The Law Relating to Legitimate Expectation

By :
Mohd. Osman Shaheed

Forward By :
Dr. AR Lakshmanan
The Hon'ble Chief Justice of High Court

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Hyderabad

LAW RELATING TO LEGITIMATE EXPECTATION

By

M. OSMAN SHAHEED, B.SC., L.L.M.

ADVOCATE, A.P. HIGH COURT

Foreword By

Hon'ble Chief Justice Dr. AR. LAKSHMANAN,

A.P. HIGH COURT

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Dr. Justice
AR. LAKSHMANAN

CHIEF JUSTICE
HIGH COURT OF ANDHRA PRADESH

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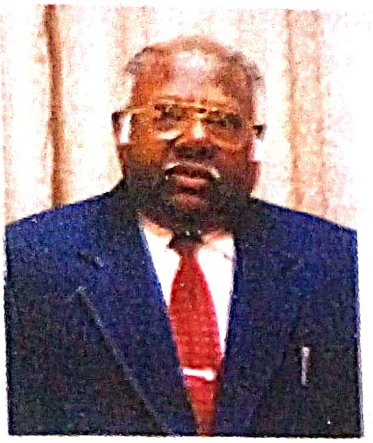


FOREWORD

Legitimate expectation arises when a person at the first instance falls under the zone of consideration. Of late, it has become a source of substantive as well as procedural rights. It is mandatory on the part of the authorities of all the three wings of the State viz., the Legislature, the Judiciary and the Executive to act in accordance with the principles of legitimate expectation and natural justice. When a person has legitimate expectation, he cannot be denied of his claim and this requirement makes the doctrine a part of much wider area of natural justice. The principles of natural justice especially relating to legitimate expectation have taken deep root in the judicial conscience of our people.

I have scanned through the Book written by Sri Mohd. Osman Shaheed on **"the Law relating to Legitimate Expectation"**. An authoritative book dealing with the subject was long felt and I am glad to find that the author has met the said necessity to a large extent. I specially appreciate the author for the pains he has taken in quoting the relevant citations at appropriate places. I have no doubt in my mind that the book shall prove to be of immense benefit to the members of the Bench and the Bar.

Dr. AR. LAKSHMANAN,
CHIEF JUSTICE

10.10.2002

Residence : No. 8-2-540, "Ashok Vihar", Road No. 7, Banjara Hills, Hyderabad - 500 034. A.P.
✆ : 040 - 23351557 (R), 040 - 23355121 (Fax)

OPINION

The subject of "Legitimate Expectation" has now become part and parcel of the Administrative Law and by the same credential it has become a part of our Constitutional Law. The Apex Court has held in "Ramana Dayaram Shetty Vs the International Airport Authority" (AIR 1979 SC 1628) that the State today is not merely and administrative authority dealing with law and Order problems. The Court declared...

"To-day the Government, in a welfare State is the regulator and dispenser of special services and provider of a large number of benefits, including jobs contracts, licences, quotas, mineral rights etc. The Government pours forth wealth, money, benefits, services, contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic".

"The Government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licences only in favour of those having grey hair or belonging to a particular political party or professing a particular religious faith. The Government is still the Government when it acts in the matter of granting largess and it cannot act arbitrarily. It does not stand in the same position as a private individual."

It is, therefore obvious that the Law relating to "Legitimate Expectation" has become an important aspect of administrative and constitutional law.

I really appreciate the stupendous effort made by Mr. Osman Shaheed, Advocate to collect all the material relating to the subject, "Legitimate Expectation". To the

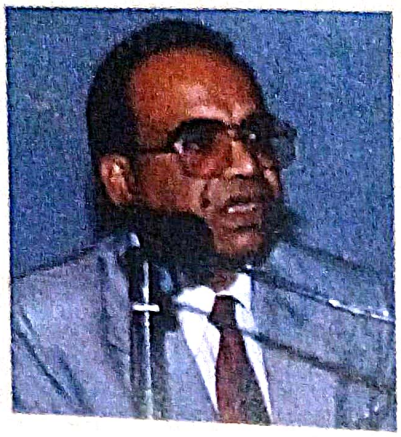
extent I could go through this magnum opus brought forward by Mr. Osman Shaheed on this important subject, I have no doubt that he has dealt with almost all the case law rendered not only by the Apex Court on the subject but also decisions of several Courts as well. He has also referred to the American Law on the subject.

The treatment that Mr Osman Shaheed has given to the subject is scholarly and analytical. He has gone into the origin and the very basis of the doctrine and concept from which the law of "Legitimate Expectation" has been evolved. This require a real scholarly and scientific approach and in the pursuit of which Mr Osman Shaheed must have spent innumerable hours of work at the cost of his own professional work. I personally know Mr. Osman Shaheed is a very busy Advocate practicing in almost all branches of Law. I was really amazed as to how it was possible for Mr. Osman Shaheed to have devoted so much of time for bringing about this extensive work on the subject. He deserves hearty congratulations.

I have no doubt whatsoever that this Book will serve both as a reference and a text book for courts, Lawyers and Law Institutes.

(K. PRATAP REDDY)
SENIOR ADVOCATE

PREFACE



Transgression of Rule of Law and violation of principles of natural justice by the administrative and Quasi-Judicial authorities have become order of the day.

Violation of Rule of Law is a serious threat to the very existence of a civilised democratic society.

Through this book I have made a humble attempt to enlighten the member of the bar and bench and all authorities who discharge Quasi Judicial and administrative functions about the newly developed Law relating to Legitimate Expectation which is a new recruit in the list of principles of natural justice.

I hope that my efforts will not prove futile.

No words are available to express my immense thanks to The Hon'ble Chief Justice of High Court of A.P. Sri Dr. AR Lakshmanan who expressed much pleasure while receiving manuscript of my book and was kind enough to agree to write a foreword and spared some of his most valuable time to write foreword disturbing his busiest schedule. I am also deeply grateful to Sri K. Pratap Reddy, Senior Advocate, A.P. High Court. Writing opinion or foreword is a time consuming exercise and I am aware of it. One has to go through the entire manuscript to write a foreword or opinion. Both the luminaries have taken much pain while writing their foreword and opinion.

My Junior colleagues M/s. Moin Ahmed Quadri, Mohd Azmath, Azhar Ansar ahmed, Mohd. Haneef, Moinuddin Akhtar, Ms. Nikhath-unnisa and Laeequnnisa, my son Mohd. Adnan Shaheed and above them all my life partner Mrs. Masarth Shaheed have all helped me a lot to complete this task. I acknowledge their services and pray for their prosperous and happy life and success in their future.

(MOHD. OSMAN SHAHEED)
B.SC., L.L.M.
Advocate of A.P. High Court

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CHAPTER I

INTRODUCTION

The Constitution of India has clothed our country with the fabric of democracy. If the fabric of democracy has to be retained intact and without being torn, the 'Rule of Law' or the supremacy of law has to be honoured, respected and followed by one and all.

The Rule of Law necessitates that all the three organs of the Government, *viz*, the Legislature, the Judiciary and the Executive must act in accordance with the constitutional mandates and the laws made thereunder.

The Legislature will enact the laws, the administration will enforce the laws and while enforcing the laws the administrative authorities are legally bound to act in accordance with the principles of natural justice. Any lapses on the part of such authorities while administering the laws or while applying the law, such as discrimination, undue haste, bias, colourable exercise of powers, acting beyond the powers conferred upon them under a statute, and in violation of principles of natural justice *etc.*, will be checked by the Constitutional Courts, *i.e.*, High Courts and the Supreme Court under their powers of judicial review.

The High Court and Supreme Court will interpret the laws and formulate the guiding principles to enforce such laws.

Under our present constitutional setup the administrative authorities, the functions of which are purely administrative or quasi-judicial and quasi-legislative, are burdened with heavy responsibilities. While discharging such responsibilities they have to act fairly and in accordance with principles of natural justice. Their action should be transparent since administration refers to the entire machinery by which the country is administered according to laws made by the legislature as well as the policy decisions made by the executive as applied to the particular facts and circumstances.

The Constitution imposes certain limitations, such as, the Fundamental Rights, upon all Governmental powers and if an administrative authority transgresses any of these limitations or any other mandatory provisions of the Constitution, the administrative act will be void and will be so declared by the Courts. The Constitution also provides constitutional remedies, such as, the writs by means of which apart from the remedies available under the General Law, an individual aggrieved by some administrative action may have his remedy from the Courts. Some of the broad categories of the acts of administrative authorities are as follows:

A. Quasi-Legislative :

This is the function of quasi-legislation and other statutory instruments to fill in the details of legislative enactments in order to make the execution of the laws possible as ruled by Supreme Court in the case of *Jayantilal vs. Rana*[1].

In this case the Supreme Court further held that: "Functions which do not fall strictly within the field of legislative or judicial, fall in

1. AIR 1964 SC 648.

the residuary class and must be regarded as executive. It cannot however be assured that legislative functions are exclusively performed by the Legislature, executive functions by the executive and judicial functions by judiciary alone. The constitution has not made an absolute or rigid divisions of functions between the three agencies of the State. To the executive, exercise of legislative or judicial functions are often entrusted. For instance power to frame rules, regulations and notifications which are essentially legislative in character is frequently entrusted to the executive. Similarly judicial authority is also entrusted with some functions. Public authorities issue orders which are not far removed from legislation and make decision affecting the personal and proprietary right of individuals which are quasi-judicial in character. In addition to these quasi-judicial and quasi-legislative functions the executive has also been empowered by statute to exercise functions which are legislative and judicial in character.

While the legislative function is vested in the legislature of a country (in India the Union Parliament) and the State Legislatures (Article 245) by its constitution the administrative authorities may make subordinate legislation when so empowered by legislation. The function of subordinate legislation is known as "rule making" functions.

Article 162 of the Constitution of India has clothed the State with the executive power to make rules.

Executive Powers of State :—This article reads thus:

Subject to the provisions of this Constitution, though the executive powers of the State are co-terminous with the legislative powers of the State Legislature, this general rule is subject to the other provisions of the Constitution. Thus :

(i) Article 277 empowers the State Executive to collect taxes which are not included in List II of the 7th Schedule. *South Indian Corpn. v. Bd. of Revenue*[1].

(ii) The State Executive may lose its powers, in whole or in part, under Article 356(1)(a), when a proclamation as to failure of constitutional machinery in the State is made. *South Indian Corpn. v. Bd. of Revenue*[1].

(iii) Even though the executive power may, in the absence of a constitutional bar, be exercised in the absence of any legislation to support such action, it cannot be so exercised as to contravene any law relating to the matter, or rules having the force of law. *Nanjundappa v. Thimiah*[2].

No power over exclusively Union subjects. It is clear from the present Article, read with Article 73, that a State shall have no executive power over matters included in the Union List *e.g.*, regulation of exports and imports, *Mount Corpn. v. Director*[3], except to the extent that it was existing at the commencement of the Constitution, under Article 73(2).

(a) Provided the language is mandatory, *State of M.P. v. Nivedita*[4], and the rule is made for the benefit of individuals, it may create rights in favour of such individuals which are capable of being enforced against the State. *Potdar v. State*[5].

(b) Where the non-statutory rule, order or other instrument operates as a promissory estoppel against the Government,

1. AIR 1962 Ker. 72 (77).
2. (1972) 1 SCC 409 (4185, 419-20)
3. AIR 1965 Mys. 143 (149)
4. AIR 1981 SC 2045 (Paras 20, 23)
5. AIR 1983 Bom. 76 (FB) (Paras 7-9)

Motilal v. State of U.P.[1], provided such instrument contains a representation, and has been made by an officials of the Government within the scope of his authority, *Jit Ram v. State of Haryana*[2], or by a Minister authorised by the Rules of Business.

Powers to make rules :—Since the executive power of the State Executive is co-extensive with that of the State Legislature, it follows that the State Executive may make Rules regulating any manner within the legislative competence of the State Legislature, without prior legislative authority, *Ram Jawaya v. State of Punjab*[3], *Chitra Lekha v. State of Mysore*[4], *Nagarjan v. State of Mysore*[5], *Rajendera v. State of Bihar*[6], "except where a law is required, because the rules, so framed would—

(i) affect a fundamental right, *e.g.*, Articles 19, *State of M.P. v. Bharat*[7].

(ii) violative of any provision of the Constitution which required legislation, *e.g.*, Articles 265, *Prathiba v. State*[8].

2. Such rules (made under Article 162) are made under the authority of the Constitution and not in exercise of any power delegated by the Legislature. *Arun v. State*[9].

3. Such administrative rules or orders, however become inoperative when a law made by the Legislature occupied the filed.

1. AIR 1979 SC 621 (Para 24)
2. AIR 1980 SC 1285 (1302)
3. (1956) 2 SCR 225 (236)
4. AIR 1964 SC 1823
5. AIR 1966 SC 1942
6. (1980) 3 SCC 217
7. AIR 1967 SC 1170
8. AIR 1991 Kant. 205 (Para 10), 302
9. AIR 1975 Kant. 174 (Para 59)

Nanjundappa v. Thimiah[1], *Onnuramma v. Tahsildar*[2], *State of M.P. v. Nivediata*[3], *Accountant General v. Doraiswamy*[4].

4. Such administrative rules or orders may be relaxed, altered or revoked (even with retrospective effect) without any formality, provided there is no legislation or statutory rules, *Onnuramma v. Tahsildar*[2], *State of M.P. v. Nivediata*[3], *Accountant General v. Doraiswamy*[4], and no provision of the Constitution is violated by such change, *Cf. Sangawam v. Union of India*[5], *Ramanana v. IAAI*[6], *Verma v. Union of India*[7], *e.g.*, Article 14 or 16, 51

Enforceability of non-statutory administrative rules or instructions :—1. Where Rules are made by an administrative authority under powers conferred by statute or the Constitution *e.g.*, under Article 309 or Article 15(4) such Rules are enforceable in the Courts like any other statutory rules.

2. When there is, no statutory power empowering the Executive to make rules, and such rules are made under the general executive power conferred by Article 154(1) or 162, even then, it has been held that such rules may be enforceable, in certain circumstances, provided they do not conflict with any existing law or any provision of the Constitution, *Balaji v. State of Mysore*[8]. These circumstances, include Article 166, *Mahadeo v. State*[9], and in the manner required by that Article in order to bind the State Government, *Mahadeo v. State*[9], and such representation does not

1. (1972) 1 SCC 409 (4185, 419-20)
2. AIR 1980 AP 267 (Para 4)
3. AIR 1981 SC 2045 (Para 25)
4. AIR 1981 SC 783 (Para 9).
5. AIR 1980 SC 1545 (Para 4)
6. AIR 1979 SC 1628 (Para 21)
7. AIR 1980 SC 1461 (Para 5)
8. AIR 1963 SC 649 (Paras 19, 35)
9. AIR 1982 SC Pat. 158 (Para 11)

prevent the Government from discharging its functions under the law, *Jit Ram v. State of Haryana*[1].

The principle has been extended even to the termination of an employee in contravention of regulations made by the Government, *Kalra v. P.E.C.*[2].

(c) In the absence of any statutory provision to the contrary, mandatory non-statutory administrative rules are enforceable against individuals, *State of A.P. v. Narendra*[3], insofar as such rules are made in exercise of the executive power under Article 162 of the Constitution and the Constitution does not required legislation for dealing with the subject.

3. Of course, when the language employed by the rules is recommendatory, *State of M.P. v. Nivedita*[4] and they are intended to be mere guidelines or instructions issued to the administrative authority, *Potdar v. State*[5], they are not capable of being enforced against the State.

But even then it may be enforceable against the State if, in the matter of applying such discretionary rules, the State acts arbitrarily or discriminates between individuals, *Erusion Equipment v. State of West Bengal*[6], *Ramana v. IAAI*[7], *Harminder v. Union of India*[8], in which case, it become violative of Article 14 of the

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1. AIR 1980 SC 1285 (1302)
2. AIR 1984 SC 1361 (Para 26)
3. AIR 1971 SC 2560 (Paras 8, 15)
4. AIR 1981 SC 2045 (Paras 20, 23)
5. AIR 1983 Bom. 76 (FB) (Paras 7-9)
6. AIR 1975 SC 266
7. AIR 1979 SC 1628 (Paras 11, 21)
8. AIR 1986 SC 1527 (Para 27)

Constitution, *Cf. Sangawam v. Union of India*[1], *Ramanana v. IAAI*[2], *Verma v. Union of India*[3].

4. It is also unconstitutional where the impugned order is *mala fide* or not justified by public interest, in which case it would fail to the reasonableness test of Article 14, *Ram v. State of Haryana*[4].

5. In general the Court would not exercise its power of judicial review to interfere with a policy made by the Government in exercise of its power under Article 162, particularly when it involves technical, *Vincent v. Union of India*[5], scientific or economic, *Sitaram v. Union of India*[6], *Liberty Oil v. Union of India*[7], expertise.

But once a policy has been made known and acted upon, it cannot be arbitrarily departed from without formulating another policy and making that policy known, if that is done, the Court might interfere even though the matter involves defence personnel, *Sangawan v. Union of India*[8].

II. On the other hand—

1. In the absence of the foregoing limitations, and administrative order may be changed by another administrative order, but an administrative order cannot change a statutory order, *Bevin v. K.P.S.C.*[9].

1. AIR 1980 SC 1545 (Para 4)
2. AIR 1979 SC 1628 (Para 21)
3. AIR 1980 SC 1461 (Para 5)
4. AIR 1985 SC 1177.
5. AIR 1987 SC 990 (Paras 15, 17)
6. AIR 1990 SC 1277 (Para 56)
7. AIR 1984 SC 1271 (Para 6)
8. AIR 1981 SC 1545 (1546)
9. AIR 1990 SC 1233 (Para 10)

2. Where the instruction is not mandatory and itself permits relaxation - Presumption would be that the authority has exercised his power of relaxation or the policy has been changed (without formal amendment) and the later entrants cannot claim the benefit of the original instructions, *Direct Recruits v. State of Maharashtra*[1].

3. In case of any conflict between an executive instruction and a rule made under Article 309, the latter shall prevail, *Union of India v. Somasunder*[2].

Proviso 1. The article in short, says that the executive power of State shall be co-extensive with its legislative power, *Bishamber v. State of U.P.*[3].

2. The proviso relates to the concurrent sphere, where both the Union and State Legislatures have concurrent legislative power, subject to State legislation giving way to Union legislation (Article 254) in case of repugnancy.

The proviso lays down that the mere fact that the Union Parliament has made a law relating to a matter governed by the concurrent legislative list (7th Schedule, List III) will not deprive the State of its executive power relating to that matter, what will happen in such a case is that the executive power expressly conferred upon the Union or its authorities, by the Constitution itself or by the aforesaid law made by the Union, *Bishamber v. State of U.P.*[3].

3. Where an entry in the State List is expressly made subject to

1. AIR 1990 SC 1607
2. AIR 1988 SC 2255.
3. AIR 1982 SC 33 (Para 22)

legislation by Parliament *e.g.*, Entry 23 of List II, the State ceases to have both legislative and executive power in respect of the matter to which law made by Parliament relaties, *Bharat Coal v. State of Bihar*[1].

B. Purely Administrative :

Following are some of the instances of purely administrative actions:

While the instruments of subordinate legislation are general in their operation, just as the laws made by the legislature on applying to a class or persons or objects, coming within the scope of the statutes under which they are made is an administrative act or order simply dispose of a particular case (*e.g.*, referring a particular industrial dispute to an Industrial Tribunal) (*Newspaper Ltd. vs. State Industrial Tribunal, U.P.*[2]

OR:

merely enunciates the policy to be pursued by the administrative authority or the Government without immediately affecting the rights of any individual as held in the case of the *State of U.P. vs. Vijay.*[3]

OR:

make inquiries or investigations as a preliminary to judicial or legislative proceedings as held in the case of *Pearl Berg vs. Varty.*[4]

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1. (1990) 4 SCC 557 (Para 12)
2. AIR 1957 SC 532.
3. 1972 (2) All.ER 6.
4. AIR 1956 SC 246.

OR:

appoints a particular person to an office or refers a matter to a particular statutory Tribunal for adjudication as held in the case of *T.K. Mudaliar vs. Venkatachalam.*[1]

OR:

transfer a case from one area to another as held in the case of *Pannalal vs. Union of India.*[2]

OR:

makes a contract or transfer a property in exercise of its statutory or constitutional powers as held in the following cases :—

1. *H.S. Rikhy vs. New Delhi Municipality*[3].
2. C.F. Arts. 298-299 of our Constitution.
3. *Ram Jawaya vs. State of Punjab*[4].

An administrative order may be made not only in exercise of a statutory power but may some times be made without any statutory authorities.

C. Quasi-Judicial :

When an administrative act immediately affects an individual's legal rights or the law requires that in coming to its decisions in the

1. AIR 1982 SC 1234.
2. AIR 1957 SC 397.
3. AIR 1962 SC 554.
4. 1955 (2) SCR 225.

matter, the administrative authority must follow a procedure simulating the judicial process, the administrative act becomes a quasi-judicial, as held in the cases mentioned below :—

(*Kraipak vs. Union of India*[1], *Maneka Gandhi vs. Union of India*[2], *Radhakrishna vs. The State of Bihar*[3], *Nageswar vs. APSRTC*[4].)

In short, it is the only additional requirement to follow a particular procedure to ensure a minimum of fairness or justice that distinguishes a quasi-judicial act from an administrative act as ruled in the case of *R. vs. Manchester Legal Aid Committee.*[5]

So far as the acts of the executive or the administration is concerned, it is secured in Indian Constitution as under :—

(a) The legislative acts of the administration *i.e.*, statutory instruments (or subordinate legislation) are expressly brought within the fold of Article 13 of the Constitution by defining 'law' as including 'order', 'by-law', 'rule', 'regulation', 'notification', ... having the force of law.

A statutory instrument can therefore be challenged as invalid not only on the ground of being *ultra vires* the statute which confers powers to make it but also on the additional ground that if contravenes any of the Fundamental Rights guaranteed by Part III of the Constitution as opined by Apex Court in the case of *Chandrakant vs. Jusgit Singh.*[1]

1. AIR 1970 SC 150
2. AIR 1978 SC 597
3. AIR 1977 SC 1496
4. AIR 1969 SC 308
5. 1952 (1) All.ER 480.
6. AIR 1962 SC 204.

(b) Even where the administrative action is non-legislative and does not even rest on any statute and is purely administrative, it will be void if it contravenes any of those fundamental rights which constitute limitations against any State action. Here, then, is an additional ground for judicial review in countries like USA or India. In a sphere where the common law doctrine of *ultra vires* is not applicable because the impugned act is non-statutory.

(i) A non-statutory administrative act may be void if it offends Article 14, guaranteeing equal protection, Articles 29 and 30 guaranteeing minority rights, Article 19 guaranteeing equality of opportunity in employment. To illustrate, even though, the administration is free to change its administrative policy or its non-statutory instructions to its subordinates at any time it likes, the Courts would strike down such change if it operates as discriminatory, so as to violate the Fundamental Rights under Article 14 of the person or persons discriminated against.

(ii) It shall also be void if it seeks to affect a Fundamental law by non-statutory action where the Constitution says that it can be done only by making a law.

(Article 19(1), (b) Article 21, (c) Article 300-A).

(c) An administrative act, whether statutory or non-statutory will be void if it contravenes any of the mandatory and justiciable provisions of the Constitution, outside the realm of Fundamental Rights include in Part-III *e.g.*, Articles 265, 301, 311 and 314.

(d) Where the administrative act is statutory, there is an additional constitutional ground upon which its validity may be challenged, namely, that the statute under which the administrative order has been made is itself unconstitutional.

(e) Where the impugned order is quasi-judicial, similarly, it may be challenged on the grounds '*inter alia*':

(i) that the order is unconstitutional;

(ii) that the law under which the order has been made is itself unconstitutional.

Constitutional law thus enters into the judicial review Chapter in Administrative law in a country like the USA or India. In these countries, the duties of the Courts to see that the administration is carried on, not only subject to the Rule of law but the also subject to the Constitution.

The Rule of Law insists that the agencies of Government are no more free than the private individual to act according to their own arbitrary Will or *whim* but must confirm to legal rule and Principles of Natural Justice developed and applied by the Courts.

The discussion as stated supra is based on the various decisions of Apex Court of India, delivered in the following cases :—

Bidi Supplying Co. vs. Union of India[1], *State of Bombay vs. Education Society*[2].

1. 1956 SCR 267
2. (1955) 1 SCR 568

Kameshwar vs. State of Bihar[1].

Krishnachandra vs. Tractor Organisation[2].

Sethi vs. Union of India[3], *State of Mysore vs. Srinivas Murthy*[4].

Kharak Singh vs. State of U.P.[5].

Ramnarayan Singh vs. State of Delhi[6].

Virender v. State of U.P.[7].

State of Kerala vs. Joseph[8].

Atia Bari Tea Co. vs. State of Assam[9].

Accountant General vs. Bakshi[10], *State of Madras vs. Row*[11].

In the case of *U.P. Awas Awam Vikas Parishad*[12], Supreme Court held that the principles of natural justice as a part of procedural law developed by this Court and English Courts has been applied and extended to quasi-judicial proceedings and administrative matters to ensure that no one is adversely affected without reasonable opportunity and fair hearing. No order can be passed without hearing a person if it entails civil consequences.

1. AIR 1962 SC 1166
2. AIR 1962 SC 602
3. AIR 1978 SC 2164
4. (1976) 1 SC 817
5. AIR 1963 SC 1295
6. 1953 SCR 652
7. 1955 (1) SCR 413
8. AIR 1958 SC 296
9. AIR 1961 SC 232
10. AIR 1962 SC 505
11. 1952 SCR 597
12. AIR 1995 SC 724

CHAPTER II

PRINCIPLES OF NATURAL JUSTICE AND LEGITIMATE EXPECTATION

In the Introductory Chapter, we have discussed that Rule of law compels upon an administrative authority to act in accordance with law and Principles of Natural Justice, as developed and applied by the Courts. The Principles of Natural Justice, as a part of Procedural Law, developed by the Apex Court and English Courts have been applied and extended to Quasi-Judicial Proceedings and Administrating matters to ensure that no one is adversely affected without reasonable opportunity and fair hearing. No order can be passed without hearing a person if it entails Civil consequences.

As we are concerned with the Doctrine of Legitimate Expectation, which is the latest addition to a long list of grounds fashioned by the Courts for review of administrative action and this ground takes its place beside such principles as the rules of natural justice, unreasonableness and judiciary duty of statutory authority *etc.* Legitimate Expectation has two facets. The first of them makes it a part of the larger area of natural justice and the second makes it a part of the doctrine of fairness. When a person has legitimate expectation he cannot be denied his claim without affording him an opportunity of being heard and this requirement makes the doctrine a part of much wider area of natural justice.

