

Narayan Chandra Chakraborty Vs. Union of India (Uoi)

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Court : Kolkata

Decided On : Jan-11-1980

Reported in : 84CWN293,[1980]126ITR831(Cal)

Judge : Pratibha Bonnerjea, J.

Acts : [Indian Contract Act, 1872](#) - Section 70; ;[Constitution of India](#) - Article 299; ;
[Evidence Act, 1872](#) - Sections 106 and 114(G)

Appeal No. : Suit No. 90 of 1974

Appellant : Narayan Chandra Chakraborty

Respondent : Union of India (Uoi)

Advocate for Def. : Goutam Chakraborty and ;Prabir Majumdar, Advs.

Advocate for Pet/Ap. : P. Dasgupta and ;N.C. Bhattacharya, Advs.

Judgement :

Pratibha Bonnerjea, J.

1. The plaintiff along with one Giridharilal Ganatra used to carry on business as brokers in the jute and hessian market, in Calcutta, long prior to 1964.
2. In the first week of November 1964, the defendant, through its officer, Mr. J. P. Singh, the Chairman of the Central Board of Direct Taxes, New Delhi, made an

announcement in a press conference which was published in the Times of India and the Statesman both dated November 8, 1964, to the effect that the persons who would disclose their concealed income voluntarily would be treated leniently by the defendant in the manner mentioned in the said publication. It was further published that the rate of the reward to those furnishing information about concealed income had been stepped up from 2.5% to a minimum of 7.5% of the extra tax to be realised as a result of such information and in suitable cases the reward might go up to 10%. Similar announcements were published in the Sunday Tribune, Ambala, Hindusthan Times Weekly, Hindusthan Standard and Amrita Bazar Patrika, all dated November 8, 1964. The plaintiff and the said Giridharilal made a joint representation in writing dated 25/26, October, 1965, to the then Commissioner of Income-tax (No. 1) giving information of concealed income by seven firms in the Jute Market mentioned in para. 3 of the plaint and furnished valuable particulars regarding the books of accounts relating to their concealed income. Thereafter from time to time information regarding about 52 firms guilty of concealing income were furnished by the plaintiff to the defendant and a list of such names has been set out in para. 8 of the plaint. On January 31, 1967, the plaintiff along with Giridharilal actively helped the defendant's officers in raiding 37 business places. As a result of the raids the defendant discovered concealed income to the extent of Rs. 4 crores, which was published in the Sunday Statesman on February 5, 1967. According to the plaintiff, he acted on the basis of the promises made by the defendant and relied on its representations published in the newspapers mentioned above and as a result thereof he changed his position and suffered disadvantages. In the alternative, the plaintiff stated that he had furnished those informations and rendered active help to the defendant not intending to do so gratuitously and, as a result thereof, the defendant derived benefit by discovering concealed income and realising huge extra taxes and as such the defendant is bound to compensate the plaintiff by payment of the promised reward under Section 70 of the Indian Contract Act. Section 70 was specifically pleaded by way of amendment. It is the plaintiff's case that he received Rs. 100 from the defendant for conveyance and Rs. 12,500 by way of interim reward on November 18, 1969. The plaintiff made several demands for settlement of his claims but without any result. The defendant, through its officer, Sri B. K.

Naha, ITO, S.I.B., wrote a letter dated April 29, 1970, acknowledging the defendant's liability to the plaintiff in writing. Thereafter, on October 29, 1970, the Central Board of Direct Taxes informed the plaintiff by a telegram that a further reward had been sanctioned. Pursuant to the same, a further sum of Rs. 12,500 was offered to the plaintiff for acceptance in full and final settlement of all his claims against the defendant but the plaintiff refused to accept the same as, according to him, his claims would be much more than what was offered to him. The plaintiff by his letter dated January 21, 1971, requested the defendant to furnish him certain information regarding assessments relating to his claims but the defendant through its officer, Mr. B. K. Naha, refused to give any information by its letter dated March 4, 1971, and alleged that the reward was ex gratia. Being unable to recover his legitimate dues from the defendant, the plaintiff moved this High Court in its writ jurisdiction under Article 226 of the Constitution by a writ petition being Civil Rule No. 2619(W) of 1971. In the said application, the defendant filed an affidavit-in-opposition affirmed on June 29, 1972, by one Coimbatore Kumaro Krishnamurthi, the Commissioner of Income-tax, West Bengal (No. II) and in para. 24 of the said affidavit, the defendant admitted its liability in writing by saying that the reward was payable on the determination of the extra taxes to be recovered as a result of the information furnished by the plaintiff but the assessments not being complete, the quantum of reward could not be ascertained at that stage.

