SUPREME COURT OF INDIA

State of Arunachal Pradesh

Vs.

Nezone Law House, Assam

C.A.No.2092 of 2002

(Dr.Arijit Pasayat and P.Sathasivam JJ.)

01.04.2008

JUDGMENT:

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the order of a Division Bench of the Guwahati High Court dismissing the writ appeal filed by the appellant.

2. The factual position is very interesting and needs to be noted in some detail.

> A Writ Petition was filed by the respondent claiming that the State Government had promised to purchase 500 sets of 'North Eastern Region Local Acts and Rules' from it. But contrary to its promise it had refused to place any order. The prayer in the writ petition was for a direction to the present appellant and its functionaries to maintain and keep the promise made by them to the respondent in respect of printing and supply of 500 sets as noted above. It was stated that the then Law Minister had assured the respondent through its proprietor to purchase the books and had given green signal for publishing and printing of the compilation of local laws at the relevant period and had promised that if they publish those the government of Arunachal Pradesh will purchase at least 500 sets of local Acts and Rules. It was submitted that in view of the direction given by this Court in All India Judges' Association and Ors. v. Union of India & Ors. [AIR 1992 SC 165] and in All India Judges' Association and Ors. v. Union of India & Ors. [AIR 1993 SC 2493] such promise was made. It according to the writ petitioner is a clear case where principles of promissory estoppel and legitimate

expectation applied. The stand was resisted by the present appellant contending that there has been manipulation of the notes. The alleged note does not indicate that there was any promise or order for printing/publishing the book. It was merely a departmental note sent to the Planning/Finance/Law Department from the Chief Minister for examination. Further the Minister had specifically stated (in the note) that 400 copies of one book containing all the North Eastern Regional Local Acts and Rules of Rs.400/- each (total value of Rs.1,60,000/-) could be purchased as the publisher on his own told that he has published such Acts and Rules. This according to the present appellant established that the then Law Minister had never ordered to undertake publication and supply thereafter of 500 sets of such books. The mind of the then law Minister was clear as to the procedure to be adopted. It was further pointed out that on the body of the respondent's letter dated 27th April, 1997 the words/Figures '500 volumes' (in the third line of the Minister's note) appears to be interpolated by the words '500 sets' by obliterating the word 'volume' by using a white erasing ink and writing over their 'sets' by hand. It was pointed out that the cost involvement would be about a crore of rupees as the price of the books as claimed was nearly 40 lakhs and with escalation of price it was likely to reach Rupees one crore. It was further submitted that the Writ Petition deserves to be dismissed. The High Court observed that though there appear to be over writing, but the normal practice is that books are purchased in sets and therefore, even if there was any interpolation the same was intentionally done to correct the error. The Writ Petition was, therefore, allowed purportedly holding that the principles of promissory estoppel applied. As noted above, the writ appeal was filed by the appellant which was dismissed by the impugned judgment.

3. Learned counsel for the appellant submitted that the learned Single Judge and the Division Bench clearly overlooked the position in law that when a claim is founded on disputed document, the writ petition is not to be entertained. Additionally there was no question of any promissory estoppel involved. The document relied upon by the respondent was a departmental note. The same need approval of the various departments. The books were not useful for the judicial officers and, therefore, there was no need for placing any order.

4. Though the respondent is represented in this appeal by a learned counsel, none appeared when the matter was taken up.

5. As noted above the factual scenario is interesting. The document relied upon by the respondent and the High Court refer to some oral expression of desire by the then Law Minister. When the view of several departments were involved the question of any oral view being expressed by a Minister is really not relevant. Further the document relied upon was nothing but a departmental note which itself clearly indicated that the view of various departments/Ministries were to be taken and their concurrence was to be obtained. Apart from that, undisputedly there was some factual dispute as to whether the intended purchase was of volumes or sets. There is conceptual different between the two. The books were not even printed at the relevant point of time. The High Court has noticed only one volume had been printed. Further the need for the purchase of the books for the judicial officers was to be assessed in consultation with the High Court. The Law Minister could not have, without taking the view of the High Court, placed orders. In any event the dispute as to the volumes or the sets and the interpolation in the documents were of considerable relevance. Unfortunately the High Court has lightly brushed aside this aspect.

