

CENTURY SPINNING & MANUFACTURING COMPANY LTD. AND ANR.

v.

THE ULHASNAGAR MUNICIPAL COUNCIL AND ANR.

February 27, 1970

[J. C. SHAH, K. S. HEGDE AND A. N. GROVER, JJ.]

Constitution of India, Art. 226—High Court's Powers—Dismissal in limine—Questions of fact—Representations by Public Body—If enforceable ex-contractu by a person who acts upon the representations.

The appellants-companies set up their factories within an "Industrial Area". No octroi duty was payable in respect of goods imported by the appellants into the Industrial Area for use in the manufacture of its products. The State of Maharashtra constituted a Municipality for certain villages including the Industrial Area. On representations made by the appellants and other manufacturers, the State proclaimed the exclusion of the Industrial Area from the Municipal Jurisdiction. The Municipality made representations to the State requesting that the proclamation, be withdrawn, agreeing to exempt the factories in the Industrial Area from payment of octroi for seven years from the date of the levy. The State acceded to the request of the Municipality. The appellants claimed to expand their activities relying upon the Municipality's assurance and undertaking. The Maharashtra Municipalities Act was enacted and the respondent-Municipality took over the administration of the former municipality as its successor. Thereafter, the respondent-Municipality sought to levy octroi duty on the appellant amounting to about Rs. 15 lakhs per annum. The appellants filed a petition under Art. 226 of the Constitution to restrain the respondent-Municipality from enforcing the levy of the Octroi. The High Court dismissed the petition *in limine*. In appeal by special leave.

HELD : The case must be remanded to the High Court for being re-admitted to its file and dealt with and disposed of according to law.

The High Court may, in exercise of its discretion, decline to exercise its extra-ordinary jurisdiction under Art. 226 of the Constitution. But the discretion is judicial: if the petitioner makes a claim which is frivolous, vexatious, or *prima facie* unjust or which may not appropriately be true in a petition invoking extraordinary jurisdiction, the Court may decline to entertain the petition. But a party claiming to be aggrieved by the action of a public body or authority on the plea that the action is unlawful, high-handed, arbitrary or unjust is entitled to a hearing of its petition on the merits. Apparently the petition filed by the Company did not raise any complicated questions of fact for determination, and the claim could not be characterised as frivolous, vexatious or unjust. The High Court has given no reason for dismissing the petition *in limine*, and on a consideration of the averments in the petition and the materials placed before the Court the appellants were entitled to have its grievance against the action of the Municipality, which was *prima facie* unjust, tried. Merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the somewhat lengthy, dilatory and expensive process by a civil suit against a public body. The questions of fact raised by the petition in this case are elementary. [858 C-F]

Public bodies are as much bound as private individuals, to carry out representations or facts and promises made by them, relying on which

A other persons have altered their position to their prejudice. The obligation arising against an individual out of his representation amounting to a promise may be enforced *ex-contractu* by a person who acts upon the promises when the law requires that a contract enforceable at law against a public body shall be in certain form or be executed in the manner prescribed by statute and if the contract be not in that form the obligation may still be enforced against the body in appropriate cases, in equity. [859 D]

B If our nascent democracy is to thrive different standards of conduct for the people and the public bodies cannot ordinarily be permitted. A public body is not exempt from liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice. [860 D]

C There is undoubtedly a clear distinction between a representation of an existing fact and a representation that something will be done in future. The former may, if it amounts to a representation as to some fact alleged at the time to be actually in existence, raise an estoppel if another person alters his position relying upon that representation. A representation that something will be done in future may result in a contract, if another person to whom it is addressed acts upon it. A representation that something will be done in future is not a representation that it is true when made.