3. The plaintiff had filed a supplementary affidavit in that proceeding affirmed on August 14, 1972, in which he stated in para. 1, that the defendant had recovered more than 8 crores by way of extra taxes and this allegation was not denied by the defendant by filing any affidavit although the supplementary affidavit was duly received by the defendant on August 16, 1972. On the basis of the allegation by the defendant that the assessment was incomplete, the plaintiff did not press the said rule and withdrew the same with leave to take out a fresh proceeding. By the order dated September 27, 1972, disposing of the said rule, this court directed the defendant to make an ad interim payment to the plaintiff at an early date and to expedite the matter. The plaintiff, thereafter, gave several reminders to the defendant. The defendant by its letter dated June 2, 1973, informed the plaintiff that the matter could not be finalised due to various litigations instituted by the

assesseees and the question of final reward would be taken up after the relevant assessments would become final and on realisation of extra taxes. As the defendant remained silent and no final reward was paid, the plaintiff instituted the present suit for recovery of rupees two lakhs after service of notice under Section 80 of the CPC, According to the plaintiff, no part of his claim is barred by limitation on account of various acknowledgments in writing by the defendant and/or its duly authorised officers.

4. The defendant filed its written statement admitting that the announcements in the newspapers were duly published as alleged in the plaint. The authority of the persons making the announcements were not disputed. It was also admitted in the written statement that the plaintiff and Giridhari-lal Ganatra furnished information and there were raids on January 31, 1967. It was, however, denied that the plaintiff and Giridharilal gave active help on January 31, 1967, or the result of the raid on January 31, 1967, was published in the Statesman dated February 5, 1967, as alleged by the plaintiff. The defendant stated that by letter dated 25/26-2-70 the plaintiff and Giridharilal were informed by the defendant that their claim for reward would depend on the discovery of concealment after examination of the seized materials and on completion of the assessments and collection of extra taxes and by the letter dated March 4, 1971, the plaintiff was informed that the reward payable to the informer was in the nature of ex gratia payments and the plaintiff was not entitled to any information in respect of any assessment. The defendant denied that by the announcements in the newspapers the defendant made any promise to pay or made any representations as alleged by the plaintiff or that the plaintiff acted on the basis of such representation or relied on the same or suffered any disadvantages or detriment as alleged, at all. The defendant also denied having any knowledge of the plaintiff's supplementary affidavit dated August 14, 1974, and disputed the correctness of the contents thereof. It is alleged that the payment of reward being ex gratia in its nature, the present suit is misconceived and is not maintainable in law. The validity and legality of the notice under Section 80 of the CPC were denied and it was alleged that there was no acknowledgment of liability by the defendant.

5. On the pleadings the following issues were raised :

ISSUES

1. (a) Has the defendant made any representations to the plaintiff to pay a reward as alleged in the plaint ?

(b) If so, has the plaintiff suffered to his detriment by acting on the alleged representations alleged to have been made by the defendant ?

2. Is the plaintiff entitled to recovery of the money claimed in the suit under Section 70 of the Indian Contract Act ?

3. Has the defendant through its Income-tax Commissioner, Mr. Krishnamurthy, admitted the plaintiff's claim in writing by affidavit affirmed on 29th February, 1972, in C.R. No. 2619(W) of 1971, as alleged in para. 19 of the plant ?

4. Did the defendant realise Rs. 8 crores as alleged in paras. 1 and 3 of the plaintiff's supplementary affidavit dated 14th August, 1972, alleged in para. 20 of the plaint ?

5. Has the plaintiff any cause of action against the defendant ?

6. To what relief, if any, is the plaintiff entitled

6. On behalf of the plaintiff, the plaintiff himself and Giridharlal Ganatra were examined. No oral evidence was adduced on behalf of the defendant.

7. The plaintiff proved the Hindusthan Times Weekly, Sunday Hindusthan, Standard, Sunday Statesman and Sunday Amrita Bazar Patrika, all dated November 8, 1964, containing the announcements of payment of reward to the informants of concealed income as alleged in the plaint and the same were marked as Exs. A/1, B/1, C/1 and D/1. The correspondence disclosed in the suit clearly established that by letters dated October 27, 1965 (Ex. E), October 29, 1965 (Ex. F) and February 10, 1969 (Ex. Q) the plaintiff supplied the defendant the names of the tax-dodgers. By letter dated May 30, 1969, the defendant informed the plaintiff that their reward in respect of jute cases could not be considered on account of pending proceedings in court and thereby acknowledged the

defendant's liability in writing. By letter dated July 16, 1969, addressed to the defendant's officer, the plaintiff recorded that on the basis of the assurance given by the defendant and/or its officers, the plaintiff had given all kinds of co-operation by explaining the system of accounting, and helping the defendant in detecting forged vouchers, and as a result thereof the defendant had discovered quite a few lakhs of rupees, jewelleryes and duplicate account books. In that letter, the plaintiff further stated that he was in a helpless condition and requested the defendant to make necessary arrangement for settling his claims. By letter dated October 29, 1969, the defendant informed the plaintiff that an interim reward of Rs. 12,500 was sanctioned in connection with the jute cases. The plaintiff admittedly received this money on November 18, 1969. By letter dated November 24, 1969, addressed to the defendant, the plaintiff recorded that at the time of the raid on January 31, 1967, the plaintiff and Giridharilal had given their utmost help to the defendant's officers resulting in the discovery of the huge amount of cash and jewellery worth several lakhs of rupees from M/s. Ramkishore and Sons, M/s. Rameswar Shroff, M/s. Ramchand and Co. and others and that the reward in that connection would exceed a few lakhs of rupees. This letter was not replied to by the defendant and the facts alleged therein remained uncontradicted. By another letter dated February 7, 1970, addressed to the Chairman, CBDT, the plaintiff specifically mentioned the names of 13 firms about whom the plaintiff had given information earlier and demanded settlement of his claims. By letter dated April 29, 1970, Mr. B. K. Naha, defendant's ITO, Special Investigation Branch, Calcutta, wrote to the plaintiff as follows :

