SUPREME COURT OF INDIA

TATA IRON & STEEL CO. LTD.

Vs.

UNION OF INDIA & ORS.

30/11/2000

(M.J.Rao, Umesh C Banerjee)

Appeal (civil) 6962 2000

JUDGMENT

BANERJEE, J.

Leave granted.

This appeal against the judgment of the High Court at Calcutta is addressed on two counts: The first involving the true purport of International Price Reimbursement Scheme (IPRS) as introduced by the Government of India and the second pertains to the doctrine of estoppel by conduct. Background Facts: By the Government Notification No. SC (A)24 (113)/63 Dated 29.2.1964 issued by the Department of Iron & Steel in the Ministry of Steel, Mines and Heavy Engineering, the Government of India to give effect to the proposal for fixation of steel prices for de-controlled categories, constituted the Joint Plant Committee consisting of representatives of all major producers of steel along with Government representative. It is the Joint Plant Committee (hereinafter referred to as JPC) with whose concurrence, the main producers, being its members control the prices of similar categories of steel, though however, the same is restrictive in its application and is made applicable to supplies effected by the main steel producers only, viz. Tata Iron & Steel Co. Ltd., Indian Iron & Steel Co. Ltd. and Hindustan Steel Ltd. (Presently Steel Authority of India Ltd.) The records depict that consequent on the increase in excise duty in steel materials under Government of India Notification dated 17th March, 1972, the prices of steel materials were directed to be inclusive of JPC contribution to the re-roller Freight Differential Fund, Equalised Freight Element and provision for JPC Engineering Goods Export Assistance Fund. The inclusion of the above were made applicable to various categories of materials including Bar, Rods, Slabs Blooms, Coil, Billets etc. as appears from JPC announcement No.81 dated March 20, 1972. It is, however, significant to note that by reason of the inclusion of the JPC price elements as above, the domestic price for iron and steel materials has always been higher than the international price of steel and resultantly demand for imported steel rather than the indigenous manufacture was on an ascending trend and it is to combat and curb such a trend and having regard to the higher domestic price structure, the Government of India introduced the International Price Reimbursement Scheme (hereinafter referred to as the Scheme) so as to provide some protection to exporters of engineering goods who would otherwise by reason of user of domestic steel, would be exposed to an additional expenditure and thus suffer a loss for the price difference as noticed above. Incidentally, be it noted that the

protection scheme came into force by reason of the price increase effected on 9.2.1981 by the Government of India, Ministry of Commerce Notification dated 23rd July, 1981. One redeeming feature of the Scheme however, is reimbursement (emphasised) and it is in this context that Clauses 2.4, 2.5, 2.7 and 2.8 of the Scheme are relevant and thus ought to be noticed in extenso and relevant extracts of which are as below: 2.4 Supplies of Steel made under release orders issued by Iron & Steel Controller will be made at the prevailing plant/stockyard price. After the export are effected, price difference between its domestic price and the relevant international price will be reimbursed to the exporter. Contracts eligible for reimbursement under this scheme (including fresh contracts) would have to be got registered with the concerned Regional Office of the EEPC within 45 days from the date of the contract.

2.5 For reimbursement purposes, the domestic price for these categories would be the JPC plant price for those categories where JPC price control exists and SAIL price for other items prevailing on the date of exports. The domestic price will be exclusive of taxes like sales tax, octroi, etc.

2.7 Procedure for Reimbursement:

A) The application for reimbursement will be made to the Regional Offices of the EEPC, with whom the exporter is registered;

B) The following documents will be submitted by the exporter for claiming the reimbursement of price difference between domestic and international prices of steel;

(i) Application in the prescribed form marked Annexure VI in triplicate;

(vi) A claim bill indicating categorywise consumption of steel and the price difference payable based on domestic price prevalent on the date of export and the international prices for the second preceding month as explained in paragraphs .(Emphasis supplied).

(vii) Sale voucher for purchase of steel/pig iron from Main Producers in original or the following documents:

1. Auditor/chartered Accountants Certificate in the prescribed format to the effect that no imported steel/pig iron has been utilised in the goods exported by the company.

2. An indemnity Bond in prescribed format indemnifying Government against any wrong payment on account of wrong calculation and / or for use of imported steel materials.