D But between a representation of a fact which is untrue and a representation express or implied—to do something in future, there is no clear antithesis. A representation that something will be done in future may involve an existing intention to act in future in the manner represented. If the representation is acted upon by another person it may, unless the statute governing the person making the representation provides otherwise, result in an agreement enforceable at law; if the statute requires that the agreement shall be in a certain form, no contract may result from the representation and acting thereupon but the law is not powerless to raise in appropriate cases an equity against him to compel performance of the obligation arising out of his representation. [858 H-859 C]

E *Union of India & Ors. v. M/s. Indo-Afghan Agencies Ltd.*, [1968] 2 S.C.R. 366; *Robertson v. Minister of Pensions*, [1949] 1 K.B. 227; *Falmouth Board Construction Co. Ltd. v. Howell*, [1950] 1 All. E.R. 538, referred to.

F

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2130 and 2131 of 1969.

Appeals by special leave from the judgment and order dated June 16, 19, 1969 of the Bombay High Court in Special Civil Application No. 41 of 1969 and S.C.A. No. 1774 of 1969.

G

C. K. Daphtary, Suresh A. Shroff, P. C. Bhartari and O. C. Mathur, for the appellants (in both the appeals).

H. R. Gokhale, N. H. Gurshani and N. N. Keswani, for respondent No. 1 (in both the appeals).

H

B. D. Sharma and S. P. Nayar, for respondent No. 2 (in both the appeals).

The Judgment of the Court was delivered by

Civil Appeal No. 2130 of 1967

Shah, J. The High Court of Bombay dismissed *in limine* a petition filed by the Century Spinning & Manufacturing Co. Ltd. hereinafter called 'the Company'—for the issue of a writ restraining the respondent Municipality from enforcing the provisions of the Maharashtra Municipalities Act 40 of 1965 relating to the levy, assessment, collection recovery of octroi and in particular s. 105 and ss. 136 to 144 thereof, and from enforcing the Maharashtra Municipalities (Octroi) Rules, 1967, and from acting upon resolutions passed by the Municipal Council dated September 9, 1968 and September 13, 1968, and from levying, assessing, collecting, recovering or taking any other step under the Act, rules or the resolutions, and for an order restraining the Municipality of Ulhasnagar from levying, assessing, collecting any octroi on the goods imported by the Company within the limits of the Municipal Council for a period of 7 years from the date of its first imposition. With special leave, the Company has appealed against the order rejecting the petition.

The Company was incorporated under the Indian Companies Act, 1913. It set up its factory in 1956, within the limits of village Shahad, Taluka Kalyan, on a site purchased from the State of Bombay, and within an area known as the 'Industrial Area'. No octroi duty was then payable in respect of goods imported by the Company into the Industrial Area for use in the manufacture of its products. On October 30, 1959, the Government of Bombay issued a notification announcing its intention to constitute a Municipality for certain villages, including the Industrial Area. The Company and other manufacturers who had set up their plants and factories objected to the proposed constitution of the Municipal Area. On September 20, 1960, the State of Maharashtra (successor to the State of Bombay) published a notification constituting with effect from April 1, 1960 the Municipality including the area in which the Industrial Area was included. Representations were then made by the Company and other manufacturers for excluding the Industrial Area from the Ulhasnagar Municipal District Area. On April 27, 1962 the Government of Maharashtra (the new State of Maharashtra having been constituted under the Bombay Reorganization Act, 1960) proclaimed that the Industrial Area be excluded from the Municipal jurisdiction. The District Municipality then made a representation to the Government of Maharashtra that the proclamation dated April 27, 1962, be withdrawn by the Government. The Municipality agreed to exempt the existing factories viz., the Company and other manufacturers whose factories were then existing in the Industrial Area from payment of octroi for a period of seven years from the date of levy of octroi and for exempting new industrial units from payment of octroi for

- A a similar period from the date of establishment. The Government of Maharashtra acceded to the request of the Municipality to retain the Industrial Area within the local limits of the Municipality.

B On August 24, 1963, the District Municipality passed a resolution to implement the agreement. It was resolved that the Municipality "agrees to give a concession to the existing factories by exempting them from the payment of octroi for a period of 7 years from the date of levy of octroi tax and by exempting new factories from the payment of the octroi tax for a period of 7 years from the date of their establishment as recommended by the Government of Maharashtra".

