Supreme Court of India
Dr. Ashok Kumar Maheshwari vs State Of U.P. & Anr on 14 January, 1998
Author: S S Ahmad
Bench: S. Saghir Ahmad, D.P. Wadhwa

PETITIONER:
DR. ASHOK KUMAR MAHESHWARI

Vs.

RESPONDENT:
STATE OF U.P. & ANR.

DATE OF JUDGMENT: 14/01/1998

BENCH:
S. SAGHIR AHMAD, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T S. SAGHIR AHMAD, J.

"Magnificent promises are always to be suspected" is an adage which was forgotten by the appellant and his colleagues who not only believed such a promise but approached the Court for its enforcement in writ proceedings which have since reached this Court requiring us to decide whether the doctrine of "Promissory Estoppel" can be invoked for the enforcement of a "promise" made contrary to law.

The appellant is a Demonstrator in the Pharmacy Department of S.N. Medical College, Agra where he was appointed or 11.01.73 and his services on that post were regularised on 28.6.76.

The appellant and five of his other colleagues, working as Demonstrators in various Government Medical Colleges in U.P., filed a Writ Petition in the Allahabad High Court that the State Government as also the Director, Medical Education and Training, may be directed not to fill the posts of Lecturers in Pharmacy by direct recruitment and the same may be filled up, at least to he extent of fifty per cent, by promotion of Demonstrators working in the Department as is done in other Departments where posts of Readers are filled up, to the extent of fifty per cent by promoting the Lecturers, while the posts of Professors are filled up, to that extent, by promoting the Readers. It

was pleaded before the High Court that the High Court that the Government, by its Order dated 31.1.77 and 23.12.77, had provided, in respect of all posts of Readers and Professors in the Government Medical Colleges, that they shall be filled up by direct recruitment to the extent of fifty per cent, and remaining fifty per cent would be filled up by promotion from amongst persons working as Lecturers in the Department provided they are qualified for the post. It was contended that the Government has not made bay provision for filling up the posts of Lecturers in the Department of Pharmacy by promotion from amongst the Demonstrators and that the Government had not passed any specific order to that effect although such an order should have been passed particularly in view of the fact that in all other Government services, avenue of promotion has been provided for. It was also claimed that the Government, by its Order dated 24.6.86 had made provision for time bound promotions of the teachers of Government Medical Colleges as it was provided that a Lecturer, on completing a particular period of service, would become entitled to the scale of pay admissible for Readers and Readers would become entitled to be paid salary in the pay scale applicable to Professors. It was claimed that these benefits should also be made applicable to the persons working as Demonstrators in the Various Government Medical Colleges and they should also be provided an avenue of promotion by providing, as is done in the other Departments, that the post of Lecturer in the Department of Pharmacy would be filled up, to the extent of fifty per cent, by promotion from amongst the Demonstrators.

It was, also claimed that in 1980 when 4 posts of Lecturers were filled up by the respondents, namely the State Government and the Director, Medical Education and Training, by direct recruitment, the appellant and his Other colleagues made representations to the Director, and it was on this representation that the respondents accured them that the remaining posts would be filled up by promoting. It was for this reason that a seniority list of Demonstrators, working in the Pharmacy Department of various Government Medical Colleges, was drawn up. Since the State Government did not, thereafter, issue any instruction or order for promotion of Demonstrators to the posts of Lecturers in the Pharmacy Department, the petitioner filed the Writ petition in the High Court which, by the impugned judgment dated January 1, 1990 was dismissed with the findings that there were neither any statutory rules nor were any executive instructions ever issued by the Government that fifty per cent posts of Lecturers in the Pharmacy Department in various Government Medical Colleges would be filled up by promotion of Demonstrators, working therein, and that the case that any of the respondent had promised that petitioner or any of his colleague would be promoted as Lecturer was not made out.

Learned counsel for the appellant has raised, as was done in the High Court, the plea of Promissory Estoppel before us and has contended that the Government having itself assured the appellant and his other colleagues that they would be promoted as Lecturers and having itself taken steps to prepare the seniority list of Demonstrators, working in various Government Medical Colleges, was bound by its promise and, therefore, ought to have issued the necessary notification that the posts of Lecturers in the Department of Pharmacy would be Filled up to promotion of Demonstrators. Since this was not done the high court should itself have commanded the Government to issue such a notification so that the promise, which was made to the appellant, was fulfilled. It is contended that the Government had already issued such Notification in respect of the posts of Professors and Readers by providing that they would be filled up, to the extent of fifty per cent, by promotion of

Readers and Lecturers and, therefore, in respect of the Department of Pharmacy, the same policy should have been adopted.