The second facet is that it is not fair on the part of an administrative authority concerned to deny the claim of a person having Legitimate Expectation because as explained above, legitimate expectation is an Expectation which not only has a basis but also justification and therefore such a person cannot be

denied his claim without any cogent and valid reason, and if so denied it would be arbitrary action. After *Maneka Gandhi's* case such a situation would attract Article 14 of the Constitution. Apart from this Legitimate Expectation is new concept, the latest recruit to the long list of concepts fashioned by the Courts for review of administrative action and on successfully establishing the Legitimate Expectation, entitling a person to a direction to the authorities to follow principles of natural justice by giving him an opportunity to represent before taking a decision.

So we have to first deal with the concept of natural justice and the broad principles governing its application or exclusion in the Constitution or administration of statutes and the exercise of judicial or administrative powers by an authority or Tribunal constituted thereunder :—

The phrases of 'Natural Justice' is not capable of a static and precise definition. It cannot be imprisoned in the straight jacket of a cast-iron formulae. Historically "Natural Justice", has been used in a way which implies the existence of moral principles of self-evident and un-arguable truth.[1]

The principles of natural justice have taken deep root in the judicial conscience of our people. They are now considering so fundamental as to be "implicit" in the concept of ordered liberty and therefore, implicit in every decision making function, call it judicial quasi-judicial or administrative. Where an authority functions under a statute and a statute provides for the observance of the principles of the natural justice in a particular manner natural justice will have to be observed in that manner and in no other. No wider right can that provided by the statute can be claimed nor can the right be narrowed where the statute is silent about the observance

1. 'Natural Justice' by Paul Jackson, 2nd Edn. Page 1.

of the principles of natural justice such statutory silence is taken by implied compliance with the principles of natural justice.

Legal experts of earlier generation did not draw any distinction between 'natural justice' and 'natural law'. "Natural Justice" was considered as "that part of natural law which relates to the administration of justice". Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules.

But two fundamental maxims of natural justice have now become deeply and indelibly ingrained in the common consciousness of mankind, as pre-eminently necessary to ensure that the law is applied impartially, objectively and fairly. Described in the form of latin tags these twin principles are: (1) *Audi-alteram partem,* and (ii) *Nemo debet esse judex in propria causa.*

Audi-Alteram Partem

Let's study the first principle first: It means hear, the other side or that both the sides in a case should be heard (before it can be decided) or that no man should be condemned un-heard. In the original application of these principles in England, there was no concern with Administrative Tribunals. In the 19th Century the phrase came to be applied by the superior Courts in controlling the decisions of Courts of summary jurisdiction. This principle was well recognised even in the ancient world.

"Seneca" the philosopher, is said to have referred in Media that it is unjust to reach decision without a full hearing.

During the last two decades, the Concept of natural justice has made great strides in the realm of administrative law.

Before the epoch-making decision of the House of Lords in *Ridge v. Baldwin*[1], it was generally though that the rules of natural justice apply only to judicial or quasi-judicial proceedings, and for that purpose, whenever a breach of the rule of natural justice was alleged, Courts in England used to ascertain whether the impugned action was taken by the statutory authority or Tribunal in the exercise of its administrative or quasi-judicial power.

In *Ridge Baldwin*, it was thought by Lord *Reid* that natural justice had no easy application where question of public interests and policy were more important than the rights of individual citizens. He observed :

> "If a Minister is considering whether to make a scheme for, say, an important new road, his primary concern will not be with the damage which its construction will do to the rights of individual owners of land. He will have to consider all manner of question of public interest, and, it may be, a number of alternate schemes. He cannot be prevented from attaching more importance to the fulfillment of his policy than to the fate of individual objectors, and it would be quite for the Courts to say that the Minister should or could act in the same kind of way as a board of works deciding whether a house should be pulled down". And, as pointed out by a contributor in 1972 A Cambridge Law journal at page 14:
>
> "..... the safeguarding of existing rights can after all in some circumstances amount to little more than the fighting of a rear guard action by the reactionally element in society seeking only to preserve its own vested position".

1. AIR 1964 AC 40.

The maxim *audi alteram partem* has many facets. Two of them are; (a) notice of the case to be met; and (b) opportunity to explain. Thus rule is universally respected and duty to afford a fair hearing in Lord Loreburn's often quoted language is "a duty lying upon every one who decides something, in the exercise of legal power. The rule cannot be at the altar of administrative convenience or for, "Convenience and justice" - as Lord *Akin* felicitously put it - "re often not on speaking terms" (General Council of *Medical Education v. Spackman*[1].

It was further held in this case that the next general aspect to be considered is; Are there any expectations to the application of the principles of natural justice, particularly the *audi alteram partem* rule?

We have already noticed that the statute conferring the power, can by express language exclude its application. Such cases do not present any difficulty. However, difficulties arise when the statute conferring the power does not expressly exclude this rule but its exclusion is sought by implication due to the presence of certain factors such as urgency, where the obligation to give notice and opportunity to be heard would obstruct the taking of prompt action of a preventive or remedial nature.

In *Durayappah v. Fernando*[2], Lord *UP John* observed that "While urgency may rightly limit such opportunity otiosely perhaps severally there can never be a denial of that opportunity if the principles of natural justice are applicable".

In *Wiseman v. Borrneman*[3], there was a hint of the competitive claims or hurry and hearing. Lord *Reid* said, "Even where the

1. 1943 A (62) at P.638.
2. (1967) 2 AC 337.
3. (1971) AC 297.

decision has to be reached by a body acting judicially, there must be a balance between the need for expedition and the need to give full opportunity to the defendant to see material against him.

Lord *Denning M.R.* in *Howard v. Bornnetman*[1], summarised the Law in this form.

> "No doctrinaire approach is desirable but the Court must be anxious to savage the cardinal rule to the extent permissible in a given case. After all, it is not obligatory that counsel should be allowed to appear not in it compulsory that oral evidence should be adduced. Indeed, it is not even imperative that written statements should be called for disclosure of the prominent circumstances and asking for an immediate explanation orally or otherwise may, in many cases, be sufficient compliance. It is even conceivable that an urgent meeting with the concerned parties summoned at an hour's notice, or in a crisis, even a telephone call, may suffice. If all that is not possible as in the case of a fleeing person whose passport, has to be impounded lest he should evade the course of justice or a dangerous nuisance needs immediate abatement, the action may be taken followed immediately by a hearing for the purpose of sustaining or setting aside the action to the extent feasible. It is quite on the cards that the Election Commission, if pressed by circumstances may give a short hearing. In any view, it is not easy to appreciate whether before further steps got under way he could have afforded an opportunity of hearing the parties, and revoke the earlier directions..... All that we, need emphasize

1. (1974) JWLR 660.

> is that the content of natural justice is a dependent variable, not an easy casualty. Civil consequence undoubtedly never infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, every thing affects a citizen in his civil life inflicts a civil consequence".

The High Court of Australia in *Commissioner of Police v. Tenos*[1], held that, "some urgency or necessity of prompt action does not necessarily exclude natural justice because a true emergency situation can be properly dealt with by short measures".

In *Healey v. Tasmanian Racing & Gaming Commission*[2], the same High Court held that, "without the use of unmistakable language in a statute, one would not attributable to Parliament an intention to authorise the Commission to order a person not to deal in shares or attend a stock exchange without observing natural justice. In circumstances of likely immediate detriment to the public, it may be appropriate for the Commission to issue a warning-off notice without notice or stated grounds, but limited to a particular meeting, coupled with a notice that the Commission proposed to make a long term order on stated grounds and to give an earliest practicable opportunity to the person affected to appear before the Commission and show why the proposed long term order be not made".

"The necessity for speed", writes *Paul Jackson*, "may justify immediate action, it will, however, normally allow for a hearing at a later stage. Moreover, the need to act swiftly may modify or limit what natural justice requires, it must not be thought 'that because rough, swift or imperfect justice only is available that there ought to be no justice'.

1. (1958) 98 CLR 363.
2. AUS LR 519.

Prof. *De Smith*, the renowed author of 'Judicial Review (3rd Edn.) has at P.170, expressed his views on this aspect of the subject, thus:

> "Can the absence of a hearing before a decision is made be adequately compensated for by a hearing ex-post facto. A prior hearing may be better than a subsequent hearing, but a subsequent hearing is better than no hearing at all, and in some cases the Courts have held that statutory provision for an administrative appeal or even full judicial review on the merits are sufficient to negative the existence of any implied duty to hear before the original decision is made. The approach may be acceptable where the original decision does not cause serious detriment to the person affected, or where there is also a paramount need for prompt action, or where it is impracticable to afford antecedent hearings".

Natural justice, like *ultra vires* and public policy is a breach of the Public Law and is a formidable weapon which can be wielded to secure justice to the citizen. It is productive of great good as well as much mischief. While it may be used to protect certain fundamental liberties, civil and political rights, it may be used, as indeed it is used more often than not to protect vested interest and to obstruct the path of progressive change. In the context of modern welfare legislation, the time has perhaps come to make an appropriate distinction between natural justice in its application to fundamental liberties, civil and political rights and natural justice in its application to vested interests. Our constitution, as befits the Constitution of a Socialist Secular Democratic Republic, recognises the paramountcy of the public will the private interests, natural justice, *ultra vires*, Public Policy, or any other rule of

interpretation must therefore, confirm, grow and be tailored to serve the public interest and respond to the demands of an evolving society.

The implication of natural justice being presumptive it may be excluded by express words of statute or by necessary intendment. Where the conflict is between the public interest and the private interest, the presumption must necessarily be weak and may, therefore, be readily displaced. The presumption is also weak where what are involved are mere property rights. In cases of urgency, particularly where the public interest is involved, pre-emptive action may be a strategic necessity. There may than be no question of observing natural justice. Even in cases of pre-emptive action, if the statute so provides or if the Courts so deem fit in appropriate cases, a postponed hearing may be substituted for natural justice. Where natural justice is implied, the extent of the implication and the nature of the hearing must vary with the statute, the subject and the situation.

The rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands.

In England, the rule was thus expressed by *Byles*, J., in *Cooper v. Wandsworth Board of Works*[1] :

> "The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man, upon such an occasion, that even God himself did not pass sentence upon Adam before he was called upon to make his defence, "Adam (says God), "where art thou? Hast thou not eaten of the tree whereof I

1. (1863) 14 CB (NS) 180

commanded the that thou shouldest not eat", and the same question was put to Eve also".

Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action Lord Morris of Borth-y-Gest spoke of this rule in eloquent terms in his address before the Bentham Club :

> "We can, I think, that pride in what has been done in recent periods and particularly in the field of administrative law by invoking and by applying in the field of administrative law by invoking and by applying these principles which we broadly classify under the designation of natural justice. Many testing problems as to their application yet remain to be solved. But I affirm that the area of administrative action is but one area in which the principles are to be deployed. Nor are they to be invoked only when procedural failures are shown. Does natural justice qualify to be described as a "majestic" conception? I believe that it is very much more. If it can be summarised as being fair play in action - who could wish that it would ever be out of action? It denotes that the law is not only to be guided by reason and by logic but that its purpose will not be fulfilled; it lacks more exalted inspiration." (Current Legal Problems, 1973, Vol.26, P.16). And then again, in his speech in the House of Lords in *Wiseman v. Borneman*, AIR 1970 SC 140 v G-2 1971 AC 297, the learned Law Lord said in words of inspired felicity :
>
> "that the conception of natural justice should at all stages guide those who discharge judicial

functions is not merely an acceptable but is an essential part of the philosophy of the law. We often speak of the rules of natural justice. But there is nothing rigid or mechanical about them. What they comprehend has been analysed and described in many authorities. But any analysis must bring into relief rather their spirit and their inspiration than any precision of definition or precision as to application. We do not search for prescriptions which will lay down exactly what must, in various divergent situations, be done. The principles and procedures are to be applied which, in any particular situation or set of circumstances, are right and just and fair. Natural justice, it has been said, is only "fair play in action". Nor do we wait for directions from Parliament. The common law has abundant riches; there may be find what *Byles*, J., called "the justice of the common law". Thus, the soul of natural justice is fair play in action and that is why it has received the widest recognition throughout the democratic world. In the United States, the right to an administrative hearing is regarded as essential requirement of fundamental fairness. And in England too it has been held that 'fair play in action' demands that before any prejudicial or adverse action is taken against a person, he must be given an opportunity to be heard. The rule was stated by Lord *Denning, M.R.*, in these terms of *Schmidt v. Secretary of State for Home Affairs*, (1969) 2 Ch.D 149, deprive a person of his liberty or his property, the general principle is that it has not to be done without his being given an opportunity of being heard and of making representations on his own behalf."

The same rule also prevails in other Commonwealth countries like Canada, Australia and New Zealand. It has even gained access to the United Nations, as published in American Journal of International Law, Vol.67, page 479, in which *Magarry*, J., describes natural justice "as a distillate of due process of law" and as observed in the case of *Fontaine v. Chastarton*[1]. It is the quintessence of the process of justice inspired and guided by 'fair play in action'. If we look at the speeches of the various Law Lords in *Wiseman's* case, it will be seen that each one of them asked the question "whether in the particular circumstances of the case, the Tribunal acted unfairly so that it could be said that their procedure did not match with what justice demanded," or, was the procedure adopted by the Tribunal in all the circumstances unfair"? The test adopted by every Law Lord was whether the procedure followed was "fair in all the circumstances" and "fair play in action" required that an opportunity should be given to the tax payer "to see and reply to the counter-statement of the Commissioners" before reaching the conclusion that "there is a *prima facie* case against him". The inquiry must, therefore, always be; does fairness in action demand that an opportunity to be heard should be given to the person affected?

Now, if this be the test of applicability of the doctrine of natural justice, there can be no distinction between a quasi-judicial function and an administrative function for this purpose. The aim of both administrative inquiry as well as quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice, or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both. On what principle can distinction be made between one and the other? Can it be said that the requirement of

1. (1968) 112 Sol Gen. 690

"fair play in action" is any the less in an administrative inquiry than in a quasi-judicial one? Sometimes an unjust decision in an administrative inquiry may have far more serious consequences than a decision in a quasi-judicial inquiry and hence the rules of natural justice must apply equally in an administrative inquiry which entails civil consequences. There was, however, a time in the early stages of the development of the doctrine of natural justice when the view prevailed that the rules of natural justice have application only to a quasi-judicial proceeding as distinguished from an administrative proceeding and the distinguishing feature of a quasi-judicial proceeding is that the authority concerned is required by the law under which it is functioning to act judicially. This requirement of a duty to act judicially in order to invest the function with quasi-judicial character was spelt out from the following observations of *Atkin*, L.J., in *Rex v. Electricity Commissioners*[1], "wherever any body of persons having legal authority to determine questions affected the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King Bench Division ....." Lord *Hewart*, C.J., in *Rex v. Legislative Committee of the Church Assembly*[2], read this observation to mean that their duty to act judicially should be an additional requirement existing independently of the "authority to determine questions affecting the rights of subjects".... something super-added to it. This gloss placed by Lord *Hewart*, C.J., on the dictum of Lord *Atkin*, L.J., be devilled the law for a considerable time and stultified and the growth of the doctrine of natural justice. The Court was constrained in every case that came before it, to make a search for the duty to act judicially sometimes from tenuous material and sometimes in the crevices of the statute and this led to oversubtlety and over-refinement resulting in confusion and uncertainty in the law. But this was plainly contrary to the earlier authorities and in the epoch-

1. (1924) 1 KB 171
2. (1928) 1 KB 411

making decision of the House of Lords in *Ridge v. Baldwin*[1], which marks a turning point in the history of the development of the doctrine of natural justice, Lord *Reid* pointed out how the gloss of Lord *Hewart*, C.J., was based on a misunderstanding of the observations of *Atkin*, L.J., and it went counter to the law laid down in the earlier decisions of the Court. Lord *Reid* observed : "If Lord *Hewart* meant that it is never enough that a body has a duty to determine what the rights of an individual should be, but that there must always be something more to impose on if a duty to act judicially than that appears to me impossible to reconcile with the earlier authorities". The learned Law Lord held that the duty to act judicially may arise from the very nature of the function intended to be performed and it need not be shown to be super-added. This decision broadened the area of application of the rules of natural justice, and to borrow the words of Prof. *Clark* in his article on 'Natural Justice', 'Substance and Shadow' in public law Journal, 1975, restored light to an area "benighted by the narrow conceptualism of the previous decade".

Development of Natural Justice in India

This development in the Law had its paralleled in India in the *Associated Cement Companies Ltd. v. P.N. Sharma*[2], where this Court approvingly referred to the decision in *Ridge v. Baldwin* (supra) and, alter in *State of Orissa v. Dr. Binapani*[3], observed that : "If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power". The Apex Court also pointed out in *A.K. Kraipak v. Union of India*[4], another historic decision in this branch of the law, that in recent years the concept of quasi-judicial power has

1. 1964 AC 40
2. (1965) 2 SCR 366 : AIR 1965 SC 1595
3. (1967) 2 SCR 625 : AIR 1967 SC 1269
4. (1970) I SCR 457 : AIR 1970 SC 150

been undergoing radical change and said : The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the frame work of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised". The net effect of these and other decisions was that the duty to act judicially need not be super added, but it may be spelt out from the nature of the power conferred, the manner of exercising it and its impact on the rights of the person affected and where it is found to exist, the rules of natural justice would be attracted.

This was the advancement made by the law as a result of the decision in *Ridge v. Baldwin*, (supra), in England and the decisions in *Associated Cement Companies's* (supra) and other cases following upon it, in India. But that was not to be the end of the development of the law on this subject. The proliferation of administrative law provoked considerable fresh thinking on the subject and soon it came to be recognised that 'fair play in action required that in administrative proceeding also, the doctrine of natural justice must be held to be applicable. We have already discussed this aspect of the question on principle and shown why no distinction can be made between an administrative and a quasi-judicial proceeding for the purpose of applicability of the doctrine of natural justice. This position was judicially recognised and accepted and the dichotomy between administrative and quasi-judicial proceedings *vis-a-vis* the doctrine of natural justice was finally discarded as unsound by the decisions in *In re H.K. (An infant)*[1], and *Schmidt v. Secretary of State for Home Affairs*[2], in England

1. (1967) 2 QB 864
2. (1969) 2 Ch.D. 149

and, so far as India is concerned by the memorable decision rendered by the Apex Court in *A.K. Kraipak's* case, AIR 1970 SC 150 (supra).

Lord *Parker*, C.J., pointed out in the course of his judgment in *In Re : H.K. (An infant)* (supra); at p.156 of AIR :

> "But at the same time, I myself think that even if an immigration officer is not a judicial or quasi-judicial authority, he must at any rate give the immigrant an opportunity of satisfying him of the matters in the sub-section, and for that purpose let the immigrant know what his immediate impression is so that the immigrant can disabuse him. That is not, as I see it, a question of acting or being required to act judicially, but of being required to act fairly. Good administration and an honest or *bona fide* decision must as it seems to me, require not merely impartiality, nor merely bringing one's mind to bear on the problem, but acting fairly; and to the limited extent that the circumstances of any particular case allow, and within the legislative framework under which the administrator is working only to that limited extent to the so-called rules of natural justice apply, which in a case such as this is merely a duty to act fairly. I appreciate that in saying that it may be said that one is going further than is permitted on the decided cases because heretofore at any rate the decisions of the Courts do seem to have drawn a strict line in these matters according to whether there is or is not a duty to act judicially or quasi-judicially".

The Apex Court speaking through *Hegde*, J., in *A.K. Kraipak's* case (AIR 1970 SC 150), quoted with approval the above

passage from the judgment of Lord *Parker*, C.J., and proceeded to add (at p.156 of AIR) :

> "The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it ..... Till very recently it was the opinion of the Courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. It is a wholesome rule designed to secure the rule of law and the Court should not be too ready to eschew it in its application to a given case. True it is that in questions of this kind a fanatical or doctrinaire approach should be avoided, but that does not mean that merely because the traditional methodology of a formalised hearing may have the effect of stultifying the exercise of the statutory power, the *audi alteram partem* should be wholly excluded.

The Court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that "natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances". The *audi alteram partem* rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise. That is why *Tucker*, L.J. emphasised in *Russel v. Duke of Norfolk*, (1949) I All.ER 109, that "whatever standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case". What opportunity may be regarded as reasonable would necessarily depend on the practical necessities of the situation. It may be a sophisticated full-fledged hearing or it may be a hearing which is very brief and minimal; it may be a hearing prior to the decision or it may even be post-decisional remedial hearing. The *audi alteram partem* rule is sufficiently flexible to permit modifications and variations to suit the exigencies of myriad kinds of situations which may arise. This circumstantial flexibility of the *audi alteram partem* rule was emphasised by Lord *Reid* in *Wiseman v. Sorneman*, (1971 AC 297) (supra) when he said that he would be "sorry to see this fundamental general principle degenerate into a series of hard and fast rules" and Lord *Hailsham*, L.C., also observed in *Pearl-Berg v. Varty*, (1971) 1 WLR 728, that the Courts "have taken an

increasingly sophisticated view of what is required in individual cases".

The question, however, as to what are the principles of natural justice that should regulate an administrative act or order is a much more difficult one to answer. We do not think it either feasible or even desirable to lay down any fixed or rigorous yard-stick in this manner. The concept of natural justice cannot be put into a straight-jacket. It is futile, therefore, to look for definitions or standards of natural justice from various decisions and then try to apply them to the facts of any given case. The only essential point that has to be kept in mind in all cases is that the person concerned should have a reasonable opportunity of presenting his case and that the administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers are concerned the duty is not so much to act judicially as to act fairly. See, for instance, the observations of Lord *Parker* in *Re. H.K. (An infant)*. It only means that such measure of natural justice should be applied as was described by Lord *Reid* in *Ridge v. Baldwin* case (supra) as 'insusceptible of exact definition but what a reasonable man would regard as a late procedure in particular circumstances". However, even the application of the concept of fair play requires real flexibility. Every thing will depend on the actual facts and circumstances of a case. As *Tucker*, L.J., observed in *Russell v. Duke of Norfolk*[1].

Principles of Natural Justice and Its Application in Administrative Functions

In view of the above discussion it can safely be concluded that there is no dispute that the principles of natural justice are binding on all Courts judicial bodies and quasi-judicial authorities.

1. (1949) 1 All.ER 109

As far as the application of principles of natural justice to administrative orders was concerned, there was fog on the sky of judiciary which was evident from the judgment referred below :

In *Franklin v. Minister of Town and Country Planning*[1], Lord *Thankate*, observed that as the duty imposed on the minister was merely administrative and not judicial or quasi-judicial the only question was whether the minister has complied with the direction or not.

In the words of *Chagla*, C.J., it would be erroneous to import into the consideration of an administrative order the principles of natural justice.

In *Kishanchand v. Commissioner of Police*[2], Justice *Wanchoo* (as he then was) speaking for Supreme Court observed that "the compulsion of hearing before passing the order implied in the maxim '*audi alteram partem*' applies as to judicial or quasi-judicial proceedings".

This fog was lifted by *Wade* in his celebrated work (Administrative Law 1994, p.363) stating that "the principles of natural justice are applicable to almost the whole range of administrative powers".

Lord *Denning* observed that "it is now well settled that a statutory body which is entrusted by statute with a discretion must act fairly. It does not matter whether its functions are described as judicial quasi-judicial on the one hand or as administrative on the other hand[3].

1. 1947 (2) All.ER 289 = 1948 AC 8
2. AIR 1956 Bom. 300
3. 1971 (1) All.ER 148

Lord *Morris* declares "we can, I think take pride in what has been done in recent periods and particularly in the field of administrative law by making and by applying the principles which were broadly classified under the designation of natural justice. Many testing problems in to this application yet remain to be solved. "But I affirm that the area of administrative action is but one area in which the principles are to be deployed. (Quoted in *Manika Gandhi* case[1].)

This principle is accepted in India also.

In *Bina Pani's* case[2], speaking for Supreme Court *Sha*, J., (as he then was) observed that "it is true that the order is administrative in character but even an administrative order which involves civil consequences must be made consistently with the rules of natural justice".

In *A.K. Karipak's* case[3], the Apex Court observed :

> "Till very recently it was the opinion of the Courts that authority concerned was required by law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of the limitation is now questioned.

If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries.

Again in *Maneka Gandhi's* case[1], *Kailashan*, J., pronounced :

1. AIR 1988 SC 597
2. AIR 1967 SC 1269
3. AIR 1970 SC 150

> "The frontier between judicial or quasi-judicial determination on the one hand and in execution on the other hand become blurred. The rigid view that principles of natural justice applied only to judicial and quasi-judicial acts and not to administrative acts no longer hold the field.

In the case of *Delhi Transport Corporation*[1], it was held that "moreover the principles of natural justice apply not only to the legislation or state but also apply where any tribunal, authority or body of ..... not falling within the definition of State under Article 12 is charged with the duty of deciding the matter. In such a case the principles of natural justice require under it must decide such a matter fairly and impartially.

It was further held in *Manika Gandhi's* case (referred supra), by the Honourable Justice *Bhagwati* "that, I emphasised that *audi alteram partem* is a highly effective rule devised by the Courts to ensure that a statutory authority arrives at a just decision and it is calculated to act as healthy check on the abuse or misuse of power. But its reach should not unravel and its applicability circumscribed".

These observations of Lord *Up John* in *Durayappah's* case (as referred supra) were quoted with approval by apex Court in *Mohinder Singh Gill's* case. It is therefore, proposed to mention the same here.

In *Mohinder Singh Gill's* case[2], the appellant and the third respondent were candidates for election in a Parliamentary Constituency. The appellant alleged that when at the last hour of counting it appeared that he had all but won the election,

1. AIR 1991 SC 101
2. AIR 1978 SC 851.

at the instance of the respondent, violence broke out and the Returning Officer was forced to postpone declaration of the result. The Returning Officer reported the happening to the Chief Election Commissioner. An Officer of the Election Commission who was an observer at the counting, reported about the incidents to the Commission. The appellant met the Chief Election Commissioner and requested him to declare the result. Eventually, the Chief Election Commissioner issued a notification which stated that taking all circumstances into consideration the Commission was satisfied that the poll had been vitiated, and therefore, in exercise of the powers under Article 324 of the Constitution, the poll already held was cancelled and a repoll was being ordered in the constituency. The appellant contended that before making the impugned order, the Election Commission had not given him a full and fair hearing and all that he had was a various meeting where nothing was disclosed. The Election Commission contended that a prior hearing has, in fact, been given to the appellant. In addition, on the question of application of the principles of natural justice, it was urged by the respondents that the tardy process of notice and hearing would thwart the conducting of election with speed, that unless civil consequences ensured, hearing was not necessary and that the right accrues to a candidate only when he is declared elected. This contention, which had found favour with the High Court, was negatived by this Court. Delivering the judgment of the Court, V.R. Krishna Iyer, J., lucidly explained the meaning and scope of the concept of natural justice and its role in a case where there is a competition between the necessity of taking speedy action and the duty to act fairly. It will be useful to extract those illuminating observations, in extenso :—

> "Once we understand the soul of the rule as fair play in action- and it is so - we must hold that it extends to both the fields. After all, administrative powers in a democratic set up is

not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, not be in one's bonnet. Its essence is good conscience in a given situation, nothing more-but nothing less. The 'exceptions' to the rules of natural justice are a misnomer or rather are but a short hand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case".

