

Situations Where the Promissory Estoppel Applied or not in Indian Law

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Introduction

In India promissory estoppel is a new branch of contract law. It has during the course of the last few years attained great importance and has been accepted by the Supreme Court. This doctrine binds the promisor because the promisee in reasonable reliance on the promise has incurred some detriment. Truly speaking estoppel creates no contract and so no consideration is needed therefore. Since it rests on equity circumstances must exist which give rise to it.

Discussion of promissory estoppel situations in which the doctrine of rejected or applied or approved noting applicable.

Situations where Promissory Estoppel is applicable

This category deals with cases where generally the situations were promissory estoppel in character as distinct from factual ones and the courts bound the promisors when the promisees had acted to their prejudice in reliance on promises. The ground of decision is not necessarily promissory estoppel or quasi-estoppel but also rule of equity or relaxed notion of consideration. In some cases the courts were willing to apply promissory estoppel but did not do so because one or the other ingredient of it was found lacking.

(1) Grand-in-aid

In case *Rev. Fr. Joseph v. State* held in India during the course of years the judiciary has developed the principle by the use of a variety of connotations for describing a situation which falls within the popular terminology of promissory estoppel. The court held in this case when the schools were established in reliance on the grant-in-aid system the conditions of which could not be unilaterally changed by the government. The government had the powers to change the rules and conditions of grants-in-aid when the system gave no invitation to private agencies to establish schools and no promise to pay them grants-in-aid.

(2) Incomplete engagement

In a Privy Council case the promisee had acted on the unilateral offer of the promisor which created a binding contract between the parties. But the judicial committee *ex hypothesi* considered the legal position of the parties if the contract was found to be defective for one reason or the other and the promisor knew of the promisee acting in reliance on the promise. Thus under these circumstances the promisee would not be without a legal remedy even when the agreement is discovered to be defective.

(3) A sale of goods transaction

In a case the purchasers agreed to buy any things from defendants. Being unable to arrange for payments but with the consent of seller agent transferred goods. So here seller bound because it would clearly be inequitable to allow the seller to recede from the arrangements which had been made by their agent. Seller had contended that the only recognized kinds of estoppels in India are those contained in section 115 to 117 of the Indian Evidence act. The court exploded this myth. It said

that estoppels as understood in English legal phraseology are matters of infinite variety. And are not restricted to the topics dealt with in this act. It advocated the doctrine of equity and good conscience to prevent a party from taking advantage of his acts arguments or contentions as against the innocent party. This widened the scope of estoppel to provide relief to a party in appropriate cases.

(4) Wrong credit entries

In a case the question arose of the liability of a bank for the wrong entries which it had inadvertently made in a customer account when the customer had settled his liabilities with third parties on their faith and so altered his position to his disadvantage. The court held that the customer was negligent because a cursory glance at the pass book would have brought home to him the fact of double credit entries therein and without referring to any English and Indian decided cases or section 115 of the evidence act that his own negligent conduct disentitled him to press the doctrine of estoppel against the bank. The court emphasized that in ordinary cases the bank would be estopped by his representations if the opposite party has acted on the basis of the credit entries and discuss the kind of estoppel but spelt out its ingredients. These are wrong credit entries, intimation to the customer absence of actual or constructive notice to him thereof changes of position to his prejudice. Here intimation is equivalent to a representation of a future undertaking by a banker to cash its customer cheques to the extent of the funds mentioned in the passbook. Wrong entries are not a mere representation of fact as to the state of the customer credit accounts with the bank.

(5) Release by mortgagee

In a case the court reduced the whole factual situation as if the mortgagee had given the any undertaking to a person who wanted to purchase the mortgaged property free from encumbrance. The mortgagee refused to accept the settled amount. The court held that there was a contingent contract and mortgagee was thus guilty of breach of contract. Another party alteration of the position on the faith of the offer by the mortgagee is good consideration for the contract. So the court applied estoppel against party. The question is not free from difficulty. It has however been held in England that an undertaking may operate as an estoppel though in the absence of consideration it cannot amount to contract.⁶ The court followed its earlier decision in *The Ganges Manufacturing Co. v. Sourujmull*⁷ and applied equity and good conscience as evolved there in and bound both on contract and estoppel. Although the court did not use any prefix to estoppel its remarks show the application of the promissory estoppel.

(6) Promissory estoppel against of government

At least in two cases decided before independence the government was held bound to fulfil its promises or assurances on the faith of which the other party had acted. In one of them the government resolution was not enveloped in statutory formalities required for making a contract and stressed that estoppel embodied in section 115 of the Indian Evidence act is a rule of common law but not of equity.⁸ The government was held bound on a rule of equity which is distinct from the estoppel of the law of evidence. The court expounded a new principle in the garb of equity and applying it against the government even when the formalities to enter into a valid contract were not fulfilled. Today the rule is sometimes known as the doctrine of equitable estoppel another expression for promissory estoppel.

