

D.C.M. LTD. AND ANR.
v.
UNION OF INDIA AND ANR.

AUGUST 13, 1996

[M.M. PUNCHHI AND K. VENKATASWAMI, JJ.]

Administrative Law : Doctrine of Promissory Estoppel—Applicability of—Held : Doctrine of Promissory Estoppel not applicable—Though benefit of doctrine available against Government, but it cannot bar future executive action or executive necessity—Doctrine of Promissory Estoppel to yield when equity so require—If it is inequitable to hold the Government or public authority to promise or representation made by it, equity not to be invoked—Moreover, expansion carried out by the appellants in pursuance of licence issued in February, 1975 was independent of incentive announced in December, 1975.

The appellants owners two sugar factories, where the business of manufacturing and selling sugar was carried on. From 10.6.66 the sale of sugar was controlled by the Government. Later on, in November, 1975, the Government announced certain incentives for establishment of new sugar factories and for expansions carried out in the existing ones to those who had applied for and completed their expansions during 1/11/75 to 20/10/80. The incentives mainly consisted in providing a higher quota of levy-free sugar. In the year 1978, as a result of withdrawal of sugar control by the Government, the incentives were no longer required/available. Later on, the Government on December 17, 1979 once again provided for partial control of sugar as was the situation prior to August 16, 1978. Then the Government revised the scheme to provide incentives w.e.f. 1980-81. This made the percentage of levy-free sugar announced in the 1975 scheme higher than the percentage announced in the 1980 scheme. The 1980 scheme was even applicable to those who were otherwise entitled to the benefit of 1975 scheme. The appellants after carrying out the expansion at their two factories on 6/8/80 and 13/8/80 sought additional free-sale sugar as per the incentives announced. Though the appellants claimed incentives as per 1975 scheme, the respondents allowed them incentives only as per the revised scheme of 1980.

A Aggrieved, they moved the High Court seeking additional free-sale sugar over and above the entitlement allowed to them on the basis of 1980 scheme. The writ petition was dismissed by the High Court.

B In appeal to this Court it was contended for the appellants that the principle of promissory estoppel applied to this case here as the appellants had spent huge amounts towards the expansion of sugar factories at two places on the incentives announced in the year 1975 and therefore, they cannot be denied on account of decontrol of the sugar for a short period. It was contended on behalf of the respondents that during the period when there was no control, the producers sold their total production in the open market and the benefit flowing from such decontrol was fully reaped by them and, therefore appellants cannot be allowed to contend that the Government cannot change the scheme.

C Dismissing the appeal, this Court

D HELD : 1.1. The principle of promissory estoppel has no application at all on the facts of this case. It is well-settled that the doctrine of promissory estoppel represents a principle evolved by equity to avoid injustice and, though commonly named promissory estoppel, it is neither in the realm of contract not in the realm of estoppel. The basis of this doctrine is the inter-position of equity which has always, proved to its form, stepped in to mitigate the rigour of strict law. It is equally true that the doctrine of promissory estoppel is not limited in its application only to defence but it can also found a cause of action. This doctrine 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 this doctrine. It is further well-established that the doctrine of promissory estoppel must yield when the equity so require. 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 to hold the Government or public authority to the promise or representation made by it, the court would not raise equity 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. The doctrine of promissory estoppel would be displaced in such a case because on the facts equity would not require that

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H the Government or public authority should be held bound by the promise

or representation made by it. [593-G-H; 594-A-C]

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1.2. The Government before refusing the incentive scheme of the year 1975 have taken into account various factors including the decontrol of sale of sugar for the period from 16.7.78 to 17.12.79. Further, if the prayer of the appellants were to be allowed, several lakhs of quintals of sugar will have to be released as incentive levy-free sugar which is otherwise meant for public distribution system. The petitioners who availed of the resulting benefit due to decontrol cannot in all fairness lay claim to the benefit of the incentives in full now over again though the basic premise became non-existent. The benefit under the subsequent scheme in force from November 15, 1980 has already been accorded to them in full measure. [594-D-F]

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Union of India and Ors. v. Godfrey Philips India Ltd., [1985] 4 SCC 369, relied on.

2. The company was granted licence in February, 1975 and at that time nobody could imagine about the incentive scheme announced on December 6, 1975. The appellants, therefore, cannot argue that the scheme announced induced them to undertake the expansion of which the licence had been received by it in February, 1975. The expansion carried out by the appellants in pursuance of the licence issued in February, 1975 was independent and had nothing to do with the incentive announced in December, 1975 as observed by the High Court. [594-G-H; 595-A]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3274 of 1990.

From the Judgment and Order dated 19.5.89 of the Allahabad High Court in W.P. No. 233 of 1984.

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Shanti Bhushan and P. Bhushan for the Appellants.

Ms. Binu Tamta for S.N. Terdol for the Respondents.