"It is untenable hereby, in our view, to lock-jaw the victim or act behind his back by tempting invocation of urgency, unless the clearest case of public injury flowing from the least delay is self-evident. Even in such cases a remedial hearing as soon as urgent action has been taken is the next best. Our objection is not to circumscription dictated by circumstances, but to annihilation as an easy escape from a benignant, albeit inconvenient obligation. The procedural precondition of fair hearing, however minimal, even post-decisional, has relevance to administrative and judicial gentlemanliness".

"We may not be taken to say that situational modifications to notice and hearing altogether impermissible ..... The glory of the law is not that sweeping rules are laid down but that it tailors principles to practical needs, doctors remedies to suit the patient promotes not freezes, life's processes, if we may mix metaphors".

A decision of the court or tribunal is vitiated by the mere fact that an interested person sat at the hearing, even though such person did not take part in the discussion or did not vote, *R. v. Justice of Hertfordshire*[1]; *R. v. Meyer*[2]; *R. v. London County Council*[3]. The mere presence of the interested person may vitiate the decision if he sat in such a position that gave an appearance that he was a member of the tribunal, *R. v. Sussex Justices*[4]; *R. v. Barry*[5]; *Cooper v. Wilson*[6].

It makes no difference whether he then discussed the case with them (the court) or not; the risk that a respondent any influence the court is so abherrent to English notion of justice that the possibility is suffecient to deprive the decision of all judicial force and to render it a nullity, *Cooper v. Wilson*[6].

On this principle :

1. The conviction for a motoring offence was quashed on the ground that the clerk to the justice, who was a member of a firm of solicitors who were to represent the accused in the civil proceedings arising out of the same collision, retired with the justice, although he did not give them any advice on the conviction, *R. v. Sussex Justices*[4]; *R. v. Barry*[5].

2. The proceedings of a Borough Watch Committee to confirm the provisional dismissal of a police constable by the chief constable was quashed on the grounds that the Chief Constable was present at the meeting when this matter was being deliberated by the committee, *Cooper v. Wilson*[6].

1. (1845) 6 Q.B 853
2. (1876) 1 Q.B.D. 173
3. (1892) 1 Q.B.D 190
4. (1924) 1 K.B. 256
5. (1953) 2 ALL E.R. 1005
6. (1937) 2 ALL ER 726

Hence, not only will certiorari issue where the adjudication has been vitiated by the personal interest of the member or members of the tribunal, but even when the Clerk of the tribunal is a person who has given some advice or his firm, without his knowledge, has given some advice to one of the parties before the tribunal, *R. vs. Justice of Essex*[1].

But where the Clerk, though a person having a bias in the cause, took no part in the deliberations of the tribunal, nor had any chance of influencing the decision of the tribunal, there was no denial of natural justice, *R. vs. Architects Registration Tribunal*[2]; *Re Lawson*[3].

The rule is commonly expressed as saying that a judge must be free from bias, *Cf. Local Government Board vs. Arlidge*[4]. 'Bias', in this context,—

"denotes a departure from the standard of even handed justice which the law requires from those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator. The reason for this clearly is that, having to adjudicate as between two or more parties he must come to his adjudication with an independent mind, without any inclination or bias towards one side or other in the dispute, *Franklin vs. Minister of Town and Country Planning*[5].

Bias may be said to be of three different kinds, *Franklin vs. Minister of Town and Country Planning*[5].

1. (1927) 2 K.B. 476.
2. (1945) 2 ALL E.R. 131
3. (1941) 57 TLR. 315.
4. (1915) A.C. 120(132).
5. (1947) 2 ALL E.R.289. (296) H.L

(a) A judge may have a bias in the subject matter which means that he is himself a party, *R. vs. Great Yaramouth Justices*[1], or has direct connection with the litigation, *R. vs. L.C.C.*[2], so as to constitute a legal interest.

Legal interest.

A "legal interest" means the judge is " in such a position that a bias must be assumed, *R. vs. L.C.C.*[2]

The best illustration of legal interest is the House of Lords case of *Dimes vs. Grand Junction Canal*[3], in which the facts were exceptional:

A public company brought a bill inequity against a land owner in a matter involving the interest of the company which was heard by the vice-chancellor who granted relief to the company. On appeal, the order was confirmed by the Lord Chancellor, Lord Cottenham who was a share holder in the company. The decree was impugned before the House of Lords after Lords Cottenham had retired and the House, presided over by another Lord Chancellor (Lord St. Leonards) set aside the decree with the observation:

> "No one can suppose that Lord Cottenham could be, in the remotest degree, influenced by the interest, he had in this concern; but it is of the last importance that the maxim that no man is to be a judge in his cause should be held sacred- This will be a lesson to all inferior tribunals to take care not only that in thei

1. (1882) 8 Q.B.D. 525
2. (1895) 71 L.T.638.
3. (1852) 3 H.L.C. 759.

decrees they are not influenced by their personal interest but to avoid the appearance of labouring under such an influence, *Dimes vs. Grand Junction Canal*[1]."

Where a Judge is disqualified, the disqualification extends to his deputy unless the deputy is judicially independent of control of the Judge whose deputy he is, *Dimes vs. Grand Junction Canal*[1].

The smallest legal interest will disqualify the Judge. Thus,

1. Members of a local or other body, *R. vs. Deal Justices*[2], who had taken part in promulgating an order or regualtion, *R vs. Rand*[3], cannot afterwards sit for adjudication of a matter arising out of such order - because of their disqualification on the ground of bias.

2. The subject to statutory exceptions, *R vs. Licensing J.J. of Cheshire*[4], "persons who had once decided a question should not take part in reviewing their own decision", *R vs. Licensing J.J. of Cheshire*[4], on appeal, *R. vs. Hertfordshire JJ. of*[5].

Thus,—

(a) The persons who constitute the Disciplinary Committee of the Institute of Chartered Accountants must not sit on the Governing Council which approves the report of the disciplinary committee, *a. I.C.A vs. I.K.Ratna*[6].

1. (1852) 3 H.L.C. 759.
2. (1881) 45 L.T. 439 (441).
3. (1913) 22 C.C. 147.
4. (1906) 1 K.B. 362 (366; 368; 370).
5. (1845) 6 Q.B 753.
6. AIR 1987 S.C.71.

(b) A Judge should not try a case in which he has examined himself as a witness, *Frome United Breweries vs. Justices of Bath*[1]. The principle being that a person having a bias in favour of or against a party should nto take part in the decision of the dispute, *State of U.P. vs. Nooh*[2], the prohibition extends to all cases where such a bias is likely to arise, *e.g.*, where the Judge has personal knowledge of the material facts of the case, *Hurpurshad vs. Sheo Dyal*[3].

The question whether there is a 'legal interest' is a question of fact to be determined with reference to the facts of each case, the question to be answered being—

> "Has the Judge whose impartiality is impugned taken any part whatever in the prosecution either by himself or his agent, *R. vs. Pullehti JJ*[4]"

But the interest, in order to disqualify, must be a specific interest in the cause before the tribunal.

A mere general interest in the 'general object' to be pursued would not disqualify the Judge. Thus, a Magistrate who subscribed to the Society for the Prevention of Cruelty to Animals was not thereby disqualified from trying a charge brought by that body of cruelty to a horse, *R. vs. Deal Justices*[5]. If, however, the Judge has reached and announced certain fixed conclusions from which it may be inferred that the parties cannot get a fair hearing, he cannot be allowed to decide the matter, *R vs. Rand*[6].

1. (1926) A.C.586 (590).
2. (1958) S.C.R. 595 (601).
3. 3 L.A 259 (286).
4. (1948) 2 ALL E.R. 815.
5. (1881) 45 L.T. 439 (441).
6. (1913) 22 C.C. 147.

Mere membership of an association or institution which is a party tot he proceedings does not disqualify a judge, *R. vs. Pullehti JJ*[1]. Disqualification arises where the Judge has been a party to the prosecution, by taking party in the resolution to prosecute the aggrieved party, *R. vs. Lee*[2]; *R. vs. Henley*[3]; *R. vs. Giasford*[4]; *Taylor vs. National Union*[5].

(a) Pecuniary interest in the cause, *Of Tumey vs. Ohio*[6], however slight, will disqualify the Judge, even though it is not proved that the decision has in fact been affected by reason of such interest, *Leoson vs. General Council*[7]. For the same reason, where a person having such interest sites as one of the Judges, *Cf. Jeejeebhoy vs. Asst. Collector*[8], the decision is vitiated even though he does not take part in the actual decision.50-51. On this principle——

(I) The court struck down the resolution of a local authority sanctioning a development scheme, on the ground that on of the councilors who had applied for permission to make the development, as an estate agent, took part in the meeting where the resolution was passed.

(II) Share holders in a railway were held to be disqualified form hearing charges against ticketless passengers, even though "the interest to each shareholder may be less than 1/4d."

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1. (1948) 2 ALL E.R. 815.
2. (1882) 9 Q.B.D. 394
3. (1892) 1 Q.B. 504
4. (1892) 1 Q.B. 381
5. (1967) 1 ALL E.R.767
6. (1927) 273 U.S.510.
7. (1889) 43 Ch. D. 366 (384).
8. AIR 1965 S.C. 1096.

On the other hand—

(I) Mere trusteeship of a friendly society would not constitute a pecuniary interest to disqualify a trustee, *R vs. Rand*[1].

(II) It s difficult to hold, without further facts, that a person who is in the permanent service of the State can be deemed to have acquired a financial interest by merely being put in charge of a Department.

In the United States, this exception has been further extended n relation to administrative proceedings to hold that an administrative body is not disqualified form adjudicating a particular case on the ground that during its *ex parte* investigation, it had come to form an opinion as to what action would, in general, constitute a violation of the law. It would be disqualified only if it is established that the minds of its members were so 'irrevocably closed on the subject" as not to be changed by any evidence produced by the parties at the hearing.

(a) A Judge may have a personal bias towards a party owing to relationship and the like or he may be personally hostile to a party as a result of events.

Personal bias: happening either before or during the trial.

Whenever there is any allegation of personal bias, the question which should be satisfied is

"Is there in the mind of the litigant a reasonable apprehension that he would not get a fair trial".

1. (1913) 22 C.C. 147.

The concept of 'Bias' however has had a steady refinement with the changing structure of the society. Modernisation of the society, with the passage of time, has its due impact on the concept of Bias as well. Three decades ago this Court in *S. Parthasarathi v. State of Andhra Pradesh*[1], proceeded on the footing of real likelihood of 'bias' and there was in fact a total unanimity on this score between the English and the Indian Courts.

Mathew, J., in *Parthasarthi's* case observed :

> "16. The tests of "real likelihood" and "reasonable suspicion" are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The Court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiry officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiry officer will be prejudiced against the delinquent. The Court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision (see per Lord *Denning, H.R.* in *Metropolitan*

1. (1974) 3 SCC 459 : AIR 1973 SC 2701 : 1973 Lab.IC 1607

Properties Co. (F.G.C.) Ltd. v. Lannon, (1968) 3 WLR 694 at 707). We should not, however, be understood to deny that the Court might with greater propriety apply the "reasonable suspicion" test in criminal or in proceedings analogous to criminal proceedings".

Lord *Thankerton* however in *Franklin v. Minister of Town and Country Planning*[1], had this to state :

> "I could wish that the use of the word 'bias' should be confined to its proper sphere. Its proper significance, in my opinion, is to denote a departure from the standard of even-handed justice which the law requires for those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator. The reason for this clearly is that, having to adjudicate as between two or more parties, he must come to his adjudication with an independent mind, without any inclination or bias towards one side or other in the dispute."

Recently, however, the English Courts have sounded a different note, though may not be substantial but the automatic disqualification theory rule stands to some extent diluted. The affirmation of this dilution however is dependent upon the facts and circumstances of the matter in issue. The House of Lords in the case of *Reg. v. Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte (No.2)*[2], observed :

> "..... In civil litigation the matters in issue will normally have an economic impact; therefore a

1. (1948) AC 87
2. 2000 (1) AC 119

Judge is automatically disqualified if he stands to make a financial gain as a consequence of his own decision of the case. But, if, as in the present case, the matter at issue does not relate to money or economic advantage but is concerned with the promotion of the cause, the rationale disqualifying a Judge applies just as much if the Judge's decision will lead to the promotion of a cause in which the Judge is involved together with one of the parties."

Lord *Brown* - Wilkinson at page 136 of the report stated :

"It is important not to overstage what is being decided. It was suggested in argument that a decision setting aside the order of 25 November, 1998 would lead to a position where Judges would be unable to sit on cases involving charities in whose work they are involved. It is suggested that because of such involvement, a Judge would be disqualified. That is not correct. The facts of this present case are exceptional. The critical elements are (1) that A1 was a party to the appeal; (2) that A1 was joined in order to argue for a particular result; (3) the Judge was a director of a charity closely allied to A1 and sharing, in this respect. A1's objects. Only in cases where a Judge is taking an active role as trustee or director of a charity which is closely allied to and acting with a party to the litigation should a Judge normally be concerned either to rescue himself or disclose the position to the parties. However, there may well be other exceptional cases in which the Judge would be well advised to disclose a possible interest".

Lord *Huttoon* also in *Pinochet's* case[1], (supra) observed :

> "there could be cases where the interest of the Judge in the subject-matter of the proceedings arising from his strong commitment to some cause or belief or his association with a person or body involved in the proceedings could shake public confidence in the administration of justice as much as a shareholding (which might be small) in a public company involved in the litigation."

Incidentally in *Locabail (U.K.) Ltd. v. Bayfield Properties Ltd.*[2], the Court of appeal upon a detail analysis of the often cited decision in *Reg. v. Gough*[3], together with the Dimes case (3 House of Lords Cases 759); *Pinoceht* case[1], (supra), Australian High Court's decision in the case of *Re J.R.L. Ex parte C.J.I.*[4], as also the Federal Court *in Re Ebner*[5], and on the decision of the constitutional Court of South African in *President of the Republic of Sought Africa v. South African Rugby Football Union*[6], stated that it would be rather dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. The Court of appeal continued to the effect that everything will depend upon facts which may include the nature of the issue to be decided. It further observed :

> "By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the Judge and any member of the public involved in the case; or

1. 2000 (1) AC 119
2. 2000 QB 451
3. (1993) AC 646
4. 1986 (161) CLR 342
5. 1999 (161) ALR 557
6. (1999) (4) SA 147

if the Judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the Judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the Judge had expressed views, particularly in the course of the hearing in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind (see *Vakuta v. Kelly* (1989) 167 CLR 568); or if, for any other reason, there were real ground for doubting the ability of the Judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issue before him. The mere fact that a Judge, earlier in the same case or in a previous case, had commented adversely on a party witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases, we think, the answer, one way or the other, will be obvious. But, if in any case there is real ground or doubt, that doubt should be resolved in favour of recusal. We repeat; every application must be decided on the facts and circumstances of the individual case. The greater the passage of time between event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be".

The Court of Appeal judgment in *Locabail*[1], (supra) though apparently as noticed above sounded a different note but in fact, in more occasions than one in the judgment itself, it has been clarified that conceptually the issue of bias ought to be decided on the facts and circumstances of the individual case a slight shift undoubtedly from the original thinking pertaining to the concept of bias to the effect that a mere apprehension of bias could otherwise be sufficient.

The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary collusion drawn therefrom. In the event however the conclusion is otherwise inescapable that there is existing a real danger of bias the administrative action cannot be sustained. If on the other hand, he allegations pertaining to bias is rather farciful and otherwise to avoid a particular Court, Tribunal or authority, question of declaring them to be unsustainable would not arise. The requirement is availability of positive and cogent evidence and it is in this context that we do record our concurrence with the view expressed by the Court of Appeal in *Locabail* case (supra).

That such authority must also not be interested as a party in subject-matter of dispute which he has to decide.

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1. (2000 QB 451)

CHAPTER III

DEFINITION, ORIGIN AND SCOPE OF DOCTRINE OF LEGITIMATE EXPECTATION

A study of principles of natural justice and its application in administrative action in the preceding chapter has made it clear that Rule of non-arbitrariness is also one of the principles of natural justice. While the administrative authorities venture to go ahead with a decision making process, for example Change of policy, such process must take into its fold the legitimate expectation. Since in the case of Supreme Court Advocates on *Record Association vs. Union of India*[1], the apex Court held that "Due consideration of every legitimate expectation in the decision making process is a requirement of the rule of non-arbitrariness".

Definition

Now the pertinent question which would arise for our study is as to what is legitimate expectation. "Legitimate" in legal parlance means that which is lawful, legally recognised by law or according to law. "Expectation" means the act or the instance of expecting or looking forward something expected or hoped for probability of an event and "expectation" is most often relatable to ones prospects. In Halsbury's laws of England, Fourth Edition, Volume-I (1) 151 legitimate expectation, finds mention of the following :—

> "A person may have a legitimate expectation of being treated in a certain way of administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation

1. AIR 1994 SC 268.

promise made by the authority, including an implied representation, or from consistent past practice. The existence of a legitimate expectation may have a number of different consequences; it may give *locus standi* to seek leave to apply for judicial review; it may mean that the authority ought not to act so as to defeat the expectation without some overriding reason of public policy to justify its doing so; or it may mean that, if the authority propose to defeat person's legitimate expectation it must afford him an opportunity to make representations on the matter. The Courts also distinguish, for example in licensing cases, between original applications, applications to renew and revocations; a party who has been granted a licence may have a legitimate expectation that it will be renewed unless there is some good reasons not to do so, and may therefore be entitled to greater Procedural Protection than a mere applicant for a grant."

Legitimate expectation in other words means that though a party has no right stricto-sensu, he still has an expectation which has a basis and justification which entitles him to approach a Court of law and the Court would recognise his standing to entertain his claim. Contrary to private law in public law the Courts, are more concerned with regulating and controlling powers used by the Government and its authorities and this ground is well recognised in administrative law and the courts are not really deciding the merits of the case. Even in public law a party has to have locus standi. Which is again based on a party having sufficient interest in the matter so as to enable him to initiate an action and claim relief.

Defining legitimate expectation, Mr. *Patrik Elias* in his much referred book "legitimate expectation and Judicial review" writes

that in recent times Courts have asserted the power to control not merely bodies exercising Judicial or Quasi-judicial functions affecting individual rights but also bodies exercising administrative functions affecting a wide variety of interests which do not constitute rights in strict sense. The contract task of administrative can have been to define which interests should be afforded protection of public law and which should not. A concept which has been fashioned by Court to help identifying these rights deserving protection is the Doctrine of Legitimate Expectation."

. This expression which is said to have been originated from the judgment of Lord *Denning* in *Schmidt v. Secretary of State Home Affairs* (referred supra) is now well established in public laws..... where expectations were based upon some statement or undertaking by or on behalf of the public authority legitimate expectations in this context are capable of including expectations which go beyond enforceable legal rights provided they have some reasonable basis. Fair procedure and just treatment is the core of our jurisprudence."

No one shared suffer from omission in law or technicalities rules.

In the case of *Trillinga Organics (P) Ltd. v. APSFC*[1], the A.P. High Court while interpreting legitimate expectation held that it is different from a wish, a desire, or a hope nor it amounts to a claim or demand on the ground of a right. However, earnest and sincere wish or desire or a hope may be and however confidentially

One may look to them to be fulfilled they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to legitimate expectation."

1. 1995 (1) ALT 17 (SN)

Origin and Scope

We find that the concept of legitimate expectation first stepped into the English Law in *Schmidt v. Secretary of State for Home Affairs*[1], wherein it was observed that an alien who had been given leave to enter the United Kingdom for a limited period had a legitimate expectation or being allowed to stay for the permitted time and if that permission was revoked before the time expires, that alien ought to be given an opportunity of making representations. Thereafter the concept has been considered in a number of cases.

In *Council of Civil Service Unions vs. Minister for the Civil Service*[2], a question arose whether the decision of the Minister withdrawing the right to Trade Union membership without consulting the staff which according to the appellant was his legitimate expectation arising from the existence of a regular practice of consultation, was valid. It was contended that the Minister had a duty to consult the staff as per the existing practice and that though the employee did not have a legal right, he had a legitimate expectation that the existing practice would be followed. On behalf of the Minister on the 'basis of the evidence produced, it was contended that the decision not to consult was taken for reasons of national security. The Court held as under:

> "An aggrieved person was entitled to invoke judicial review if he showed that a decision of a public authority affected him by depriving him of some benefit or advantage which in the past he had been permitted to enjoy and which he could legitimately except to be permitted to continue to

1. (1969) 2 Ch 149
2. (1984) 3 All ER 935 = 1985 AC 374.

enjoy either until he was given reasons for the withdrawal and the opportunity to comment on those reasons or because he had received an assurance that it would not be withdrawn before he had been given the opportunity of making representations against the withdrawal. The appellants legitimate expectation arising from the existence of a regular practice of consultation which the appellants could reasonably expect to continue gave rise to an implied limitation on the Minister's exercise of the power contained in Article 4 of the 1982 order, namely an obligation to act fairly by consulting the GCHQ staff before withdrawing the benefit of Trade Union membership."

Lord *Diplock* enunciated the basic principles in this branch relating to 'legitimate expectation'. It was observed in this case that for a legitimate expectation to arise, the decisions of the administrative authority must affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. The procedural part of it relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made. The substantive part of the principle, is that if a representation is made that a benefit of a substantive nature will be granted or if the person is already in receipt of the benefit that it will be continued and not be substantially varied, then the same could be enforced.

In the above case, Lord *Frasser* accepted that the civil servants had a legitimate expectation that they would be consulted before their trade union membership was withdrawn because prior consultation in the past was the standard practice whenever conditions of service were significantly altered.

Lord *Diplock* went a little further, when he said that they had a legitimate expectation, that they would continue to enjoy the benefits of the trade union membership. The interest in regard to which a legitimate expectation could be had must be one which was protectable. An expectation could be established past action of settled conduct. The representation must be clear and unambiguous. It could be a representation to an individual or generally to a class of persons based on an express promise or representation or by established past action of settled conduct. The representation must be clear and unambiguous. It could be a representation to the individual or generally to a class of persons.

In the case of *Breen v. Amalgamated Engineering Union (Now Amalgamated Engineering and Foundry Workers Union*[1], the District Committee of a trade union refused to endorse a members election as Shop Steward. The court held that if a man seeks a privilege to which he has no particular claim, such as an appointment to some post, then he can be turned away without a word. He need not be heard. But here a member was elected to his office of Shop Steward by democratic process and therefore, the court held that he had a legitimate expectation that he would be approved by the District Committee unless there were good reasons against him. The court referred to earlier celebrated case of *Padfield v. Trade Unions of Agriculture, Fisheries and Food*[2],

1. (1971) 1 ALL ER 1148 (CA)
2. (1968)1 ALL ER 694 (HL)

where the H.L. had held that dairy farmers had no right to have their complaint referred to a Committee for investing but they had a legitimate expectation that it would so referred. It may be noted that Breen's case the Court adjudicating upon a case of trade union and its Democratic Tribunal i.e. District Committee which was not a statutory body. Therefore, this case extended the doctrine of legitimate expectation to a non-statutory domestic body and therefore, fairness and natural justice are expected even of non-statutory bodies operating under their own Rules.

In the case of *McInnes v. Onslow Fane*[1], the Court was again concerned with Domestic Tribunal *i.e.*, British Boxing Board of Control which rejected an application for entrance licence. The Court speaking through Megrry V.C. held that there were 3 categories of cases. First category of cases are those which are called forfeiture cases in which a decision takes away some existing right or existing licence is revoked; in such cases, obviously principles of natural justice have to be observed. The second category I sat the other extreme which are called application cases where the applicant has no right to have his application, granted *e.g.* when a man applies for licence or seeks membership to an organisation. In such cases, there is neither a right nor a legitimate expectation and therefore, no hearing is required to be granted. However, the Court spelt out a third intermediate category which are called expectation cases which differ from application cases only in that the applicant has some legitimate expectation from what was already happened that his application will be granted *e.g.*, when an existing licence holder applies for renewal of licence or person already elected or appointed to some post seeks confirmation from some confirming authority. The Court went on observing that the expectation cases are in some respects more akin to forfeiture cases than application cases for although in former there is no

1. (1978) 3 ALL ER 211 (Ch D)

jury; but a mere attempt and application that fails, the legitimate expectation of a renewal of a licence or confirmation of membership is one which raises the question of what it is , that has happened to make the application unsuitable for the membership or licence for which he was previously suitable. It is submitted that exposition of the doctrine of legitimate expectation is in clear term in this case.

Cinnamond v. British Airport Authority[1], Lord *Denning M.R.* turned down the taxi driver's entry into airport on the upheld decision of the authority to prohibit them form entering airport because of the taxi drivers' own past conduct. The Court held that since the drivers were imposed fines in the past their claim was not justified and therefore, they had no legitimate expectation and no claim on that basis. The Court held that if these taxi drivers were of good character and had for years been coming to the airport under reliable licence to do so and suddenly there is a prohibition order preventing them form entering then it would seem only fair that they should be given hearing but since they continue to engage in unlawful conduct they had no legitimate expectation of being heard. It appears form this judgement that doctrine of legitimate is an equitable doctrine which may not be applied by Court because of parties own conduct which may be unlawful or claim that in unworthy.

An immigrant did not hear the announcement of the HongKong Immigration Authority that while examining the cases of illegal immigration each case would be treated on its merits, but saw TV programme about the subject. He was interviewed by an immigration officer and ultimately, Director of Immigration made a removal order. In appeal he claimed that removal order was illegal as he was not heard. The appeal was decided against him by the Tribunal without hearing him, and he applied for a writ of

1. (1980) 2 ALL ER 368 (CA)

certiorari to quash the removal order and the decision of the Tribunal. The Full Bench of the High Court refused the application for certiorari but stayed the removal order for seven days to enable to file appeal before the Court of appeal. The Court of appeal allowed the appeal in part and granted him prohibition against the removal order and directed the authority not to execute the removal order before an opportunity of hearing was given to immigrant. Against this very limited order of prohibition, the Hongkong authority appealed to the Privy Council.

In this case of *Attorney-General of Hongkong v. Ng.Yuen Shiu*[1], the Court held that the Government promise to immigrant that each cases would be considered on its merits has not been fulfilled because he was not given any opportunity of explaining why he should not be removed and therefore, the Court quashed and set aside the removal order and directed the Director of Immigration to hold a fair inquiry at which the immigrant had to be given an opportunity to make representation as he may think fit as to why he should not be removed. While allowing the appeal the Court relied upon *Schmidt v. Secretary of State for Home Affairs*[2], and other cases.

In this case the Court observed that the authority would be inquired to act in accordance with the assurance given by it provided that it did not conflict with any statutory duty required to be followed by the authority.

