

Olivia Jayaraj Vs. State of Andhra Pradesh

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Court : Andhra Pradesh

Decided On : Dec-28-1990

Reported in : 1991(1)ALT345; (1995)IIILLJ68AP

Judge : Bhaskar Rao, J.

Acts : Employees' Provident Fund and Miscellaneous Provisions Act, 1952 - Sections 16; Employees' Provident Fund and Miscellaneous Provisions (Amendment) Act, 1988; [Constitution of India](#) - Article 20(1)

Appeal No. : Cr. M.P. 1341 of 1990

Appellant : Olivia Jayaraj

Respondent : State of Andhra Pradesh

Advocate for Def. : Additional Public Prosecutor

Advocate for Pet/Ap. : T. Bali Reddy, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Bhaskar Rao, J.

1. The question that arises in this batch of Criminal Petitions is, whether the doctrine of promissory estoppel could be invoked against the State for actions resultant of legislative obligations so as to get over the prosecutions in a proceeding under Section 482, Cr. P.C. during the course of administration of Criminal Justice.

2. The facts that gave rise to this question are : In 1984 when the petitioner started the school, by name H. Rosetle English Medium School, Section 16 of the Employees' Provident Funds and Miscellaneous Provision Act, 1952 (hereinafter referred to as 'the Act') exempted application of its provision to establishments employing 20 to 50 persons until expiry of five years from the date of setting up of the establishment. However, in June 1988 the said section underwent an amendment by Act 33 of 1988 whereby the period of exemption was reduced from 'five years' to 'three years'. In view of this amendment, soon after expiry of the three years the provisions of the Act had their operation endearing the petitioner liable to comply with certain provisions of the Act. Since the petitioner was found to have not complied with the same, the State launched prosecutions against the petitioner. The said prosecutions are challenged in these petitions mainly by invoking the doctrine of promissory estoppel stating that the provisions of the Act cannot be made applicable to the petitioner's establishment until expiry of five years inasmuch as Section 16 as it stood at the time of starting of the school exempted the said application for a period of five years from the date of starting of the establishment. In this background of the facts, the contention of the learned counsel, Sri T. Bali Reddy, is that the amended Section 16 of the Act cannot be given effect to as against the petitioner since it is hit by the doctrine of promissory estoppel. In support of this contention, Mr. Bali Reddy sought to place reliance upon a few decisions of the Supreme Court and also of this Court.

3. In *M.P. Sugar Mills v. State of U.P.* : [1979]118ITR326(SC) based upon a statement made by the Secretary of the Industries Department a news item appeared in the National Herald that the State of Uttar Pradesh had decided to give exemption from the sales tax for a period of three years under Section 4-A of the U.P. Sales Tax Act to all new units in the State with a view to enabling them 'to come on firm footing in developing stage'. The appellate on the basis of this

announcement addressed the Chief Secretary of the State and had also a reply dated 23rd January', 69 confirming that the proposed Vanaspathi factory of the appellant, will be entitled to exemption from U.P. Sales Tax for a period of three years from the date of going into production.' In view of this assurance, which obviously is by virtue of the power available to the Government under the statute to accord exemption, the appellant went ahead with the project. However, on 20th January, 70 the appellant was addressed a letter going back upon the earlier assurance and consequently when tax was sought to be levied on the sales to the appellant, that action was challenged by invoking the doctrine of promissory estoppel. In those circumstances, the Supreme Court held that the facts necessary for invoking the doctrine of promissory estoppel were present and that the Government was bound to carry out the representation and exempt the appellant from sales-tax for a period of three years from the date of commencement of production. However, the Supreme Court made it clear in unambiguous terms:

'Where the Government owes a duty to the public to act in a particular manner - and here obviously duty means a course of conduct enjoined by law - the doctrine of promissory estoppel cannot be invoked for preventing the Government from acting in discharge of its duty under the law. The doctrine of promissory estoppel cannot be applied in teeth of an obligation or liability imposed by law. It may also be noted that promissory estoppel cannot be invoked to compel the Government or even a private party to do an act prohibited by law. There can also be no promissory estoppel against the exercise of legislative power. The legislature can never be precluded from exercising its legislative function by resort to the doctrine of promissory estoppel.'

