

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:- Hon'ble Mr. Justice I. P. Mukerji
Hon'ble Mr. Justice Subhendu Samanta.

F.M.A. 2169 of 2018

Amar Dam & Anr.
Vs.
The State of West Bengal & Ors.

For the appellants	:	Sardar Amjad Ali, Sr. Advocate. Mr. Pinaki Chakraborty, Ms. Saswati Ghosh Sinha, Advocates.
For the State	:	Mr. Amal Kumar Sen, Mr. Lal Mohan Basu, Advocates.
For the respondents	:	Mr. Sudipto Moitra, Mr. A.K. Gayen, Advocates.
Judgment on	:	01.08.2022

I. P. MUKERJI, J.-

In the 1980s of the last century the Government of India started a twenty point programme. It was for promoting the quality of life of the socially and economically weaker sections of rural areas. In West Bengal the government worked in collaboration with the department of Agriculture and rural development of the state government.

Nobody has told this court about the legal status of the appellant No. 2, Krishi Bikash Shilpa Kendra (the appellant) which appears to be an association or society founded on 27th September, 1979. It was registered with the Land Reforms Department in the district of Birbhum. Its aims and objectives were to provide assistance to both the governments to implement this twenty point programme. The

organization had one registered office and several branch offices in various parts of West Bengal. It seemed to lend its helping hand in developing agriculture, bio-gas plant, community irrigation system, family welfare, family planning, birth control, animal husbandry, cultivation and harvesting scientifically, using high yielding variety of seeds.

So much seems to have been the reputation enjoyed by this organization that on 27th September, 1979 the Special L.A. Collector, Birbhum wrote to its General Director as follows:-

“.....and we are asking the various District and Block level authorities to assist you under various kinds of assistance, such as IRDP, NREP, RLEGP, seeds of higher yielding varieties and other projects etc. so that, the workers can get assistances.”

On 9th February, 1982 it received accolades from the office of the Prime Minister in the following words:

“.....to inform you that as per the performances of activities your organisation is being appreciated as a good organization to implement the 20-points Programmes in the State of West Bengal.”

The appellant wanted recognition of their workers and security for them by their absorption in government service. In response to this on 22nd July, 1982 it received the following communication from the Prime Minister's office:-

“....and the matter of Regularization of the workers of Krishi Bikash Shilpa Kendra would be subsumed, afterwards.”

On 17th November, 1982 the Prime Minister's office sent another communication to the organization saying that *“.....the matter has*

been forwarded to the Chief Secretary Govt. of West Bengal for suitable action.”

The District Magistrate of Birbhum, Burdwan, Murshidabad, Nadia and Malda etc. reported that to cope with the shortage of financial resources, the workers attached to the organization were doing cultivation work in collaboration with owners of agricultural land on 50% profit sharing basis. They were also doing miscellaneous work like supplying smokeless chullah to save fuel, sinking tube wells in some places for fresh drinking water, constructing low cost toilets, to generate income.

Atleast by three letters dated 12th April, 1982, 8th March, 1985 and 18th April, 1985 the government of West Bengal had deeply acknowledged and appreciated the performance of the appellant in various districts and block levels.

In the letter of 18th April, 1985 the Secretary, Agriculture Department, Government of West Bengal wrote *“Your performances in Rural Development under 20-points Programmes is deeply appreciated by the Govt. and considering for taking over your farm in future.”*

The Chief Secretary to the State of West Bengal directed the Secretary, Agriculture Department to prepare a report further to the letter of the appellant dated 26th March, 1985 to the Prime Minister which had been forwarded by his office to the Chief Secretary. It related to “taking over of the staff” of the organization.