C On October 31, 1963, the Government of Maharashtra issued a notification withdrawing the proclamation dated April 27, 1962, and the Industrial Area became part of the Ulhasnagar Municipal District. Relying upon the assurance and undertaking given by the Municipality the Company claims that it had expanded its activities and commenced manufacturing new products by setting up additional plant which it would not have done "but for the concessions given, assurances and representations made and agreement arrived at on May 21, 1963".

E On September 10, 1965, the Legislature of the State of Maharashtra enacted the Maharashtra Municipalities Act which repealed the Bombay District Municipal Act 3 of 1901. The notification declaring the area of the former District Municipality of Ulhasnagar into the Ulhasnagar Municipality became effective as from June 15, 1966. The Ulhasnagar Municipality took over as successor to the Ulhasnagar District Municipality, the assets and the affairs of that body. On September 9, 1968 the Ulhasnagar Municipality resolved "to levy minimum rates of octroi duty as shown in columns 4 and 6 on all items shown in Sch. I to the Rules", and by resolution dated September 13, 1968, the Municipality adopted with effect from January 1, 1969, the rates for the imposition of octroi duty on the goods imported for use, sale and consumption within the Municipal Council limits.

F At a special meeting held on December 24, 1968, the Municipal Council considered the letters written by the Government of Maharashtra dated November 22, 1968 and December 10, 1968, drawing the attention of the Municipality to the circumstances in which the Industrial Area was included and retained in the local limits of the Ulhasnagar District Municipality and continued to remain within the local limits of the Municipality, and "advised the Municipality to pass a resolution confirming such exemption and honour the commitments of its predecessor." The Municipality ignored the advice and resolved that the Government of Maharashtra be informed that the Municipality would consider afresh on

merits any representation of a tax-payer for exemption from payment of octroi, and if any such representation was made by the factories situate in the Industrial Area, the Council would consider the same and take such action as it would deem fit. Thereafter the Municipality sought to levy octroi duty and to recover from the Company octroi duty amounting to approximately Rs. 15 lakhs per annum.

The Company moved a petition before the High Court of Bombay under Art. 226 of the Constitution for the writs set out earlier seeking to restrain the Ulhasnagar Municipality from enforcing the octroi Rules.

The High Court may, in exercise of its discretion, decline to exercise its extra-ordinary jurisdiction under Art. 226 of the Constitution. But the discretion is judicial : if the petition makes a claim which is frivolous, vexatious, or *prima facie* unjust, or may not appropriately be tried in a petition invoking extra-ordinary jurisdiction, the Court may decline to entertain the petition. But a party claiming to be aggrieved by the action of a public body or authority on the plea that the action is unlawful, high-handed, arbitrary or unjust, is entitled to a hearing of its petition on the merits. Apparently the petition filed by the Company did not raise any complicated questions of fact for determination, and the claim could not be characterised as frivolous, vexatious or unjust. The High Court has given no reasons for dismissing the petition *in limine*, and on a consideration of the averments in the petition and the materials placed before the Court we are satisfied that the Company was entitled to have its grievance against the action of the Municipality, which was *prima facie* unjust, tried.

The Company pleaded that the Ulhasnagar Municipality had "entered into a solemn arrangement" not to levy octroi duty for a period of seven years from the date of its imposition. The evidence relating to the undertaking was contained in public records. The Government of Maharashtra advised the Municipality that it was acting in violation of the terms of that undertaking. By its resolution the Municipality declined to abide by the undertaking of its predecessor.