6. The doctrines of promissory estoppel and legitimate expectation were not applicable to the facts of the case.

7. Estoppel is a rule of equity which has gained new dimensions in recent years. A new class of estoppel has come to be recognized by the courts in this country as well as in England. The doctrine of 'promissory estoppel' has assumed importance in recent years though it was dimly noticed in some of the earlier cases. The leading case on the subject is Central London Property Trust Ltd. v. High Trees House Ltd. (1947) 1 KB 130. The rule laid down in High Trees case (supra), again came up for consideration before the King's Bench in Combe v. Bombe (1951) 2 KB 215. Therein the court ruled that the principle stated in High Trees's case (supra), is that, where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the party who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relationship as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced, even though it is not supported in point of law by any consideration, but only by his word. But that principle does not create any cause of action, which did not exist before; so that, where a promise is made which is not supported by any consideration, the promise cannot bring an action on the basis of that promise. The

principle enunciated in the High Trees case (supra), was also recognized by the House of Lords in Tool Metal Manufacturing Co. Ltd. v. Tungsten Electric Co. Ltd (1955) 2 All ER 657. That principle was adopted by this Court in Union of India v. Indo-Afghan Agencies Ltd. (AIR 1968 SC 718) and Turner Morrison and Co. Ltd. v. Hungerford Investment Trust Ltd. (1972 (1) SCC 857). Doctrine of "Promissory Estoppel" has been evolved by the courts, on the principles of equity, to avoid injustice. "Promissory Estoppel" is defined in Black's Law Dictionary as "an estoppel which arises when there is a promise which promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of promisee, and which does induce such action or forbearance, and such promise is binding if injustice can be avoided only by enforcement of promise". So far as this Court is concerned, it invoked the doctrine in Indo Afghan Agencies's case (supra) in which it was, inter alia, laid down that even though the case would not fall within the terms of Section 115 of the Indian Evidence Act, 1872 (in short the 'Evidence Act') which enacts the rule of estoppel, it would still be open to a party who had acted on a representation made by the Government to claim that the Government should be bound to carry out the promise made by it even though the promise was not recorded in the form of a formal contract as required by Article 299 of the Constitution. (See Century Spinning Co. v. Ulhasnagar Municipal Council (AIR 1971 SC 1021), Radhakrishna v. State of Bihar (AIR 1977 SC 1496), Motilal Padampat Sugar Mills Co. Ltd v. State of U.P. (1979 (2) SCC 409), Union of India v. Godfrey Philips India Ltd. (1985 (4) SCC 369), Dr. Ashok Kumar Maheshwari v. State of U.P. & Another (1998 (2) Supreme 100).

8. In the backdrop, let us travel a little distance into the past to understand the evolution of the doctrine of "promissory estoppel". Dixon, J. an Australian Jurist, in Grundt v. Great Boulder Gold Mines Prorietary Ltd. (1939) 59 CLR 641 (Aust) laid down as under: "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 assumptions were deserted that led to it". The principle, set out above, was reiterated by Lord Denning in High Trees's case (supra). This principle has been evolved by equity to avoid injustice. It is neither in the realm of contract nor in the realm of estoppel. Its object is to interpose equity shorn of its form to mitigate the rigour of strict law, as noted in

Anglo Afghan Agencies's case (supra) and Sharma Transport Represented by D.P. Sharma v. Government of A.P. and others (2002 (2) SCC 188).

9. Where a particular mode is prescribed for doing an act and there is no impediment in adopting the procedure, the deviation to act in different manner which does not disclose any discernible principle which is reasonable itself shall be labelled as arbitrary. Every State action must be informed by reason and it follows that an act uninformed by reason is per se arbitrary.

10. This Court's observations in G. B. Mahajan v. Jalgaon Municipal Council (AIR 1991 SC 1153) are kept out of lush field of administrative policy except where policy is inconsistent with the express or implied provision of a statute which creates the power to which the policy relates or where a decision made in purported exercise of power is such that a repository of the power acting reasonably and in good faith could not have made it. But there has to be a word of caution. Something overwhelming must appear before the Court will intervene. That is and ought to be a difficult onus for an applicant to discharge. The Courts are not very good at formulating or evaluating policy. Sometimes when the Courts have intervened on policy grounds the Court's view of the range of policies open under the statute or of what is unreasonable policy has not got public acceptance. On the contrary, curial views of policy have been subjected to stringent criticism.