'I am directed to inform you that at this stage no further reward is admissible to you in respect of the information supplied by you in the jute cases which are being assessed in this charge. The claim for reward in these cases will depend on discovery of concealment, if any, after examination of all the seized materials and upon their assessments and on realisation of tax on such assessments.'

8. This letter is a clear admission of acknowledgment of the defendant's liability to the plaintiff in writing. It appears that by the end of November, 1970, the defendant offered the plaintiff to accept another sum of Rs. 12,500 in full and final settlement of his claims for reward. The plaintiff by his letter dated December 4, 1970, refused

to accept the said sum in full and final settlement of his claims. By a letter dated January 21, 1971, the plaintiff requested the defendant's, D. H. Dutta, Deputy Director of Inspection, to furnish him with copies of the search lists and seizure lists and wanted to know what steps the defendant had taken for completing the assessments and what amounts had been assessed as extra taxes. In reply to this letter, Mr. B. K. Naha wrote to the plaintiff on March 4, 1971, that the plaintiff was not entitled to any information and that the payment of reward was ex gratia in nature and was entirely within the discretion of the Government. It would be significant to note that this allegation of reward being an ex gratia payment, was made for the first time in this letter. Shocked at the stand taken by the defendant, the plaintiff took out an application under Article 226 of the [Constitution of India](#), being C.R. No. 2619(W) of 1971, against the defendant. In that writ petition, the plaintiff filed a supplementary affidavit affirmed on August 14, 1972, which was duly received by the defendant on August 16, 1972. In para. 3 of the said affidavit the plaintiff alleged that the total extra income-tax assessed for the years 1960 to 1965, from all these assessees, were more than 8 crores. The defendant did not deny the allegations in the said affidavit. The I.T. Dept., by the first week of February, 1967, announced to the press that documents relating to tax worth Rs. 4 crores had been realised and the said information was published in the Statesman dated February 5, 1967 (Ex. DDD1). The plaintiff stated that he got this news item verified by the Deputy Director of Investigation, Mr. D. H. Dutt (plaintiff Qs. 193-196). He further deposed that he made claims on the basis of the announcements made in the newspapers and pursuant to the assurance given by the department. The recovery of Rs. 4 crores was on the basis of information supplied by the plaintiff (Q. 205-210). In C.R. No. 2619(W) of 1971, the defendant filed an affidavit-in-opposition affirmed on June 29, 1972, by one Coimbatore Kumaro Krishnamurthi, the Commissioner, West Bengal No. II (Ex. GGG). In para. 24 of the affidavit, the defendant stated as follows :

'I submit that reward is payable on the determination of extra taxes thereon as a result of the information furnished. As in the instant case relevant assessments have not been completed, at this stage, the final reward could not be ascertained.'

9. This statement amounts to a clear acknowledgment in writing of the defendant's liability to pay the reward to the plaintiff upon ascertainment of the extra taxes payable by the assesseees. On the basis of this averment of the defendant, and relying on the same, the plaintiff did not press the said rule and the same was disposed of by the court by order dated September 27, 1972 (Ex. EEE), observing as follows :

'It is however, expected that the authorities will expedite the matter and will also consider if it is possible for them to make another interim payment, if due, to the petitioner in the meantime. If so, the authorities will make such ad interim payment to him at an early date.'

10. It is to be noted that in the writ petition, the defendant did not take the stand that the plaintiff had no legal right to recover the reward or that the reward was in the nature of an ex gratia payment and would depend on the discretion of the authorities as alleged in the written statement before me or in the letter dated March 4, 1971. Subsequent to the disposal of this rule, the plaintiff made various representations to the defendant for payment of his reward but without any result. Being exasperated, the plaintiff, by a letter dated November 10, 1972, addressed to the Chairman, CBDT, recorded the whole history of the case. It was specifically recorded that on January 31, 1967, the department made sudden raids in 37 places pursuant to the information given by the plaintiff. In that letter the plaintiff stated that the defendant had realised Rs. 8 crores by way of extra taxes. A long list of names supplied by the plaintiff to the defendant was enclosed with that letter. There was reply to this letter and no denial of the facts recorded in that letter. Subsequently, by two letters dated January 22, 1973, and May 2, 1973, the defendant informed the plaintiff that his claims were receiving attention and were under consideration and the Board's decision would be communicated to him in due course.

11. In the written statement, the defendant denied receipt of most of the plaintiff's letters mentioned in the plaint but at the time of hearing, no one on behalf of the defendant came forward to establish that denial. On the contrary, all the correspondence mentioned above were duly proved and exhibited by the plaintiff

without any objection on the part of the defendant and as such they are good evidence before me.