In the second case the government had given certain verbal assurances in furtherance of a written contract on which the other party had relied. Even if the principle of estoppel is not applicable to such a case the principle applicable to it may be described as principle of quasi estoppel as a principle of equity.⁹ So the government was liable but on quasi estoppel another name for promissory estoppel.

Situation where Promissory Estoppel is not applicable

The category deals with cases where the representations were promissory in character or could well be construed as promissory and distinct from factual ones or the court hypothetically considered the application of promissory estoppel but rejected it.

(1) Promise to give share in property

In a case an issueless person had a promise for his property the promisor died issueless and intestate and a dispute arose about the legal rights in the property of the deceased. The court held there was no contract or agreement there was only an expectation on each side and the matter had never reached the stage of contract because there was no contract in existence in favour of the promisee. So there was not binding as an estoppel and suggested by court that the estoppel applied when the contract had become complete.

(2) Cheque marked good for payment

In case a cheque dated 13th was made payable on 20th and was signed by a bank manager as marked good for payment up to 20th. The question arose as to this bank liability when another bank in reliance on these words had made advances and the drawer fund on the due date was insufficient to cash the cheque. The court held that marking or certification did not in law or custom constitute acceptance and to be not of an existing fact but of future intention. There being no consideration there was no contract and therefore the banker was not bound even if the certification amounted to a promise in law and applied estoppel. Thus in the absence of consideration promissory intention cannot be enforced even if the representee has acted on the faith of the promise.

(3) Promise for constructing road

A sale by a society of certain plots of land on the representation that certain land bordering on them is reserved for the proposed drainage road of the trust is not a statement of existing facts. The court held to have a reference to future intention and since the necessary road had been constructed the question of promissory estoppel did not arise directly but the court remarked that to operate as an estoppel representation must be factual and not intentional.¹²

(4) Release by mortgagee

In a case there was a tripartite arrangement among the mortgagor the mortgagee and the prospective purchaser of the mortgaged property for release by the mortgagee of a portion of the mortgaged property. The purchaser gave the agreed amount to the mortgagee who acknowledged it. The court held to be a release but not a statement of an existing fact which could be enforced by estoppel. Being a mere promise to do a certain act in consideration of something else it could be enforced only on a contract.

(5) Promise to give land

In a suit for recovery of possession by plaintiff defendant was unable to prove gift and then alleged an agreement by the former to give him the land on the basis of constructed on the land.¹⁴ The court held that a proposition of law is not a thing within the meaning of section 115 evidence act.

(6) Promise for marital maintenance

In a case the marriage of a Brahmin woman with a shudra was declared void under Hindu law. She then claimed maintenance on other ground. The court considered the application of old and new estoppels and rejected them because at the time of marriage to treat and maintain her as his wife was a promise in futuro and as such it was a contract which was illegal.

(7) Promise to make him his heir

In a case the deceased had wrongfully represented to the other party that the boy about whose marriage he was negotiating was his adopted son. Being issueless he had also represented that he would make him his sole heir. This induced the mother to give her daughter in marriage to this boy. The promiser died intestate. Next year the husband also died and the widowed daughter claimed the property. Representation as to adoption was rightly held to be of existing fact but representation as to future heirship created a contract on marriage and said that representation of future intention can be binding only as a contract and not otherwise.

(8) Invoked for preventing Government from discharging its duty

Where the government owes a duty to the public to act in a particular manner a duty meaning a course of conduct enjoined by law the doctrine cannot be invoked for preventing the government from acting in discharging of duty under the law and as such the doctrine cannot be applied to compel anyone to do an act prohibited by law. Legislature cannot be precluded from exercise of legislative functions by a resort to the doctrine.¹⁸

(9) Invoked to central government servant to refund tax

No law can be made nor can an executive order be issued to refund tax. It would be invalid and ultra vires. In the matter of taxation in relation to the application of the doctrine of promissory estoppel there is distinction between exemption of tax and refund of tax. An exemption is a concession allowed to a class or an individual for the general burden for valid and justifiable reasons. The object is to enable the industry to stand up and compete in the market. Sales tax is an indirect tax which is ultimately passed on to the consumer and it is the consumer who is the ultimate beneficiary. The industry is allowed to overcome its teething period by selling its products at comparatively cheaper rates as compared to others. Such exemption is neither illegal nor against the public policy.¹⁹ Refund of return of it or is equivalent irrespective of the form is repayment of refund of sales tax. These principles when considered for application to the withdrawal of tax for growth fund scheme would lead to the conclusion that the withdrawal of the scheme is well justified and the petitioners in spot of their acting upon it on the basis of representations contained therein cannot resort to the doctrine of promissory estoppel.