C) .the reimbursement benefit may be claimed by any one of the two parties provided the claimant is a registered exporter and otherwise eligible to get reimbursement benefit under this scheme; (Emphasised)

2.8 .

v) The claim for reimbursement would be made only in respect of consumption of indigenous steel and pig iron procured from the main producer or other sources. Claims for reimbursement would not be admitted against consumption of Steel / pig iron imported against Advance License under the Duty Exemption Scheme and against imprest / REP license or under OGL. No claims will be admitted in case Customs duty refund has been claimed / will be claimed under brand rate of duty drawback for such steel / pig iron. (Emphasised)

Further facts are as below:

(a) Application paper being Annexure VI to the Scheme pertaining to reimbursement of difference between the domestic and international price of steel contain details pertaining to total quantity of steel consumed for the manufacture of the product for export during a particular month together with a statement of the amount of claim. (b) Annexure VI to the Scheme itself provides for furnishing of an undertaking recording therein an obligation to refund the amount of Bill in full or part against application for reimbursement of price difference between domestic and international prices in case the declaration/certificate furnished by the appellant against the claim are found to be incorrect at any time. The undertaking further recorded that the refund would be effected within a period of 10 days from the date of receipt of notice asking for the refund failing which the amount paid erroneously or in excess shall be recovered from the appellant or to be adjusted against any other claim. (a) Incidentally Annexure VI also contained an Indemnity Bond as well which records as below: ..Such payments are to be made on demand and without demur. Our liability for payment under the bond being irrevocable and unconditional. (Emphasized).

The Indemnity Bond further provides

Now the condition of this bond is such that if as a result of the details scrutiny of the above said application (s) the amount finally payable to obliger is determined to be (the decision of the government being final and binding) nil/less because the obliger has been paid in excess on wrong calculations or has used imported steel/pig iron in the manufacture of items thus exported and also received the price difference claim from the Disbursing Authority, the eligibility of receiving further amounts by way of difference in the price between the domestic and international prices for steel/pig iron used in the manufacture of items exports, will be withdrawn and Government shall be at liberty to claim upon the obliger to return back the amount already paid by the disbursing authority within seven (7) days of the receipt of the notice from the disbursing authority failing which the government shall be free to take any action against the obliger without prejudice to the Government claim including security deposits and earnest money deposits lying with any other department of the Government or by attachment of our assets, shareholding and goodwill as also to stop all further payment/assistance to the obliger as available to the exporters.

The facts in issue: The factual score depicts that in terms of the Scheme as above, the appellant claimed benefits on the basis thereof and payments have also been made to the extent of differential element involved in the price structure. The factual score however disclose that the appellant while exporting engineering goods did use its own manufactured steel items without involvement of any of the price elements as declared by JPC and as noticed above. It is on this score however, the Engineering Export Promotion Council subsequently by its letter dated 23rd November, 1992 refused to recognise the appellants entitlement to avail of the benefit of the Scheme. The Council expressly communicated that a sum of Rs.10,37,96,604/- was paid in excess under a bona fide mistake being discovered later. The Council in addition to the claim above-said also claimed interest at the rate of 18% per annum. The appellant however, in turn by its letter dated 19th January, 1993 while recording acceptance of the factum of user of own materials placed on record that the JPC guidelines exempt main producers from having levies on steel manufactured by them but used for either captive consumption or for manufacture of down stream products and this proves that the JPC had accepted the unique position of an integrated steel producer who also manufactures other down stream products and by reason of such an acceptance, the appellant is not precluded from deriving the benefits under the Scheme.

It has been the specific stand of the appellant that the Scheme for Price Reimbursement from the time of its introduction is applicable universally to all exporters since the export would not have been viable without the benefits under the Scheme. Further the appellant contended that the EEP Council did not find any fault with the claims lodged for all these years, evidently because the Council was also satisfied about the eligibility of the company, nor there was any violation or circumvention of any of the provisions of the Scheme.