11. As Professor Wade points out (in Administrative Law by H.W.R. Wade, 6th Edition) there is ample room within the legal boundaries for radical differences of opinion in which neither side is unreasonable. The reasonableness in administrative law must, therefore, distinguish between proper course and improper abuse of power. Nor is the test Court's own standard of reasonableness as it might conceive it in a given situation. The point to note is that the thing is not unreasonable in the legal sense merely because the Court thinks it to be unwise.

12. In Union of India and Ors. v. Hindustan Development Corporation and Ors. (AIR 1994 SC 998), it was observed that decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest where the doctrine of legitimate expectation can be applied. If it is a question of policy, even by ways of change of old policy, the Courts cannot intervene with the decision. In a given case whether there are such facts and circumstances giving rise to legitimate expectation, would primarily be a question of fact.

13. As was observed in Punjab Communications Ltd. v. Union of India and others (AIR 1999 SC 1801), the change in policy can defeat a substantive legitimate expectation if it can be justified on "Wednesbury reasonableness." The decision-maker has the choice in the balancing of the pros and cons relevant to the change in policy. It is, therefore, clear that the choice of policy is for the decision-maker and not the Court. The legitimate substantive expectation merely permits the Court to find out if the change of policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made. A claim based on merely legitimate expectation without anything more cannot ipso facto give a right. Its uniqueness lies in the fact that it covers the entire span of time; present, past and future. How significant is the statement that today is tomorrows' yesterday. The present is as we experience it, the past is a present memory and future is a present expectation. For legal purposes, expectation is not same as anticipation. Legitimacy of an expectation can be inferred only if it is founded on the sanction of law.

14. As observed in Attorney General for New Southwale v. Quinn (1990 (64) Australian LJR 327) to strike 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 negotiation 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 treasure of natural justice and it ought not to unlock the gates which shuts the Court out of review on the merits,' particularly, when the elements of speculation and uncertainty are inherent in that very concept. As cautioned in Attorney General for New Southwale's case

the Courts should restrain themselves and respect such claims duly to the legal limitations. It is a well meant caution. Otherwise, a resourceful litigant having vested interest in contract, licences, etc. can successfully indulge in getting welfare activities mandated by directing principles thwarted to further his own interest. The caution, particularly in the changing scenario becomes all the more important.

15. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities and adopt trade policies. As noted above, the ultimate test is whether on the touchstone of reasonableness the policy decision comes out unscathed.

16. Article 166 of the Constitution deals with the conduct of Government business. The said provision reads as follows:

> "166. Conduct of business of the Government of a State. (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.
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> (2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.
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> (3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion."
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> Clause (1) requires that all executive action of the State Government shall have to be taken in the name of the Governor. Further there is no particular formula of words required for compliance with Article 166(1). What the Court has to see is whether the substance of its requirement has been complied with. A Constitution Bench in R. Chitralekha etc. v. State of Mysore and Ors. (AIR 1964 1823) held that the provisions of the Article were only directory and not mandatory in character and if they were not complied with it could still be established as a question of fact that the impugned order was issued in fact by the State Government or the Governor.

> Clause (1) does not prescribe how an executive action of the Government is to be performed; it only prescribes the mode under which such act is to be expressed. While clause (1) is in relation to the mode of expression, clause (2) lays down the ways in which the order is to be authenticated. Whether there is any Government order in terms of Article 166; has to be adjudicated from the factual background of each case.

17. In order 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 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. The Courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the Courts have to do equity and the fundamental principles of equity must forever be present in the mind of the Court.

18. As the factual scenario goes to show the principles of promissory estoppel were clearly inapplicable to the facts of the case. Above being the position, the appeal deserves to be allowed which we direct. Orders of learned Single Judge and the Division Bench are set aside.

19. The appeal is allowed but without any order as to costs.