It is not disputed that the posts of Lecturers in the Department of Pharmacy as also in other Departments of Pharmacy as also in other Departments of the Medical Colleges are filed up by direct recruitment. It is also not disputed that so far as Demonstrators are concerned, there are no rules, statutory or otherwise, which provide that they would be promoted to the posts to Lecturers. The High Court has also considered this aspect of the matter and has recorded a finding that medical education in Government Medical Colleges is a three-tier system consisting of the posts of Professors, Readers and Lecturers. While these posts were, earlier, filled up by direct recruitment by the two Government Notifications, issued in 1977, it was provided that the posts of Professors and Readers would be filled up, to the extent of fifty per cent, by promotion of Readers and Lecturers and the remaining fifty per cent would be filled up by direct recruitment. The scheme of personal promotion was also introduced under which a Lecturer of Reader who had put in service for a specified period, was to be automatically promoted to next higher grade available to the Readers or Professors, as the case may be. No such provision was made for the promotion of Demonstrators not was the scheme of personal promotion made applicable to them. The High Court has also found it as a fact that the respondents, or any of them, had not given any assurance to the appellant or other Demonstrators that they would be promoted to the posts of Lecturers. In view of these findings, which are findings, of fact, we need not enter into the factual dispute once again.

Assuming, however, that any such assurance was given to the appellant either by the State Government of by the Director that the appellant or any of this colleague who had joined him in filing the Writ Petition, would be promoted as Lecturers, let us examine whether the Rule of Promissory Estoppel could be invoked in the particular circumstances of the case.

Doctrine of "Promissory Estoppel" has been evolved by the courts, on the principles of equity, to avoid injustice.

"Estoppel" in Black's Law Dictionary, is indicated to mean that a party is prevented by his own acts from claiming a right to the detriment of other party who was entitled to rely on such conduct and has acted accordingly. Section 115 of the Indian Evidence Act is also, more or less, couched in a language which conveys the same expression.

"Promissory Estoppel" is defined as 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."

These definitions in Black's Law Dictionary which are based on decided cases, indicate that before that Rule of "Promissory Estoppel" can be invoked, it has to be shown that there was a declaration or promise made which induced the party to whom the promise was made to alter its position to its disadvantage.

In this 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. The Great Boulder Pty. Gold Mines Ltd. (1938) 59 CLR 641, laid down as under :-

> "It is often said simply that he party asserting the estoppel must have been induced to act to his detriment. Although substantially such a statement is correct a ns leads to misunderstanding, it does not bring out clearly the basal purpose to 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 act or abstained from acting. This means that the real detriment harm from which the law seeks to given protection is that which would flow from the change of position if the assumption were deserted that led to it."

The principle, set out above, was reiterated by Lord Denning in Central London Properties Ltd. v. High Trees House Ltd. 1947 KB 130, when he stated a sunder :-

"A promise intended to be binding, intended to be acted upon, and in fact acted upon is binding...."

Lord Denning approved the decision of Dixon, J. (supra) in Central Newbury Car Auctions Ltd. v. Unity Finance Ltd. (1956) 3 ALL ER 905. Apart from propounding the above principle on judicial side, Lord Denning wrote out an article, a classic in legal literature, on "Recent Developments in the Doctrine of Consideration", Modern Law Review, Vol. 15, in which he expressed as under :-

> "A man should keep his word. All the more so when the promises is not a bare promise but is made with the intention that the other party should act upon it. Just a contract is different from tort and from estoppel, so also in the sphere now under discussion promises may give rise to a different equity from other conduct.
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> The difference may lie in the necessity of showing "detriment".
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> Where one party deliberately promises to waive, modify or discharge his strict legal rights, intending the other party to act on the faith of promise, and the other party actually does act on it, then it is contrary, not only to equity but also to good faith, to allow the promisor to go back on his promise. It should not be necessary for the other party to show that he acted to his detriment in reliance on the promise. It should be sufficient that he acted on it."