The foundation of this case is the letter dated 23rd May, 1985 of the Secretary, Agricultural Department, Government of West Bengal containing this report where it was admitted that as against the

claim of 4200 workers working in 1993 branches of the appellant to implement the twenty point programme, only 70 branches were identified with a total 2450 number of workers. In a carefully worded conclusion, the Secretary stated that although he regretted that the government could not take over the organization he acknowledged that the workers had rendered service in various state and national programmes in the field of “rural and agriculture” on the assurance of the Prime Minister that they would be regularized afterwards and that this fact needed to be “thought” by the government.

From time to time, writ applications were made by the appellants which by orders of court were sent to the government for consideration. We did not detain ourselves with those writ applications because nothing fruitful came out of them.

The Additional Secretary made a decision on 9th November, 2015 acting in terms of an order dated 31st August, 2015 in a writ application [WP No. 4936(W) of 2012] (Shri Amar Dam and Anr. vs. The State of West Bengal & Ors.) where the government was asked to consider the report and recommendation of the Secretary, Agriculture Department dated 23rd May, 1985 and the subsequent representations by the members of the organization.

One paragraph of that decision is most intriguing. It is as follows:-

“AND WHEREAS, with reference to this Department’s letter no. 222/AG/O/L-67/II(Pt-I) dated 24.09.2015, Sushila Ananth, Deputy Secretary to the Govt. of India, Department of Agriculture Cooperation and Farmers Welfare, informed vide his letter dated 07.10.2015 that the Ministry of Statistics and Programme Implementation which monitors Twenty Point Programme has clarified vide D.O. No.

1/8/2012-TPP dated 12.09.2012 that KBSK has not been authorized at any stage to implement the Twenty Point Programme or any part of it and appears to be no involvement of this Department in the said case.

Now, after hearing and careful consideration of the facts of present case, it is observed that since the organization is functioning without any Government authorization and the Government has no responsibility towards so called employees of KBSK/KVSK, hence their petition is hereby rejected. It is further observed that this case has resulted in loss of precious time of the Hon'ble Court(s) and also officials of the concerned departments. Hence litigations of this nature should be discouraged.

All concerned may be informed accordingly for further course of action."

Aggrieved by this decision, the appellant preferred the instant writ application which was dismissed by the learned single judge.

Now, it is sought to be contended by learned counsel for the respondents at a point of time some 40 years after the above report containing recommendations dated 23rd May, 1985 that it is not bound to act in terms of the representations contained in those documents.

In fact, the respondents deny the role of the appellant and say there is no question of granting any largesse to them.

If such was the plea, then the order of this court made on 31st August, 2015 ought to have been challenged on that ground. It was not. Hence, as late as on 31st August, 2015 this court thought it fit and proper for the government to consider the representations, views and recommendations made in 1985.

This order has become final and binding on all parties.

It is quite astonishing to find in the decision dated 9th November, 2015 that a reference was made to a communication of the Government of India dated 7th October, 2015 from a Deputy Secretary to the department of Agriculture Cooperation and Farmers Welfare referring to another document dated 12th September, 2012 that the organization had not been authorized to implement the twenty point programme. Further, the government of West Bengal had also denied any role to play in the matter and described the litigation as frivolous and vexatious.

In the impugned judgment and order dated 5th May, 2017 dismissing the writ application the learned judge with brevity yet sufficient clarity recounted the submissions of the appellant that as an agency they worked for the twenty point programme of the Central government. Their work and contribution were appreciated both by the central and the state governments. Both the governments were of the view that in acknowledgment of the work done and/or to reward it, the members of the organization would be considered to be absorbed in government service or the government would take over the organization, run it itself employing the members. In the impugned departmental order dated 9th November, 2015 the role of the appellant in implementing the twenty point programme was denied. It was said that they were indulging in vexatious litigation and that no assurance had been given by any government to them to provide employment or any other benefit.

Having narrated the above facts, the learned judge proceeded to view the appellant's claim as one based on the principle of promissory, estoppel. His lordship referred to various correspondences where there was a clear satisfaction on the part of

both the Central and the State governments that the appellant had rendered very laudable service in implementing the twenty point programme and that the case of their members for absorption deserved consideration.

