

PROMISSORY ESTOPPEL – A SURVEY

Justice Srinath Sahay
Chairman,
State Law Commission, U.P.

It was in the beginning of this century that a case had arisen in the then Presidency of Bombay, in which the action of the Government in going back on its promise was challenged- the seeds of promissory estoppel were sown in that case in so far as our country is concerned. It was a case where on the assurance of the Government, the Municipal Corporation had abandoned the site of certain municipal stables which obstructed the construction of an arterial road, as proposed by the Government, and had entered into possession of another piece of land offered by the Government and constructed stables, workshops and chawls on the same at considerable expense. Twenty four years afterwards, the Government served a notice on the Municipal Commissioner requesting him to deliver possession of the land within six months and in the meantime to pay rent at the rate of Rs. 12000/- per month. The claim was resisted by the Municipal Corporation and the suit filed by the Secretary of State on the basis of the said notice was dismissed. The plea of the Municipal Corporation that the events “had created an equity in favour of the Municipality” was upheld, Jenkin C.J. holding that the Municipality gave up the old stables, levelled the ground and erected the movable stables in the belief that they had an absolute right against the Government, not to be turned out until after the expiration of six months, notice and other suitable ground was furnished and “that this belief is referable to an expectation created by the Government that their enjoyment of the land would be in accordance with this behalf; and that the Government knew that the Municipality was acting in this belief so created” (vide *Municipal Corporation of Bombay v. The Secretary of State*, I.L.R. 29 Bom. 580).

2. Another case relating to Crawford Market in Bombay itself arose, in which a plea of equity was raised and though it was not decided by all, it did not go wholly unnoticed, one of the learned Judges adverted to it. The Crawford Market was constructed with an investment of Rs. 17 lakhs by the Municipality on a new site granted by the Government, on the representation that no rent shall be charged as the market will be like other public buildings for the benefit of the whole community. Before taking possession of the new site, the Municipality had, on being called upon by the Government given up and vacated the old site on which the market stood. Seven decades after the coming into existence of the market on the new site, the Collector of Bombay proceeded to assess the new site to land revenue. The Municipal Corporation instituted a suit for declaration that the order of assessment was ultra vires, and that it was

entitled to hold the land for ever without payment of any land revenue. The matter went up to the Supreme Court and was decided in, *Collector of Bombay v. Municipal Corporation of the City of Bombay*, A.I.R. 1951 S.C. 469. It was held by the majority that since the transfer of land was not effected after complying with the statutory formalities required for entering into a contract with the Government or transfer of property by the Government, the Municipality did not acquire a legal title to the land on which the market was built, but the Municipality had perfected its title by adverse possession and the right to hold the land in perpetuity on the basis of the promise held out by the Government being an integral part or inseverable incident of the title so acquired, the Municipality was entitled to the declaration sought by it and the assessment to land revenue made by the Collector was ultra vires. Another learned Judge (Patanjali Sastri J.) did not share this view and opined that right to hold the land rent free was an additional or collateral right and the prerogative right to assess land revenue was independent of the right of making grant in land and could not be destroyed by lost grant or adverse possession. The majority did not, therefore, consider it necessary to decide the questions of equity raised in the case. Chandra Sekhara Aiyar J., was the solitary Judge who adverted that when the Government stated that no rent would be charged, as markets to be built were for the benefit of the whole community, it was a representation made by the Government, when the site was given and possession was taken and the existence of the representation could not be wiped out by the fact that the grant was invalid. Came the most inspiring observation that “Courts must do justice by the promotion of honesty and good faith, as far as it lies in their power”.

3. While all this was going on, the law of promissory estoppel was taking concrete shape in the lands beyond the frontiers. The case reported in *Central London Property Trust Ltd. v. High Trees House Ltd.*, 1947 K.B. 130 set the ball rolling. In that case Mr. Justice Denning formulated the principle “that a promise intended to be binding, intended to be acted on and in fact acted on, is binding so far as its terms properly apply.” The dictum of Denning J. (as he then was) was debated oft and on in his own country and attempt was made to settle the parameters of the doctrine as far as possible. However, a reformist like Denning himself was not prepared to stretch the doctrine too far, so as to let it create a new cause of action. In America also, jurists were pondering over the doctrine of promissory estoppel and where in favour of encouraging its application for preventing injustice being done in a party. They have veered round the view in recent times that the doctrine of promissory estoppel may apply to Government when justice so requires.