Cases when Legitimate Expectation is defeated

Next is the case of *Council of Civil Services Union v. Minister of Civil Services*[3]. In this case the staff at a Government

1. (1982) 2 ALL ER 346 (PC)
2. (1969) 1 ALL ER 904
3. (1984) 3 ALL ER 935 (HL)

Communication Headquarters had a long standing right to belong to National Trade Unions and thereupon established practice at H.Q. by consultation between the management and the union about the important alteration in terms and conditions of employment of staff. The Minister of Civil Services issued an oral instruction to the effect that the terms and conditions of civil services at H.Q would be revised so as to exclude the membership of any particular Trade Union other than a departmental Staff Association approved by the Director of Headquarters. This instruction was challenged because the Minister had acted unfairly in removing their fundamental right to belong to a particular union without consultation. House of Lords invoked the doctrine of legitimate expectation in as much as the staff had legitimate expectation arising from consistent practice of consultation that the benefit or advantage of belonging to a national union which they had been, permitted to enjoy in the past, they would be permitted to continue to enjoy ether until they were given reasons for withdrawal of such benefit and an opportunity to command reason or because that there was an assurance that the benefit would be withdrew before they had an opportunity of making representations. The Court held that even where the persons claiming some benefit of privilege has no legal right to do as a matter of private law, he may have a legitimate expectation of receiving benefit or privilege and if so the Court will protect his expectation by judicial review as a matter of public law. The legitimate or reasonable expectation may arise either form an expression or promise given on behalf of a public authority or from existence of a regular practice which the claimant can reasonably expect to demand. Though the Court found that there was legitimate expectation, the Court held relying upon an affidavit filed by the authority that in the interest of national security the instructions issued by the Minister was fully justified and therefore, the Court upheld the instructions issued by the Minister. Thus, in this case the legitimate expectation was dislodged by considerations of National Security which outweigh

what would otherwise have been the reasonable expectation on the part of the staff to have prior consultation. Thus though the legitimate expectation exists it would be outweighed by cogent considerations and the relief was ultimately denied the claimants.

In the case of *R v. Secretary of State for Home Department ex parte, Ruddock*[1], the applicant, found that the telephone calls had been intercepted pursuant to a warrant signed by the Secretary of State for Home Department. He has challenged the decision to sign the warrant. The Court held that he had a legitimate expectation which imposed in a sense the duty to act fairly and that the doctrine was not restricted to cases where expectation was to be consulted or to be given opportunity to make representation before a decision was made. The Court held that where exhypothesi there was no right to be heard it could be more important to fair dealing with a problem or undertaking given by a Minister as to how he would proceed, should be kept since the criteria governing the issue of interpretation of warrants, had been published six times and had been expressly adopted by the Secretary of State, it clearly establishes a legitimate expectation that he would in fact follow the criteria when deciding whether to issue a warrant.

In the case of *Lloyd v. Mc. Mahon*[2], the appellants who formed majority group of a city council, refused to arrange a meeting of the counsel to set a rate for a particular year. The District Auditor warned the Council that failure to set a rate would be clear breach of duty. The District Auditor notified the appellants that he propose to consider whether he should certify that under the law a particular sum was due form the appellant on the ground that the loss of that sum by the Council, had been caused by

1. (1987) 2 ALL ER 518 (QBD)
2. (1987) 1 ALL ER 1118 (HL)

their wilful defect in preventing the Council from setting a rate. The notice further stated that they could make representations to the District Auditor. In these circumstances the Court held that notice and opportunity to make representations were given and appellants had no right of oral hearing. The Court rejected the arguments that the appellants had a legitimate expectation of being invited or heard. Lord Tenkeman rejected the arguments observing that the extravagant language did not admit him to elevate a catch-phrase in to a principle. The Court held that true principle was that is should be like any other decision maker mist at fairly. It was not unfair for the auditor to reach a decision on the basis of written material served on and submitted by appellant. Thus though the Court approved of doctrine of legitimate expectation if refused to extend it to an obligation to give oral hearing in case where notice and opportunity to make written representation were given.

The development of the doctrine in England had shown a remarkable tendency of Judges to evolve, invoke and apply doctrine which was introduced negatively to deny the relief, in a positive manner in various situations.

In *R. v. Secretary of State for the Home Department ex parte Ruddock*[1], *Taylor*, J., after referring to the ratio laid down in some of the above cases held thus:

> "On these authorities I conclude that the doctrine of legitimate expectation in essence imposes a duty to act fairly. Whilst most of the cases are concerned, as Lord Roskill said, with a right to be heard, I do not think the doctrine is so confined. Indeed, in a case where ex hypothesis there is no right to be heard, it may be thought

1. (1987) 2 All.ER 518.

> the more important to fair dealing that a promise or undertaking given by a Minister as to how he will proceed should be kept. Of course such promise or undertaking must not conflict with his statutory duty or his duty, as here, in the exercise of a prerogative power. I accept the submission of Counsel for the Secretary of state that the respondent cannot fetter his discretion. By declaring a policy he does not preclude any possible need to change it. But then if the practice has been to publish the new policy, unless again that would conflict with his duties. Had the criteria here needed changing for national security reasons, no doubt the respondent could have changed them. Had those reasons prevented him also from publishing the new criteria, no doubt he could have refrained from doing so. Had he even decided to keep the criteria but depart from them in his single case for national security reasons, no doubt those reasons would have afforded him a defence to judicial review".

On examination of some of these important decisions it is generally agreed that legitimate expectation gives the applicant sufficient *locus standi* for judicial review and that the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negativing a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway from the administrative authorities as no cyrstallised right as such is involved. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular decision then decision maker should justify the

denial such expectation by showing some override public interest. Therefore, if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has *locus standi* to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the Courts cannot interfere with a decision. In a given case whether there are such facts and circumstances giving rise to a legitimate expectation, it would primarily be a question of fact. If these tests are satisfied and if the Court is satisfied that a case of legitimate expectation is made out then the next question would be whether failure to give an opportunity of hearing before the decision affecting such legitimate expectation is taken, has 'resulted in failure of justice and whether on that ground the decision should be quashed. If that be so then what should be the relief is again a matter which depends on several factors.

Legitimate expectation may come in various forms and owe their existence to different kind of circumstances and it is not possible to give an exhaustive list in the context of vast and fast expansion of the Governmental activities. They shift and change so fast that the start of our list would be absolute before we reached the middle. By and large they arise in cases of promotions which are in normal course expected, though not guaranteed by way

of a statutory right, in cases of contracts, distribution of largesse by the Govt. and in somewhat similar situations.

For instance in cases of discretionary grant of licences, permits or the like, carries with it a reasonable expectation, though not a legal right to renewal or non-revocation, but to summarily disappoint that expectation may be seen as unfair without the expectant person being heard. But there again the Court has to see whether it was done as a policy or in the public interest either by way of GC., rule or by way of a legislation. If that be so, a decision denying a legitimate expectation based on such grounds does not qualify for interference unless in a given case, the decision or action taken amounts to an abuse of power. Therefore, the limitation is extremely confined and if the according of natural justice does not condition the exercise of power, the concept of legitimate expectation can have no role to play and the Court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the Court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the Legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the Court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. For instance if an authority who has full discretion to grant a licence and if he prefers an existing licence holder to a new applicant, the decision cannot be interfered with on the ground of legitimate expectation entertained by the new applicant applying the principles of natural justice. It can therefore be seen that legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. It would thus appear that there are stronger reasons as to why the legitimate expectation should not be substantively protected.

If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or gross abuse of power or in violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot *ipso facto* give a right to invoke these principles. It can be one of the grounds to consider but the Court must lift the veil and see whether the decision is violative of principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the Courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case.

The principle of legitimate expectation is still at a stage of evolution as pointed out in *De Smith* Administration law (5th Ed.) (para 8.038). The principle is at the root of law and requires regularity, predictability and certainty in Government's dealings with the public. Adverting to the basis of legitimate expectations its procedural and substantive aspects Lord *Steyn* in *Pleasure vs. Secretary of State*[1], goes back to Dicey's description of the rule of law in his "Introduction to the study of the Law of the Constitution "(10th Ed.1959 p.203) (*) as containing principles of enduring value in the work of a great jurist. Dicey said that the constitutional rights have roots in the common law. He said:

> "The 'rule of law', lastly, may be used as a formula for expressing the fact that with us, the law of constitution, the rules which in foreign countries naturally form part of a constitutional

1. (1997 (3) All.ER 577 (at 606) (HL)

code, are not the source but the consequence of the rights of individuals, as defined and enforced by the Courts that, in short the principles of private law have with us been by the action of the Courts and parliament so extended as to determine the position of the crown and its servants, thus the constitution is the result of the ordinary law of the land." See also "The Rule of Law as the Rule of Reason Consent and Constitutionalism in (1999) 115 LQR 221 Pg234 that fairness is both procedural and substantive". Due process and fair procedure by DJ Galigam (1996) at Pg. 242 quoting Dicey (1959) at pg 203.

To put it in simple terms Legitimate expectation is that expectation which a person expects from a public authority by reasons of either an express promise made by that authority or on the basis of the existence of a regular practice which the person can reasonably expect to continue for the fulfillment of such promise or the said practice. However all expectations a person may have for the public authority may not be legitimate. In other words he has neither to get them fulfilled nor can expect a particular manner in which the concerned public authority should exercise the power. Only such of those expectations which are based on a past promise or a past practice by which one can be entitled to a particular manner of exercise of power by the public authority or fulfillment of his expectation, one is said to have Legitimate expectation. Legitimate Expectation therefore arises when there is source or basis for it and it has to have justification to be legitimate. It is therefore at an intermediary stage between a situation on one hand where a person has no claim whatsoever and on the other where the person has fully matured right in the strict sense of the term.

For example: if a Municipal Corporation advertises a post and the standing Committee of the corporation selects a person on the basis of valid interviews and this selection requires confirmation by general body of corporation at the stage when a person is selected by the standing committee and is awaiting confirmation by general body it can be said that said person has legitimate expectation of having his selection confirmed and being appointed to that post. Persons who are not selected by standing committee have no case or claim to appointment on one hand and on the other hand if the selection is confirmed by general body the persons would have a right to be appointed in the strict sense of the term. However at an intermediate stage where he is selected by the body empowered to select but the selection in awaiting confirmation it can be said that he has Legitimate expectation, which has arisen from his being selected and is justified. It is pursuant to a valid process of selection but still falls short of a right in the strict sense of term as the confirmation by General body, required by law, is still not granted. In a case like this if a person at No.2 in the select list were to be confirmed by the General body Legitimate expectation which the person at S.No.1 in the select list has, would entitle him to initiate proceedings on the basis of Legitimate expectation.

The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural consequences.

The person who bases his claim on the Doctrine of Legitimate expectation, in the first instance must satisfy that there is a foundation and thus he has *locus standi* to make such a claim. The doctrine of legitimate expectation liberalises the doctrine of *locus standi* to an extent in as much as it enables the party to approach the Court though he does not have a right in the strict sense of term. Legitimate expectation thus enabling a party to approach a Court of

law to get his grievance redressed though it does not necessarily means that the Court would grant relief merely because he has legitimate expectation, public interest considerations would apply when Court considers the question of granting relief.

It has to be noticed that the concept of legitimate expectation in administrative law has now undoubtedly gained considerable importance. It is stated that 'legitimate expectation' is the latest recruit to a long list of concepts fashioned by the Courts for the review of administrative action and this creation takes it place beside such principles as the rules of natural justice, unreasonableness, the fiduciary relationship of local authorities and "in future, perhaps, the principle of proportionately".

The following passages from "Administrative Law" the celebrated work of HWR Wade would help us to understand its doctrine.

> "These are revealing decisions. They show that the Courts now except Government departments to honour their published statements or else to treat the citizen with the fullest personal consideration. Unfairness in the form of unreasonableness here comes close to unfairness in the form of violation of natural justice, and the doctrine of legitimate expectation can operate in both contexts. It is obvious, furthermore, that this principle of substantive, as opposed to procedural, fairness may undermine some of the established rules about estoppel and misleading advice, which tend to operate unfairly. Lord Scarman has stated emphatically that unfairness in the purported exercise of a power can amount to an abuse or excess of power, and this seems likely to develop into an important general doctrine".

"If was in fact for the purpose of restricting the right to be heard that 'legitimate expectation' was introduced into the law. It made its first appearance in a case where alien students of 'scientology' were refused extension of their entry permits as an act of policy by the Home Secretary, who had announced that no discretionary benefits would be granted to this sect. The Court of Appeal held that they had no legitimate expectation of extension beyond the permitted time, and so no right to a hearing, though revocation of their permits within that time would have been contrary to legitimate expectation. Official statements of policy, therefore, may cancel legitimate expectation, just as they may create it, as seen above. In a different context, where car-hire drivers had habitually offended against Airport Bye-laws, with many convictions and unpaid fines, it was held that they had no legitimate expectation of being heard before being banned by the Airport authority.

There is some ambiguity in the dicta about legitimate expectation, which may mean either expectation of a fair hearing or expectation of the licence or other benefit which is being sought. But the result is the same in either case; absence of legitimate expectation will absolve the public authority from affording a hearing".

UP Awas Evam Vikas Parishad vs. Gyan Devi[1], is a case which was heard by a Bench of 5 Judges. In this case the Judges of S.C. differ in their views. The Majority view is taken by four out of five Judges. Legitimate Expectation was spelt out in this case and it was held thus:- In a situation where even though a

1. AIR 1995 SC 724

person has no enforceable right yet he is effected or likely to be effected by the order passed by a public authority. The court have evolved the principle of Legitimate expectation.

"The principles of natural justice, as a part of procedural law developed by this Court and English Courts has been applied and extended to Quasi-Judicial proceedings and administrative matters to ensure that no one is adversely affected without reasonable opportunity and fair hearing. No order can be passed without hearing a person if it entails civil consequences. But what about those situations where, as in the present case, the legislature stops short by providing an option to appear only. The local body cannot be impleaded as a matter of right. Nor it can invoke the principle of natural justice. Yet it is entitled to lead evidence. It may or may not. Latter does not present any difficulty. But if it intends to lead evidence then no mechanism has been provided to enable it to exercise its option. In situation where even though a person has no enforceable right yet he is affected or likely to be affected by the order passed by a public authority the Courts evolved the principle of legitimate expectation. Courts have applied this principle where expectations were based upon some statement or undertaking by or on behalf of the public authority and observed, "Accordingly legitimate expectation in this context are capable of including expectations which go beyond enforceable legal rights, provided they have some reasonable basis. Fair procedure and fair treatment is the core of our jurisprudence. No one should suffer for omission in law or technicalities in rules. Therefore when the law

permits the local body to lead evidence from it is complied in it that the local authority can legitimately expect to be informed or intimated of the proceedings.

In the case of *Food Corp. of India vs. Kamadhenu Cattle Feed Industries*[1], it was held that :

> In contractual sphere as in all other state actions the state and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law. A public Authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is fair play in-action. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his inter-action with the State and its instrumentalities with this element forming a necessary component of the decision making process in all state actions. To satisfy this requirement of non-arbitrariness in a state action it is therefore necessary to consider and give due weight to the reasonable or legitimate expectations of the person likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the *bona fides* of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise of its judicial review.

1. (1993) (1) SCC 71 = AIR 1993 SCW 1509 = 1993 JT SC 259

The mere reasonable or legitimate expectation of a citizen in such a situation may not be itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of the due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law.

Every legitimate expectation is a relevant factor requiring due consideration in fair decision making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimants perception but in larger public interest where in other more important considerations may out weigh what would otherwise have been the legitimate expectation of the claimant. A *bona fide* decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.

In the case of *National Building Constructions Corporations vs. S. Raghunathan*[1], the Supreme Court held that:

> "The doctrine of legitimate expectation has its genesis in the field of administrative law. The Government and its department, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any *iota* of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural

1. 1998 (7) SCC 66

> justice. It was this context that the doctrine of legitimate expectation was evolved which has today become a source of substantive as well as procedural rights. But claims based on legitimate expectation have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel. Unfairness in the purported exercise of power can amount to an abuse or excess of power. Thus the doctrine of "legitimate expectation" has been developed, both in the context of natural justice. The State actions have to be in conformity with Article 14 of the Constitution of which non-arbitrariness in a significant facet. There is no unfettered discretion in public law. A public authority possesses powers only to use them for public good. Though the doctrine of legitimate expectation is essentially procedural in character and assures fair play in administrative action, it may, in a given situation, be enforced as a substantive right.

While applying the doctrine of Legitimate Expectation in decision making process the apex Court in the case of Supreme Court Advocates on *Record Association vs. Union of India*[1], held that:

> Due consideration of every legitimate expectation in the decision making process is a requirement of the Rule of non-arbitrariness and therefore this is also a norm to be observed by the Chief Justice of India in recommending appointments to the Supreme Court. "Just as a High Court Judge at the time of his initial appointment has the legitimate expectation to

1. AIR 1994 SC 268

become Chief Justice of a High Court in his turn in the ordinary course, he has the legitimate expectation to be considered for appointment to the Supreme Court in his turn according to his seniority.

Concept of legitimate expectation in administrative law was also considered in the case of *Union of India vs. Hindustan Development Corporation*[1], in which the apex Court ruled "that the doctrine does not give scope to claim relief straight away from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular decision then decision maker should justify the denial of such expedition by showing some overriding public interest. Therefore even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted.

It was further held thus:

"A case of a legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfill. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has *locus standi* to make such a claim. In considering

1. AIR 1994 SC 988

> the same several factors which give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the Courts cannot interfere with a decision."

Legitimate expectations may come in various forms owe their existence in different kind of circumstances and it is not possible to give an exhaustive list in the context of vast and fast expansion of the Governmental activities. They shift and change so fast that the start of out list would be obsolete before we reached the middle. By and large they arise in cases of promotions which are in normal course expected, though not guaranteed by way of a statutory right. In cases of contracts, distribution of larger by the Government and in somewhat similar situations. For instance in cases of discretionary grant of licence, permits of the like carries with it a reasonable expectation though not a legal right to renewal or non-revocation, but to summarily disappoint that expectation may be seen as unfair without the expectant person being heard. But then again the Court has to see whether it was done as a policy or in the public interest either by way of GO rule or by way of a legislation. It that be so, a decision denying a legitimate expectation based on such grounds does not qualify for interference unless in a given case, the decision or action taken amounts to an abuse of power. Therefore the limitation is extremely confined and if the according of natural justice does not condition the exercise of power, the concept of legitimate expectation can have no role to play and the Court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the Court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the Legislature is presumed to have intended. Even in a case

where the decision is left entirely to the discretion of the deciding authority without any such legal bounds, and if the decision is taken fairly and objectively, the Court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be effected. For instance if an authority who has full discretion to grant a licence and if he prefers an existing licence holder to a new applicant, the decision cannot be interfered with on the ground of legitimate expectation entertained by the new applicant applying the principle of natural justice. It can therefore be seen at that legitimate expectation can at most be one of the grounds which may give rise into judicial review but the granting of relief is very much limited. It would thus appear that there are stronger reasons as to why the legitimate expectation should not be substantively protected that the reasons as to why it should be protected.

In other words such a legal obligation exists whenever the case supporting the same in terms of legal principles of different sorts, is stronger than the case against it. If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or abitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be question on the well known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot *ipso facto* give a right to invoke these principles. It can be one of the grounds to consider but the Court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the Courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the

future exercise of administrative powers in a particular case, particularly when the element of speculation and uncertainty is inherent in that very concept. As cautioned in Attorney-General for *New South Wales'* case[1], the Court should restrain themselves and restrict such claims duly to the legal limitations. It is a well meant caution. Otherwise a resourceful indulge in getting welfare activities mandated by a directive principles thwarted to further his own interests. The caution, particularly in the changing scenario, becomes all the more important.

Doctrine of legitimate expectation can be applied in administrative action in order to strike down the same since the doctrine has now become an enforceable substantive right as held by Supreme Court in the case of *M.P. Oil Extraction v. State of M.P.*[2]. If which it was also laid down that though the doctrine of "legitimate expectation" is essentially procedural in character and assures fair play in administrative action, it may, in a given situation, be enforced as a substantive right.

In the case of *Ghaziabad Development Authority vs. Delhi Auto and General Finances Ltd.*[3], the Apex Court considered the question as to when this doctrine can be applied or invoked by the person who is aggrieved by the action of administrative authorities, referred with approval the view taken by the same Court in the case of *FCI vs. Kamadhenu Cattle Feed Industries*[4], and held that:

> "Non-consideration of legitimate expectation of a person adversely affected by a decision may invalidate the decision of the ground of

1. 90 (64) AUS LIR 327
2. 1997 (7) SCC 592
3. AIR 1994 SC 2263
4. 1993 (1) SCC 71

> arbitrariness even though the legitimate expectation of that person is not an enforceable right to provide the foundation for challenge of the decision on that basis alone. In other words the plea of legitimate expectation relates to procedural fairness in decision making and forms part of the rule of non-arbitrariness, and it is not meant to confer an independent right enforceable by itself. It was further observed that the requirements of public interest can out weigh the legitimate expectation of private persons and the decision of a public body on that basis is not ascertainable.

A Division Bench of A.P. High Court in the case of *Ritz Hotel (Hyderabad) Ltd. vs. The State of A.P.*[1], while considering the application of the Doctrine in administrative action held that:

> The doctrine of legitimate expectation can be called in aid for the purpose of procedural fairness, where there has been procedural irregularity, the decision can be questioned but the doctrine *per se* does not clothe any person with a right legally enforceable in a Court of law.

Further the legitimate expectation of private persons can always be defeated by requirement of public interest. Hence legitimate expectation of continuance of lease is not therefore available to lessee.

In the case of *Venkat Rajaiah and others vs. Osmania University*[2], a question basing on application of legitimate expectation

1. 1997 (3) ALT 538
2. 2000 (4) ALD 558

was posed to High Court as to whether a student staying in a University Hostel cannot be asked to vacate the hostel during summer vacation and whether such a student has legitimate expectation to continue to stay in the hostel even after completion of his academic year.

The A.P. High Court held that as a matter of facility a student is admitted to hostel subject to fulfilling the conditions and norms prescribed in the Hand Book prescribed by University governing the hostel admission, the student who has completed the course has to vacate the hostel and that he has no entitlement or legitimate expectation to stay in the hostel during summer vacation.

An act of an administrative authority or a quasi-judicial authority can be called into question in the Court of law invoking its power of judicial review if such an act is in-violation of doctrine of legitimate expectation.

In the case of *Osmania University vs. R. Madhavi and others*[1], a Division Bench of A.P. High Court answered the following questions keeping in view the application of legitimate expectation "whether Osmania & Kakatiya Universities in the State of Andhra Pradesh are under obligations to hold external examinations as were being conducted until the University Grant Commission (UGC) decided that no such external examinations be conducted by any of the Universities in the State ?

The facts of the case are that candidates in the non-formal system of studies were taken through external examinations for B.A., B.Com., B.Sc., and M.A., without undergoing regular classes. They could prepare in their homes and appear for examination by paying necessary fee. Osmania and Kakatiya Universities

1. AIR 1998 AP 130

conducted such examinations for more than two decades but suddenly stopped inviting applications for the year 1996. Some of the beneficiaries of non-formal education system felt themselves ignored and aggrieved questioned as to why such a step was taken as the same was inconsistent of Rules of natural justice and fair play in-action and defeat the legitimate expectations of the candidates. A learned single Judge while deciding the writ took the view that "By dispensing with external examination system and bringing into effect the modified scheme all of a sudden, in my considered view, the respondents have denied the legitimate expectations of the persons".

The Bench heard the matter in appeal and elaborately discussed the doctrine of legitimate expectations in the light of decisions rendered by English Court and Apex Court and held thus:

> "Unless the decision taken by the Universities for changing the policy and the procedure of distant Non-formal examination is arbitrary, unreasonable and not taken in public interest on the sole ground of alleged expectation of the persons of taken Non-formal/distant education and external examination the Court be not justified in issuing any order in favour of the persons. The Courts ordinarily do not interfere into policy matters. Thus the order to the Universities to make one time exception and hold external examination for 1996 on the ground of Legitimate Expectation is improper. It was also held that a case of Legitimate Expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfill. The protection is limited to that extent and a judicial review can be within those limits.

In the case of *Raj Chowdry vs. Union of India*[1], a writ was filed by one Sri *Raj Chowdry* who contended that he had applied for late cast of the mega serial under the name and style of "Mahaprabhu" and the proposal to telecast the said serial was for atleast 500 episodes and that it was accepted by the Doordarshan authorities so it was an agreement to allow him to telecast of the said serial in 500 episodes. At the first instance 65 episodes were sanctioned which number as increased from time to time upto 455 number. When the serial became popular that Mr. *Raj Chowdry* sought further extension of episodes but it was similarly terminated at the end of 455 episodes.

The petitioner contended that he has legitimate expectation to have extension of episodes as in fact in past on all occasion without any the extension was granted. As such this act and conduct of the respondents had droused and/or guaranteed expectation of the petitioner.

The Court held thus:-

> "In this case the question of legitimate expectation does not arise as the parties are governed by the contractual agreement and in terms of the contract as well as modification thereof as to the number of episodes. It is for either of the parties either to extend or not and neither of them can be enforced to grant extension. So question of Legitimate Expectation does not arise.

The doctrine of Legitimate Expectation would give rise to a right of having fair treatment or a chance of being told before hand with just reasons before Legitimate Expectation is frustrated.

1. AIR 2000 Cal. 232

This right is capitalised when one is unfairly treated expectation is denied without any informed reasons overriding public interest.

The Court further held that doctrine of Legitimate Expectation cannot be to modify or vary expressed terms of contract.

In this case Legitimate Expectation would have arisen had there been refusal of extension without giving a chance or without informing any reason particularly when extension was granted from 65 episodes to 455 episodes as and when occasion arose. So it was and it is quite natural that before refusal of extension petitioner at least would be heard or be informed with reasons. In this case the petitioner was communicated before hand that no further extension would be granted 455 episodes and the petitioner was to windup its serial and in fact even thereafter on the representation of the petitioner the respondent has duly reiterated its stand not to extend any more episode and the reasons thereof was communicated to him.

In *Navjivat Co-op. Housing Society vs. Union of India,* Justice *G.N. Ray* speaking for the Bench observed as under :—

> "In the aforesaid facts the Group Housing Societies were entitled to legitimate expectation of following consistent past practice in the matter of allotment even though they may not have any legal right in private law to receive such treatment. The existence of Legitimate Expectation may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat Legitimate Expectation without some overriding reason of public policy to justify it doing so. In a case of Legitimate Expectation if the authority proposes to defeat a person's legitimate expectation it

should afford him an opportunity to make representations in the matter. An aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit of advantage which in the past he has been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy until he was given reasons for withdrawal and the opportunity to comment on such reason" it was further observed that the doctrine of legitimate expectation imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such "Legitimate Expectation" within the conspectus of fair dealing in case of Legitimate Expectation, the reasonable opportunities to make representation by the parties likely to be effected by any change of consistent past policy come in. (92 (2) Scale 548 - AIR 1992 SCW 3075).