Thus, the Supreme Court made it categorically specific that the doctrine of promissory estoppel cannot be invoked for preventing the Government from acting in discharge of its duty under law and that the doctrine cannot be applied in the teeth of an obligation or liability imposed by the legislative provision. Further, as observed, since there can be no promissory estoppel against the exercise of the legislative power, the incidental argument advanced that the right accrued under the unamended Section 16 of the Act cannot be taken away by amendment reducing the period of exemption to three years is untenable.

4. In *State of Kerala v. Sami Iyer* AIR 1966 SC 1415, *Union of India v. Godfry Philips India Ltd.* : [1986]158ITR574(SC) , *Gujarat State Financial Corporation v. Lotus Hotels* : AIR 1983 SC848 , *Pournami Oil Mills v. State of Kerala* : [1987]165ITR57(SC) , *State of Bihar v. Usha Martin Industries* 65 STC 430, *Haryana Urban Development Authority v. Sunitha* : AIR 1989 SC1637 and *Assistant Commissioner v. Dharmendra Trading Co.* : [1988]172ITR395(SC) , the actions impugned relate to either grant of exemption from tax by virtue of the power available under the statute to the Government or issue or withdrawal of certain notifications, and they were all executive actions resultant of statutory power and in those circumstances the doctrine was made applicable. None of them is a case where the doctrine was permitted to be invoked in the teeth of an obligation or liability imposed by a legislative provision nor for the purposes of preventing the Government from acting in discharge of its duty under law.

5. The learned Addl. Public Prosecutor also brought to my notice a decision of this Court rendered by a Division Bench in W.P. No. 1861/82 and batch dated 10.3.1988. That also is a case where the Government proposed to revise certain incentives so as to more effectively serve the purpose of bringing about rapid industrial growth and issued a G.O. appending thereto a scheme envisaging certain subsidies like investment subsidy, interest subsidy and interest free sales tax loan. Relying upon the incentives, more particularly on the last one the petitioners therein went ahead with the industry and when the Government sought to cut down the eligible amount under the interest free sales tax loan the said action as challenged. Since this restriction or cutting down is the resultant of section 3 of the A.P. Interest Free Sales Tax Loans for Industries Act, 1987 (Act 20 of 1987) ...an obligation or liability arising out of the statutory provision, the Division Bench upheld the action of the Government in limiting the amount to Rs. 10 lakhs as per the above section and dismissed the writ petition inasmuch as the doctrine of promissory estoppel is not available in the teeth of an obligation or liability imposed by a statutory provision. This decision is exactly in terms of the observations made by the Supreme Court in *M.P. Sugar Mills* case (1 supra). In view of this the present prosecutions having been the resultant of the amended statutory provisions, viz., Section 16 of the Act, I hold that the doctrine of promissory estoppel cannot be invoked against the State since it would be in the

teeth of a liability imposed by the said legislative provision.

6. It is also contended by Mr. Bali Reddy that since the exemption under the unamended Section 16 was available till 1.6.1989 - the school having been started in May, 1984-non-compliance with any of the provisions of the Act or paras of the Scheme does not amount to an offence in terms of Article 20 of the [Constitution of India](#) and therefore the prosecutions are bad in law. It is a fact that as per Article 20(1) no person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence. In the present case by virtue of the amended Section 16 the exemption in regard to application of the provisions of the Act having been limited only to three years, the same had admittedly expired by 31.8.1988. So much so the amended Section came into force with effect from 1.8.1988. The prosecutions launched are only from and onwards of September', 88. Therefore it cannot be said the non-compliance of the provisions of the Act from and onwards of September', 88 in the light of the coming into force of amended Section 16 from 1.8.88 and also the fact that even by 31.8.1988 the period of three years contemplated by amended Section 16 expired, is not charged as an offence so as to invoke the aid of Article 20(1) of the Constitution. Accordingly I find no substance in this contention too.

7. In the result the question framed at the opening of this judgment is answered in the negative and the petitions dismissed.