4. *Union of India v. Indo Afghan Agencies*, A.I.R. 1968 S.C. 718 is the first notable case in India which has heralded the installation of the doctrine of promissory estoppel on the pedestal of law. It was once again declared in

emphatic terms that no person may be deprived of his right or liberty except in due course of an course of and by authority of law. If a member of the executive seeks to deprive a citizen of his right or liberty otherwise than in exercise of power derived from law, common or statute, the Courts will be competent to and indeed would be bound to protect the rights of the aggrieved citizen. The Government is bound to honour the promise made by it and if the citizen acting in reliance on the promise has altered his position, the doctrine of promissory estoppel would be applicable against the Government and Government cannot be released from its obligation either on the ground of executive necessity or of the absence of a formal contract executed after due compliance of statutory formalities. The doctrine of promissory estoppel is invoked against the Government as an equitable doctrine and naturally it must yield when the equity so requires. The Government is bound to its promise, because otherwise it would be inequitable to permit it to refrain from carrying out its solemn promise or representation made by it as to its future conduct on some “undefined and undisclosed ground of necessity or expediency”. The next step forward was taken in *Century Spinning and Manufacturing Co. Ltd. v. Ulhasnagar Municipal Council*, A.I.R. 1971 S.C. 1021 where it was held that the doctrine of promissory estoppel is applicable against a public authority.

5. The doctrine of promissory estoppel came in full bloom in *Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh*, (1979) 2 S.C.C. 409. A Bench of two Hon'ble Judges of the Supreme Court heard the matter and the judgment of Court was delivered by Bhagwati J. (as he then was). He made a thorough research and after referring to a large number of cases, Indian, English and American, propounded that in India the law may now to be taken to be settled that where the Government makes a promise knowing or intending that it would be acted upon by the promisee and in fact the promisee acting in reliance of it alters his position, the Government will be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. The Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such a promise may fetter its executive action. New dimensions were added to the doctrine by laying down that in applying this doctrine to the Government, no distinction can be made between the exercise of a Sovereign or Governmental function and a trading or business activity of the Government. Whatever be the nature of the function which the Government is discharging, it was emphasised, the Government is subject to the rule of promissory estoppel. Immunity from the liability may be granted to the Government, if it can be shown by the Government that having regard to the facts, as they have transpired, it would be inequitable to hold the Government to

the promise made by it. The exceptions to the rule were also stated, in that promissory estoppel cannot be invoked to compel the Government to do an act prohibited by law or to permit or condone a breach of law or to preclude exercise of legislative function. A significant innovation was, however, made where departing from the view taken in English cases, it was laid down that the doctrine of promissory estoppel can also be a source of cause of action and cannot be applied by way of defence only.

6. Shadows were cast from time to time on the scope and applicability of the said doctrine and a line of thought had emerged that Government should be granted immunity. By resort to the doctrine of promissory estoppel, the Legislature cannot be precluded from exercising its legislative function (*State of Kerala v. Gwalior Rayon Silk Manufacturing Co. Ltd.*, (1973)2 S.C.C. 713) nor there can be any estoppel against the Government in the exercise of its Sovereign, legislative and executive functions. But the real criticism came at the hands of a Division Bench of two learned Judges in *M/s Jit Ram Shiv Kumar v. State of Haryana*, (1981)1 S.C.C. 11. the judgment in that case is a vivid exposition of the subject of immunisation of the Government from the operation of the doctrine of promissory estoppel. Detailed discussion coupled with examination of case-law and expert treatises has led to the formulation of the following conclusions, namely, that the doctrine is not available against exercise of legislative functions of the State and it cannot be invoked for preventing the Government from discharging its functions under the law. The Government is also not bound by the unauthorised acts of its officers or by the acts done by the officers outside the scope of their authority. When the officer acts within the scope of his authority under a scheme and enters into an agreement and makes a representation and acting on that representation, the other party puts itself in disadvantageous position, the officer is required to act according to the agreement or representation. The officer cannot act arbitrarily on his mere whim and ignore his promise on some undefined and undisclosed grounds of necessity or change the conditions to be prejudice of the person who has acted upon such representation and put himself in a disadvantageous position. The officer would still be justified in changing the terms of the agreement to the prejudice of the other party on special considerations or the matters which have a bearing on the general interest of the state.

7. The tide took a turn again when the matter was reconsidered by a Bench consisting of three learned Judges presided over by Mr. Justice Bhagwati who had by that time been elevated as Chief Justice of India. In *Union of India v. Godfrey Philips India Ltd.* (1985) 4 S.C.C. 369) the leading judgment on the doctrine of promissory estoppel was delivered by Bhagwati C.J. himself and the other two learned Judges expresses their full agreement with the view taken by him. This judgment is of greater importance because the criticism levelled in the case of *M/s Jit Ram Shiv Kumar* against his view expressed in *M.P. Sugar Mills*

case was considered and answered by the learned Chief Justice. The law declared by him has stood the test of time and has not been dissented from in the later decisions of the Supreme Court. Now the doctrine of promissory estoppel is well established in the administrative law of India. It represents a principle evolved by equity to avoid injustice. Though commonly named as promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of the doctrine is the interposition of equity which has always true to its form stepped in to mitigate the rigour of strict law. The true principle of promissory estoppel is that-

“Where one party has by his word or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it if it would be inequitable to allow him to do so, having regard to the dealings which have taken place between the parties.