There is undoubtedly a clear distinction between a representation of an existing fact and a representation that something will be done in future. The former may, if it amounts to a representation as to some fact alleged at the time to be actually in existence, raise an estoppel, if another person alters his position relying upon that representation. A representation that something will be done in the future may result in a contract, if another person to whom it is

- A addressed acts upon it. A representation that something will be done in future is not a representation that it is true when made. But between a representation of a fact which is untrue and a representation—express or implied—to do something in future, there is no clear antithesis. A representation that something will be done in future may involve an existing intention to act in future
- B in the manner represented. If the representation is acted upon by another person it may, unless the statute governing the person making the representation provides otherwise, result in an agreement enforceable at law; if the statute requires that the agreement shall be in a certain form, no contract may result from the representation and acting thereupon but the law is not powerless to raise in appropriate cases an equity against him to compel performance of the obligation arising out of his representation.
- C

- Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice. The obligation arising against an individual out of his representation
- D amounting to a promise may be enforced *ex contractu* by a person who acts upon the promise : when the law requires that a contract enforceable at law against a public body shall be in certain form or be executed in the manner prescribed by statute, the obligation may be if the contract be not in that form be enforced against it in appropriate cases in equity. In *Union of India & Ors. v. M/s. Indo-Afghan Agencies Ltd.*⁽¹⁾ this Court held that the Government is not exempt from the equity arising out of the acts done by citizens to their prejudice, relying upon the representations as to its future conduct made by the Government. This Court held that the following observations made by Denning, J., in *Robertson v. Minister of Pensions*⁽²⁾ applied in India :
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- F “The Crown cannot escape by saying that estoppels do not bind the Crown for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so as to fetter its future executive action.”
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We are in this case not concerned to deal with the question whether Denning, L.J., was right in extending the rule to a different class of cases as in *Falmouth Boat Construction Co. Ltd. v. Howell*⁽³⁾ where he observed at p. 542 :

- H “Whenever Government officers in their dealings with a subject take on themselves to assume authority in a

(1) [1968] 2 S.C.R. 366.

(2) [1949] 1 K.B. 227.

(3) [1950] All. E.R. 538.

matter with which the subject is concerned, he is entitled to rely on their having the authority which they assume. He does not know, and cannot be expected to know, the limits of their authority, and he ought not to suffer if they exceed it."

It may be sufficient to observe that in appeal from that judgment (*Howell v. Falmouth Boat Construction Co. Ltd.*) Lord Simonds observed after referring to the observations of Denning, L.J. :

"The illegality of an act is the same whether the action has been misled by an assumption of authority on the part of a government officer however high or low in the hierarchy. . . . The question is whether the character of an act done in force of a statutory prohibition is affected by the fact that it had been induced by a misleading assumption of authority. In my opinion the answer is clearly : No."

If our nascent democracy is to thrive different standards of conduct for the people and the public bodies cannot ordinarily be permitted. A public body is, in our judgment, not exempt from liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice.

Mr. Gokhale appearing on behalf of the Municipality urged that the petition filed by the Company apparently raised questions of fact which in the view of the High Court could not appropriately be tried in the exercise of the extra-ordinary jurisdiction under Art. 226. But the High Court has not said so, and on a review of the averments made in the petition this argument cannot be sustained. Merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the somewhat lengthy, dilatory and expensive process by a civil suit against a public body. The questions of fact raised by the petition in this case are elementary.

The order passed by the High Court is set aside and the case is remanded to the High Court with a direction that it be readmitted to the file and be dealt with and disposed of according to law. The High Court will issue rule to the Municipality and the State and dispose of the petition. We recommend that the case may be taken up for early hearing.

We had during the pendency of the appeal in this Court made an order restraining the levy of octroi duty. We extend the operation of the order for a fortnight from this date to enable the

- A** Company to move the High Court for an appropriate interim order pending hearing and disposal of the writ petition. There will be no order as to costs in this Court. Costs in the High Court will be costs in the cause.

- B** Since we have granted special leave against the order dismissing the petition, we do not deem it necessary to consider whether the order rejecting the application for certificate was erroneous. Civil Appeal No. 2131 of 1969 is therefore dismissed.

Y.P.