12. In his oral evidence, the plaintiff corroborated the entire case recorded in the correspondence. He said that after the raids he helped the department in finding out the manipulations in the books of accounts. The officers concerned were one Mr. Talapatra, one Mr. Ghoshal and one Gouri, all ITOs (plaintiff's Qs. 230-233). He came to know from the market that Rs. 8 crores were realised by the department. Thereafter, Mr. Srini-vasan, a member of the CBDT, confirmed this information and he is still in service as a member of the Board (plaintiff's Qs. 253-255). He supplied information and helped the defendant, relying on the representations of Mr. J. P. Singh, Chairman of the CBDT, and the assurance of Mr. Jain, Commissioner of Income-tax (plaintiff Qs. 249-251, 260-261). The plaintiff mentioned several names of the officers of the defendant in this connection but none of them was tendered as a witness by the defendant.

13. Giridharilal Ganatra was next examined by the plaintiff who corroborated the plaintiff's oral evidence as well as the facts recorded in the correspondence. He further deposed that within a very short period after giving information to the defendant, both the plaintiff and Ganatra faced great difficulty in their business as the news of their giving information to the defendant leaked out in the jute market. They suffered financial loss, and he and the plaintiff went out of the jute market (Giridharilal Q. 29-31, 92, 206-211). He said that he had to accept Rs. 25,000 as he badly needed money at that time for his daughter's marriage (Giridharilal Q. 89). He further said that Mr. R. Prosad, Assistant Inspector, Jute Circle and Mr. R. Chopra, Commissioner of Income-tax, told him that assessments had been completed and tax had been realised and these officers are still in service (Giridharilal Q. 103-110, 241-243). Giridharilal mentioned the names of several officers of the defendant who according to him had given information to Ganatra about the realisation of huge taxes but none of these officers came forward to deny this oral testimony. Both the documentary and the oral evidence before me remained unchallenged and unrebutted. The entire record of assessments and information and records of recovery of extra taxes have been withheld by the defendant from court. The defendant has not come forward to assist the court in

this matter. Mr. Dasgupta, the plaintiff's counsel, submitted that the whole records relating to assessment and realisation of taxes were suppressed. The shyness of the defendant's officers to go to the witness box and to face cross-examination and the suppression of all relevant records from court, naturally would give rise to the adverse presumption that the records, if produced, would go against the defendant and would support the plaintiff's case of realisation of extra taxes to the extent of at least 8 crores by the defendant. He pointed out that under Section 106 of the Evidence Act, the onus was on the defendant to prove what was the extra tax realised by the defendant as all the facts are within the special knowledge of the defendant. It is not for the plaintiff to prove the amount realised by the defendant by way of extra taxes. Section 106 is as follows :

'When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.'

14. In this connection, Mr. Dasgupta, counsel for the plaintiff, relied on *Collector of Customs v. D. Bhoormull*, : 1975 CriLJ545 , where it was held:

'On the principle underlying Section 106, Evidence Act, the burden to establish those facts is cast on the person concerned ; and if he fails to establish or explain those facts, an adverse inference of facts may arise against him.'

15. On the same point, he also relied on *Ch. Razik Ram v. Ch. J. S. Chouhan*, : AIR 1975 SC667 :

'In the first place, it may be remembered that the principle underlying Section 106, Evidence Act--which is an exception to the general rule governing burden of proof--applies only to such matters of defence which are supposed to be especially within the knowledge of the defendant-respondent. It cannot apply when the fact is such as to be capable of being known also by persons other than the respondent.'

16. He submitted that the plaintiff wanted the information relating to assessments which were refused by the defendants. The plaintiff made applications for orders for discovery of relevant records including all assessment orders but the defendant

wrongfully took the stand that there was a statutory bar against discovery of such documents. One of such applications is still awaiting decision. In the premises, the plaintiff was not in a position to give direct evidence regarding the amount of extra tax actually realised by the defendant. The plaintiff has given evidence regarding recovery of extra taxes on the basis of information received from the defendant's officers as well as from publication of news in the newspapers which evidence remained uncontradicted. All the records relating to recovery of taxes are in the custody and control of the defendant and all informations are within the special knowledge of the defendant. Hence, it is for the defendant to prove what sum has actually been realised by the defendant. The defendant failed to discharge that onus. It is a fit case where an adverse presumption should be raised against the defendant under Section 114(g) of the Evidence Act. The counsel for the defendant submitted that there was no question of suppression of records by the defendant. The assessment records are secret documents as there is a statutory prohibition against disclosure of these documents. He very strongly relied on Section 54 of the Indian I.T. Act, 1922, and Section 137 of I.T. Act of 1961. Mr. Dasgupta thereupon invited my attention to the fact that Section 137 of the I.T. Act of 1961 was deleted with effect from April 1, 1964, by the Finance Act, 1964, and whatever statutory bar was there was removed from April, 1964. He cited *Nazir Mahammad v. Jamila Bibi* : [1972]85ITR342(Orissa) . In this case the effect of the omission of Section 137 from the I.T. Act of 1961, by the Finance Act, 1964, with effect from April 1, 1964, was considered and it was held at page 345 as follows :

'Thus, as it appears, after the omission of Section 137 from the statute, the restriction in respect of disclosure of information has been confined only in respect of the banking companies and none other.'

