36
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Ct. No.23
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 6166 of 2022

Nihar Ranjan Sarkar
Vs.
The State of West Bengal & Ors.

Mr. Moloy Roy
... For the petitioner

Mr. Debasish Chattopadhyay
... For the State

Mr. Aditya Chaturvedi
... For WBTC

The petitioner was a permanent employee of Calcutta Tramways Company (1978) Ltd. (in short "CTC") now known as West Bengal Transport Corporation Limited (in short "WBTC"). The petitioner retired from service on 30th November, 2014. The petitioner says that during his service tenure, he was given the benefit of Revision of Pay and Allowance Rules, 1998 (in short "ROPA 1998"). The principal sum on account of the benefits of ROPA 1998 has been paid to the petitioner but at a belated stage. The petitioner seeks interest for delayed payment of the principal sum.

Admittedly, the petitioner has approached this Court with the claim for interest after about seven years from the date of his retirement, the writ petition having been filed on 5th April, 2022. Posed with the question of delay, the petitioner refers to a Government circular as pleaded in the writ petition without giving the particulars thereof. According to the petitioner, by virtue of the said government circular, the State Government had promised to pay the petitioner the principal sum on account of ROPA 1998 along with interest with effect from 10th April, 1997 till 31st March, 2008 in instalment. The petitioner alleges that by the said Circular there has been a promise on the part of the Government to pay the principal sum with interest. Having failed to pay the interest, there is a breach of such promise. This failure attracts the provisions of Section 115 of the Indian Evidence Act, 1872 and, as such, the respondents cannot take the plea of delay being estopped from doing so. The petitioner, therefor, says that he is entitled to the interest though he has approached the Court only on 5th April, 2022 after more than seven years from his date of retirement. The petitioner has annexed an order dated 8th March, 2022 passed in WPA 3639 of 2022 (Smt. Manjula Pattanayak & Ors. v. The State of West Bengal & Ors.) in support of his claim for interest on delayed payment of the principal sum on account of ROPA 1998. The petitioner further says that even though he has approached this Court at a belated stage, his claim for interest cannot be denied on account of inordinate delay or laches.

The petitioner's cause of action to receive the interest on the delayed payment of the principal sum on account of ROPA 1998 even going by the petitioner's argument accrued with the promise made by the State in its circular which as per the respondents is dated 23rd June, 2000. The petitioner also accepts the date of the circular. The claim for interest in favour of the petitioner further accrued when the principal sum was paid in instalments. According to the pleading, the last instalment was promised to be paid by 31st March, 2008. The respondents say that the entire principal sum was paid by 2008. However, the petitioner disputes the payment to have been made in 2008 and says that the last instalment was paid at the time of his retirement on 30th November, 2014.

Considering both the factual situations, the claim for interest survived for three years from 31st March, 2008 or three years from 30th November, 2014. Assuming without admitting that the principal sum was paid on 30th November, 2014, then also the three years period would come to an end on 29th November, 2017. The petitioner had, admittedly, come before this Court on 5th April, 2022 much after the three years period from 30th November, 2014 had expired.

The issue of inordinate delay in respect of a claim for retiral benefit had fallen for consideration before the Hon'ble Supreme Court in the judgment reported in (2008) 8 SCC 648 (Union of India & Ors. v. Tarsem Singh). In the said judgment, it was clearly held in paragraph 7 that "normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). However, the Hon'ble Supreme Court had referred to certain exceptions to the said rule, one of which is a case relating to a continuing wrong. It was also held in the said judgment that where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date till which the continuing wrong was in existence. In the said judgment, what amounts to continuing wrong was also considered by referring to the judgment reported in AIR 1959 SC 798 (Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan). In paragraph 31 of Balakrishna Savalram Pujari Waghmare (supra) which has been quoted in Tarsem Singh (supra), the following has been said:-

> "31. … It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury."

In the instant case, the continuing source of injury to the petitioner commenced when the first instalment was paid beyond the schedule date without providing for interest for the delay. This continued till the last instalment paid beyond the schedule date without interest for the delay in paying the same. The continuing source of injury, which, in essence, is the continuing wrong, further continued between 2008 till 30th November, 2014 when the petitioner retired from his services without being paid the interest for the delay. On the petitioner's retirement, the employer – employee relationship ceased between the petitioner and CTC or WBTC. Thus, the wrongful act, which caused injury to the petitioner, was complete when the petitioner retired from his services on 30th November, 2014. The damage resulting from the injury, however, persisted even after the petitioner's retirement but that did not give rise to a further continuing wrong since such wrong was complete on the date of the petitioner's retirement. The petitioner, therefor, is not entitled to the benefit of the exception of continuing wrong to maintain his claim for interest even after seven years from the date on which the wrongful act ceased to persist.