The law in India has gone far ahead of the narrow position adopted in England and it is now well-settled that the doctrine of promissory estoppel is not limited in its application only to defence but it can also found a cause of action. The various parameters of the doctrine outlined in the earlier case of Motilal Sugar Mills were approved. It was thus held that the doctrine of promissory estoppel is applicable against the Government in the exercise of its Governmental, public or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel. However, there can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can be Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It cannot also be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or a public authority to make. The doctrine of promissory estoppel being an equitable doctrine must yield when equity so requires. If it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable the Government or public authority to the promise or representation made by it, the Court would not raise an enquiry in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority.

8. Such is the law compendiously laid down in *Union of India v. Godfrey Philips India Ltd.* and it has been affirmed in the subsequent cases. The doctrine has taken roots and all attempts to negative the same have been scuttled. (See

Pournami Oil Mills v. State of Kerala (1986) Supp. S.C.C. 728; Shri Bakul Oil Industries v. State of Gijrat (1987)1 S.C.C. 31; State of Bihar v. Usha Martin Industries Ltd. (1987) Supp. S.C.C. 710; Delhi Cloth and General Mills v. Union of India (1988)3 S.C.C. 570; Amrit Banaspati v. State of Punjab (1992)2 S.C.C. 411. Recent case of Kasinka Trading v. Union of India (1995) 1 S.C.C. 274 furnishes as instance of the exception to the rule of promissory estoppel. The Government of India issued a notification dated 15.3.1979 u/s 25, Customs Act, 1962, exempting polyvinyl chloride resins when imported into India from the whole of customs duty upto 31.3.1981. It issued another notification dated 16.10.1980 u/s. 25 superceding the earlier notification and providing that P.V.C. resin when imported into India would be exempt from so much of customs duty as is in excess of 4 percent advalorem. The company claimed that it had placed orders for the import of PVC resin on the understanding that PVC resin was totally exempt from customs duty and the Government must be held bound by the representation it had made in the exemption notification and it was estopped on the basis of promissory estoppel from going back on its promise. The claim was resisted by the Government and it was argued that the exemption had been withdrawn in public interest and the doctrine of promissory estoppel cannot operate against the State to the detriment of the society at large. The argument was reiterated that unless it can be established that while functioning in its Sovereign, Governmental or public capacity, as distinct from its executive or commercial capacity its action is not bonafide or is actuated by extraneous considerations, the Courts will not allow a party to invoke the doctrine of promissory estoppel against the Government. The claim of the company was repelled by the Court on the ground that the earlier notification granting total exemption from customs duty was issued in public interest in the exercise of statutory power with a view to enabling the Government to regulate, control and promote the industries and industrial production in the country. It was not intended as an incentive for import and was not issued to induce the company to import PVC resin. It did not extend any representation much less a promise to the company which was intended to create a legal relationship between the Government and the party drawing benefit flowing from the notification. The Government could not be prohibited from discharging its statutory obligation u/s 25 if it was satisfied that it was in the public interest to withdraw, modify or rescind the earlier notification. The withdrawal or exemption in public interest a matter of policy and the Courts would not bind the Government to its policy, a matter of policy for all times to come irrespective of the satisfaction of the Government that change in the policy was necessary in public interest. It was found that neither fraud nor lack of bonafides was alleged or established in issuing the second notification withdrawing the exemption. Consequently the company was not permitted to claim total exemption from customs duty by invoking the doctrine of promissory estoppel.

9. The epilogue of the matter is that the doctrine of promissory estoppel has become part and parcel of the Corpus Juris of India. It is no longer the handmaid of a legal activist and it is too late in the day for any Government or public authority to claim total immunity from the applicability of the doctrine. The rule of promissory estoppel is based on equity and the exceptions to the rule are clearly carved out and the areas well demarcated in which the doctrine would not apply to Government or public authority. Judicial mind would be relieved of much of its disturbance in drawing the line of immunity for the Government, if the true perspective of the doctrine is not allowed to be blurred. Equity is sometimes used as a synonym for natural justice and sometimes for what seems in the circumstances of a case naturally just and right as contrasted with a rule of law which may not provide for such circumstances or provide what seems unreasonable or unfair. Special consideration, unless it is clearly warranted, is anti-thesis to equity. The object of equity is to promote honesty and good faith and no Government or public authority can be expected or encouraged to act otherwise, whether at par with a private citizen or as something extraordinary in the sphere in which it is called upon to act. Therefore, whenever the doctrine of promissory estoppel is invoked in a given case, the equities are to be considered in the light of the nature of the representation or promise made by or on behalf of the Government or public authority, the legal relationship created or intended to be created between the parties, the things done by a party on the basis of such representation or promise for altering its position, the dealings between the parties and the prejudice which would be caused to the parties by the reversal of the representation or promise. Adjustment of equities in a given case will ultimately matter and the Government or public authority may not be held bound to its promise or representation, if it is ultra vires or contrary to law or in teeth of statutory prohibition or the like. The case of exercise of statutory power in good faith in public interest having been added to the category of exceptions indicates that the list is not exhaustive and other exceptions in the name of disentitlement to equitable relief may be evolved in future.

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