

DOCTRINE OF "LEGITIMATE EXPECTATION"

A. K. Srivastava

Deputy Director,
JTRIUP

The Word "Legitimate Expectation" is not defined by any law for, the time being in force. Yet it is another doctrine fashioned by the Court to review the administrative action.

Concept of legitimate expectation in administrative law has now gained sufficient importance. "Legitimate Expectation" is the latest recruit to the long list of concepts fashioned by the Courts for the review of administrative actions, and this creation takes its place beside such principles as the rules of natural justice, unreasonableness, the judiciary duty of local authorities and in future perhaps, the principle of proportionality.

It was, in fact, for the purpose of restricting the right to be heard that 'legitimate expectation' was introduced into the law. It made its first appearance in an English case where alien students of 'Scientology' were refused extension of their entry permits as an act of policy by the Home Secretary, who had announced that no discretionary benefits would be granted to this sect. They had no legitimate expectation of extension beyond the permitted time and so no right to a hearing, though revocation of their permits within that time would have been contrary to legitimate expectation. Official statements of policy may cancel legitimate expectation; just as they may create it.¹

"A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to *receive* such treatment. The expectation may arise from a representation or promise made by the authority including an Implied representation or from consistent past practice."²

No order can be passed *without* hearing a person if *it* entails civil consequences. Where even though a person has no enforceable right yet he is affected or likely to be affected by the order passed by a public authority, the doctrine of legitimate expectation come into play and the person may have a legitimate expectation of being treated in a certain way by an administrative authority.³

A case of legitimate expectation *would* arise when a body, by representation or by past practice, aroused expectation which would be within

¹ Administrative Law. 6th Edn. by HWR Wade at page 522.

² Halsbury's Laws of England Vol. I (1) 4th Edition para 81 at page 151-152.

³ U.P. Awasthi v. Gyan Devi, (1995) 2 SCC 326.

its power fulfil. The protection is limited to that extent and the judicial review can be within those limits. 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.

Legitimate expectations may come in various forms and owe their existence to different kinds of circumstances e.g. cases of promotions which are in normal course expected, contracts, distribution of largess by the Government and some what similar situations i.e. discretionary grants of licences, permits or the like, carry with it a reasonable expectation though not a legal right to renewal or non-revocation, and to summarily disappoint that expectation may be seen as unfair without the expectant person being heard. The court has to see whether it was done as a policy or in the public interest. 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 doctrine 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. In a case where the decision is left entirely to the discretion of the deciding authority without any legal bounds and if the decision is taken fairly and objectively the Court will not interfere on the ground of procedural unfairness to a person whose interest based on legitimate expectation might be affected. 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.⁴

The principle of legitimate expectation is closely connected with a 'right to be heard'. Such an action may take many forms. One may be expectation of prior consultation. Another may be expectation of being allowed time to make representations, especially where the aggrieved party is seeking to persuade an authority to depart from a lawfully established policy adopted in connection with the exercise of a particular power because of some suggested exceptional reasons justifying such a departure.⁵

Legitimate, or reasonable, expectation may arise from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue.⁶ The expectation may be based on some statement or undertaking by or on behalf of the public authority which has the duty of taking decision, If the authority has through its officers

⁴ Union of India v. Hindustan Development Corpn., (1993) 3 SCC 499 at 548

⁵ (1984) 3 All. EA 935 at 954.

⁶ R. v. Secretary of State of Transport Exports Greater London Council, (1985)3 All.ER 300

acted in a way that would make it unfair or inconsistent with good administration for him to be denied such an inquiry.

The expectation cannot be the same as anticipation. It is different from a wish, desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope, even leading to a moral obligation, cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or established procedure followed in regular and natural sequence. It is also distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense.⁷

Legitimate expectation gives the applicant sufficient locus standi for judicial review. This doctrine 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 straightway from the administrative authority as no crystallised right, as such, is involved.

Legitimate expectation may arise-

1. if there is an express promise given by a public authority; or
2. because of the existence of a regular practice which the claimant can reasonably expect to continue;
3. Such an expectation must be reasonable.⁸

The doctrine of legitimate expectation arises only in the field of administrative decisions. If the plea of legitimate expectation relates to procedural fairness there is no possibility whatsoever of invoking the doctrine as against the legislation.

Administrative action is subject to control by judicial review under three heads :-

- (i) illegality, where the decision making authority has been guilty of an error of law e.g. by purporting to exercise a power which it does not possess.

⁷ Union of India v. Hindustan Development Corpn., (1993)3 SCC 499 at 540.

⁸ Madras City Wine Merchants Association v. State of Tamil Nadu, (1994) 5 SCC 509

- (ii) irrationality, where the decision making authority has acted so unreasonably that no reasonable authority would have made the decision;
- (iii) procedural impropriety, where the decision making authority has failed in its duty to act fairly.⁹

Judicial review provides the means by which judicial control of administrative action is exercised. The subject matter of every judicial review is a decision made by some person or a refusal by him to make a decision.

The decision must have consequences which affect some person (or body of persons) other than the decision maker although it may affect him too. It must affect such other person either,

- (a) by altering rights or obligations of that person which are enforceable by or against him in private law, or
- (b) by depriving him of some benefit or advantage which either

(i) he has in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to enjoy until there has been communicated to him some rational ground for withdrawing it on which he was to be given an opportunity to comment or,

- (ii) he has received assurance from the decision maker that it will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should be withdrawn.¹⁰

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.

Legitimate expectation being less than a right operates in the field of public and not private law and to some extent such legitimate expectation ought to be protected not guaranteed.

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.

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 Art. 14 of the Constitution of India but a

⁹ CCSD vs. Minister for the Civil Service, (1984) 3 All.ER 935

¹⁰ (1984) 3 All EA 935 at 949.

claim based on mere legitimate expectation without anything more cannot 'ipso facto' give a right to invoke these principles.

It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely.

- (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from other left out groups, and
- (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question.

The classification may be founded on different bases namely geographical or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.¹¹

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 shut the court out of review on the merits, particularly when the element of uncertainty and speculation is inherent in that very concept.

The mere reasonable or legitimate expectation of a citizen may not by itself be a distinct enforceable right, but failure to consider and give due *weight* to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non- - arbitrariness, a necessary concomitant of the rule of law. Every legitimate; expectation is a relevant factor requiring due consideration in a fair decision making process. Whether the expectation of the claimant is reasonable or *legitimate* in the context is a question of fact in each case. Whenever the, question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. The doctrine of legitimate expectation gets assimilated in the rule of law.

In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Art. 14 of the Constitution of which non- arbitrariness is a significant facet. There is no unfettered discretion in public law. A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is fairplay in action. To satisfy this requirement of non- arbitrariness in a State action, it is,

¹¹ *Ram Krishna Dalmia v. Justice S.R. Tendolkar, AIR 1958 S(., 538*

necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision and also that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bonafides of the decision in a given case. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.¹²

[J.T.R.I. JOURNAL – First Year, Issue – 2 - Year – April – June, 1995]

¹² F.C.I. v. Kamdhenu Cattle Fee Industries, (1993) 2 SCC 71.