17. The plaintiff's counsel also relied on *H. N. Malak v. Aziz S. Yusuf* : [1974]94ITR276(Bom) :

'The intention of the legislature is further clear from the fact that Section 137 of the Income-tax Act, 1961, has been deleted. Therefore, in my opinion, now it is not possible to hold that, though Section 54 of the old Act or Section 137 of the Income-tax Act, 1961, have been deleted by the legislature from the statute book,

still it was the intention of the legislature in effect to continue the same protection to the assessee.'

18. It should be noted that even under Section 137 of the I.T. Act, 1961, there was an exception provided under Sub-section (3)(iv) in a case where the I.T. authorities or the Government was a party. If the suit related to or arose out of any proceeding under the I.T. Act, the prohibition against disclosure was not applicable. The defendant should have disclosed all relevant records but the same have been suppressed from court.

19. The next point argued by the plaintiff's counsel is that the announcements in the newspapers about payment of 7.50% or 10% reward to the informants on the extra tax realised upon discovery of the concealed income, is a clear representation by the defendant to the public in general with the intention that whoever would act on that basis and would supply information leading to discovery of concealed income and realisation of extra taxes, would be entitled to get the reward promised by the defendant. It is clear from the facts of this case, that on the basis of these representations, the plaintiff in fact supplied information regarding several-tax dodgers and the plaintiff's said services were accepted by the defendant. The defendant's counsel, however, submitted that there was no representation by the defendant by the announcements in the newspaper. It was an offer to the general public and whoever would have accepted the offer should have entered into a contract with the defendant. In this case, no contract was entered into in writing in accordance with the provisions of Article 299 of the Constitution. Hence, the purported contract, if any, is totally void as against the defendant. He relied on *Carlill v. Carbolic Smoke Ball Co.* [1892] 2 QB 484 [affirmed in [1893] 1 QB 256 (CA)], in support of his contention.

20. But this case of making an offer to the general public does not find any place in the written statement. In para. 2 of the written statement, the defendant admitted that certain statements were made by the Chairman, CBDT, New Delhi, and reported in the press. In para. 31 of the written statement, the defendant's case is :

'This suit is not maintainable as the payment of reward is in the nature of ex gratia payment.'

21. This case of offer and acceptance of void contract has no basis whatsoever as the plaintiff has not come to court to enforce any contractual right against the defendant. The cause of action in the suit is 'promissory estoppel' or Section 70 of the Contract Act. Although this particular term 'promissory estoppel' has not been used in the plaint, both the parties have argued this branch of law in full. Hence this Carbolic Smoke Ball case [1892] 2 QB 484 (Ch D) has no application to the facts of this case. According to the defendant's counsel, the question of promissory estoppel would not arise as no legal relationship or right was in existence between the parties when the alleged representations were made by the defendant. The defendant's counsel submitted that where an existing legal right is varied or modified by the promisor by subsequent agreement or promise without having any fresh consideration for the same from the promisee the promisor is not allowed to go back on his promise and this promise becomes enforceable in law as a promissory estoppel. Promissory estoppel, standing alone, without any pre-existing legal right or jural relationship between the parties, does not give rise to any cause of action. In support of his contention, he cited Central London Property Trust Ltd. v. High Trees House Ltd. [1956] 1 All ER 256 ; [1947] KB 130 (KB), Emmanuel Ayodeji Ajayi v. R. T. Briscoe [1964] 3 All ER 556 (PC) and Turner Morrison and Co. Ltd. v. Hungerford Investment Trust Ltd. : [1972] 85 ITR 607 (SC) . He then argued that the principle of promissory estoppel cannot be applied and/or enforced against the Government. On this point, he relied on Excise Commissioner, U. P. v. Ram Kumar, : AIR 1976 SC 2237 , His next point is that in the case of a promissory estoppel, the plaintiff has to establish that the plaintiff acting on the basis of the representations of the defendant has changed his position to his prejudice and has suffered some injuries, loss or damages. According to him, in the present case, the plaintiff failed to prove that he had altered his position to his prejudice. On this point, the defendant's counsel cited Kamchanoor Bhaskar v. State of West Bengal [1978] 2 CLJ 166. The plaintiff's counsel on the other hand argued that the promissory estoppel, standing alone, without any preexisting legal right or jural relationship between the parties, gives rise to a cause of action. According to him, promissory estoppel is enforceable against the Government and in a case based on a promissory estoppel, the plaintiff is not required to prove that while acting upon the representations of the

defendant he has altered his position to his prejudice. He has only to prove that he has acted upon the representations of the defendant. In support of his contention, the plaintiff's counsel relied on *Union of India v. Anglo-Afghan Agencies*, AIR 1968 SC 718, *Century Spg. and Mfg. Co. Ltd. v. Ulhasnagar Municipal Council*, : [1970]3SCR854 , and *Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh* : [1979]118ITR326(SC) .