The learned judge proceeded to hold that this did not amount to any promise by the government. No promise was evident from the records. The learned judge endorsed the view of the Additional Secretary in the impugned order dated 9th November, 2015 rejecting the claim of the appellants holding that “nothing has been placed before the Court to suggest that, the initial appointment of the employees of the appellant was with the concurrence of or prior approval of the authorities for any absorption or regularization to take place.”

This is a unique case. I have not come across a case like this. The circumstances are special. Our decision is in a new field and bound to have some repercussion on the law.

Legitimate expectation and promissory estoppel are two legal doctrines which I propose to deal with before proceeding to analyse the merits of the case.

By a representation, decision, policy or statement of the government a person is led to believe by the government that a state of affairs, right enjoyed by him or obligation imposed on him would continue in the same way, unless there is an extraordinary situation calling for its alteration. It is said to give rise to legitimate expectation. Any departure from this is viewed as arbitrary, unfair and unreasonable conduct on the part of the government calling for intervention by the court.

Suppose there is a government policy allowing duty free import of fertilizers used in the cultivation of a particular crop. Let us say that the farmers of a particular region could cultivate either that crop or another crop. It is represented either expressly or impliedly by the government that since this policy has been continuing for a long period of time, it would continue. Believing this representation and acting on the prevailing state of affairs, the farmers of that particular region take steps for cultivation of the crop for which fertilizers are freely importable with the hope and expectation that with duty free fertilizers they would be able to make a fairly large profit cultivating that particular crop than they would be making cultivating the other variety. All of a sudden the government changes its policy by imposing heavy duty on this fertilizer. This seems to give the farmers a cause of action against the government. They could say that the previous action of the government gave rise to a legitimate expectation in them that fertilizers would continue to be duty free and they would continue to earn handsome amounts from cultivation of that particular crop. The change in policy has caused them great detriment. The government, it seems, could be restrained by orders of court from enforcing the new policy, unless it is able to show that the change was warranted by overwhelming public interest. The action of the government giving rise to legitimate expectation is weighed on the scales of arbitrariness, fairness and reasonableness. The continuing state of affairs as promised or represented to be maintained or the state of affairs promised to be brought about is weighed against the changed situation. The judge has to adjudicate whether there is lack of

fairness or presence of arbitrariness and unreasonableness in the changed policy.

“A public authority has a duty to act with fairness and consistency in its dealings with the public and that if it makes inconsistent decisions unfairly or unjustly, it misuse its powers.....inconsistency of policy may amount to an abuse of discretion, particularly when undertakings or statements of intent are disregarded unfairly.....only an overriding public interest will outweigh the obligation of a promise, particularly where it is made to an individual or a small group.....an expectation whose fulfillment requires that a decision-maker should make an unlawful decision, cannot be a legitimate expectation.” (Administrative Law, H.W.R. Wade & C.F. Forsyth)

In this case, there was no representation or promise made by any government official that the members of the organization would be absorbed or that the organization would be taken over by the government and run for the benefit of the members. It only recognized their contribution and proposed to consider their above case. Since, there was no clear representation or promise of any reward, the case cannot come under the principle of legitimate expectation.

The other doctrine is promissory estoppel. Here, it has to be shown that the government had made a representation or promise, short of a formal contract, inducing a person to act in a particular way. The relationship created by the government should be akin to a contract, although it is not formally entered into by writing or otherwise. It has to be shown that a person acted on this promise. Although not a formal contract, the government could be held to be

bound by it negatively in the sense that they could not be allowed to resile from the representation or promise.

Since there was no positive representation or promise by the government to the appellant, the doctrine of promissory estoppel would also not apply in this case.

Since there is no written promise to reward for past work certainly no case under Section 25 of the Contract Act is maintainable.