In the case of *Chaitnya Charan Das vs. State of W. Bengal*, it was held thus:-

The doctrine of the legitimate expectation cannot also be brought in aid in support of the contention of the petitioners as it is well known that no relief can be granted only on the basis of the doctrine of legitimate expectation. It is not necessary to cite a large number of decisions in this regard inasmuch as recently in *Madras City Wine Merchant's Association v. State of Tamil Nadu*, reported in 1994 (5) SCC 509, it was held:-

"We will briefly deal with the doctrine of legitimate expectation. It is not necessary to

refer to large number of cases excepting the following few. On this doctrine Clive Lewis in Judicial Remedies in Public Law at page 97 states thus:-

"Decisions affecting legitimate expectations:-

In the public law field, individuals may not have strictly enforceable rights but they may have legitimate expectations. Such expectations may stem either from a promise or a representation made by a public body, or from a previous practice of a public body. The promise of a hearing before a decision is taken may give rise to a legitimate expectation that a hearing will be given. A past practice of consulting before a decision is taken may give rise to an expectation of consultation before any future decision is taken. A promise to confer, or past practice of conferring a substantive benefit, may give rise to an expectation that the individual will be given a hearing before a decision is taken not to confer the benefit. The actual enjoyment of a benefit may create a legitimate expectation that the benefit will not be removed without the individual being given a hearing. On occasions, individuals seek to enforce the promise or expectation itself by claiming that the substantive benefit be conferred. Decisions affecting such legitimate expectations are subject to judicial review".

Reference in this connection may be made to a recent decision of House of Lords in *R. v. Secretary for State for Transport, ex parte*, Richmond upon Thames London Borough Council, reported in 1994 (1) All ER 577.

In the case of *Bhupeshkar v. Secy. Selection Committee, Sabarmathi Hostel* (FB), it was held thus (1)

> Whether it may be, there is no question of any representation on the part of the Government at any time that the grace marks would be taken into consideration for the purpose of admission to Professional Courses. Consequently, the petitioners cannot invoke either the doctrine of legitimate expectation or the principle of promissory estoppel. Reliance is placed by them on the judgment of the Supreme Court in *Union of India v. Hindustan Development Corporation*, AIR 1994 SC 988. The Court has explained the scope of the doctrine of legitimate expectation. But the ruling does not help the petitioners in the present case. The Court pointed out that if a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well known grounds attracting Article 14 of the Constitution of India, but a claim based on mere legitimate expectation without anything more cannot *ipso facto* give a right to invoke those principles and that it can be one of the grounds to consider, but the Court must lift the veil and see whether the decision is violative of those principles warranting interference. The Court also held that it depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation, must be restricted to the general legal limitation applicable and binding the manner of the future exercise of

administrative power in a particular case. The Court said (at p.1021, para 36):

> The contention that Article 14 of the Constitution of India is violated because of the discrimination between professional colleges and non-professional colleges is without any merit. There is no need to point out that higher studies in Professional Courses, will certainly stand on a different pedestial from that of the non-professional Courses. If a person not eligible is admitted to Professional Courses and is ultimately conferred with a degree or diploma in a Professional Course, it will affect the larger public interest, whereas it may not be so in the case of admission to non-Professional Courses and conferment of non-Professional Degrees on ineligible persons (AIR 1995 Mad. 399).

In the case of *Mogo Nigi* is the Naga land it was held that :

> The argument that the allotment of 1,000 metres each of G.I. pipes to the 5th and 6th respondents who are non-tenderers has been done in exercise of discretion any power of the State is no argument. There is no unfettered discretion in public law. The public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adapt the procedure which is fair play in action. Failure to act fairly and non-arbitrarily in State action and its instrumentalities would amount to an abuse or excess of power culminating in challenging the action or of exposed to judicial review on the ground of arbitrariness. In the instant case the petitioner being the highest bidder had a legitimate expectation of allotting

4000 metres G.I. pipes in favour of the petitioner. This legitimate expectation of the petitioner has been thwarted by the instrumentalities of the state arbitrarily without any cogent or ostensible reason. No doubt, the State or its instrumentalities have some discretion in dealing with contract of commercial transactions or in disposing state largesse but exercise of such discretionary power must be supported with reasons acceptable in fair play.2 (AIR 1995 Gauhati 6)

CHAPTER IV

LEGITIMATE EXPECTATION AND JUDICIAL REVIEW

Having surveyed the definition origin, scope and development of doctrine of legitimate expectation and having compared the same with the doctrine of promissory estoppel it has to be studied now as to how the doctrine of legitimate expectation has been made a basis while scrutinizing the administrative action particularly when such scrutiny is done by the Courts of law under their power of Judicial review.

Judicial review of administrative actions or administrative acts is the sole soul of administrative process. The whole superstructure of control mechanism is built on this foundation. Judicial review in not an appeal process; In Judicial review the Court is basically concerned with the decision making process of the administration; judicial review provides adequate safeguards against arbitrariness, unless resulting in grave prejudice to be reviewed by Court

through the mechanism of judicial review. In India, it is not the function of the Court to act as a super board or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator.

In *Finlay v. Secretary of State for the Home Dept.*[1], it was observed as under:

> "The doctrine of legitimate expectation has an important place in the developing law of judicial review. It is, however, not necessary to explore the doctrine in this case, it is enough merely to note that a legitimate expectation can provide a sufficient interest to enable one who cannot point to the existence of a substantive right to obtain the leave of the Court to apply for judicial review. These two applicants obtained leave. But their submission goes further. It is said that the refusal to accept them from the new policy was an unlawful act on the part of the Secretary of State and that his decision frustrated their expectation. But what was their legitimate expectation? Given the substance and purpose of the legislative provisions governing parole, the most that a convicted prisoner can legitimately expect is that his case will be examined individually in the light of whatever policy the State sees fit to adopt, provided always that the adopted policy is a lawful exercise of the discretion conferred on him by the statute. Any other view would entail the conclusion that the unfettered discretion conferred by the statute on the Minister can in some cases be restricted so as to hamper, or even prevent, changes of policy. Bearing in mind the complexity of the issues which the

1. (1984) 3 All.ER 801.

> Secretary of State has to consider and the importance of the public interest in the administration of parole, I cannot think that Parliament intended the discretion to be restricted in this way."

In Public Law and Politics edited by *Carol Harlow* concluded thus:

> "The confusion and uncertainty at the heart of the concept stems from its origin. It has grown from two separate roots, natural justice or fairness and estoppel, but the stems have become entwined to such an extent that it is impossible to disentangle them. This makes it very difficult to predict how the hybrid will develop in future. This could be regarded as giving the concept a healthy flexibility for the intention behind it is benign; it has been fashioned to protect the individual against administrative action, which is against his interest. On the other hand, the uncertainty of the concept has led to conflicting decisions and conflicting interpretations in the same decision".

However, it is generally accepted and also clear that legitimate expectation being less than right operate in the field of public and not private law and that to some extent such legitimate expectation ought to be protected though not guaranteed.

We find in *Attorney General for New South Wales'* case[1], that the entire case on the doctrine of legitimate expectation has been considered. We also find that on an elaborate and erudite discussion it is held that the Court's jurisdiction to interfere is very

1. 1990 (64) AUS LJR 327

much limited and much less in granting any relief in a claim based purely on the ground of 'legitimate expectation'.

Factual matrix of this case is that the Local Courts Act abolished Courts of Petty Sessions and replaced them by Local Courts. Section 12 of the Act empowered the Governor to appoint any qualified person to be a magistrate in the new Court system. Mr. *Quin*, who had been a Stipendiary Magistrate in-charge of a Court of Petty Sessions under the old system, applied for, but was refused, an appointment under the new system. That was challenged. The challenge was upheld by the appellate Court on the ground that the Selection Committee had taken into account an adverse report on him without giving a notice to him of the contents of the same. In the appeal by the Attorney-General against that order before the High Court, it was argued on behalf of Mr. *Quin* that he had a legitimate expectation that he would be treated in the same way as his former colleagues considering his application on the own merits. In the same case *Mason*, C.J., was of the view that if subordinative protection is to be accorded to legitimate expectations that would encounter the objection of entailing "curial interference with administrative decisions on the merits by precluding the decision maker from ultimately making the decision which he or she considers most appropriate in the circumstances. It was further observed thus :—

> "Some advocates of judicial intervention would encourage the Courts to expend the scope and purpose of judicial review, especially to provide some check on the Executive Government which now a days exercises enormous powers beyond the capacity of the Parliament to supervise effectively. Such advocacy is misplaced. If the Courts were to assume a jurisdiction to review administrative acts or decisions which are "unfair" in the opinion of the Court - not the product of

> procedural fairness, but unfair on the merits - the Courts would be assuming a jurisdiction to do the very thing which is to be done by the repository of an administrative power, namely, choosing among the courses of action upon which reasonable minds might differ."

If judicial review were to trespass on the merits of the exercise of administrative power, it would put its own legitimacy at risk. The risk must be acknowledged for a reason which *Frankfurt*, J., stated in *Trop. v. Dulles*[1] :

> "All power is, in Madison's phrase, 'of an encroaching nature'..... Judicial power is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self-restraint."

If the Courts were to postulates rules obstensibly related to limitations on administrative power but in reality calculated to open to the gate into the forbidden field of the merits of its exercise, the function of the Courts would be exceeded, *R. v. Net Bell Liquors Ltd.*[2]. If the Courts were to define the content of legitimate expectations as something less than a legal right and were to protect what would be thus defined by striking down administrative acts or decisions which failed to fulfil the expectations, the Courts would use the powers which are naturally apt to affect those expectations. To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the Courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is

1. (1958) 356 US 86 at 119
2. (1922) 2 AC 128 at 156

too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law. The capacity judicially to review the exercise of administrative power depend in the last analysis on their fidelity to the rule of law, exhibited by the articulation of general principles.

To lie within the limits of judicial power, the notion of "legitimate expectation" must be restricted to the illumination of what is the legal limitation on the exercise of administrative power in a particular case. Of course, if a legitimate expectation were to amount to a legal right, the Court would define the respective limits of the right and any power which might be exercised to infringe it so as to accommodate in part both the right and the power or so as to accord to one priority over the other. (That is a common place of curial declarations). But a power which might be so exercised as to affect a legitimate expectation falling short of a legal right cannot be truncated to accommodate the expectation.

So long as the notion of legitimate expectation is seen merely as indicating "the factors and kinds of factors which are relevant to any consideration of what are the things which must be done or afforded" to accord procedural fairness to an applicant for the exercise of an administrative power (see per Mathoney JA in Macrae, at 285), the notion can, with one important provision be useful. If, but only if, the power is to created that the according of natural justice conditions its exercise, the notion of legitimate expectation may useful focus attention on the content of natural justice in a particular case, that is, on what must be done to give procedural fairness to a person whose interests might be affected by an exercise of the power. But if the according of natural justice, does not condition the exercise of the power, the notion of legitimate expectation can have no role to play. If it was otherwise, the notion would become a stalking horse for excesses of judicial review".

In this very case, *Brennan*, J., after referring to *Schmidt's* case[1], (supra) observed thus:

> "Again when a Court is deciding what must be done in order to accord procedural fairness in a particular case, it has regard to precisely the same circumstances as those to which the Court might refer in considering whether the applicant entertains a legitimate expectation, but the inquiry whether the applicant entertains a legitimate expectation is superfluous. Again, if an express promise be given or a regular practice be adopted by a public authority, and the promise or practice is the source of a legitimate expectation, the repository is bound to have regard to the promise or practice in exercising the power, and it is unnecessary to inquire whether those factors give rise to a legitimate expectation. But the Court must stop short of compelling fulfillment of the promise or practice unless the statute so requires or the statute permits the repository of the power to bind itself as to the manner of the future exercise of the power. It follows that the notion of legitimate expectation is not the key which unlocks the treasury of natural justice and it ought not unlock the gate which shuts the Court out of review on the merits". The notion of legitimate expectation was introduced at a time when the Courts were developing the common law to suit modern conditions and were sweeping away the unnecessary archaisms of the prerogative writs, but it should not be used to subvert the principle justification for curial intervention of the exercise of administrative power."

1. 1969 (2) Ch 149

In the same case, *Dawson*, J., observed thus :

"It also follows that the required procedure may vary according to the dictates of fairness in the particular case.

"Thus, in order to succeed, the respondent must be able to point to something in the circumstances of the case which would make it unfair not to extend to him the procedure which he seeks. There is no doubt that the respondent had a legitimate expectation of continuing in his position as a stipendiary Magistrate such that it would, apart from statute, have been unfair to remove him from that petition without according him a hearing. If the principle of judicial independence extended to a stipendiary Magistrate, then, no doubt, that would have strengthened his expectation. But the respondent was not removed from his position of stipendiary Magistrate by administrative decision. He was removed by a statute which abolished the position of Stipendiary Magistrate. Not only that, the statute, the Local Courts Act, clearly contemplated that not all the former stipendiary Magistrate would be appointed as Magistrates pursuant to its terms. Accordingly it made provision for those who were not so appointed. It may be possible to deprecate the manner in which the statute removed the respondent from office, but it is not possible to deny its effect. Any unfairness was the product of the legislation which conferred no right upon the respondent to a procedure other than that which is laid down."

Thus it is clear that judicial review is a tool in the hands of the Courts to test the legality or constitutionality of the exercise

of power by an administrative authority. Legality covers constitutionality, as such the same principle of judicial review or judicial control of administrative actions/acts are applicable in India. Some discussion on it is imperative. The Basic Law like the Indian Constitution binds all organs of the State and any violation of it would be tantamount and may be made a subject of litigation in the Courts on which they can make authoritative pronouncements; the bindings of the constitution is not only formal but also material inasmuch that all the basic rights or fundamental rights or some other provisions of the constitutions. In a rule of law for any administrative action there must be a legislative basis, and so long the legislation is consistent with the constitution any administrative action which violates the constitution must also violate the legislation on which it is based since no constitutional legislation can authorise an unconstitutional action. Concisely, if may be put in this way, Constitution is a Supreme lex or grundnorm, constitutional legislation must be in conformity with the Supreme lex, the delegated legislation must be in conformity with the delegated legislation, constitutional legislation, and the supreme lex. There is no dearth of cases where the Courts have invalidated administrative actions as unconstitutional because such actions offended basic rights or fundamental rights like the right to equality Courts main function is to defend as well as safeguard the rights of individuals "against Governmental intrusion".

Administrative action in India common law and administrative act in civil law is the core concept of administrative process, because the administrative process alone can cleanse or discipline the administrative action if it goes astray or if it is astride. Therefore, the judiciary in India has evolved certain principles delineating the core meaning of administrative action. Recently, the Supreme Court of India in the case of *TATA Cellular*[1], observed

1. 1994 (6) SCC 651

that while exercising the power of Judicial review of administrative actions it is the duty of the Court to confine itself to the under-mentioned questions.

1. Whether a decision-making authority exceeds its power?

2. Whether the authority has committed an error of law?

3. Whether the authority has committed a breach of the principles of natural justice?

4. Whether the authority has reached a decision which no reasonable person would have reached?

5. Whether the authority has abused its power?

Therefore, administrative action whether legislative, administrative or quasi-judicial, must not in view of Article 14 be illegal, irrational or arbitrary and must conform to principle of equality. The principle of equality enshrined in Article 14 must guide every State action, whether it be legislative, executive or quasi-judicial. An authority has to act properly for the purpose for which the power is conferred. He must take a decision in accordance with the provisions of the Act and the Statute. He must not be guided by extraneous or irrelevant consideration. He must not act illegally, irrationally or arbitrarily. Any such illegal, irrational or arbitrary action or decision, whether in the nature of a legislative, administrative or quasi-judicial exercise of Power is liable to be quashed being violative of Article 14, as held in the case of *Nelima Mishra v. H.K. Paintal*[1].

In India there is a progressive movement in administrative process *i.e.*, a departure from substantive due process (*A.K. Gopalan's*

1. 1990 (2) SCC 746

case) to procedural due process (*Maneka Gandhi's* case after math). Procedural due process is also popularly known as procedural justice whose main thirst is on the procedure on which the official action is reached as rightly emphasised by Prof. *I.P. Massey* thus, "if the means (procedure) are not trustworthy, the end cannot be just. The procedure may be located either under the statute wide which an administrative body/authority/agency has been created or wide a separate uniform procedural code which every administrative authority may have to follow. Article 14 of the Constitution of India also applies to arbitrary or discriminatory state action and as such violation of natural justice results in arbitrariness which eventually amounts to violation of equality enjoined in Article 14. Violation of equality, therefore, means violation of rule of law as arbitrariness and rule of law are sworn enemies and do not see eye to eye to each other.

Disregard of principles of natural justice by law would amount of violation of fundamental rights guaranteed by Articles 21 and 14 as such it is the rule of law which must define law rather than the law defining the rule of law. Thus it is this procedural due process which has now a constitutional guarantee through which an individual gets protection to his life and liberty. Consequently, no act of the executive which affects the rights of the citizens can be immune from judicial review. If, an individuals rights are violated by the power of the State he shall have access to legal redress. If anything binds the administrative agencies to the law they cannot violate the law. As such it requisite that the legal relationship between the State and citizen be regulated by law.

Discussion of the concepts of proportionality and reasonableness *vis-a-vis* administrative action and administrative discretion is constitutional democracies in imperative because there is intimate as well as close interaction and any discussion minus of either

would be meaningless as well as aimless. Proportionality and reasonableness are mechanisms of check behaviour over administrative actions exercised or performed with discretion. Discretion is an essential element for a just society so that rule of law becomes a rule of life and also a living reality. Discretion powers of the administration and the judicial control of administrative discretion in India and Germany converge on the same point despite divergent constitutional structurizations, because the judicial review of administrative discretion and the various grounds on which it can be based in as much the creation of Courts in Indian common law.

Administrative discretion means choosing from amongst the various available alternatives but with reference to the rules of reason and justice and not according to personal *whims*; power to act in an official capacity in a manner which appears to be just and proper under the circumstances. *Discretio est discernere per legem quid sit justum*; Discretion is to know through law what is just; *Discretio est scire per legem quid sit justum*; Discretion consists in knowing what is just in law. An administrative action is unreasonable as well as unsound if it is coupled with capricious or arbitrary administrative discretion. Courts in India have developed a technique of judicial correction of unreasonable exercise of administrative discretion on the principle of reasonableness or proportionality which means that in any administrative decision and action the end and means relationship must be rational. When the laws gave wide discretionary powers to the administrative authorities the Supreme Court of India authoritatively pronounced that arbitrariness and power to discriminate are writ looming large on the face of the legislative acts and falls within the mischief which Article 14 seeks to prevent. (*Maharashtra State Board of HSSE vs. P.B. Kumar Seth*[1].)

1. 1984 (4) SCC 27

It has to be noticed that every administrative action is subject to control by judicial review under three heads, *viz*; (1) Illegality, when the decision making authority has been guilty of an error of law purporting to exercise a power it does not possess, (2) Irrationality, when decision making authority has acted so unreasonably that no reasonable authority would have made the decision, and (3) Procedural impropriety, when decision making authority has failed in its duty to act fairly.

Thus the Doctrine of Legitimate Expectation can be applied in administrative action when the impugned action suffers from procedural impropriety.

It is further explained, that the doctrine of Legitimate Expectation is significant as it affords a standing to a class of persons who have no right as such the positive and potent content of the doctrine is principle of substantive fairness which is capable of securing justice by making the decision, which fails to consider legitimate expectation as violative of principles of natural justice.

The doctrine is incapable of securing relief for those who have no right as such except when cogent consideration of public interest would justify the decision.

A person who bases his claim on the doctrine of Legitimate Expectation in the first instance must satisfy that, the decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the Courts interfere with a decision. In a given case where there are such facts and circumstances giving rise to a legitimate expectation it would primarily be a question of fact. If these tests are satisfied and if the Court is certified that a case of Legitimate Expectation is made out then

the next question would be whether failure to give an opportunity of hearing before the decision affecting such Legitimate Expectation is taken has resulted in failure of justice and whether on that ground the decision should be quashed. This doctrine is the conscience keeper of Government, as it introduces a shade or morality and fairness which is required to be observed by Government and its authority in all its dealings with the public.

It is a savior for those persons who are likely to be denied relief on the short ground that they have no right to claim relief.

In case of *Navjyoti Group Housing Society* (supra) on a different point It was also ruled that; "A aggrieved person is entitled to invoke judicial review basing his claim on the defect of legitimate expectation if he establishes that a decision of a public authority affected him by depriving him of some benefit or advantage which in the past he had been permitted to continue to enjoy and which he could legitimately expect to be permitted to continue to enjoy rather until he was given reasons for its withdrawal and the opportunity to comment on those reasons or because he had received an assurance that it would not be withdrawn before he had been given an opportunity of making representation against the withdrawal.

For, even where a person claiming some benefit or privilege has no legal right as a matter of private law, he may, just the same, have a legitimate expectation of receiving the benefit or privilege, and if so, Courts will protect its expectations by judicial review as a matter of Public Law. This is so, since, it may be considered more important, as far as fair dealing is concerned, that a promise or undertaking given by an authority as to how it will proceed should be kept, provided such promise or undertaking does not conflict with its statutory duty in the exercise of prerogative power. An

overriding public interest may, of course, dash the Legitimate Expectation of one, but in the absence of which Legitimate expectation of some boon or benefit should always be fulfilled. Such substantive protection may not grant an absolute right to a particular decision, but a duty to act fairly on part of the public authority ensures specific circumstances in which the expectation must be restricted.[1]

The duty to act fairly arises in different forms in different situations but in essence it should reflect non-arbitrariness as in all state actions non-arbitrariness is significant fact. There is no unfettered discretion in public law. A Public authority possesses powers only to use them for public good. This imposes the duty to act fairly and adopt a procedure which is fair play in action, Due observance of this obligation as a part of good administration raises a reasonable or Legitimate Expectation to be treated fairly in its inter-action with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all state actions.

To satisfy this requirement of non-arbitrariness in state action, it is, therefore, necessary to consider and give due weight to the reasonable or Legitimate Expectations of the persons likely to be affected by the decision or else, that unfairness in the exercise of the power may amount to an abuse of the decision in a given case. The decision so made would be exposed to a challenge on the ground of arbitrariness.

Rule of law does not completely eliminate discretion in the exercise of power as it is unrealistic, but provides for control of its exercise by judicial review. The mere reasonable or Legitimate

1. The Province and Protection of Legitimate Expectations of the treatise of the Cambridge Law Journal Vol.47, Part 2 at P.238.

Expectation of a citizen, in such a situation, may by itself be a distinct enforceable right, but failure to consider and given due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of expectation forms the past of Principle of non-arbitrariness, a necessary concomitant of the Rule of Law.

Rule of Reasonableness

Now what is the test of reasonableness which has to be applied in order to determine the validity of Governmental action. It is undoubtedly true, as pointed out by *Patanjali Sastri*, J., in *State of Madras v. V.G. Row*[1], that in forming his own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judge participating in the decision, would play an important part, but even so, the test of reasonableness is not a wholly subjective test and its contours are fairly indicated by the Constitution. The concept of reasonableness in fact pervades the entire constitutional Scheme. The interaction of Articles 14, 19 and 21 analysed in *Maneka Gandhi v. Union of India*[2], clearly demonstrates that the requirement of reasonableness runs like a golden thread through the entire fabric of fundamental rights and, as several decisions of Supreme Court show, this concept of reasonableness finds its positive manifestation and expression in the lofty ideal of social and economic justice which inspires and animates the Directive Principles. It has been laid down by the apex Court in *E.P. Royappa v. State of Tamil Nadu*[3], and *Maneka Gandhi's* case (supra) that Article 14 strikes at arbitrariness in State action and since the principle of reasonableness

1. (1952) SCR 597 : (AIR 1952 SC 196)
2. (1978) 2 SCR 621: (AIR 1978 SC 597)
3. (1974) 2 SCR 348 : (AIR 1974 SC 555)

and rationality, which is legally as well as philosophically an essential element of equality or non-arbitrariness, is projected by this article, it must characterise every Governmental action, whether it be under the authority of law or in exercise of executive power without making of law. So also the concept of reasonableness runs through the totality of Article 19 and requires that restrictions on the freedoms of the citizen, in order to be permissible, must at the best be reasonable. Similarly Article 21 in the full plenitude of its activist magnitude as laid down in *Maneka Gandhi's* case, insists that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law and such procedure must be reasonable, fair and just. The Directive Principles concretise and give shape to the concept of reasonableness envisaged in Articles 14, 19 and 21 and other articles enumerating the fundamental rights. By defining the national aims and the constitutional goals, they set forth the standards or norms of reasonableness which must guide and animate Governmental action. Any action taken by the Government with a view to giving effect to any one or more of the Directive ,Principles would ordinarily, subject to any constitutional or legal inhibitions or other overriding considerations, qualify for being regarded as reasonable, while an action which is inconsistent with or runs counter to a Directive Principle would *prima facie* incur the reproach to being unreasonable.

So also the concept of public interest must as far as possible receive its orientation from the Directive Principles. What according to the founding fathers constitutes the plainest requirement of public interest is set out in the Directive Principles and they embody per excellence the constitutional concept of public interest. If, therefore, any Governmental action is calculated to implement or give effect to a Directive Principle, it would ordinarily, subject to any other overriding considerations, be informed with public interest.

Where any Governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some Directive principles is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property. We have referred to these considerations only illustratively, for there may be an infinite variety of consideration which may have to be taken into account by the Government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Government in taking a particular action, that the Court would have to decide whether the action of the Government is reasonable and in public interest. But one basic principle which must guide the Court in arriving at its determination on this question is that there is always a presumption that the Governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the Court by proper and adequate material. The Court cannot lightly assume that the

action taken by the Government is unreasonable or without public interest because, as we said above, there are a large number of policy considerations which must necessarily weigh with the Government in taking action and therefore the Court would not strike down Governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it would be the plainest duty of the Court under the Constitution to invalidate the Governmental action. This is one of the most important functions of the Court and also one of the most essential for preservation of the rule of law. It is imperative in a democracy governed by the rule of law that Governmental action must be kept within the limits of the law and if there is any transgression, the Court must be ready to condemn it.

It is a matter of historical experience that there is a tendency in every Government to assume more and more powers and since it is not an uncommon phenomenon in some countries that the legislative check is getting diluted, it is left to the Court as the only other reviewing authority under the Constitution to be increasingly vigilant to ensure observance with the rule of law and in this task, the Court must not flinch or falter. It may be pointed out that this Governmental action is unreasonable or lacking in the quality of public interest, is different from that of *mala fides* though it may, in a given case, furnish evidence of *mala fides*. The second limitation on the discretion of the Government in grant of largess is in regard to the persons to whom such largess may be granted. It is no well settled as a result of the decision of Apex Court in *Ramana D. Shetty v. International Airport Authority of India*[1], (supra) that the Government is not free, like an ordinary individual, in selecting the recipients for its largess and it

1. (AIR 1979 SC 1628)

cannot choose to deal with any person it pleases in its absolute and unfettered discretion. The law is now well established that the Government need not deal with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure. Where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. The Governmental action must not be arbitrary or capricious, but must be based on some principle which meets the test of reason and relevance. This rule was enunciated by the Court as a rule of administrative law and it was also validated by the Court as an emanation flowing directly from the doctrine of equality embodied in Article 14. The Court referred to the activist magnitude of Article 14 as evolved in *E.P. Royappa v. State of Tamil Nadu*[1], (supra) and *Maneka Gandhi's* case[2], (supra) and observed that it must follow "as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with anyone, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground". This decision has reaffirmed the principle of reasonableness and non-arbitrariness in Governmental action which lies at the core of our entire constitutional scheme and structure.