21. I am not dealing with the cases cited by the defendant's counsel and the plaintiff's counsel separately as the entire law of promissory estoppel including the cases relied on by both the plaintiff and the defendant have been thoroughly dealt with in the epoch making judgment of Bhagwati J. in *Motilal Padampat Sugar Mills' case* : [1979]118ITR326(SC) . The entire law has been summarised and settled in this case and the apparent inconsistency in *Excise Commr. v. Ram Kumar*, : AIR 1976 SC2237 , relied on by the defendants' counsel and *Union of India v. Anglo-Afghan Agencies*, AIR 1968 SC 718, relied on by the plaintiff's counsel has been resolved on the basis of the ratio of both these judgments as will clearly appear from that decision. This case clearly lays down that so far as the Indian courts are concerned, they have always held that promissory estoppel, standing alone, without any consideration or pre-existing legal or jural relationship between the parties, gives rise to a cause of action and on this point there is a clear departure from the law in England. In India, the law on this point is uniform since 1880. It is worthwhile reproducing para. 19 of : [1979]118ITR326(SC) (*Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.*), where the Supreme Court, in bold language, held as follows (p. 356 of 118 ITR):

'When we turn to the Indian law on the subject it is heartening to find that in India not only has the doctrine of promissory estoppel been adopted in its fulness but it has been recognised as affording a cause of action to the person to whom the promise is made. The requirement of consideration has not been allowed to stand in the way of enforcement of such promise. The doctrine of promissory estoppel has also been applied against the Government and the defence based on executive necessity has been categorically negatived. It is remarkable that as far back as 1880, long before the doctrine of promissory estoppel was formulated by Denning J. in England, a Division Bench of two English judges in the Calcutta High

Court applied the doctrine of promissory estoppel and recognised a cause of action founded upon it in the *Ganges Mfg. Co. v. Sourujmull* ILR [1880] 5 Cal 669. The doctrine of promissory estoppel was also applied against the Government in a case subsequently decided by the Bombay High Court in *Municipal Corporation of Bombay v. Secretary of State* ILR [1904] 29 Bom 580.'

22. Bhagawati J. quoted a passage from ILR 29 Bom 580, at page 641 (p. 357 of 118 ITR):

' '.....The municipality gave up the old stables, levelled the ground, and erected the moveable stables in 1866 in the belief that they had against the Government an absolute right not to be turned out until not only the expiration of six months' notice, but also other suitable ground was furnished that this belief is referable to an expectation created by the Government that their enjoyment of the land would be in accordance with this belief, and that the Government knew that the Municipality were acting in this belief so created'.'

23. Strongly relying on this Bombay case, the Supreme Court held at page 641 (p. 358 of 118 ITR) :

'This decision of the Bombay High Court is a clear authority for the proposition that it is open to a party who has acted on a representation made by the Government to claim that the Government shall be bound to carry out the promise made by it, even though the promise is not recorded in the form of a formal contract as required by the Constitution.'

24. Even if the promise to pay the reward was in the nature of an 'offer' to the general public as submitted by the defendants' counsel and, on acceptance of such offer, there could be a binding contract if it was embodied in writing in accordance with Article 299 of the Constitution, but the same not being done it became void on account of non-compliance with the constitutional provisions, that would not stand in the way of enforcing the equitable principle of promissory estoppel against the Government. It will not give the defendant a valid defence as will appear from the observation of the Supreme Court at page 643 of this report, where relying on the case of *Anglo-Afghan Agencies'* case, AIR 1968 SC 718, it

was held (see also [1979] 118 ITR 361) :

' It was thus laid down that a party who has, acting in reliance on a promise made by the Government, altered his position, is entitled to enforce the promise against the Government, even though the promise is not in the form of a formal contract as required by Article 299 and that article does not militate against the applicability of the doctrine of promissory estoppel against the Government.'

25. The defendants' counsel had argued that the doctrine of promissory estoppel was not applicable in this case because there is no evidence, so far as the plaintiff is concerned, that he had suffered any prejudice or detriment by acting on the representation made by the defendant. It is true that the plaintiff has not said in his evidence that he had suffered any detriment. This point has also been answered in *Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.*, : [1979]118ITR326(SC) as a similar argument was made in that case. It was held at page 650 of this report (p. 372 of 118 ITR) :

' This contention of the State is clearly unsustainable and must be rejected. We do not think it is necessary, in order to attract the applicability of the doctrine of promissory estoppel, that the promisee, acting in reliance on the promise, should suffer any detriment. What is necessary is only that the promisee should have altered his position in reliance on the promise..... If a promise is 'acted on', 'such action, in law as in physics, must necessarily result in an alteration of position'.'

26. Then again at page 651 (p. 373 of 118 ITR):

' 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 would 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 the prejudice which would be caused to the promisee, if the promisor were allowed to go back on the promise.'