Subsequently, however, the Council by a letter dated 19th May, 1994 directed an adjustment of a sum of Rs.10,37,96,604/- being the excess IPR - Scheme payment to the Appellant herein and hence the Writ Petition before the High Court which was ordered in favour of the Appellant herein by the learned Single Judge though however, reversed in Letters Patent Appeal by the Appellate Bench of the High Court and hence the appeal before this Court. Contentions in support: In support of the Appeal, the learned senior counsel, Mr. Andhiyarujina contended that the scheme by itself if read in its entirety does not require actual payment of domestic price and in support thereof it has been contended: (1) The Scheme does not require the applicant to state the actual domestic price paid by it to make the claim, after the 1985 amendment. (2) After the 1985 amendment it was not necessary, nor a requirement in the matter of submission of sales voucher. (3) A claimant has only to state the price difference payable between the domestic price prevalent on the date of export and the international price of the preceding month. (4) The JPC price is not applicable to the steel purchased from producers other than the main producers i.e. other sources. Exporters who obtain steel from other sources do not have to pay JPC price or JPC levies. Nevertheless the price difference is payable between the JPC prices and the international prices. (5) There is no provision in the Scheme for diminishing or altering the JPC prices to conform to a price actually paid by the manufacturers/exporters for the steel. (6) For non-JPC categories of steel to be used in the manufacture, the domestic price would be the SAIL price. SAIL prices do not include JPC levies. (7) The Scheme disregards the actual price paid by the manufacturer/exporter for the domestic steel. He may have paid to the producer of steel a higher or lower price than the JPC price. This is ignored by the Scheme and the uniform JPC price is taken. (8) Though the Scheme uses the word reimbursement, in the context of the Scheme, there is no repayment to the exporter. The word reimbursement here truly means the payment to the exporter of the price difference between the higher domestic price and the lower international price, i.e. to say a subsidy for exports.

Mr. Andhyarujina, learned senior counsel, very strongly commented that after the commencement of the Amendment on 17th of October, 1985 the exporters of the engineering steel product could procure the indigenous steel and pig iron from any source in the country since there was existing no obligation to procure materials from only the main producers but from other sources as well and it is in this context, strong reliance was placed on clause 2.8 (v) of the Scheme. Mr. Andhyarujina contended that the very use of the words other sources being an alternate to the main producer depicts the intent of the framers of the Scheme that though primarily reimbursement would be effected in respect of consumption of indigenous steel and pig iron procured from the main producer but this procurement may be had from other sources as well, such as Mukand Iron, Jindal, Orient etc.. It has been contended rather strongly that other sources cannot but mean other manufacturers producing indigenous steel and contra view would run counter to the intent of the framers of the Scheme. It has been contended that the words procured fromother sources, as a matter of fact, cannot but mean other sources than the main producer. The word procure in common English parlance mean and imply to obtain or to get possession from someone else. It is, as a matter of fact, obtaining the possession of someone which one has not already got. This attribution however stands accepted by Lord Parker, C.J. in R v. Mills(1963 1All ER202: 204). Old English however, referred to the word as a sinister move but having regard to the common acceptation of the word, the

submission of Mr. Andhyaujina seem to be rather attractive. Incidentally, prior to 17th October, 1985 the price protection was available to exporters who used indigenous raw material procured from the main producers. On 17th October, 1985 the Scheme was amended so as to record that the production of sale vouchers, for the purchase of steel, pig iron from the main producers, ceased to be a requirement though, however, in lieu thereof an Audit Certificate has been demanded by the Union of India for certification that no foreign steel has been used in the concerned manufactured item. During the course of submissions Mr. Andhyarujina in no uncertain terms contended that JPC prices are the prices which are announced by the JPC from time to time for supplies from member steel plants, namely, the main producers (SAIL and TISCO) and the JPC prices applied for purchases from the main producers but not to purchases from other sources or other producers as noted above. TISCO, admittedly, is a main producer of steel in the country and admittedly further TISCO was captively consuming steel manufactured by it in the export product being steel tubes and it is on this score that they claimed the benefits of the IPRS from 1985 onwards and allowed till 1992 when the respondents said to have illegally denied the appellant the full benefits on the ground that it has not paid the special levies in the JPC price structure. Contentions raised on behalf of the Respondents: It is in this perspective that learned Attorney General contended that IPRS was evolved to avoid financial sufferance to the Indian manufacturer of iron and steel products from out of indigenous steel having the four basic price elements known in common English parlance as the JPC price namely, (i) Engineering Goods Export Assistant Fund (EGEAF) (ii) Steel Development Fund (SDF) (iii) Freight Equalisation Fund (FEF) and (iv) JPC Cess. Admittedly, JPC pricing is higher than international pricing as is available in the steel market in the country but in order to make sure utilisation of the indigenous steel from the main producers, the quality of which stands tested , and to curb and combat the financial stress on the manufacturers, the IPRS was brought into existence as otherwise Indian manufacturers would be completely out of the trade by reason of availability of international steel at a lesser rate. The IPRS leaves no manner of doubt stands attracted for reimbursement only. The issue therefore, arises having regard to the meaning attributed to the word reimbursement as to whether there is any entitlement for the appellant herein. It needs to be adverted that the appellant-petitioner in fact have been receiving the money in the past and the entitlement thereof is challenged only since 1992 and this payment as stated by Mr. Attorney General has been effected by mistake and immediately on detection thereof and in order to rectify the mistake, a notice was sent as to the excess payment on account of price difference between the domestic and the international prices. Observations: Under the International Price Reimbursement Scheme (IPRS) supplies of steel raw materials required by the Engineering exporters were made available at the International prices by reimbursing the difference between the JPC prices and the relevant international prices. The expression used is reimbursement to the extent of the difference between the domestic and international prices and in the event of non-payment thereof question of thus claiming any price difference would not arise as otherwise it would amount to obtaining double benefit This has been the contention of both Attorney General of India as also the Additional-Solicitor General of India appearing for the respondents. Admittedly, Tata Iron has not paid the JPC price which includes a number of levies rendering it more than the international prices but the factum of non-payment of the levies, since the materials in question have been consumed at the factory itself without payment of any duty, the submissions of the respondent seems to have been placed at a rather stronger footing. In common acceptation the word reimburse mean and imply to pay back or refund: As a matter of fact it denotes restoration of something paid in excess: as regards the respondent Union of India it cannot but mean to indemnify having regard to the common grammatical meaning of the word reimbursement. Reimbursement has to mean and imply restoration of an equivalent for something paid or expended. Reimbursement pre-supposes previous payment. The contextual facts depict that the intention of the Government while framing the IPRS