So far as this Court is concerned, it invoked the doctrine in Union of India vs. Indo-Afghan Agencies & Ors. AIR 1968 SC 718 = (1968) 2 SCR 366, in which it was, inter alia, laid down that even though the case would not fail within the terms of Section 115 of 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 nor recorded in the form of a formal contract as required by Article 299 of the Constitution. To the same effect are the decisions in Century Spinning Co. vs. Ulhasnagar Municipal Council, AIR 1971 SC 1021 an d Radhakrishna vs. State of Bihar, AIR 1977 SC 1496.

In Motilal Padampat Sugar Mills Co. Ltd. vs. State of U.P (1979) 2 SCR 641 = 1979 (2) SCC 409 = AIR 1979 SC 621, while r eiterating the above principles and quoting with approval the passage of Dixon, J., extracted above, it was observed as under :-

> "We do not think that in order to invoke the doctrine of promissory estoppel it is necessary for the promisee to show that he suffered detriment as a result of acting in reliance on the promise. But we may make it clear that if by detriment we mean injustice to the promisee which could result if the promisor were to recede from his promise then detriment would certainly come in as a necessary ingredient, The detriment in such a case is not some prejudice suffered by the promisee by acting on the promise, but he prejudice which would be caused to the promisees, if the promisor were allowed to go back on the promise."

Thereafter, in successive cases, as for example, Union of India vs. Godfrey Philips India Ltd. (1985) 4 SCC 369 = 1985 Supp (3) SCR 123 = AIR 1986 SC 806; Delhi Cloth & General Mills Ltd. vs. Union of India & Ors. (1995) 1 SCC 274; Darshan Oil (P) Ltd. vs. Union of India & Ors (1995) 1 SCC 245; Shabi Construction Co. Ltd. vs. City & Industrial Development Corporation & Anr. (1995) 4 SCC 301; Shrijee Sales Corporation vs. U.O.I, (1997) 3 SCC 398; Pawan Allovs & Castings (P) Ltd. vs. U.P. State Electricity Board (1997) 7 SCC 251. the Rule of "Promissory Estoppel" was discussed, explained and elaborated.

There are may aspects of "Promissory Estoppel", but in the instant case we are concerned only with one aspect which is to the effect that if any "promise" has been made contrary to law, can it still be enforced by involving this rule.

The basic principle is that the plea of estoppel cannot be raised to defeat the provisions of a Statute. (See: G.H.C. Ariff vs. Jadunath Majumdar Bahadur AIR 1931 PC 70; M/s Mathra Parshad & Sons vs. State of Punjab & Ors. AIR 1962 SC 745; Rishabh Kumar vs. State of U.P. AIR 1987 SC 1576 = 1987 (Supp.) SCC 306).

This principle was reiterated in Union of India vs. R.C. D'Souza AIR 1987 SC 1172 = (1987) 2 SCC 211, where a retired army officer was recruited as Assistant Commandant on temporary basis and was called upon to exercise his option for regularisation contrary to the statutory rules. It was held that it would not amount to estoppel against the Department.

Whether a Promissory Estoppel, which is based on a 'promise' contrary to law can be invoked has already been considered by this Court in Kasinka Trading & Anr. vs. Union of India & Ors (1995) 1 SCC 274 as also in Shabi Construction Co. Ltd vs. City & Industrial Development Corporation & Anr. (1995) 4 SCC 301 wherein it is laid down that the Rule of "Promissory Estoppel" a 'declaration' which is contrary to law or outside the authority or power of the Government or the person making

that promise.

Applying th eabove principles to the instant case, even if it is accepted that the State Government or the Director, Medical Education & Training, assured the appellant or any of his colleagues that they would be promoted to the posts of Lecturer, such a ' promise' cannot be enforced against the respondents as the avenue of promotion for Demonstrators to the post of Lecturers was not provided either under the Statute or any executive instruction. Moreover, if the post of Lecturer was filled up by promotion of Demonstrator, it would defeat the existing mode of recruitment, namely, that it can be filled up by direct recruitment only and not by promotion. It may also be stated that the appellant did not make any clear, sound and positive averment as to which officer of the Government, when and in what manner gave the assurance to the appellant or any of his colleague that hey would be promoted as Lecturers. It was also not stated that he appellant had, at any time, acting upon the promise, altered his position, in any manner, specially to his detriment. Bald Pleadings cannot be made the foundation for involving the Doctrine of Promissory Estoppel.

The appeal being without merits has to be dismissed reminding the appellant that a mind, conscious of integrity, scorns to say more then it means to perform and the Government and Director were not of the material. No costs.