27. On the facts of this case, it is an admitted position that pursuant to the promise and/or representation of the defendant to pay the promised reward, the plaintiff in fact acted on such representations and assurances and gave information to the defendant pursuant to which the defendant was able to discover concealed income and realise extra taxes. The promise has been acted upon by the plaintiff and 'such action' in law, as in physics, must necessarily have resulted in an alteration of position irrevocably. It is no longer possible by the plaintiff to resume the position of 1965. It has not been proved or argued on behalf of the defendant, that it will be inequitable to hold the defendant to the promise made by it by enforcing this equitable doctrine against it. So far as the facts of this case are concerned, the case is almost undefended. The Government cannot claim to be exempted on some indefinite and undisclosed ground. The defendant's allegation at a very late stage, that the promise was not a representation but was an intimation of an ex gratia payment to the informant depending on the discretion of the Government cannot be accepted. In the premises, I hold that the plaintiff has a cause of action on the basis of promissory estoppel and the suit is maintainable against the defendant. Moreover, Ganatra has said that both he and the plaintiff had to give up their business in the jute market.

28. Section 70 of the Contract Act has been introduced by way of amendment in paras. 3A and 4A of the plaint. As against this, the defendant's counsel has raised three points :

1. This case does not find any place in Section 80 notice and cannot be entertained.
2. The plaintiff admitted in the plaint that he had supplied information 'pursuant to the request' of the defendant. Section 70 does not contemplate any such 'request' and its operation would, therefore, be excluded.
3. This amendment was made at a time when the plaintiff could not have filed any suit on this cause of action as it was barred by limitation.

29. The plaintiff's counsel on the other hand submitted that the question of limitation would not arise at all as all the facts required to be pleaded under

Section 70 of the Contract Act were already pleaded in the plaint. By amendment, Section 70 was specifically mentioned to make explicit what was implicit in the plaint. The defendant's counsel, however, relied on *Union of India v. Sita Ram Jaiswal*, : [1977]1SCR979 , in support of his contention that all the ingredients were not pleaded and as such Section 70 introduced a new cause of action in the plaint. In para. 6 of this report the requirements of Section 70 were set out :

- '1. The goods are to be delivered lawfully or anything has to be done for another person lawfully.
2. The thing done or the goods delivered is so done or delivered 'not intending to do so gratuitously '.
3. The person to whom the goods are delivered * enjoys the benefit thereof'.'

30. The plaintiff in that case alleged that certain goods supplied to the defendant were wrongfully rejected by the defendant after a lapse of reasonable time. The plaintiff claimed the price of goods and his alternative case was that the plaintiff was entitled to the sum for supply of the goods because the same were not supplied gratuitously. The Supreme Court held that there was no proper pleading under Section 70 of the Contract Act. It was so held because it was a case of rejection of goods and there was no express pleading of acceptance of benefit by the defendant. In spite of this state of pleading, the Supreme Court did not disturb the finding of the trial court as the parties had gone to trial on the basis of Section 70. In my opinion, this case has no application to the facts of the present case as all the aforesaid three requirements would be found to have been sufficiently pleaded in the original plaint to attract Section 70 of the Contract Act. Therefore, the question of limitation will not arise in this case as no new case or cause of action has been introduced by way of amendment. The defendant's counsel further submitted that in para. 3 of the plaint it was specifically pleaded that the plaintiff supplied information 'in pursuance of the said announcement' and this pleading will exclude the operation of Section 70 of the Contract Act. The defendant's counsel relied on *B. N. Elias and Co. Ltd. v. State of West Bengal*, : AIR1959 Cal247 . In para. 29 of this case, it has been held that where goods are delivered pursuant to a request, Section 70 of the Contract Act has no application

and that there must be a pleading for compensation under Section 70. According to the defendant's counsel, under Section 70, compensation is the market value of the goods, which is a question of fact and there must be proper pleading and proof of market value. The plaintiff did not plead or prove the market value of work done by him and the suit must be dismissed on that ground. The plaintiff's counsel, however, submitted that *B. N. Elias and Co. Ltd. v. State of West Bengal*, : AIR1959 Cal247 , has been overruled by implication by *State of West Bengal v. B. K. Mondal and Sons*, : AIR 1962 SC779 . The facts of this case were that the plaintiff at the request of the defendant submitted its estimate for certain construction works and completed the same and became entitled to Rs. 2,322.81 from the defendant. Thereafter the Sub-Divisional Officer requested the plaintiff to erect certain storage sheds which was done by the plaintiff and his bill came up to Rs. 17,003. In the suit, these two amounts were claimed. There was no pleading under Section 70 of the Act. The defence was that there was no valid or binding contract under Section 175(3) of the Government of India Act, 1935. The trial court, on the facts of that case, held that there was no binding contract between the parties but allowed the claim holding that the claim of the plaintiff would be justified under Section 70 of the Contract Act. In : AIR 1962 SC779 , it was held:

Para 24:

'Turning to the facts of this case it is clear that both the courts have found that the acts done by the respondent (plaintiff) were done in fact in pursuance of the requests invalidly made by the relevant officers of the appellant, and so they must be deemed to have been done without a contract. It was not disputed in the courts below that the acts done by the respondent have been accepted by the appellant and the buildings constructed have been used by it.' Para 43: ' The request by the officers does not affect the question that arises in this case. It had no compelling effect and no effect as a promise and in fact no effect at all.'

