979) 2 SCC 409) has been reiterated in Union of India v. Godfrey Philips India Ltd. ((1985) 4 SCC 369 : 1985 Supp 3 SCR 123)

24. The concept of detriment as we now understand it is whether it appears unjust, unreasonable or

inequitable that the promisor should be allowed to resile from his assurance or representation, having regard to what the promisee has done or refrained from doing in reliance on the assurance or representation.

25. It is, however, quite fundamental that the doctrine of promissory estoppel, cannot be used to compel the public bodies or the government to carry out the representation or promise which is contrary to law or which is outside their authority or power. Secondly, the estoppel stems from equitable doctrine. It, therefore, requires that he who seeks equity must do equity. The doctrine, therefore, cannot also be invoked if it is found to be inequitable or unjust in its enforcement.

26. We may also state that for the purpose of invoking the doctrine, it is not necessary for the company to show that the assurance contained in Ex. C-5 was mainly responsible for establishing the factory at Kota. There may be several representations to one party from different authorities in regard to different matters. Or, there may be several representations from the same party in regard to different matters. As in the instant case, there was one representation by the Rajasthan Government to supply power to the company at concessional rate. There was another representation from the same government to exempt the company from payment of tax for certain period. There may be other representations from the same or some other authorities. If those representations have been relied upon by the company, the court would compel those parties to adhere to their respective representations. It is immaterial whether each of the representations was wholly responsible or partly responsible for locating the factory at Kota. It is sufficient if the company was induced to act on that representation.

27. The last and final aspect of the matter to which attention should be drawn is that for the purpose of finding whether an estoppel arises in favour of the person acting on the representation, it is necessary to state that the representation must be clear and unambiguous and not tentative or uncertain. In this context we may usefully refer to the following passage from Halsbury's Laws of England (4th Edn., Vol. 16, p. 1071, para 1595) :

> 1595. Representation must be unambiguous. - To found an estoppel a representation must be clear and unambiguous, not necessarily susceptible of only one interpretation, but such as will reasonably be understood by the person to whom it is made in the sense contended for, and for this purpose the whole of the representation must be looked at. This is merely an application of the old maxim applicable to all estoppels, that they "must be certain to every intent ....

28. The question now is whether the assurance given by the Railway Board in the letter Ex. C-5 was clear and unqualified. But unfortunately, it is not so. It was subject to review to be undertaken when the company starts moving the raw material. Ex. C-5 reads :

> # New Delhi 1, Dated November 5, 1966Dear Sir,Sub. : Integrated Fertilizer - PVC project at Kota, Rajasthan - Rail movement of NapthaRef. : Your letter No. SFC/Gen-72 dated September 5, 1966I am directed to state that the Railway Board agree toquote a special rate equal to class 85-B (Special) CC : K fortransport of Naptha in train loads from Bombay or Koyali to Kota, formanufacture of fertilizers. The proposed special rate will apply atowner's risk.Since the special rate is being quoted ahead of the actualsetting up of the factory the rate may need to be reviewed when thetraffic actually begins to move. The Railway may accordingly beapproached before the traffic actually starts moving. Yours faithfully, Sd/- R. L. Sharma for

Secretary Railway Board##

29. What does this letter mean ? The first part of the letter offering the concessional rate equal to class 85-B (special) has been completely watered down in the second part of the letter. It has been expressly stated that the rate may need be reviewed when the traffic actually begins to move. The company was put to notice that it has to again approach the Railway Administration. The Railway authorities now state that they have reviewed the whole matter and found no justification to offer a concessional freight rate for Naptha, since fertilizers are deliberately given a low classification in the tariff. From the tenor of Ex. C-5 the Railways are entitled to state so, and it does not amount to resiling form the earlier assurance. No question of estoppel arises in favour of appellant out of the representation made in Ex. C-5.

30. We, therefore, agree with the conclusion of the Tribunal but not for all the reasons stated.

31. In the result the appeal fails and is dismissed. In the circumstances, however, we make no order as to costs.

</html