1. (AIR 1978 SC 555)
2. (AIR 1978 SC 597)

Substantive Legitimate Expectations

The principle of substantive legitimate expectation, that is, expectation of favourable decision of one kind of another has been accepted as part of the English Law in several cases (*De Smith* Administrative Law, 5th Edn.) (13.030): According to *Wade* the doctrine of substantive legitimate expectation has been "rejected" by the High Court of Australia in *Attorney General for N.S.W.V. Quin*. The principle was also rejected in Canada in reference *Re Canada Assistance Plan*[1], but favoured in *Ireland, Cannon v. Minister for the Marine*[2]. The European Court goes further and permits the Court to apply proportionately and go into the balancing of legitimate expectation and the public interest.

Even so, it has been held under English law that the decision maker's freedom to change policy in public interest cannot be fettered by the application of the principle of substantive legitimate expectation. Observations in earlier cases project a more inflexible rule than is in vogue presently. In *Re Findlay*, (supra) the House of Lords rejected the plea that he altered policy relating to parole for certain categories of prisoners required prior consultation with the prisoner, Lord *Scarman* observed:

> "But what was their legitimate expectation given the substance and purpose of the legislative provisions governing parole, the most that a convicted prisoner can legitimately expect is that his case be examined individually in the light of whatever policy the Secretary of State sees fit to adopt provided always that he adopted policy is a lawful exercise of the direction conferred by statute upon the minister can in some cases be

1. 1991 (83) DLR 297(4)
2. 1991 (1) IR 82

restricted so as to hamper, or even to prevent changes of policy.

To a like effect are the observations of Lord *Diplock* in *Hughes v. Department of Health and Social Security*[1].

> "Administrative policies may change with changing circumstances, including changes in the political complexion of Governments. The liberty to make such changes in some thing that is inherent in our constitutional form of Government. (See in this connection Mr. *Dotans's* article).
>
> "Why administrators should be bound by their policies" 1997 (Vol.17) Oxford Journal Of legal Studies. But today the rigidity of the above decisions appears to have been some what relaxed to the extent of application of Wednesbury rule.

The above of cases examination shows that the doctrine of legitimate expectation in the substantive sense has been accepted as part of our law and that the decision maker can normally be compelled to give effect to his representation in regard to the expectation base on previous or past conduct unless some overriding public interest comes in the way. The judgement in *Raghunathans* case (supra) requires that reliance must have been placed on the said representation and the represent must have thereby suffered detriment.

The more important aspect, in our opinion, is whether the decision maker can sustain the change in policy by respect to *Wednesbury* principles of rationality or whether the Court can go

1. 1985 AC 776

into the question whether decision maker has properly balanced the legitimate expectation as against the need for a change. In the later case the Court would obviously be able to go into the proportionality of the change.

The result is that change in policy can defeat a substantive legitimate expectation if it can be justified on *Wednesbury* reasonableness.

In the light of the above discussion it is clear that legitimate expectation cannot preclude legislation as held in the case of *R. vs. Ministry of Agriculture Fisheries and Food Ltd.*, as referred supra.

This analysis on the doctrine of legitimate expectations and its applications in administrative action is classical but certainly not exhaustive.

The doctrine of legitimate expectations in essence imposes a duty to act fairly and the principles that under this doctrine a person would be entitled to a right of fair hearing even if a person has no legal right to claim some benefits or privilege he may have legitimate expectations of receiving such benefits and if so his expectations will be protected by the Court under its power of judicial review.

CHAPTER V

LEGITIMATE EXPECTATION AND PROMISSORY ESTOPPEL

Before proceeding to discuss the application of legitimate expectation in administrative action we shall examine as to what extent the doctrine differs from the doctrine of promissory estoppel and whether they over lap each other. Lets now trace out the origin of promissory estoppel so as to fully understand its scope and to differentiate it from legitimate expectation. Though the origin of the doctrine of promissory estoppel may be found in *Hughes v. Metropolitan Rly. Co.*[1], and *Birmingham and District Land Co. v. London and North Western Rly. Co.*[2], it was only in 1947 that it was rediscovered by Mr. Justice *Denning*, as he then was, in his celebrated judgment in *Central London property Trust Ltd. v. High Trees House Ltd.*[3] This doctrine has been variously called 'promissory estoppel' equitable estoppel, quasi-estoppel and new estoppel. It is a principle evolved by equity to avoid injustice and though commonly named 'Promissory Estoppel', it is, as we shall presently point out, neither in the realm of contract nor in the realm of estoppel. It is interesting to trace the evolution of this doctrine in England and to refer to some of the English decisions in order to appreciate the true scope and ambit of the doctrine particularly because it has been the subject of considerable recent development and is steadily expanding.

Basis of Doctrine of Estoppel

The basis of this doctrine is the interposition of equity. Equity has always, true to form, stepped into mitigate the rigours of strict

1. (1877) 2 AC 439.
2. (1888) 40 Ch D 268.
3. (1956) 1 All ER 256.

law. The early cases did not speak of this doctrine as estoppel. They spoke of it as raising an equity. Lord Cairns stated the doctrine in its earliest form it has undergone considerable development since then in the following words in *Hughes v. Metropolitan Rly. Co.* (supra) :

> "It is the first principle upon which all Courts of Equity proceed, that if parties who have entered into definite and distinct terms involving certain legal results ..... afterwards by their own act or with their own consent enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or will be kept in suspense, or held in abeyance, the person who otherwise might have enforced those rights will not be allowed to enforce them where it would be inequitable having regard to the dealings which have thus taken place between the parties."

This principal of equity laid down by Lord Cairns made sporadic appearances in stray cases now and then but it was only in 1947 that it was disinterested and restated as a recognised doctrine by Mr. Justice Denning in the High Trees cases. The facts in that case were as follows: The plaintiff leased to the defendants a subsidiary of the plaintiffs, in 1937 a block of flats for 99 years at a rent of Rs.1,250/- from the beginning of the term. By the beginning of 1945 the conditions had improved and tenants had been found for all the flats and the plaintiffs, therefore, claimed the full rent of the premises from the middle, of that year. The claim was allowed because the Court took the view that the period for which the full rent was claimed fell outside the representation, but Mr. Justice *Denning*, as he then was, considered Obiter whether the plaintiffs could have recovered the covenanted rent for

the whole period of the lease and observed that in equity the plaintiffs could have recovered the covenanted rent for the whole period of the lease and observed that in equity the plaintiffs could not have been allowed to act inconsistently with their promise on which the defendants had acted. It was pressed upon the Court that according to the well settled law as laid down in *Jorden v. Money*[1], no estoppel could be raised against the plaintiffs since the doctrine of estoppel by representation is applicable only to representations as to some state of facts alleged to be at the time actually in existence and not to promises *de futuro* which, if binding at all, must be binding only as contracts and here there was no representation of an existing state of facts by the plaintiffs but it was merely a promise or representation of intention to act in a particular manner in the future.

Mr. Justice *Denning*, however, pointed out:

> "The law has not been standing still since *Jorden v. Money* (supra). There has been a series of decisions over the last fifty years which, although they are said to be cases of estoppel are not really such. They are cases in which a promise was made which was intended to create legal relations and which, to the knowledge of the person making the promise was going to be acted on by the person to whom it was made, and which was in fact so acted on. In such cases the Courts have said that the promise must be honoured."

The principle formulated by Mr. Justice *Denning* was, to quote his own words, "that a promise intended to be binding, intended to be acted on and in fact acted on, is binding so far as

1. (1854) 5 HLC 185

its terms properly apply, "Now from the decisions in the cases of *Hughes v. Metropolitan Rly. Co.*[1], and *Birmingham and District Land Co. v. London and North Western Rly Co.*[2], Mr. Justice *Denning* drew inspiration for evolving this new equitable principle, it is clear that those were clearly cases where the principle was applied as between parties who were already bound contractually one to the other. In *Hughes v. Metropolitan Rly. Co.* (supra) the plaintiff and the defendant were already bound in contract and the general principle stated by Lord *Cairns*, L.C. was :

> "If parties who have entered into definite and distinct terms involving certain legal results afterwards ..... enter upon a course of negotiations".

Ten years later *Bowen*, L.J. also used the same terminology in *Birmingham and District Land Co. v. London and North Western Rly. Co.* (supra) and held that:-

> "If persons who have contractual rights against others induce by their conduct those against whom they have such rights to believe .... These two decisions might, therefore, seem to suggest that the doctrine of promissory estoppel is limited in its operation to cases where the parties are already contractually bound and one of the parties induces the other to believe that the strict rights under the contract would not be enforced. But we do not think any such limitation can justifiably be introduced to curtail the width and amplitude of this doctrine. We fail to see why it should be necessary to the applicability of this

1. 1877 (2) AC 439
2. 1880 ILR 5 Cal. 669

doctrine that there should be some contractual relationship between the parties. In fact *Donaldson*, J. pointed in *Durham Fancy Goods Ltd. v. Jackson Ltd.*, (1968) 2 All ER 987, that:

"Lord Cains in his enunciation of the principle assumed a pre-existing contractual relationship between the parties, but this does not seem to me to be essential, provided that there is a give rise to liabilities and penalties". But even this limitation suggested by *Donaldson*, J., that there should be a pre-existing legal relationship which could in certain circumstances give rise to liabilities and penalties is not warranted and it is significant that the statement of the doctrine by Mr. Justice *Denning* in the High Trees Case does not contain any such limitation. The learned Judge has consistently refused to introduce any such limitation in the doctrine and while sitting in the Court of Appeal, he said in so many terms, in *Evenden v. Guildford City Association Football Club Ltd.*, (1975) 3 All ER 269: "Counsel for the appellant referred us, however, to the second edition of Spencer Bower's book on Estoppel by Representation (1966) pp. 340-342) by Sir *Alexandar Turner*, a Judge of the New Zealand Court of Appeal. He suggests the promissory estoppel is limited to cases where parties are already bound contractually one to the other. I do not think it is so limited: see *Durham Fancy Goods Ltd. v. Jackson Michael (Fancy Goods) Ltd.* It applies whenever a representation is made, whether of fact or law, present or future, which is intended to be binding, intended to induce a person to act on it and he does act on it".

The observation of Lord *Denning* clearly suggests that the parties need not be in any kind of legal relationship before the transaction from which the promissory estoppel takes its origin. The doctrine would seem to apply even where there is no pre-existing legal relationship between the parties, but the promise is intended to create legal relations or affect a legal relationship which will arise in future, as mentioned in *Halsbury's* Laws of England 4th Ed. p.1018, Note 2 to para 1514. Of course it must be pointed out in fairness to Lord *Denning* that he made it clear in the High Trees case that the doctrine of promissory estoppel cannot find a cause of action in itself, since it can never do away with the necessity of consideration in the formation of contract, but he totally repudiated in Evenderis case (the necessity of pre-existing relationship between the parties) and pointed out in *Crabb v. Arun District Council*[1], that equity will in a given case where justice and fairness demand, prevent a person from insisting on strict legal rights even where they arise not under any contract, but on his own title deeds or under statute. The true principle of promissory estoppel, therefore, seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective whether there is any pre-existing relationship between the parties or not.

It may be pointed out that in England the law has been well settled for a long time, though there is some indication of a

1. (1975) 3 All ER 865

contrary trend to be found in recent juristic thinking in that country, that promissory estoppel cannot itself be the basis of an action. It cannot found a cause of action: it can only be a shield and not a sword. This narrow approach to a doctrine which is otherwise full of great potentialities is largely the result of an assumption, encouraged by its rather misleading nomenclature, that the doctrine is a branch of the law of estoppel. Since estoppel has always been traditionally a principle invoked by way of defence, the doctrine of promissory estoppel has also come to be identified as a measure of defence. The ghost of traditional estoppel continues to haunt this new doctrine: formulating and applying this new equity in the *High Trees* case[1], Lord *Denning* added a qualification that though in the circumstances set out, the promise would undoubtedly be held by the Courts to be binding on the party making it, not understanding that under the old common law it might be difficult to find any consideration for it, "the Courts have not gone so far as to give a cause of action damages for the breach of such a promise, but they have refused to allow the party making it to act inconsistently with it".

Lord *Denning* also pointed out in *Combe's* case[2], that "Much as I am inclined to favour the principle stated in the *High Tress* case, it is important that it should not be stretched too far, lest it should be endangered. That principle does not create new causes of action where none existed before. It only prevents a party from insisting upon his strict legal rights, when it would be unjust to allow him to enforce them, having regard to the dealings which have taken place between the parties .....". So also said *Buckley*, J., in the case of *Beesly v. Hallwood Estates Ltd.*[3]

1. 1956-1 All ER 256
2. (1951) 2 KB 215
3. (1960) 2 All ER 314:

"The doctrine may afford a defence against the enforcement or otherwise of enforceable rights: it cannot create a cause of action".

It is, however, necessary to make it clear that though this doctrine has been called in various judgments and text books as promissory estoppel and it has been variously described as 'equitable estoppel', quasi-estoppel' and 'new estoppel' it is not really based on the principle of estoppel, but it is a doctrine evolved by equity in order to prevent injustice where a promise is made by a person knowing that it would be acted on by the person to whom it is made and in fact it is so acted on and it is inequitable to allow the party making the promise to go back upon it. Lord *Denning* himself observed in the High Trees' case, expressly making a distinction between ordinary estoppel and promissory estoppel, that cases like the one before him were"..... not cases of estoppel in the strict sense. They are really promises, promises intended to be binding, intended to be acted upon and in fact acted upon". *Jenkins*, C.J., also pointed out in *Municipal Corporation of Bombay v. Secy. of State*[1], that the "doctrine is often treated as one of estoppel, but I doubt whether this is correct, though it may be a convenient name to apply". The doctrine of promissory estoppel need not, therefore, be inhibited by the same limitation as estoppel in the strict sense of the term. It is an equitable principle evolved by the Courts for doing justice and there is no reason why it should be given only a limited application by way of defence.

It may be noted that even Lord Denning recognised in *Crabb v. Arun District Council*[2], that "there are estoppels and estoppels. Some do give rise to a cause of action. Some don't and added

1. (1905) ILR 29 580 at p.607
2. (1975) 3 All ER 865

that "in the species of estoppel called "proprietary estoppel", it does give rise to a cause of action".

The learned Law Lord, after quoting what he had said in *Moorgate Mercantile Co. Ltd. v. Twitchings*[1], namely that the effect of estoppel on the true owner may be that:

> "his own title to the property, be it land or goods, has been held to be limited or extinguished, and new rights and interests have been created therein. And this operates by reason of his conduct - what he has led the other to believe - even though he never intended it", proceeded to observe that "the new rights and interests, so created by estoppel, in or over land, will be protected by the Courts and in this way give rise to a cause of action". The Court of Appeal in this case allowed Grabb a declaration of a right of access at point B over the verge on to Mill Park Road and a right of way along that road to Hook Lane" on the basis of an equity arising out of the conduct of the Arun District Council.

Of course, Spencer Bower and Turner, in their Treatise on "The Law Relating to Estoppel by Representation' have explained this decision on the basis that it is an instance of the application of the doctrine of estoppel by encouragement or acquiescence or what has now come to be known as proprietary estoppel which, according to the learned author, forms an exception to the rule that estoppel cannot found a cause of action. But if we look at the judgments of Lord *Denning* and *Scarman*, L.J., it is apparent that they did not base their decision on any distinctive

1. (1975) 3 WLR 286

feature of proprietary estoppel but proceeded on the assumption that there was no distinction between promissory and proprietary estoppel so far as the problem before them as concerned. Both the learned Law Lord and the learned Lord Justice applied the principle of Promissory estoppel in giving relief to Crabb. Lord Denning, referring to what Lord Cairns had said in *Hughes v. Metropolitan Rly. Co.*, (1877) 2 AC 439 at p.448 a decision from which inspiration was drawn by him for evolving the doctrine of promissory estoppel in the *High Trees'* case (1956-1 All ER 256) observed that :

"..... it is the first principle on which all Courts of equity proceed ..... that it will prevent a person from insisting on his strict legal rights - whether arising under a contract, or on his title deeds, or by statute- when it would be inequitable for him to do so having regard to the dealings which have taken place between the parties". The decision in the High Trees' case was also referred to by the learned Law Lord and so also other cases supporting the doctrine of promissory estoppel. *Scarman*, L.J., also observed that in pursuing the inquiry as to whether there was an equity in favour of Crabb, he did not find helpful "the distinction between promissory and proprietary estoppel".

He added that this "distinction may indeed be valuable to those who have to teach or expound the law, but I do not think that, in solving the particular problem raised by a particular case, putting the law into categories is of the slightest assistance". It does appear to us that this was a case decided on the principle of promissory

estoppel. The representative of the Arun District Council clearly gave assurance to Crabb that they would give him access to the new road at point B to serve the southern portion of his land and the Arun District Council in fact constructed a gate at point B, and in the belief induced by this representation that he would have right to access to the new road at point B Crabb agreed to sell the northern portion of his land without reserving for himself as owner of the southern portion any right of way over the northern portion for the purpose of access to the new road. This was the reason why the Court raised an equity in favour of Crabb and held that the equity would be satisfied by giving Crabb 'the right of access at point B free of charge without paying anything for it". Arun District Council was held bound by its promise to provide Crabb access to the new road at point B and this promise was enforced against Arun District Council at the instance of Crabb. The case was one which fell within the category of promissory estoppel and it may be regarded as supporting the view that promissory estoppel can be the basis of a cause of action. It is possible that the case also came within the rule of proprietary estoppel enunciated by Lord Kingsdown in *Ramsden v. Dyson*, (1866) 1 HL 129:

"The rule of law applicable to the case appears to me to be this : If a man, under a verbal agreement with a landlord for a certain interest in land, or what amounts to the same thing, under an expectation, created or encouraged by the landlord that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and upon the faith of such

> promise or expectation, with the knowledge of the landlord, and without objection by him, lays out money upon the land, a Court of equity will compel the landlord to give effect to such promise or expectation", and Spencer Bower and Turner may be right in observing that was perhaps the reason why it was held that the promise made by Arun District Council gave rise to a cause of action in favour of Crabb. But, on what principle, one may ask, is the distinction to be sustained between promissory estoppel and proprietary estoppel in the matter of enforcement by action. If proprietary estoppel can furnish a cause of action, why should promissory estoppel not? There is no qualitative difference between the two. Both are the offsprings of equity and if equity is flexible enough to permit proprietary estoppel to be used as a cause of action, there is no reason in logic or principle why promissory estoppel should also not be available as a cause of action, if necessary to satisfy the equity.

But perhaps the main reason why the English Courts have been reluctant to allow promissory estoppel to found a cause of action seems to be the apprehension that the doctrine of consideration would otherwise be completely displaced. There can be no doubt that the decision of Lord *Denning* in the *High Trees'* case[1], represented a bold attempt to escape from the limitation imposed by the House of Lords in *Jorden v. Money*[2], (supra) and it rediscovered an equity which was long embedded beneath the crust of the old decisions in *Hughes v. Metropolitan Rly. Co.*[3], (supra) and *Birmingham and District Land Co. v.*

1. (1956-1 All ER 256)
2. (1854) 5 HLC 185
3. (1877) 2 AC 439

London and North Western Rly. Co.[1], (supra) and brought about a remarkable development in the law with a view to ensuring its approximation with justice, an ideal for which the law has been constantly striving. But it is interesting to note that Lord *Denning* was not prepared to go further, as he thought that having regard to the doctrine of consideration which was so deeply entrenched in the jurisprudence of the country, it might be unwise to extend promissory estoppel so as to found a cause of action and that is why he uttered a word of caution in *Combe v. Combe*[2], (supra) that the principle of promissory estoppel should not be stretched too far, lest it should be endangered'. The learned Law Lord proceeded to add:

> "Seeing that the principle never stands alone as giving a cause of action in itself, it can never do away with the necessity of consideration when that is an essential part of the cause of action. The doctrine of consideration is too firmly fixed to be overthrown by a side wind". Spencer Bower and Turner also point out at page 384 of their Treatise (3rd Edn.) that it is difficult to see how in a case of promissory estoppel a promise can be used to found a cause of action without according to it operative contractual force and it is for this reason that :
>
> "a contention that a promissory estoppel may be used to found a cause of action must be regarded as an attack on the doctrine of consideration."

The learned authors have also observed at page 387 that :

> "to give a plaintiff a cause of action on a

1. (1888) 40 Ch. D 268
2. (1951) 2 KB 215

> promissory estoppel must be little less than to allow an action in contract where consideration is not shown".

The modern attitude towards the doctrine of consideration is, however, changing fast and there is considerable body of juristic thought which believes that this doctrine is 'something of an anachronism'. Prof. Holdsworth pointed out long ago in his History of English Law that :

> "the requirements of consideration in its present shape prevent the enforcement of many contracts, which ought to be enforced, if the law really wishes to give effect to the lawful intentions of the parties to them; and it would prevent the enforcement of many others, if the Judges had not used their ingenuity to invest considerations. But the invention of considerations, by reasoning which is both devious and technical, adds to the difficulties of the doctrine".

Lord Wright remarked in an article published in 49 Harvard Law Review, 1225 that the doctrine of consideration in its present form serves no practical purpose and ought to be abolished. Sir *Federick Pollock* also said in his well known work on "Genius of Common Law", p.91 that the application of the doctrine of consideration 'to various unusual but not unknown cases has been made subtle and obscured by excessive dialectic refinement'. Equally strong is the condemnation of this doctrine in judicial pronouncements. Lord *Dunedin* observed in the well known case of *Dunlop Pneumatic Tyre Co.*[1] :

> "I confess that this cases is to my mind apt to nip any budding affection which one might have

1. 1915 AC 847

had for the doctrine of consideration. For the effect of that doctrine in the present case it to make it possible for a person to snap his fingers at a bargain deliberately made, a bargain not in itself unfair, and which the person seeking to enforce it has a legitimate interest to enforce".

The doctrine of consideration has also received severe criticism at the hands of Dean Roscoe Found in the United States. The reason is that promise as a social and economic institution becomes of the first importance in a commercial and industrial society and it is an expression of the moral sentiment of a civilized society that a man's word should be 'as good as his bond' and his fellowmen should be able to rely on the one equally with the other. That is why the Law Revision Committee in England in its Sixth Report made as far back as 1937 accepted Prof. *Holdsworth's* view and advocated that a contract should exist if it was intended to create or affect legal relations and either consideration was present or the contract was reduced to writing. This recommendation, however, did not fructify into law with the result that the present position remains what it was. But having regard to the general opprobrium to which the doctrine of consideration has been subjected by eminent jurists, we need not be unduly anxious to protect this doctrine against assault of erosion nor allow it to dwarf or stultify the full development of the equity of promissory estoppel or inhibit or curtail its operational efficacy as a juristic device for preventing injustice.

It may be pointed out that the Law Commission of India in its 13th Report adopted the same approach and recommended that, by way of exception to Section 25 of the Indian Contract Act, 1925, a promise express or implied, with the promisee, should be enforceable, if the promisee has altered his position to his detriment in reliance on the promise. We do not see any valid

reason why promissory estoppel should not be allowed to found a cause of action where, in order to satisfy the equity, it is necessary to do so.

We may point out that even in England where the Judges, apprehending that if a cause of action is allowed to be founded on promissory estoppel it would considerably erode, if not completely overthrow, the doctrine of consideration, have been fearful to allow promissory estoppel to be used as a weapon of offence, it is interesting to find that promissory estoppel has not been confined to a purely defensive role. Lord *Denning* himself said in *Combe v. Combe* (supra) that promissory estoppel 'may be a part of a cause of action', though 'not a cause of action itself. In fact there have been several cases where promissory estoppel has been successfully invoked by a party to support his cause of action, without actually founding his cause of action exclusively upon it. Two such cases are: *Robertson v. Minister of Pensions*[1], and *Evenden v. Guildford City Association Football Club Ltd.*[2]. The English Courts have thus gone a step forward from the original position when promissory estoppel was regarded merely as a passive equity and allowed it to be used as a weapon of offence to a limited extent as a part of the cause of action, but still the doctrine of consideration continues to inhibit the judicial mind and that has thwarted the full development of this new equitable principle and the realisation of its vast potential as a juristic technique for doing justice.

It is true that to allow promissory estoppel to found a cause of action would seriously dilute the principle which requires consideration to support a contractual obligation, but that is no reason why this new principle, which is a child of equity brought into the world with a view to promoting honesty and good faith

1. (1949) 1 KB 227
2. (1975) 3 All ER 269

and bringing law closer to justice, should be held in fetters and not allowed to operate in all its activist magnitude, so that it may fulfil the purpose for which it was conceived and born. It must be remembered that law is not a mausoleum. It is not an antique to be taken down, dusted, admired and put back on the shelf. It is rather like an old but vigorous tree, having its roots in history, yet continuously taking new grafts and putting out new sprouts and occasionally dropping dead wood. It is essentially a social process, the end product of which is justice and hence it must keep on growing and developing with changing social concepts and values. Otherwise, there will be estrangement between law and justice and law will cease to have legitimacy. It is true, as pointed out by Mr. Justice *Holmes*, that continuity with the past is a historical necessity but it must also be remembered at the same time, as pointed out by Mr. Justice *Cardono* that 'conformity is not to be turned into a fatish'.

American Law

We may profitably consider at this stage what the American law on the subject is, because in the United States the law has always shown a greater capacity for adjustment and growth than elsewhere. The doctrine of promissory estoppel has displayed remarkable vigour and vitality in the hands of American Judges and it is still rapidly developing and expanding in the United States. It may be pointed out that this development does not derive its origin in any way from the decision of Lord *Denning* in the *High Trees'* case (supra) but ante-dates this decision by a number of years; perhaps it is possible that it may have helped to inspire that decision.

It was long before the decision in the *High Trees'* case that the American Law Institute's Re-statement of the Law of Contracts came out with the following proposition in Article 90:

> "A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee, and which does induce such action or forbearance, is binding if injustice can be avoided only by enforcement of the promise".

This proposition was explained and elucidated by several illustrations given in the article and one of such illustrations was as follows:

> "A promises B to pay him an annuity during B's life. B thereupon resigns a profitable employment, as a expected that he might. B receives the annuity for some years, in the meantime becoming disqualified from again obtaining good employment, A's promise is binding.
>
> "A number of Courts have upheld the validity of charitable subscriptions on the theory of promissory estoppel holding that while a mere promise to contribute is unenforceable for want of consideration, if money has been expanded or liabilities have been incurred in reliance on the promise so that non-fulfillment will cause injury to the payee, the donor is estopped to assert the lack of consideration, and the promise will be enforced".