Following the ratio laid down in Tarsem Singh (supra), the petitioner's claim having been filed by way of a writ petition is required to be rejected on the ground of inordinate delay and laches. The ratio laid down in Tarsem Singh (supra) has been subsequently approved by the Hon'ble Supreme Court in the judgment reported in (2016) 13 SCC 797 (Asger Ibrahim Amin v. Life Insurance Corporation of India).

The petitioner on being confronted with proposition as to inordinate delay and laches has cited the provision of Section 115 of the Evidence Act, 1872. The petitioner says that a promise having been made by the State, the State cannot wriggle out by citing delay and laches. There is, as such, a promissory estoppel and no provision of limitation is attracted in the instant case. The petitioner, therefor, says that his claim cannot be rejected on the ground of delay even though he has approached the Court after seven years from the date of his retirement.

The issue of promissory estoppel fell for consideration in the judgment reported in (2016) 10 SCC 77 (State of Himachal Pradesh & Ors. v. Rajesh Chander Sood & Ors.). The Hon'ble Supreme Court after considering several judgments approved the ratio laid down therein. In paragraph 80 at page 154 of Rajesh Chander Sood (supra), the following has been discussed:-

> "**80.** … the decision in Bhagwati Vanaspati Traders v. Supt. of Post Offices, (2015) 1 SCC 617, wherein this Court held as under:- (SCC pp, 621-24, para 7)
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> > "7. The first contention advanced at the hands of the learned counsel for the appellant was based on the decision rendered by this Court in TISCO Ltd. v. Union of India, (2001) 2 SCC 41, wherefrom the learned counsel invited our attention to the following observations: (SCC pp. 51-53, paras 20-22)
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> > > "20. Estoppel by conduct in modern times stands elucidated with the decisions of the English Courts in Pickard v. Sears, (1837) 6 Ad & El 469, and its gradual elaboration until placement of its true principles by the Privy Council in Sarat Chunder Dey v. Gopal

Chunder Laha, (1891-92) 19 IA 203, whereas earlier Lord Esher in Seton, Laing & Co. v. Lafone, (1887) LR 19 QBD 68 (CA), evolved three basic elements of the doctrine of estoppel to wit: (QB p.70)

> Firstly, where a man makes a fraudulent misrepresentation and another man acts upon it to its true detriment: secondly, another may be where a man makes a false statement negligently though without fraud and another person acts upon it: and thirdly, there may be circumstances under which, where a misrepresentation is made without fraud and without negligence, there may be an estoppel.

Lord Shand, however, was pleased to add one further element to the effect that there may be statements made, which have induced other party to do that from which otherwise he would have abstained and which cannot properly be characterised as misrepresentation. In this context, reference may be made to the decisions of the High Court of Australia in Craine v. Colonial Mutual Fire Insurance Co. Ltd., (1920) 28 CLR 305 (Aust). Dixon, J. in his judgment in Grundt v. Great Boulder Pty. Gold Mines Ltd., (1938) 59 CLR 641 (Aust) stated that:

> "In measuring the detriment, or demonstrating its existence, one does not compare the position of the representee, before and after acting upon the representation, upon the assumption that the representation is to be regarded as true, the question of estoppel does not arise. *It is only when the representor wished to disavow the assumption contained in his representation that an estoppel arises, and the question of detriment is considered, accordingly, in the light of the position which the representee would be in if the representor were allowed to disavow the truth of the representation.*"

(In this context see Spencer Bower and Turner: Estoppel by Representation, 3rd Edn.)

Lord Denning also in Central Newbury Car Auctions Ltd. v. Unity Finance Ltd., (1956) 3 All ER 905 (CA), appears to have subscribed to the view of Lord Dixon, J. *pertaining to the test of "detriment" to the effect as to whether it appears unjust or unequitable that the representator should* *now be allowed to resile from his representation, having regard to what the representee has done or refrained from doing in reliance on the representation, in short, the party asserting the estoppel must have been induced to act to his detriment*. So long as the assumption is adhered to, the party who altered the situation upon the faith of it cannot complain. His complaint is that when afterwards the other party makes a different state of affairs, the basis of an assertion of right against him then, if it is allowed, his own original change of position will operate as a detriment, (vide Grundt, (1938) 59 CLR 641 (Aust): High Court of Australia).