was to protect the interest of exporters of the engineering goods where the JPC or the domestic price (which includes a number of levies) was more than the international pricing. The appellant TISCO admittedly has not paid the JPC price which includes various levies of the raw materials used for the product. As a matter of fact they cannot have any reimbursement for expenses which they have never incurred. As per the calculation made by the respondents an amount of Rs.10,37,96,604/- is recoverable from TISCO on account of over payment of which a sum of Rs.6,75,00,298/- stands adjusted by the Union of India against the payments respectively and a balance amount of Rs. 3,62,96,306/- is yet to be recovered as contended by the respondents. On a true reading of the Scheme and various clauses thereunder together with the available meaning on the basis of the language used, the IPRS Scheme cannot possibly cover a situation as is in the present context. We are afraid that in the event the appellant is permitted and allowed to enjoy the benefits in terms of the scheme, the situation would be rather not only of unjust enrichment but entertainment of a totally wrong claim. Second Count: In support of the Appeal, the learned senior counsel Mr. Andhiyarujina by way of an alternative submission contended that conferment of benefit in terms of IPRS and continuance thereof in the matter of payment of price difference in terms of the IPRS the conduct of the respondent is hit by the doctrine of estoppel. by conduct. Estoppel by conduct in modern times stands elucidated with the decisions of the English Courts in Pickard v. Sears (1837: 6Ad. & El. 469) and its gradual elaboration until placement of its true principles by the Privy Council in the case of Sarat Chunder Dey v. Gopal Chunder Laha (1898 L.R. 19 I.A.203) whereas earlier Lord Esher in the case of Seton, Laing Co. v. Lafone (1887: 19, Q.B.D.68) evolved three basic elements of the doctrine of Estoppel to wit: Firstly, where a man makes a fraudulent misrepresentation and another man acts upon it to its true detriment: Secondly, another may be where a man makes a false statement negligently though without fraud and another person acts upon it: And thirdly there may be circumstances under which, where a mis-representation is made without fraud and without negligence, there may be an Estoppel: Lord Shand, however, was pleased to add one further element to the effect that there may be statements made, which have induced other party to do that from which otherwise he would have abstained and which cannot properly be characterised as mis- representation. In this context, reference may be made to the decisions of the High Court of Australia in the case of Craine v. Colonial Mutual Fire Insurance Co. Ltd.(1920: 28 C.L.R. 305). Dixon, J. in his judgment in Grundt v. The Great Boulder Pty. Gold Mines Ltd. (1938: 59 C.L.R. 641) stated that: in measuring the detriment, or demonstrating its existence, one does not compare the position of the representee, before and after acting upon the representation, upon the assumption that the representation is to be regarded as true, the question of estoppel does not arise. It is only when the representor wishes to disavow the assumption contained in his representation that an estoppel arises, and the question of detriment is considered, accordingly, in the light of the position which the representee would be in if the representor were allowed to disavow the truth of the representation. (In this context see Spencer Bower and Turner: Estoppel by Representation 3rd Ed.). Lord Denning also in the case of Central Newbury Car Auctions Ltd. v. Unity Finance Ltd. (1956 (3) All ER 905) appears to have subscribed to the view of Lord Dixon, J. pertaining to the test of detriment to the effect as to whether it appears unjust or unequitable that the reprsentator should now be allowed to resile from his representation, having regard to what the representee has done or refrained from doing in reliance on the representation, in short, the party asserting the Estoppel must have been induced to act to his detriment. So long as the assumption is adhered to, the party who altered the 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.(vide Grundts: High Court of Australia (supra)).