31. On these findings, the Supreme Court held that Section 70 was rightly applied by the learned trial court. It is true that *B. N. Elias and Co. Ltd. v. State of West Bengal*, : AIR1959 Cal247 , was not considered in *State of West Bengal v. B. K. Mondal and Sons*, : AIR 1962 SC779 , but after this Supreme Court decision, the

decision in : AIR1959 Cal247 cannot be considered to be good law and the effect of this judgment would amount to overruling this Calcutta decision by implication and I accept this submission of the plaintiff's counsel on this point. As stated earlier, there was no express pleading of Section 70 in the plaint in that case but the Supreme Court held that all the three ingredients required for invoking Section 70 were already in the plaint and applied the provisions of Section 70 without having any specific pleading to that effect or having any proof regarding the compensation : AIR 1962 SC779 :

'The position then is that the respondent had done the work for the Government without any contract with anybody. The question is, are the three requisites of Section 70 as very correctly formulated by G. K. Mitter J. satisfied We think they are. There is no dispute that the Government had taken the benefit of the work. We also feel no doubt that the respondent did not intend to do the work gratuitously. It submitted its estimate for the work and was very prompt in submitting its bill after the work was done.'

32. The aforesaid observation of the Supreme Court is fully applicable to the facts of this case. The supply of information and the active help by the plaintiff and the discovery of concealed income by the defendant on the basis of the plaintiffs' information are not only admitted by the defendant but also have been fully established by both oral and documentary evidence of the plaintiff in this suit. That the plaintiff had no intention to act gratuitously is also proved by the oral and documentary evidence which show that the plaintiff had been repeatedly demanding the promised reward from the defendant. The plaintiff's counsel rightly submitted that all the requisites under Section 70 of the Act were already pleaded in the original plaint and the amendment only clarified the position. This also disposes of the other point taken by the defendant that Section 80 notice did not mention anything about cause of action under Section 70 and as such the plaintiff was not entitled to recover the claim on that basis. I have carefully gone through the notice and am satisfied that all the requirements under Section 70 have been fully and substantially pleaded in the said notice.

33. Then comes the question of evidence of compensation in this suit. According to the defendant, the plaintiff has not given any evidence of the reasonable value of the work done by him and the suit must fail on this ground only. The value of the information to be supplied or works to be done had been assessed and fixed by the defendant by announcing that 7.50% of the extra tax would be the reward and in suitable cases that might go up to 10%. The plaintiff has accepted this assessment and the defendant is bound by its own assessments and the promise to pay the same. No other evidence is necessary in this case.

34. But what is the extra tax realised? The entire relevant records of this case regarding assessment of tax have been suppressed by the defendant from court. The defendant-Government tried to take shelter under the provisions of Section 54 of the Indian I.T. Act of 1922 and Section 137 of the I.T. Act of 1961 in spite of the fact that the protection given to the revenue was withdrawn by the Finance Act of 1964, with effect from April 1, 1964, The Finance Act of 1964 was passed by the defendant and it was fully acquainted with its provisions. No one came forward to tell the court as to what was the state of affairs regarding the assessments, whether they were complete or incomplete or what was the extra tax realised. There is a clear and unchallenged evidence on record that some of the important officers of the defendant who gave information to the plaintiff and the witness, Ganatra, about the quantum of tax realised are still in the employment of the defendant. But all of them avoided the witness box. The defendant not only suppressed the assessment records but also withheld all oral evidence from court regarding realisation of extra tax by the defendant. On the facts of this case and on the basis of the aforesaid conduct of the defendant I hold that the provisions of Sections 106 and 114(g) of the Evidence Act apply in full force. The onus to prove the realisation of extra tax is on the defendant and the court is entitled to raise the presumption that the defendant has suppressed all available evidence from court because all such evidence would support the plaintiff's case that the defendant has realised extra tax to the extent of rupees eight crores. In the written statement, it was alleged by the defendant that some of the parties whose names were mentioned by the plaintiff subsequently made voluntary disclosures and the plaintiff was not entitled to claim anything in respect of the same. But the defendant did not come forward to prove this case. The defendant failed to

discharge that onus.

35. In the premises, there will be no order on the plaintiff's application for discovery. The issues are, therefore, answered as follows :

Issue No. 1(a)--Yes.

Issue No. 1(b)--Yes.

Issue No. 2--Yes.

Issue No. 3--Yes.

Issue No. 4--Yes.

Issue No. 5--Yes.

36. The plaintiff has already received Rs. 12,500 from the defendant. There will be a decree for a further sum of Rs. 2,00,000 in favour of the plaintiff against the defendant and this sum will carry interim interest at the rate of 6% per annum from the date of institution of the suit to the date of the decree. Interest on judgment at the rate of 6% per annum until realisation and costs. The defendant is given 3 months' time from date for payment of the decretal dues. In default of payment by the defendant within the period aforesaid, the plaintiff will be entitled to execute the decree. Certified for two counsel.

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