(10) Taxation of motor vehicle

In the case of taxation of motor vehicles it was held that the doctrine of promissory estoppel will not apply against statute.²⁰ The state authorities cannot be restrained from levying tax on basis of principle of estoppel.²¹

Situations where Promissory Estoppel is not applicable against the State

The doctrine of promissory estoppel is a panacea to all who believe in the principle of equity among equals. The government is bound by the considerations of honesty and good faith said in *Motilal Sugar Mill case*²² and the law can not acquire legitimacy and again social acceptance unless it accords with the moral values of the society and the constant endeavour of the court and the legislature must be therefore to close the gap between law and morality. The veracity of this statement is vindicated by the evolution of the doctrine of promissory estoppel. It is formulated by the court and has its soul and basis in the interposition of equity and law. As equity is always allowed to mitigate the rigours of strict law. The government is bound by the consideration of honesty and good faith while invoking this doctrine. However the principle has to be administered with caution because if the door is kept wide open it might defeat the very concept it therefore can not be used as young George Washington's axe.²³ The limitations of the doctrine of promissory estoppel can not be

overlooked while invoking it against the state. In the many circumstances the government cannot be held bound by its informal promises even if the promisee has changed his position of his detriment.

(1) Public interest

The courts may not come to the rescue of the petitioner for enforcing informal promises against the government for enforcing informal promises against the government in the broader interest. When the government is able to show that in view of the facts which transpired since the making of the promise public interest would be prejudiced if the government were required to carry out the promise the court would have to balance the public interest in the government carrying out the citizen to act upon it and alter his position and the public interest is likely to suffer if the promise was required to be carried out by the government and determine which way the equity lies.²⁴ Principle of promissory estoppel applicability against government on circumstances when the government may change its stand and resile from such promise and existence of supervening public equity against representation made by government. The government would be entitled to withdraw from such representation made by it which induced persons to take certain steps which may have gone adverse to interest of such persons on account of such withdrawal. Rights of individuals are subordinated to paramount interest of public good.

(2) Public duties for obligation of law

The courts have refused to enforce government informal promises if the government is under obligation of law to act in a particular manner and the informal promise made by it hinders in the performance of its public duty. In *Ramanatha Pillai v. State of Kerala*²⁵ the Supreme Court has observed that the courts exclude the operation of doctrine of estoppel when it is found that the authority against whom estoppel is pleaded has a duty to the public against whom the estoppel cannot fairly operate and in *M.P. Sugar Mills* case the Supreme Court observed that what the court intended to say that where the government owes a duty to the public to act differently promissory estoppel can not be invoked to prevent the government from doing so.

(3) Act prohibited by law

The doctrine of promissory estoppel can not be available to an individual where the promise or assurance given by the government is opposed to the law of statutory prohibition or entitle the subject to maintain that there had been no reach of it.²⁶ Even the courts of India have committed to the principle that the promissory estoppel could not be available against the explicit prohibition of an act. So the promissory estoppel can not be invoked to compel the government to do an act prohibited by law.²⁷

(4) Estoppel against the Exercise of legislative powers

Law making power of the legislature can not be precluded by relying on the promissory estoppel. The government cannot be obliged to perform its contractual liability if the performance thereof stultifies its law making powers. In *M.P. Sugar Mills*¹ and *State of Kerala v. Gwalior Rayon Silk Co.*²⁸ as well as in *Excise Commissioner of U.P. Allahbad v. Ram Kumar*²⁹ the Supreme Court laid down that government can never be precluded from exercising its legislative powers for enforcing its promises.

(5) Reasonable notice

The government may resile from its promise by serving a reasonable notice to the promisee and by giving him a reasonable opportunity to explain his position which he may have altered by acting on the informal promise. In *M.P. Sugar Mill* case the court observed that it may still be competent to the government to resile from the promise on giving a reasonable notice which need not be a formal

notice giving the promisee a reasonable opportunity of resuming his position provided of course it possible for the promisee to restore status quo ante.

Conclusion

A device which can by and large be a good substitute for promissory estoppel, is the liberalization by courts of the nation of consideration as contained in section 2(d) of the act. Implying a request of the promisor where the promisee has injuriously acted in reliance on the promise can do this. The principle of justice, equity and good conscience cannot apply in violation of the Indian contract act.

Really speaking promissory estoppel applies in cases where for want of consideration the promisee cannot be protected. It is then that it is thought to estop a promisor from going back on his promise with a view to aiding an injured promisee.

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