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The Judgment of the Court was delivered by

K. VENKATASWAMI, J. The short point that arises for our consideration is whether the Principle of Promissory Estoppel applies to the facts of this case. The facts are as under :—

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A The appellants owned two sugar factories at Daurala and Mawana (Meerut) and at both these factories the business of manufacturing and selling of sugar by vacuum pan process was carried on. The Central Government promulgated the Sugar (Control) Order on 10.6.66 under which the sale of sugar by producers was controlled. In order to mitigate the hardship caused to the sugar industry in the establishment of new sugar factories and for effecting substantial expansions in the existing sugar factories, the Government sanctioned a scheme in November, 1975 providing incentives to the new sugar factories and also to those sugar factories who had applied for and completed their expansion projects during the period 1.11.75 to 20.10.80. The incentives consisted partly of higher percentage of levy-free sugar quota and partly of concessions in the excise duty. It was also announced that the eligible sugar factories will be entitled for the above-said incentives for a period of five years from the date of their completion of licenced expansions. In the year 1978, there was a major change in the sugar policy i.e. the control and the price, distribution, release and movement of sugar was lifted w.e.f. August 16, 1978. As a result of this decontrol, the classification - levy and levy-free sugar - no longer existed and consequently the benefits under the incentive scheme were no longer required/available. While so, the Central Government w.e.f. December 17, 1979 agains modified the sugar policy to provide for partial control with dual pricing as was the situation prior to August 16, 1978. The Government after examining the various altered parameters for revising the scheme announced a revised scheme to provide incentives to the new sugar factories and expansion projects. This revised scheme came into effect from the sugar year 1980-81. At this juncture, it must be noted that the percentage of levy-free sugar announced in the 1975 scheme is higher than the percentage announced in the 1980 scheme. The new scheme of the year 1980 was made applicable even to those industries who were otherwise entitled to the benefit of the scheme announced in the year 1975. The appellants after completing the expansion projects at the two places on 6.8.80 and 13.8.80 applied for necessary eligibility certificate for additional free-sale sugar entitlements as per the incentives announced. The respondents allowed the incentives as per the revised 1980 scheme. However, the appellants asserted that the incentives as per the scheme announced in the years 1975 must be given to them. The respondents did not accede to this claim of the appellants.

H Aggrieved by that they moved the High Court for the issue of a writ of mandamus directing the first respondent to issue a supplementary

eligibility certificate for 1.63 lakh quintals of additional free-sale sugar entitlement over and above the entitlement declared by the Central Government on the basis of revised 1980 scheme for the year 1980-81 to 1982-83. In addition to that, the appellants also prayed for a writ of mandamus directing the first respondent to issue a further eligibility certificate determining the amount of additional free-sale entitlement to the appellants' sugar factory for the year 1983-84 and 1984-85 under the incentive scheme of the year 1975.

The High Court rejecting the claim of the appellants dismissed the writ petition.

Mr. Shanti Bhushan, learned senior counsel appearing for the appellants contended that the principle of Promissory Estoppel squarely applies to the facts of this case. According to him, the new scheme announced in the year 1980 cannot be applied to the appellants merely because there was no control for the sale of sugar by the producers for a short period. It is further contended that the appellants had spent huge amounts towards the expansion of sugar factories at two places on the incentives announced in the year 1975 and therefore, they cannot be denied on account of the decontrol of the sugar for a short period. In support of that argument, he placed heavy reliance on a judgment of this Court in *Union of India and Ors. v. Godfrey Philips India Ltd.*, [1985] 4 SCC 369. On the other hand, learned counsel appearing for the respondents placing reliance on the decontrol order submitted that during the period when there was no control of sale of sugar by the producers, the producers were enabled to sell their hundred per cent of that production in the open market and the benefit flowing from such decontrol changed the whole complex and, therefore, the appellants cannot be allowed to contend that the Government cannot change the scheme.

We have considered the rival submissions. It is well-settled that the doctrine of promissory estoppel represents a principle evolved by equity to avoid injustice and, though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of this doctrine is the inter-position of equity which has always, proved to its form, stepped in to mitigate the rigour of strict law. It is equally true that the doctrine of promissory estoppel is not limited in its application only to defence but it can also found a cause of action. This doctrine is applicable

- A 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 this doctrine. It is further well-established that the doctrine of promissory estoppel must yield when the equity so require. If it can be shown by the
- B Government or public authority that having regard to the facts as they have transpired, it would be unequitable to hold the Government or public authority to the promise or representation made by it, the court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the
- C Government or public authority. The doctrine of promissory estoppel would be displaced in such a case because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it [vide 1985 4 SCC 369 (supra)].

- D In this case we have found that the Government before refusing the incentive scheme of the year 1975 have taken into account various factors including the decontrol of sale of sugar for the period from 16.8.78 to 17.12.79. Further if the prayer of the appellants were to be allowed, several lakhs of quintals of sugar will have to be released as incentive levy-free sugar which otherwise meant for public distribution system. We agree with
- E the learned Judges of the High Court when they observed that the 'petitioners who availed of the resulting benefit due to decontrol cannot in all fairness lay claim to be restored the benefit of the incentives in full now over again though the basic premise became non-existent. The benefit under the subsequent scheme in force from November 15, 1980 has already
- F been accorded to them in full measure'.

- G The High Court also noticed another important factor to decline the relief prayed for by the appellants, namely that the appellant company had applied for a grant of the licence in the year 1975, had mentioned in the licence application that the entire expansion would be done by the said company at its own expense. The company was granted licence in February, 1975 and that time nobody could imagine about the incentive scheme which was announced on December 6, 1975. The appellants, therefore, cannot argue that the scheme announced induced them to undertake the expansion of which the licence had been received by it on February, 1975. The
- H expansion carried out by the appellants in pursuance of the licence issued

in February, 1975 was independent and had nothing to do with the incentive announced in December, 1975 as observed by the High Court. A

Taking all these factors into consideration, we have no doubt that on the facts of this case, the Principle of Promissory Estoppel has no application at all. The judgment relied on by the learned Senior counsel for the appellants, namely, *Godfrey Philips* case supports the case of the respondents on facts. In the result the appeal fails and is accordingly dismissed. B
No costs.

S.S.

Appeal dismissed.