21. Phipson on Evidence (14^{th} Edn.) has the following to state as regards estoppels by conduct.

> "Estoppels by conduct, or, as they are still sometimes called, estoppels by matter in pais, were anciently acts of notoriety not less solemn and formal than the execution of a deed, such as livery of seisin, entry, acceptance of an estate and the like, and whether a party had or had not concurred in an act of this sort was deemed a matter which there could be no difficulty in ascertaining, and then the legal consequences followed (Lyon v. Reed, (1844) 13 M & W 285, ER pp. 128-29 M & W at p. 309). The doctrine has, however, in modern times, been extended so as to embrace practically any act or statement by a party which it would be unconscionable to permit him to deny. The rule has been authoritatively stated as follows: 'Where one by his words or conduct wilfully causes another to believe the existence of a certain state of things and induces him to act on that belief so as to alter this own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time.' (Pickard v. Sears, 112 ER 179, ER p. 181). And whatever a man's real intention may be, he is deemed to act wilfully 'if he so conducts himself that a reasonable man would take the representation to be true and believe that it was meant that he should act upon it.' (Freeman v. Cooke, (1848) 2 Exch. 654, ER p. 656: Exch at p. 663)
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> Where the conduct is negligent or consists wholly of omission, there must be a duty to the person misled (Mercantile Bank

> of India Ltd. v. Central Bank of India Ltd. 1938 AC 287 (PC) at p. 304, and National Westminster Bank Ltd. v. Barclays Bank International Ltd., 1975 QB 654). This principle sits oddly with the rest of the law of estoppel, but it appears to have been reaffirmed, at least by implication, by the House of Lords comparatively recently (Moorgate Mercantile Co. Ltd. v. Twitchings, 1977 AC 890). The explanation is no doubt that this aspect of estoppel is properly to be considered a part of the law relating to negligent representations, rather than estoppel properly so-called. If two people with the same source of information assert the same truth or agree to assert the same falsehood at the same time, neither can be estopped as against the other from asserting differently at another time (Square v. Square, 1935 P. 120)."

22. A bare perusal of the same would go to show that the issue of an estoppel by conduct can only be said to be available in the event of there being a precise and unambiguous representation and on that score a further question arises as to whether there was any unequivocal assurance prompting the assured to alter his position or status. The contextual facts however, depict otherwise. Annexure 2 to the application form for benefit of price protection contains an undertaking to the following effect:-

> "We hereby undertake to refund to EEPC Rs… the amount paid to us in full or part thereof against our application for price protection. In terms of our application dated … against exports made during… In case any particular declaration/certificate furnished by us against our above referred to claims are found to be incorrect or any excess payment is determine to have been made due to oversight/wrong calculation etc. at any time. We also undertake to refund the amount within 10 days of receipt of the notice asking for the refund, failing which the amount erroneously paid or paid in excess shall be recovered from or adjusted against any other claim for export benefits by EEPC or by the licensing authorities of CCI & C."

And it is on this score it may be noted that in the event of there being a specific undertaking to *refund* for any amount *erroneously paid or paid in excess*, question of there being any estoppel in

> our view would not arise. In this context correspondence exchanged between the parties are rather significant. In particular letter dated 30-11-1990 from the Assistant Development Commissioner for Iron & Steel and the reply thereto dated 8-3-1991 which unmistakably record the factum of non-payment of JPC price."

The provision of Section 115 of the Indian Evidence Act, 1872 restricts a person or his representative the truth of a thing if the said person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief. Applying the provisions of Section 115 of the Indian Evidence Act, 1872 and the ratio of Rajesh Chander Sood (supra) to the facts of the case, it will mean that the State having made a promise in a government circular to pay the benefits of ROPA 1998 with interest between 2001 and 2008 is precluded from denying such fact in a suit or proceeding that is to say in the instant writ petition. The State or the employer has not denied the fact of the promise made by them in making payment of the benefits of ROPA 1998 with interest till upto 2008. In fact, it is an admitted position that the benefits of ROPA 1998 has been given to the petitioner with interest for the period for which State had agreed to while paying the benefit in a staggered manner in instalment. The issue is not paying the principal sum in instalment in a deferred manner with interest but interest for payment of the instalments beyond the scheduled date as promised. The petitioner can contend that for payment of ROPA benefit in instalment with interest, the petitioner had changed his position by accepting such proposal but there was neither any promise nor acceptance of the fact that State/CTC will pay interest if the instalments are delayed. The legal position, therefor, is not the promissory estoppel as contended by the petitioner but the petitioner's right in enforcing the claim and entitlement of interest for delayed payment of the instalments being the relief claimed in the writ petition. The delay of more than seven years in approaching the Court for enforcing his claim for interest on account of delayed payment of the instalments is an inordinate delay. Even if the respondents are precluded from denying the fact of having promised to pay the principal amount with interest in instalments, then also the petitioner does not acquire a right to enforce the claim for interest after a long delay of more than seven years.

In view of the long delay which also amounts to laches on the part of the petitioner, the claim for the petitioner is liable to be rejected and is accordingly rejected. The writ petition fails and is accordingly dismissed, however, without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)