Chief Justice *Cardozo*, presiding over the Court of Appeals of the State of New York, explained the ratio of these decisions in the same terms in *Alleghany College v. National Chautaugus Country Bank* :

There are also numerous cases where the doctrine of promissory estoppel has been applied against the Government where the interest of justice, morality and common fairness clearly dictated such a course. We shall refer to these cases when we discuss the applicability of the doctrine of equitable estoppel against the Government. Suffice it to state for the present that the doctrine of promissory estoppel has been taken much further in the United States than in English and Common wealth jurisdictions and in some States at least, it has been used to reduce, if not to destroy, the prestige of consideration, as an essential of valid contract. As mentioned in Spencer Bower and Turner's Estoppel by Representation (2d) page 358.

We now go on to consider whether, and if so to what extent is the doctrine of promissory estoppel applicable against the Government. So far as the law in England is concerned, the position cannot be said to be very clear *Rowlatt* J., in an early decision in *Reedriaktiebolaget Amphitrite v. R.*[1], held that an undertaking given by the British Government to certain neutral ship owners during the First World War that if the ship owners sent particular ship to the United Kingdom with a specified cargo, she shall not be detained, was not enforceable against the British Government in a Court of law and observed that his main reason for taking this view was that:

> "..... it is not competent for the Government to fetter its future executive action, which must necessarily be determined by the needs of the community when the question arises. It cannot by contract hamper its freedom of action in matters which concern the welfare of the State".

This observation has however not been regarded by jurists

1. (1921) 3 KB 500

as laying down the correct law on the subject since it is "very wide and it is difficult to determine its proper scope". Anson's English Law of Contract, 22 Ed. 174.

The doctrine of executive necessity propounded by *Rowlatt*, J., was in fact disapproved by *Denning*, J., (as he then was) in *Robertson v. Minister of Pensions*[1], (supra) where the learned Judge said:

> "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.
>
> That doctrine was propounded by *Rowlatt*, J., in Rederiaktiebolaget *Amphitits v. R.*, but it was unnecessary for the decision because the statement there was not a promise which was intended to be binding but only an expression of intention, *Rowlatt*, J., seems to have been influenced by the cases on the right of the Crown to dismiss its servants at pleasure, but those cases must now all be read in the light of the Judgment of Lord *Atkin* in *Reilly v. R.*, (1934 AC 176, 179) - In my opinion the defence of executive necessity is of limited scope. It only avails the Crown where there is an implied term to that effect or that is the true meaning of the contract".

It is true that the decision of *Denning*, J., in this case was overruled by the House of Lords in *Howell v. Falmouth Boat*

1. (1949-1 KB 227)

Construction Co. Ltd.[1], but that was on the ground that the doctrine of promissory estoppel cannot be invoked to "bar the Crown from enforcing a statutory prohibition or entitle the subject to maintain that there has been no breach of it".

The decision of the House of Lords did not express any disapproval of the applicability of the doctrine of promissory estoppel against the Crown nor did it overrule the view taken by *Denning*, J., that the Crown cannot escape its obligation under the doctrine of promissory estoppel by 'praying in aid the doctrine of executive necessity'. [The statement of the law by *Denning*, J. may, therefore, still be regarded as holding the field and it may be taken to be a judicially favoured view that the Crown is not immune from liability under the doctrine of promissory estoppel.

The Courts in America for a long time took the view that the doctrine of promissory estoppel does not apply to the Government but more recently the Courts have started re-treating from that position to a sounder one, namely, that the doctrine of promissory estoppel may apply to the Government when justice so requires. The second edition of American jurisprudence brought out in 1966 in paragraph 123 points out that:

> "equitable estoppel will be involved against the State when justified by the facts", though it does warn that this doctrine" should not be lightly invoked against the State". Later in the same paragraph it is stated that:
>
> "as a general rule, the doctrine of estoppel will not be applied against the State in its Governmental, public or sovereign capacity", but a qualification is introduced that promissory

1. 1951 AC 837

> estoppel may be applied against the State even in its governmental, public or sovereign capacity if "its application is necessary to prevent fraud or manifest injustice". Since 1966 there is an increasing trend towards applying the doctrine of promissory estoppel against the State and the old law that promissory estoppel does not apply against the Government is definitely declining. There have been numerous cases in the State Courts where it has been held that promissory estoppel may be applied even against the Government in its governmental capacity where the accommodation of the needs of justice to the needs of effective Government so requires.

The protagonists of the view that promissory estoppel cannot apply against the Government or a public authority seek to draw inspiration from the majority decision of the United States Supreme Court in *Federal Cerop Insurance Corporation v. Merrill*[1]. But we do not think that decision can be read as laying down the proposition that the doctrine of promissory estoppel can never be invoked against the Government.

"It is too late in the day to urge that the Government is just another private litigant, for purposes of charging it with liability, whenever it takes over a business therefore conducted by private ventures.... Whatever the form in which the Government functions, anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority ..... and this is so even though as here, the agent himself may have been unaware of the limitation upon his authority. "Men must turn square corners when they deal with the

1. (1947) 332 US 380 = 92 L. Ed.10

Government", does not reflect a callous outlook. It merely expresses the duty of all Courts to observe the conditions defined by Congress for charging the public treasury".

There has so far not been any decision of the Supreme Court of the United States taking the view that the doctrine of promissory estoppel cannot be invoked against the Government. The trend in the State Courts, of late, has been strongly in favour of the application of the doctrine of promissory estoppel against the Government and public bodies "where interests of justice, morality and common fairness clearly dictate that course". It is being increasingly felt that:

> "that the Government ought to set a high standard in its dealings and relationships with citizens and the word of a duly authorised Government agent, acting within the scope of his authority, ought to be as good as a Government bond".

Of course, as pointed out by the United States Court of Appeals, Third Circuit in *Valsonavich v. United States*[1], the Government would not be estopped "by the acts of its officers and agents who without authority enter into agreements to do what the law does not sanction or permit" and "those dealing with an agent of the Government must be held to have notice of limitations of his authority" as held in *Merrill's* case. This is precisely what the House of Lords also held in England in *Howell v. Falmouth Boat Construction Co., Ltd.*[2], (supra) where Lord Simonds stated the law to be:

> "The illegality of an act is the same whether or not the actor has been misled by an assumption

1. 335 FR 2d 96
2. 1951 AC 837

of authority on the part of a Government officer however high or low in the hierarchy- The question of whether the character of an act done in face of a statutory prohibition is affected by the fact that it has been induced by a misleading assumption of authority. In my opinion the answer is clearly no". But if the acts of remissions of the officers of the Government are within the scope of their authority and are not otherwise impermissible under the law, they "will work estoppel against Government".

Indian Law

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 fullness 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*[1].

The facts of this last mentioned case in *Municipal Corporation of Bombay v. Secy. of State*[2], are a little interesting and it would be profitable to refer to them. The Government of Bombay, with

1. (1880) ILR 5 Cal. 669.
2. 1905 I.L.R. 29 Bom. p.580

a view to constructing an arterial road, requested the Municipal Commissioner to remove certain fish and vegetable markets which obstructed the construction of the proposed road. The Municipal Commissioner replied that the markets were vested in the Corporation of justices but that he was willing to vacate certain Municipal stables which occupied a portion of the proposed site, if the Government would rent other land mentioned in his letter, to the Municipality at a nominal rent, the Municipality undertaking to bear the expenses of levelling the same and permit the Municipality to erect on such land "stables of wood and iron which rubble foundation to be removed at six months' notice on other suitable ground being provided by Government". The Government accepted the suggestion of the Municipal Commissioner for a site for stabling on the terms set out above and the Municipal Commissioner thereafter entered into possession of the land and constructed stables, workshops, and chawls on the same at considerable expense. Twenty four years later the Government served a notice on the Municipal Commissioner determining the tenancy and requesting the Municipal Commissioner to deliver possession of the land within six months and in the meantime to pay rent at the rate of Rs.12,000/- per month. The Municipal Corporation declined to hand over possession of the land or to pay the higher rent and the Secretary of State for India thereupon filed a suit against the Municipal Corporation for a declaration that the tenancy of the Municipality stood determined and for an order directing the Municipality to pay rent at the rate of Rs.12,000 per month. The suit was resisted by the Municipal Corporation on the ground that the events which had transpired had created an equity in favour of the Municipality which afforded an answer to the claim of the Government to eject the Municipality. This defence was upheld by a Division Bench of the High Court and *Jenkins*, C.J. speaking on behalf of the Division Bench, pointed out that, in view of the following facts, namely "..... the Municipality gave up the old stables, leveled the ground, and erected the movable 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, "an equity was created in favour of the Municipality which entitled it "to appeal to the Court for its aid in assisting them, to resist the Secretary of State's claim that they shall be ejected from the ground". The learned Chief Justice pointed out that the doctrine which he was applying took its origin "from the jurisdiction assumed by Courts of Equity to intervene in the case of or to prevent fraud" and after referring to *Ramsden v. Dyson*[1], observed that the Crown also came within the range of this equity. 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. That is how this decision has in fact been interpreted by this Court in *Union of India v. Indo-Afghan Agencies*[2].

We don't find any decision of importance thereafter on the subject of promissory estoppel until we come to the decision of this Court in *Collector of Bombay vs. Municipal Corporation of the City of Bombay*[3]. The facts giving rise to this case were that in 1865 the Government of Bombay called upon the predecessor in title of the Municipal Corporation of Bombay to remove old markets from a certain site and vacate it and on the application of the Municipal Commissioner, the Government passed a resolution

1. (1866) 1 HL 170
2. (1968) 2 SCR 366 = (AIR 1968 SC 718)
3. 1952 SCR 43, (AIR 1951 SC 469)

approving and authorising the grant of an other site to the Municipality. The resolution stated further that.

> "the Government do not consider that any rent should be charged to the Municipality as the Markets will be like other public buildings, for the benefit of the whole community".

The Municipal Corporation gave up the site on which the old markets were situated and spent a sum of Rs.17 lakhs in erecting and maintaining markets on the new site. In 1940 the Collector of Bombay assessed the new site to land revenue and the Municipal Corporation thereupon filed a suit for a declaration that the order of assessment was *ultra vires* and it was entitled to hold the land forever without payment of any assessment. The High Court of Bombay held that the Government had lost its right to assess the land in question by reason of the equity arising on the facts of the case in favour of the Municipal Corporation and there was thus a limitation on the right of the Government to assess under Section 8 of the Bombay City Land Revenue Act. On appeal by the Collector to this Court, the majority Judges held that the Government was not, under the circumstances of the case, entitled to asses land revenue on the land in question, because the Municipal Corporation had taken possession of the land in terms of the Government resolution and had continued in such possession openly, uninterruptedly and of right forever seventy years and thereby acquired the limited title it and had been prescribing for during the period, that is to say, the right to hold the land in perpetuity free of rent, *Chandrasekhara Aiyer*, J., agreed with the conclusion reached by the majority but rested his decision on the doctrine of promissory estoppel. He pointed out that the Government could not be allowed to go back on the representation made by it and stressed the point in the form of an interrogation by asking:

> "If we do so, would it not amount to our countenancing the perpetration of what can be compendiously described as legal fraud which a Court of equity must prevent being committed"? He observed that even if the resolution of the Government amounted merely to "the holding out of a promise that no rent will be charged in the future, the Government must be deemed in the circumstances of this case to have bound themselves to fulfil it. Whether it is the equity, recognised in *Ramsden's* case (supra) or it is some other form of equity, is not of much importance, Courts must do justice by the promotion of honesty and good faith, as far as it likes in their power". This was of course the solitary view of *Chandrasekhara Aiyer*, J., but it was approved by this Court in no uncertain terms in *Indo-Afghan Agencies* case (supra).

Then we come to the celebrated decision of Apex Court in the *Indo-Afghan Agencies* case[1], (supra). It was in this case that the doctrine of promissory estoppel found its most eloquent exposition. We may briefly state the facts in order to appreciate the ratio of the decision. Indo-Afghan Agencies Ltd., who were the respondents before the Court, acting in reliance on the Export Promotion Scheme issued by the Central Government, exported woollen goods to Afghanistan and on the basis of their exports claimed to be entitled to obtain from the Textile Commissioner import entitlement certificate for the full f.o.b. value of the goods exported as provided in the scheme. The Scheme was not a statutory Scheme having the force of law but it provided that an exporter of woollen goods would be entitled to import raw-material of the total amount equal to 100% of the f.o.b. value of his exports. The respondents contended that, relying on the

1. (AIR 1968 SC 718)

promise contained in the scheme, they had exported woollen goods to Afghanistan and were, therefore, entitled to enforce the promise against the Government and to obtain import entitlement certificate for the full f.o.b. value of the goods exported, on the principle of promissory estoppel. This contention was sought to be answered on behalf of the Government by pleading the doctrine of executive necessity and the argument of the Government based on this doctrine was that it is not competent for the Government to fetter its future executive action which must necessarily be determined by the needs of the community when the question arises and no promise or undertaking can be held to be binding on the Government so as to hamper its freedom of executive action. *Shah*, J., speaking on behalf of the Court, observed (at p.723 of AIR SC) :

> "We are unable to accede to the contention that the executive necessity releases the Government from honouring its solemn promises relying on which citizens have acted to their detriment. Under our constitutional set-up no person may be deprived of his right or liberty except in due course of and by authority of law: if a member of the executive seeks to deprive a citizen of his right or liberty otherwise than in exercise of power derived from the law-common or statute-the Courts will be competent to and indeed would be bound to, protect the rights of the aggrieved citizen". The defence of executive necessity was thus clearly negatived by this Court and it was pointed out that it did not release the Government from its obligation to honour the promise made by it, if the citizen, acting in reliance on the promise, had altered his position. The doctrine of promissory estoppel was in such a case applicable against the

Government and it could not be defeated by invoking the defence of executive necessity.

"are not seeking to enforce any contractual right: they are seeking to enforce compliance with the obligation which is laid upon the Textile Commissioner by the terms of the Scheme, and we are of the view that even if the Scheme is executive in character, the respondents who were aggrieved because of the failure to carry out the terms of the Scheme were entitled to seek resort to the Court and claim that the obligation imposed upon the Textile Commissioner by the Scheme be ordered to be carried out". 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.

This Court finally, after referring to the decisions in the *Ganges Mfg. Co. v. Surujmull*[1], (supra) *Municipal Corporation of the City of Bombay v. Secy of State for India*[2], (supra) and *Collector of Bombay v. Municipal Corporation of the City of Bombay*[3], (supra), summed up the position as follows:

"Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct

1. (1880) ILR 5 Cal.669
2. (1905) ILR 29 Bom. 580
3. AIR 1951 SC 469

> and it cannot on some undefined and undisclosed grounds of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the Judge of its own obligation to the citizen on an *ex parte* appraisement of the circumstances in which the obligation has arisen". The law may, therefore, now be taken to be settled as a result of the decision that where the Government makes a promise and, in fact, the promises, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, however high or low, is above the law. Every one is subject to the law as fully and completely as any other and the Government is no exception.

It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned; the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government committed to the rule of law, claim immunity from the doctrine of promissory estoppel? Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of "honesty and good faith"? Why should the Government not be held to a high "standard of rectangular recited while dealing with its citizen"? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government

to repudiate even its contractual obligations, but let it be said to the external glory of this Court, this doctrine was emphatically negatived in *the Indo-Afghan Agencies* case[1], and the supremacy of the rule of law was established. It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promise and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society and the constant endeavour of the Courts and the Legislatures must, therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible. The doctrine of promissory estoppel is a significant judicial contribution in that direction. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts which have transpired since the making of the

1. (AIR 1968 SC 718)

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 a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot, as *Shah*, J., pointed out in the Indo-Afghan Agencies case, claim to be exempt from the liability to carry out the promise "on some indefinite and undisclosed ground of necessity or expediency", nor can the Government claim to be the sole Judge of its liability and repudiate it "on an *ex parte* appraisement of the circumstances". If the Government wants to resist liability, it will have to disclose to the Court what are the subsequent events on Account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those events are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability, the Government would have to show what precisely is the changed policy and also its reason and justification so the Court can Judge for itself which way the public interest lies and what the equity of the case demand. It is only if the Court is satisfied, on proper and adequate material placed by the Government that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere *ipsi dixit* of the Government for it is the Court which has to decide and not the Government whether the Government should be held exempt

from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise "on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position" provided of course it is possible for the promisee to restore *status quo* ante. If, however, the promisee cannot resume his position, the promise could become final and irrevocable. Vide *Ajayi v. Briscoe*[1].

The doctrine of promissory estoppel was also held applicable against a public authority like a Municipal Council in *Century Spg. and Mfg. Co. Ltd. v. Ulhasnagar Municipal Council*[2]. The question which arose in this case was whether the Ulhas Nagar Municipal Council could be compelled to carry out a promise made by its predecessor Municipality that the factories in the industrial area within its jurisdiction would be exempt from payment of *octroi* for seven years from the date of the levy. The appellant company, in the belief induced by the assurance and undertaking given by the predecessor Municipality that its factory would be exempt from octroi for a period of seven years, expanded its activities, but when the Municipal Council came into being and took over the administration of the former Municipality, it sought to levy octroi duty on the appellant-company. The appellant company thereupon filed a writ petition under Article 226 of the Constitution in the High Court of Bombay to restrain the Municipal Council from enforcing the levy of octroi duty in breach of the

1. (1964) 3 ALL ER 556
2. (1970) 3 SCR 854: (AIR 1971 SC 1021)

promise made by the predecessor Municipality. The High Court dismissed the petition in limini but, on appeal, this Court took the view that this was a case which required consideration and should have been admitted by the High Court, *Shah* J., speaking on behalf of the Court, pointed out (at p.1024 of AIR):

> "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 amounting to a person who acts upon the promise: when the 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".

The learned Judge then referred to the decision in the *Indo-Afghan, Agencies* case[1], and observed that in that case it was laid down by this Court 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 Govt". It was also pointed by the learned Judge that in the Indo-Afghan Agencies case this Court approved of the observations made by *Denning* J. in *Robertson v. Minister of Pensions*[2], (supra) rejecting the doctrine of executive necessity and held them to be applicable in India. The learned Judge concluded by saying in words pregnant in the hope and meaning of democracy".

"If our nascent democracy is to thrive different standards of

1. (AIR 1968 SC 718)
2. (1949) 1 KB 227

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". This Court refused to make a distinction between a private individual and a public body so far as the doctrine of promissory estoppel is concerned.

We then come to another important decision of this Court in *Turner Morrison and Co. Ltd. v. Hungerford Investment Trust Ltd. v. Rungerford Investment Trust Ltd.*[1], where the doctrine of promissory estoppel was once against affirmed by this Court. *Hedge*, J., speaking on behalf of the Court, pointed out:

> "Estoppel' is a rule of equity. That rule has gained new dimensions in recent years. A new class of estoppel *i.e.*, promissory estoppel has come to be recognised by the Courts in this country as well as in England. The full implication of 'promissory estoppel' is yet to be spelled out". The learned Judge, after referring to the decisions in *High Trees* case, (1956-1 All ER 256) *Robertson v. Minister of Pensions*, (1949) 1 KB 227 (Supra) and the *Indo-Afghan Agencies* case (AIR 1968 SC 718) pointed out that :
>
> "the rule laid down in these decisions undoubtedly advances the cause of justice and hence we have no hesitation in accepting it".

We must also refer to the decision of this Court in *M. Ramanatha Pillai v. State of Kerala*[2], because that was a decision strongly relied upon on behalf of the State for negativing

1. (1972) 3 SCR 711; (AIR 1972 SC 1311)
2. (1974) 1 SCR 515; (AIR 1973 SC 2641)

the applicability of the doctrine of estoppel against the Government. This was a case where the appellant was appointed to a temporary post and on the post being abolished, the service of the appellant was terminated. The appellant challenged the validity of termination of service, *inter alia*, on the ground that the Government was precluded from abolishing the post and terminating the service on the principle of promissory estoppel. The ground based on the doctrine of promissory estoppel was negatived and it was pointed out by the Court that the appellant knew that the post was temporary, suggesting clearly that the appellant could not possibly be led into the belief that the post would not be abolished. If the post was temporary to the knowledge of the appellant, it is obvious that the appellant knew that the post would be liable to be abolished at any time and if that be so, there could be no factual basis for invoking, the doctrine of promissory estoppel for the purpose of precluding the Government from abolishing the post. This view taken by the Court was sufficient to dispose of the contention based on promissory estoppel and it was not necessary to say anything more about it, but the Court proceeded to cite a passage from American Jurisprudence, Vol.28 (2d) at 783, paragraph 123 and observed that the High Court rightly held :

> "the Courts exclude the operation of the doctrine of estoppel, when it is found that the authority against whom estoppel is pleaded has owed a duty to the public against whom estoppel cannot fairly operate".

It was this observation which was heavily relied upon on behalf of the State but we fail to see how it can assist the contention of the State. In the first place, this observation was clearly obiter, since, as pointed out by us, there was on the facts of the present case no scope for the applicability of the doctrine

of promissory estoppel. Secondly, this observation was based upon a quotation from the passage in para 123 at page 783 of Volume 28 of American Jurisprudence (2d), but unfortunately this quotation was incomplete and it overlooked, perhaps inadvertently, the following two important sentences at the commencement of the paragraph, which clearly show that even in the United States the doctrine of promissory estoppel is applied against the State "when justified by the facts".

"There is considerable dispute as to the application of estoppel with respect to the State, while it is said that equitable estoppel will be invoked against the State when justified by the facts, clearly the doctrine of estoppel should not be lightly invoked against the State". (emphasis supplied). Even the truncated passage quoted by the Court recognised in the last sentence that though, as a general rule, the doctrine of promissory estoppel would not be applied against the State in its Governmental, public or sovereign capacity, the Court would unhesitatingly allow the doctrine to be invoked in cases where it is necessary in order "to prevent fraud or manifest injustice". This passage leaves no doubt that the doctrine of promissory estoppel may be applied against the State even in its governmental, public or sovereign capacity where it is necessary to prevent fraud or manifest injustice. It is difficult to imagine that the Court citing this passage with approval could have possibly intended to lay down that in no case can the doctrine of promissory estoppel be invoked against the Government. Lastly, a proper reading of the observation of the Court clearly shows that what the Court intended to say was that where the Government owes a duty to the public to act differently, promissory estoppel cannot be invoked to prevent the Government from doing so. This proposition is unexceptionable, because 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. Vide *State of Kerala v. Gwalior Rayon Silk Mfg. (Wvg.) Co., Ltd.*[1].

The next decision to which we must refer is that in *Excise Commr., U.P. Allahabad v. Ram Kumar*[2]. This was also a decision on which strong reliance was placed on behalf of the State. It is true that in this case, the Court observed that "it is now well settled by a catena of decisions that there can be no question of estoppel against the Government in the exercise of its legislative, sovereign or executive powers", but for reasons which we shall presently state, we do not think this observation can persuade us to take a different view of the law than that enunciated in the *Indo-Afghan Agencies'* case[3]. In the first place, it is clear that in this case there was factually no foundation for invoking the doctrine of promissory estoppel. When the State auctioned the licence for retail sale of country liquor and the respondents being the highest bidders were granted such licence, there was in force a Notification dated 6th April, 1959, issued under Section 4 of the U.P. Sales Tax Act, 1948, exempting sale

1. (1974) 1 SCR 671: (AIR 1973 SC 2734)
2. (1976) Supp SCR 532: (AIR 1976 SC 2237)
3. (AIR 1968 SC 718)

of country liquor from payment of sales tax. No announcement was made at the time of the auction whether the exemption from sales tax under this Notification dated 6th April, 1959 was or was not likely to be withdrawn. However, on the day following the commencement of the licence granted to the respondents, the Government of U.P. issued a Notification dated 2nd April, 1969 superseding the earliest Notification dated 6th April, 1959 and imposing sales tax on the turnover in respect of country spirit with immediate effect. This Notification dated 2nd April, 1969 was challenged by the respondents by filing a writ petition and amongst the several grounds of challenge taken in the writ petition, one was that "since the State Government did not announce at the time of the aforesaid auction that the Notification dated 6th April, 1959 was likely to be withdrawn and the sales of country liquor were likely to be subjected to the levy of sales tax during the excise year and in reply to the query made by them at the time of the auction they were told by the authorities that there was no sales tax on the sale of country liquor, the appellants herein were estopped from making the demand in respect of sales tax and recovering the same from them". I was in the context of this ground of challenge that the Court came to make the observation relied upon on behalf of the State. Now, it is clear that, even taking the case of the respondents at its highest, there was no representation or promise made by the Government that they would continue the exemption from sales tax granted under the Notification dated 6th April, 1959 and would not withdraw it, and the Notification dated 2nd April, 1969 could not, therefore, be assailed as being in breach of any such representation or promise. There was accordingly, no factual basis for making good the plea of promissory estoppel and the observation made by the Court in regard to the applicability of the doctrine of promissory estoppel against the Government was clearly obiter. That perhaps was the reason why the Court did not consider it necessary to refer to the earlier

decisions in *Century Spinning & Mfg. Co.'s* case[1], and *Turner Morrison's* case[2], and particularly the decision in the *Indo-Afghan Agencies* case where the Court in so many terms applied the doctrine of promissory estoppel against the Government in the exercise of its executive power. It is not possible to believe that the Court was oblivious of these earlier decisions, particularly when one of these decisions in the Indo-Afghan Agencies case was an epoch making decision which marked a definite advance in the field of administrative law, Moreover, it may be noted that though standing by itself the observation made by the Court that "there can be no question of estoppel against the Government in exercise of its legislative, sovereign or executive powers", may appear to be wide and unqualified, it is not so, if read in its proper context. This observation was made on the basis of certain decisions which the Court proceeded to discuss in the succeeding paragraphs of the judgment. The Court first relied on the statement of the law contained in para 123 at page 783 Volume 28 of the American Jurisprudence (2d), but it omitted to mention the two important sentences at the commencement of the paragraph and the words "unless its application is necessary to prevent fraud or manifest injustice" at the end, which clearly show that even according to the American Jurisprudence, the doctrine of promissory estoppel is not wholly inapplicable against the Government "When justified by the facts" as for example where it is necessary to prevent fraud or injustice. In fact, as already pointed above, there are numerous cases in the United States where the doctrine of promissory estoppel has been applied against the Government in the exercise of its governmental, public or executive powers. The Court then relied upon the decision in the *Gwalior Rayon Silk Mfg. Co.'s* case but that decision was confined to a case where legislation was sought to be precluded by relying on the doctrine of promissory estoppel and it was held, and in our

1. (AIR 1971 SC 1021)
2. (AIR 1972 SC 1311)

opinion rightly that there can be no promissory estoppel against the legislature in the exercise of its legislative function. That decision does not negative the applicability of the doctrine of promissory estoppel against the Government. The decision in *Howell's* case was, thereafter relied upon by the Court, but that decision merely says that the Government cannot be debarred by promissory estoppel from enforcing a statutory prohibition. The Court also cited a passage from the Judgment of the Court of Jammu and Kashmir in *Malhotra & Sons v. Union of India*[1], but this passage itself makes it clear that the Courts will bind the Government by its promise where it is necessary to do so in order to prevent manifest injustice or fraud. The last decision on which the Court relied was *Federal Crop Insurance Corporation v. Morrill*[2], (supra) but this decision also does not support the view contended for on behalf of the State. We have already referred to this decision earlier and pointed out that the Federal Crop Insurance Corporation in this case was held not liable on the policy of insurance, because the regulations made by the Corporation prohibited the insurance of reseeded wheat. The principle of this decision was not promissory estoppel cannot be invoked to compel the Government or a public authority to carry out a representation or promise which is contrary to law. It will thus be seen from the decisions relied upon in the Judgment that the Court could not possibly have intended to lay down an absolute proposition that there can be no promissory estoppel against the Government in the exercise of its governmental public or executive powers. That would have been in complete contradiction, of the decisions of this Court in the *Indo-Afghan Agencies* case *Century Spg. and Mfg. Co.'s* case and *Turner Morrison's* case[3], and we find it difficult to believe that the Court could have ever intended to lay down any such propositions without expressly

1. AIR 1976 J&K 41
2. (1947) 332 US 380: 92 Led 10
3. (AIR 1972 SC 1311)

referring to these earlier decisions and overruling them. We are, therefore, of the opinion that the observation made by the Court in Ram Kumar's case does not militate against the view we are taking on the basis of the decisions in the *Indo-Afghan Agencies's* case, *Century Spinning & Mfg. Co.'s* case and *Turner Morrison's* case in regard to the applicability of the doctrine of promissory estoppel against the Government.