The fact remains that indisputably the appellant was a legitimate organization, recognized by the Central and State governments and had done work to further the twenty point programme of the Central government in some districts of West Bengal. This work had been acknowledged by both the Central and State governments. Both felt, without handing out any express promise or assurance to the organization that its workers should be absorbed in government or in the alternative, the government would take over the organization and run it so that income could be earned by its members. Thereafter, both the Central and State governments turning around and stating that the organization was unrecognized and did not do any work to promote the twenty point programme is wrongful conduct.

What is more important is that by the order of this court dated 31st August, 2015 it was held that the case of the appellant as made out now, needed consideration and on that basis, referred to the State government for a decision.

Since on that premise the reference by this court had been made, it was not within the jurisdiction of the Additional Secretary, to dismiss the claim at the bud stage by stating that the organization

had not taken any approval from the government to work on the twenty point programme. This basis of proceeding, in my opinion, was in transgression of his jurisdiction or refusal or unwillingness to exercise his jurisdiction.

Secondly, the impugned order suffered from perversity in considering a stray note from the Central government denying the contribution of the petitioners despite a galore of correspondences earlier. What the Additional Secretary was required to do was to accept the facts which emerged from the body of correspondences exchanged in the 1980s as true and recommend to the government a decision in the matter.

A government should not equate its conduct and style of functioning with that of an unscrupulous businessman. When it makes a statement, it should do it with responsibility. When it makes a representation, it should do that with the intention of fulfilling it. Any statement which it makes, any representation it makes, or any decision that it arrives at, should be made finally unless there is good cause for revoking it on the ground of fraud or mistake as early as possible. Once it is final, it should not be changed unless the circumstances are extraordinary. This is true with change of governments or change in administration. A decision of the government should be impersonal emanating from the sovereign, not liable to be changed with change of guards. In this case, when the government, both State and Central, 40 years ago had acknowledged the work of the organization in the twenty point programme and thought that its members may be considered to be absorbed in government service or the organization be run by the government, there was no occasion for it to turn around later and

even cease to acknowledge, the organization or its work. The government should take it upon it the responsibility to atleast consider honouring its commitment made 40 years ago to some extent specially when this has received the stamp of approval of this court in 2015 by referring it to the government to take a decision on it.

The action or inaction of the government complained of above, cannot be categorized as one giving rise to legitimate expectation amongst the members of the organization. Neither can they invoke the doctrine of promissory estoppel. Nonetheless, the conduct is undesirable and unprincipled on the part of the government and its officers. The court cannot shut its eyes to this state of affairs. It has the duty to ensure that this kind of wrongful conduct does not recur in future.

In those circumstances, I set aside the impugned judgment and order dated 15th May, 2017 and the decision of the government dated 9th November, 2015. The matter is referred to the Chief Secretary, Government of West Bengal or any Principal Secretary of the government to be nominated by him. The Chief Secretary or the Principal Secretary (the adjudicator) will carefully examine afresh the case of the appellant from the records, the correspondences exchanged between the Central government and the appellant, State government and the appellant or between the two governments recognizing the appellant and the work done by them. The adjudicator will also carefully study the assurance given by the governments to the appellant from time to time about members of the association being absorbed into government service or the government taking over the organization and running it to provide

income to its members. The adjudicator shall re-adjudicate the case of the appellant upon hearing the appellant or its representative considering the records that may be produced by them.

Upon its satisfaction with the case of the appellant, the adjudicator will recommend to the government that a grant may be made to the appellant which might be utilized to provide pensionary benefits to those members of the organization who were involved in implementation of the twenty point programme or their legal heirs and representatives. Such decision should be taken within three months of communication of this order. Any recommendation made by the adjudicator shall have to be honoured by the State government. The State government shall have the right to claim as reimbursement of expenses, from the Central government any grant made to the appellant.

This appeal is accordingly disposed of.

Certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree.

(SUBHENDU SAMANTA, J.)

(I. P. MUKERJI, J.)