Phipson on Evidence (Fourteenth Edn.) has the following to state as regards estoppels by conduct. Estoppels by conduct, or, as they are still sometimes called, estoppels by matter in pais, were anciently acts of notoriety not less solemn and formal than the execution of a deed, such as livery of seisin, entry, acceptance of an estate and the like; and whether a party had or had not concurred in an act of this sort was deemed a matter which there could be no difficulty in ascertaining, and then the legal consequences followed. [Lyon v. Reed (1844) 13 M & W. 285, 309] The doctrine has, however, in modern times, been extended so as to embrace practically any act or statement by a party which it would be unconscionable to permit him to deny. The rule has been authoritatively stated as follows: Where one by his words or conduct willfully causes another to believe the existence of a certain state of things and induces him to act on that belief so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time. [Pickard v. Sears (1837) 6 A.& E. 469,474] And whatever a mans real intention may be, he is deemed to act willfully if he so conducts himself that a reasonable man would take the representation to be true and believe that it was meant that he should act upon it. (Freeman v. Cooke: 1848 (2) Exch. 654, 663).

Where the conduct is negligent or consists wholly of omission, there must be a duty to the person misled. {Mercantile Bank v. Central Bank (1938 AC 287, 304 and National Westminster Bank v. Barclays Bank International (1975 Q.B. 654] This principle sits oddly with the rest of the law of estoppel, but it appears to have been reaffirmed, at least by implication, by the House of Lords comparatively recently. [Moorgate Mercantile Co. Ltd. v. Twitchings (1977) AC 890 (H.L.)] The explanation is no doubt that this aspect of estoppel is properly to be considered a part of the law relating to negligent representations, rather than estoppel properly so-called. If two people with the same source of information assert the same truth or agree to assert the same falsehood at the same time, neither can be estopped as against the other from asserting differently at another time. [Square v. Square (1935) P.120]

A bare perusal of the same would go to show that the issue of an estoppel by conduct can only be said to be available in the event of there being a precise and unambiguous representation and on that score a further question arises as to whether there was any unequivocal assurance prompting the assured to alter his position or status.. The contextual facts however, depict otherwise. Annexure 2 to the application form for benefit of price protection contains an undertaking to the following effect:- We hereby undertake to refund to EEPC Rs.---- the amount paid to us in full or part thereof against our application for price protection. In terms of our application dated against exports made during In case any particular declaration/certificate furnished by us against our above referred to claims are found to be incorrect or any excess payment is determine to have been made due to oversight/wrong calculation etc. at any time. We also undertake to refund the amount within 10 days of receipt of the notice asking for the refund, failing which the amount erroneously paid or paid in excess shall be recovered from or adjusted against any other claim for export benefits by EEPC or by the licensing authorities of CCI & C.

and it is on this score it may be noted that in the event of there being a specific undertaking to refund for any amount erroneously paid or paid in excess (emphasis supplied), question of there being any estoppel in our view would not arise. In this context correspondence exchanged between the parties are rather significant. In particular letter dated 30th November, 1990 from the Assistant Development Commissioner for Iron & Steel and the reply thereto dated March 8, 1991 which unmistakably record the factum of non-payment of JPC price.

Opinion of the Court: The contextual facts therefore in no unambiguous language depict that the

four JPC price elements have not been paid by the appellant herein. Further factual score depicts recording of an undertaking to repay in the event of excess payments and on the wake of the findings as noticed hereinbefore, it would neither be fair nor reasonable or in consonance with the concept of justice, equity and good conscience directing entitlement of the appellant as is being claimed. Doctrine of fairness and the duty to act fairly is a doctrine developed in the administrative law field to ensure the rule of law and to prevent failure of justice. It is a principle of good conscience and equity since the law courts are to act fairly and reasonably in accordance with the law. The correspondence unmistakably divulge an obligation to pay certain compensation in the event there is a payment of certain levy by the appellant herein: The appellant admittedly has not made the payment : Doctrine of unreasonableness is opposed to doctrine of fairness and reasonableness will have its play, if allowed. The happening of an event has not taken place, can it be said irrespective of such an event reimbursement is to be allowed? The answer, however, cannot but be in the negative. In that view of the matter, we record our concurrence with the Judgment of the Calcutta High Court. The appeal therefore, fails and is dismissed. No order as to costs.