We may then refer to the decision of this Court in *Bihar Eastern Gangetic Fisherman Co-operative Society Ltd. v. Sipahi Singh*[1]. It was held in this case in para 12 of the judgment that the respondent could not invoke the doctrine of promissory estoppel because he was unable to show that, relying on the representation of the Government he had altered his position by investing moneys and the allegations made by him in that behalf were "much too vague and general" and there was accordingly no factual foundation for establishing the plea of promissory estoppel. On this view it was unnecessary to consider whether the doctrine of promissory estoppel was applicable against the Government but the Court proceeded to reiterate, without any further discussion, the observation in *Ram Kumar's* case[2], that "there cannot be any estoppel against the Government in the exercise of its sovereign legislative and executive functions". This was clearly in the nature of obiter and it cannot prevail as against the statement of the law laid down in the *Indo-Afghan Agencies* case[3]. Moreover, it is clear from para 14 of the Judgment that this Court did not intend to lay down any proposition of law different from that enunciated in the *Indo-Afghan Agencies* case, because it approved of the decision in the *Indo-Afghan Agencies* case and distinguished it on the ground that in that case there was no enforcement of contractual right but the claim was founded upon

1. AIR 1977 SC 2149
2. (AIR 1976 SC 2237)
3. (AIR 1968 SC 718)

equity arising from the scheme, while in the case before the Court, a contractual right was sought to be enforced. There is, therefore, nothing in this decision which should compel us to take a view different from the one we are otherwise inclined to accept.

We may point out that in the decision on the subject in *Radhakrishna Agarwal, v. State of Bihar*[1], this Court approved of the decisions in the *Indo-Afghan Agencies* case[2], and *Century Spg. & Mfg. Co.'s* case[3], are pointed out that these were cases "where it could be held that public bodies or the State are as much bound as private individuals are to carry out obligations incurred by them because parties seeking to bind the authorities have altered their position to their disadvantage or have acted to their detriment on the strength of the representations made by these authorities". It would, therefore, be seen that there is no authoritative decision of the Supreme Court which has departed from the law laid down in the celebrated decisions in the *Indo-Afghan Agencies* case and the *Century Spg. & Mfg. Co.'s* case. The law laid down in these decisions as elaborated and expounded by us continues to hold the field.

What is necessary is only that the promisee should have altered his position in reliance on the promise. This position was impliedly accepted by *Denning*, J., in the *High Trees* case when the learned Judge pointed out that the promise must be one

> "Which was intended to create legal relations and which, to the knowledge of the person making the promise, was going to be acted on by the person to whom it was made and which was in fact acted on".

1. (1977) 3 SCC 457: (AIR 1977 SC 1496)
2. (AIR 1968 SC 718)
3. (AIR 1971 SC 1021)

If a promise is "acted on", such action in law as in physics, must necessarily result in an alteration of position". This was again reiterated by Lord *Denning* in *W.J. Alan & Co. Ltd. v. El. Nasr Export and Import Co.*[1], where the learned Law Lord made it clear that alteration of position "only means that he (the promisee) must have been led to act differently from what he would otherwise have done. And, if you study the cases in which the doctrine has been applied, you will see that all that is required is that the one should have acted on the belief induced by the other party".

Viscount Simonds also observed in *Tool Metal Mfg. Co. Ltd. v. Tungston Electric Co. Ltd.*[2], that "..... the gist of the equity lies in the fact that one party has by his conduct led the other to alter his position". The Judgment of Lord *Tucker* in the same case would be found to depend likewise on a fundamental finding of alteration of position, and the same may be said of that of Lord *Cohen*. Then again in *Ajayi v. Briscoe*[3], (supra) Lord *Hodson* said: "this equity is, however, subject to the qualifications (a) that the other party has altered his position". The same requirement was also emphasised by Lord *Diplock* in *Kammin's Ballrooms Ltd. v. Zenith Investments (Torguay) Ltd.*[4]. What is necessary, therefore, is no more than that there should be alteration of position on the part of the promisee. The alteration of position need not involve any detriment to the promisee. If detriment were a necessary element, there would be no need for the doctrine of promissory estoppel because, in that event, in quite a few cases, the detriment would form the consideration and the promise would be binding as contract. There is in fact not a single case in England where detriment is insisted upon as a necessary ingredient of promissory

1. (1972) 2 All ER 127 at p.140
2. (1955) 2 All ER 651
3. (1964) 3 All ER 556
4. (1970) 2 All ER 871

estoppel. In fact, in *W.J. Alan & Co. Ltd. v. El-Nasr Export and Import Co.* (supra) Lord *Denning* expressly rejected detriment as an essential ingredient of promissory estoppel, saying:

> "A seller may accept a less sum for his goods than the contracted price, thus inducing (his buyer) to believe that he will not enforce payment of the balance: see *Central London Property Trust Ltd. v. High Trees House Ltd.* (1956) 1 All ER 256 and *D. & C. Builders Ltd. v. Rees* (1965) 3 All ER 837). In none of these cases does the party who acts on the belief suffer any detriment. It is not a detriment, but a benefit to him to have an extension of time or to pay less, or as the case may be. Nevertheless, he has conducted his affairs on the basis that he has had that benefit and it would not be equitable now to deprive him of it".

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. The classic exposition of detriment in this sense is to be found in the following passage from the judgment of *Dixon*, J., in the Australian case of *Grundt. v. Great Boulder Pty. Gold Mines Ltd.*[1] :

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1. (1938) 59 CLR 641

"..... It is often said simply that the party asserting the estoppel must have been induced to act to his detriment. Although substantially such a statement is correct and leads to no misunderstanding, it does not bring out clearly the basal purpose of the doctrine. That purpose is to avoid or prevent a detriment to the party asserting the estoppel by compelling the opposite party to adhere to the assumption upon which the former acted or abstained from acting. This means that the real detriment or harm from which the law seeks to give protection is that which would flow from the change of position if the assumption were deserted that led to it. So long as the assumption is adhered to, the party who altered his situation upon the faith of it cannot complaint. His complaint is that when afterwards the other party makes a different state of affairs the basis of an assertion of right against him then, if it is allowed, his own proginal change of position will operate as a detriment. His action or inaction must be such that, if the assumption upon which he proceeded were shown to be wrong, and an inconsistent state of affairs were accepted as the foundation of the rights and duties of himself and the opposite party, the consequence would be to make his original act or failure to act a source of prejudice".

If this is the kind of detriment contemplated, it would necessarily be present in every case of promissory estoppel, because it is on account of such detriment which the promisee would suffer if the promisor were to act differently from his promise, that the Court would consider it inequitable to allow the promisor to go back upon his promise. It would, therefore, be correct to say that in order to invoke the doctrine of promissory

estoppel it is enough to show that the promisee has, acting in reliance on the promise, altered his position and it is not necessary for him to further show that he has acted to his detriment.

Notably such a view of English Courts 82 Supreme Court has been followed by all the subsequent precedents of the SC up to the latest one in *Kasinaka Trading & Works vs. Union of India*[1].

While reviewing the entire case law on the question until the date of the precedent and referring to that in para 12 the pith & core of the concept has been reiterated and recorded as hereunder, the doctrine of Promissory Estoppel of Equitable Estoppel is well established in the administrative law of the country. To put it simply the doctrine represents a principle evolved by equity to avoid injustice.

It is further settled by Supreme Court that the doctrine is applicable against the Government also particularly when it is necessary to prevent fraud or manifest injustice however subject to exception including the result of fraud or misconduct of the parties involved in seeking the remedy of equity Court. It has been observed that the ambit scope and amplitude of Promissory Estoppel has been evolved in the country over the last quarter of the century though successive decision of SC with special reference to *Union of India v. Godfrey Philips India Ltd.*[2].

It was observed in the above case that we may also point out that the doctrine of Promissory Estoppel being an equitable doctrine it must yield when the equity so requires, if it can be shown by the Government or public authority having regard to

1. AIR 1995 SC (p.874)
2. (AIR 1986 SC 806)

the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promisor representation made by it. The Court would raise inequity in favour of the person to whom the promise or representation is made and enforced the promise or representation against the Government or public authority.

Now the question is whether the doctrine of Promissory Estoppel cannot be invoked against the Government compelling it to act contrary to the obligation or duty imposed by a statutory.

The case which considered this point is *Century Spinning and Manufacturing Co. Ltd. v. Ulhasnagar Municipality*[1]. The writ petitioner therein *viz.*, Company, set up its factory in the year 1956 within the limits of village Shahad, Taluka Kalyan, within the area known as 'Industrial Area'. At that time, no octroi duty was 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, Government of Bombay issued a notification, wherein there was an announcement to constitute a municipality for certain villages including the situate. Inspite of objection by the petitioner therein and others, a notification was published constituting municipality with effect from April 1, 1960, including the industrial area. Representations were made by the petitioner-company therein and other manufacturers for excluding the industrial area. When the State of Maharashtra proclaimed that the industrial area will be excluded from the jurisdiction of the municipality, the municipality made a representation to the Government, to withdraw its proclamation dated April 27, 1962 and agreed to exempt the existing factories *viz.*, the petitioner-company therein and other manufacturers from payment of octroi for a period of seven years *etc.* On that representation, Government of Maharashtra agreed to

1. AIR 1971 SC 1021

retain the industrial area within the local limits of the municipality. Then the District Municipality passed a resolution exempting the petitioner company therein and others from payment of octroi for a period of seven years. Thereafter, on October 31, 1963 Government of Maharashtra issued a notification withdrawing the proclamation dated April 27, 1962. As a result the industrial area became part of Ulhasnagar Municipal District. Subsequently, Ulhasnagar District Municipality became Ulhasnagar Municipality, pursuant to the notification issued under the Maharashtra Municipality Act. Ulhasnagar Municipality resolved to levy octroi duty. Government of Maharashtra drew the attention of the Municipality the circumstances under which the industrial area was included in its jurisdiction and also advised the Municipality to pass a resolution granting exemption from the payment of octroi duty and honour the commitments made by its predecessor. However, the Municipality ignored the same. In those circumstances, the company filed the application under Article 226 of the Constitution of India in the High Court of Bombay and sought a direction to refrain Ulhasnagar Municipality from enforcing the octroi Rules. The High Court dismissed the same *in limini*. On appeal, the Supreme Court, while dealing with the said case observed as follows (AIR 1971 SC 1021 para 10):

> "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;....." (Emphasis supplied).

The learned Judges allowed the appeal and remanded the matter to the High Court of Bombay for decision on facts.

Therefore, in this case also, the Supreme Court stated that unless otherwise provided by a statute, the principles of 'promissory estoppel' can be invoked and enforced. That means, if the statute governing the person making the representation provides otherwise, the principles of 'promissory estoppel' cannot be invoked to compel him to act contrary to the statute.

In a decision *State of Kerala v. G.R. Silk Manufacturing (Wvg). Co. Ltd.*[1], the main point urged was regarding the constitutional validity of Kerala Private Forests (Vesting and Assignment) Act, 1971 (26 of 1971) which was upheld by the Supreme Court and the writ petitions were dismissed, while they were allowed by the High Court. Question of the plea of equitable/ promissory estoppel was also raised in Civil Appeal No.1398 of 1972 which was dealt with in para 23 of the report. The contention was that the writ petitioner company established in Kerala for the production of rayon cloth pulp on an understanding that the Government would bind itself to supply the raw material. However, the Government later on was unable to supply the same and by an agreement undertook not to legislate for the acquisition of private forest lands for the supply of raw material. On the basis of the agreement, the Company purchased 30,000 acres of private forests. On the above facts, it was contended that the State is bound by the agreement not to legislate for the acquisition of private forests purchased by the Company. The contention was that the agreement under which the State agreed not to legislate would operate as equitable estoppel against the State. While dealing with this contention, the learned Judges of the Supreme Court stated as follows (para 23 of AIR):

> "We do not see how an agreement of the Government can preclude legislation on the subject. The High Court has rightly point out that the

1. AIR 1973 SC 2734

> surrender by the Government of its legislative powers to be used for public good cannot avail the Company or operate against the Government as equitable estoppel".

In *Motilal Padampet Sugar Mills v. State of Uttar Pradesh*[1], the applicability of the doctrine of 'promissory estoppel' was considered elaborately.

While dealing with this case, the learned Judges stated that the doctrine of 'promissory estoppel' applies against the Government and the defence based one executive necessity is not sustainable. The doctrine of 'promissory estoppel' is an equitable doctrine and it must yield if the equity so requires, *i.e.,* if the Government is able to show on facts and circumstances that it would be inequitable to hold the Government to the promise made by it, the Court will not raise an equity in favour of the promisee and enforce the promise against the Government The learned Judges also specifically stated that the doctrine of 'promissory estoppel' cannot be applied in the teeth of an obligation or liability imposed by law and that the doctrine of 'promissory estoppel' cannot be invoked to compel the Government to do an act prohibited by law.

In *M/s. Jit Ram Shiv Kumar v. State of Haryana*[2], again the learned Judges of Supreme Court considered the applicability of principles of 'promissory estoppel'. In the said case, Municipal Committee of Bahadurgarh while establishing Mandi Fateh in Bahadurgarh Town, decided that the purchasers of the plots in the Mandi would not be required to pay octroi duty on goods imported within the said Mandi. This was done with a view to improve the trade in the area. A resolution to that effect was passed on 20-11-1916. In the hand bills issued for the sale of

1. AIR 1979 SC 621
2. AIR 1980 SC 1285

plots also, the same thing was proclaimed. Subsequently, Municipal Committee changed its mind and passed a resolution dated 8-5-1954 resolving that octroi duty was also to be levied on the goods imposed into Fateh Mandi. The said resolution was annulled by the Punjab Government exercising its powers under Section 236 of the Punjab Municipal Act. Subsequently, State of Haryana came into existence on 1-11-1964 while cancelling the earlier resolution dated: 2-3-1954, as a result the Municipal Committee started charging octroi duty on the goods imported into the Mandi.

Supreme Court in its Judgment in *Union of India v. Godfrey Philips India Ltd.*[1], stated that the decision referred to supra (AIR 1979 SC 621), to the extent is stated that "the defence of executive necessity was thus clearly negatived by the Court ....." is subject to the qualifications laid down in the case of *Anglo Afghan Agencies*[2], (supra). Therefore, the said observations are subject to the authority pleading and proving that there were special considerations which necessitated it not being able to comply with the obligations in public interest. Therefore, in so far as legislative and statutory functions are concerned, principles of 'Promissory estoppel' are not applicable and continues to hold the field.

In the decision referred to supra (AIR 1986 SC 806) the learned Judges of the Supreme Court once again considered the principles governing the doctrine of 'promissory estoppel'. It was laid down that there can be no promissory estoppel against the Legislature in the exercise of its legislative functions. The Government of Public authority cannot be debarred by promissory estoppel by enforcing a statutory provision. Government or public authority

1. AIR 1986 SC 806
2. (AIR 1968 SC 718)

cannot be compelled to carry out the representation or promise which is contrary to law. It cannot also be compelled to carry out a representation or promise which is *ultra vires* the power of the officer of the Government or public authority who or which made the representation or promise. Doctrine of 'promissory estoppel' being an equitable doctrine, it must yield when equity so requires, *viz.*, if it can be shown by the Government or public authority that having regard to the facts and circumstances, it would be inequitable to hold the Government or public authority to the promise or representation made by it, promissory estoppel will not be invoked.

The next case, which considered promissory estoppel is *Pournami Cil Mills v. State of Kerala*[1]. In this case, by a notification dated 11-4-1979, the State of Kerala with a view to boost Industrialisation in the State, granted exemption from sales tax and purchase tax for a period of five years for the new small scale units from the date of commencement of production. In response to such an order and in view of the concessions made available, promoters of small scale industries set-up their industries within the State of Kerala. Later on, by an order dated 21-10-1980 the same were withdrawn. Question arose whether the State can be made to adhere to the promise made in order dated 11-4-1979.

The learned Judges of the Supreme Court came to the conclusion that such of those parties before them who in response to the order dated 11-4-1979 set up their industries prior to the subsequent order dated 21-10-1980, within the State of Kerala would be entitled for exemption and to that extent they are entitled to invoke the principle of promissory estoppel as against the State Government.

1. AIR 1987 SC 590

Doctrine of 'promissory estoppel' was invoked and also applied by the Supreme Court in *Assistant Commissioner, Commercial Taxes (Asst.) v. Dharmendra Trading Co.*[1], where the Government of Karnataka having granted certain concessions, withdraw the same subsequently. The learned Judges stated that the doctrine of 'promissory estoppel' can be invoked in such a case.

In *Vasantkumar Radhakishan Vora v. Board of Trustees of the Port of Bombay*[2], the Supreme Court again considered the applicability of 'promissory estoppel'. In the said case, the representation made by the Estate Manager of the Bombay Port Trust that on deposit of certain amount they would be allotted flats after reconstruction of the building was sought to be enforced against the Bombay Fort Trust on the plea of 'promissory estoppel'.

Learned Judges of the Supreme Court, after considering the facts and circumstances, came to the conclusion that the representation made by the Estate Manager of the Port Trust is beyond his authority, *viz.*, it is an *ultra vires* act and therefore, held that promissory estoppel cannot be invoked to enforce the representation made by the officer which is ultra vires his powers.

Learned Judges in that context stated as follows:

> "It is equally settled law that the promissory estoppel cannot be used compelling the Government or a public authority to carry out a representation or promise which is prohibited by law or which was devoid of the authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine,

1. AIR 1988 SC 1247
2. AIR 1991 SC 14

> it must yield place to the equity, if larger public interest so requires, and if it can be shown by the Government or public authority for having regard to the facts as they have transpired that it would be inequitable to hold the Government or public authority to the promise or representation made by it. The Court on satisfaction would not, in those circumstances raise the equity in favour of the persons to whom a promise or representation is made and enforce the promise or representation against Government or the public authority".

While dealing with the above said question, the learned Judges, stated as follows: (AIR 1989 SC 1629, para 25):

> "It is true that there is no estoppel against the Legislature and the *vires* of the Act cannot be tested by invoking the plea, but so far as the State Government is concerned the rule of estoppel does not apply and the precedents of this Court are clear. It is unnecessary to go into that aspect of the matter as in our considered opinion the impugned Act suffers from the vice of taking away rights to property without providing for compensation at all and is hit by Article 31(2) of the Constitution".

On a consideration of the precedents of the Supreme Court, it is settled that doctrine of promissory estoppel is an equitable relief and it can be invoked against the Government and public authorities, subject to following:-

(1) The Legislature can never be precluded from exercising its functions to legislate by invoking the principles of promissory estoppel;

(2) Principles of 'promissory estoppel' can be invoked against the Government or public authority subject to the following :—

(i) It cannot be invoked to compel it to act contrary to the obligation or liability imposed by law. In other words, the principle of 'promissory estoppel' cannot be invoked preventing the Government from acting in discharge of its duty or obligation imposed by law.

(ii) The doctrine of 'promissory estoppel' being an equitable doctrine if it is established on the facts and circumstances that it would be inequitable, in the larger public interest, to hold the Government or public authority to the promise or representation made by it, it will not be enforced.

(iii) The doctrine cannot be invoked when the representation made by the officer or authority is beyond their powers *viz.*, if it is *ultra vires* the powers of the officer or authority, it cannot bind the Government.

(iv) The doctrine being an equitable one cannot be invoked if it is shown that the representation was obtained by playing fraud, having regard to the fact that fraud vitiated everything. On the other hand the doctrine of legitimate expectation in essence imposes a duty on administration authorities to act fairly and the principles laid down under the doctrine is that a person would be entitled to a right of fair hearing even if he has no legal right to claim some benefit. He may have legitimate expectation of receiving such benefits and if so his expectation will be protected by the Court under its power of judicial review.

This doctrine can be called in aid for the purpose of procedural fairness where there has been procedural irregularity the decision can be questioned.

This doctrine *per se* does not clothe any person with a right legally enforceable in a Court of law. Further the legitimate expectation can be defeated by requirements of public interest.

Legitimate expectation give rise to those expectation which are based upon some statement or undertaking by or on behalf of public authority. On the contrary principle of Promissory Estoppel seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promisee which is intended to create legal relations or affect a legal relationship are arise in the future knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties and this would be so irrespective whether then is any pre-existing relationship between the parties or not. The element of inducement would in any case be a precondition resulting in 'altering the position' which deprives a person of his legitimate expectation.

In the case of *Kodanda Reddy vs. State of A.P.*, it was held under:-

The factual matrix, the third respondent herein invited tenders on 5-1-1996 from the eligible contractors with respect to Meddileru project from elevation 363 to elevation 379 metres including road, overbridge, over spillway regulator. The petitioner submitted his tender within the time prescribed along with the six other

contractors. The tenders were opened on 2-2-1996 and the tender submitted by the petitioner is the lowest, as the petitioner's offer was Rs.8,63,14,500/-. The petitioner was requested by the third respondent to come for negotiations and during the negotiations the petitioner reduced his offer from 8,63,14,500/- to 8,49,350/-. In the final negotiations on 19-2-1996 the petitioner offered a further reduction of Rs.5.86 lakhs which work out to 1% over and above the rates reduced by the petitioner before the third respondent. The second respondent herein by his letter dated 26-2-1996 recommended the bid of the petitioner at Rs.8,49,91,350/- for acceptance. All the offers received with respect to Maddileru project were placed before the Commissionerate of Tenders (for short Commissionerate) on 25-3-1996. The Commissionerate after having considered various aspects of the matter accepted the offer made by the petitioner for the value of Rs.8,49,91,350/-. The offer made by the petitioner would be at plus 55.07%, come over the estimated value.

The third respondent herein through letter dated 30-3-1996 informed the petitioner about the acceptance of his tender by the Commissionerate of tenders and requested the petitioner to deposit a sum of Rs.4,75,000/- towards the balance of Earnest Money Deposit and the same was deposited by the petitioner through his letter dated 3-4-1996. However, the agreement cannot be entered into by the third respondent herein with the petitioner inspite of the repeated requests made by the petitioner. The third respondent herein by his proceedings dated 1-6-1996 informed the petitioner that the orders of the Government were awaited in the matter including the contract.

It is stated that the matter was unnecessarily kept pending with the ulterior motive and under political pressure. The respondents were bound to enter into the contract as the offer made by the petitioner is already accepted and entering into the contract was only

a formality. It is stated that the matter was kept pending in view of the agreement alleged to have been made by the Chief Minister at a public meeting at Uruva Kanda that the tenders received for Maddileru project would be cancelled.

The third respondent herein through a impugned letter dated 16-7-1996 informed the petitioner that the tender for the work in question was cancelled as per the instructions received from the Chief Engineer, Medium Irrigation, Hyderabad. The petitioner was requested to take return the Earnest Money Deposit and the balance Earnest Money deposit paid by the petitioner. This order is under challenge.

It is submitted by the petitioner that the third respondent by proceedings dated 30-3-1996 communicated the acceptance of his offer and therefore, the same would amount to a concluded contract and signing of a contract/agreement is only a formality. The cancellation of the tender is therefore illegal and without jurisdiction. It is also stated that the tender was processed by the Commissionerate, which is assisted by a technical cell which is an expert body. It is stated that even the Government has no power or authority to cancel or acceptance of the tender after the same is processed and approved by the Commissionerate. What remains according to the petitioner is only a ritual or formality of the 3rd respondent signing the agreement. It is also stated that the cancellation of the tender is in-violation of principles of natural justice and no reasons whatsoever are signed for cancellation of the tenders. The petitioner submits that the cancellation is only for a political consideration and therefore based on extraneous reasons. It is also stated that the action is discriminatory for the reason that in the same district with respect to Pedapalli Project which is also finalised by NABARD, the offers accepted by the Commissionerate were not interfered with by the Government though the said offers are also in excess of the estimated amount.

In the counter-affidavit filed it is stated that administrative approval was accorded in G.O. Ms. No.330, dated 23-12-1995 for 9 medium irrigation projects for taking under the schemes under NABARD loan assistance for Rs.346.10 crores. Out of the above 9 medium irrigation schemes Maddileru Reservoir project is one of the scheme for which an amount of Rs.5,028.34 lakhs is allocated. Estimates for the work in question was technically sanctioned for Rs.570 lakhs. The offer made by the petitioner herein at Rs.8,49,91,350/- works out to plus 55.07% excess over the estimated value. It is stated in categorical terms that there is no written agreement so far entered into between the contractor and the Government and therefore there is no concluded contract as such between the petitioner and the Government. The acceptance of the offer by the Commissionerate unless followed by written agreement and contract is of no consequences and the same cannot form basis or foundation for asserting any right as such by the petitioner. It is stated that at the most the acceptance conveyed by the Commissionerate could be one more preliminary step in the process of finalisation of the contract. The petitioner cannot claim any right and there is no corresponding obligation on the part of the State unless there is a concluded contract as per para 26.5 of part 1 of general conditions of the contract Vol.1 of the Tender Schedule. It is stated that the contract in question is not a complete one as the clause 26.5 of general conditions of the contract appended to volume 1 of the Tender Schedule stipulate that the written agreement to be entered into by the Government and the contractor for creation of rights and obligations of both the parties and contract shall not be treated as final until the agreement is signed by the Contractor and then by the officer authorised to enter into the contract on behalf of the Government.

It is stated that entire matter was reviewed at the highest level in the Government before a decision was taken to cancel the tenders. All the relevant factors were taken into consideration and

the decision was taken to cancel the tenders in public interest. The work in question is scheduled to be completed by March, 1997 as per the terms and conditions stipulated by NABARD. Since the period under consideration was July, 1997 that is to say the threshold of monsoon, completion of work cannot be expected. The Government had also considered the observations made by the second respondent regarding the need to complete the works and the observations of Commissionerate and came to the conclusion that it would only help the petitioner to prefer the claims of increased rates due to prolongation of contract caused due to delayed entrustment, in the meanwhile number of allegations in the matter relating to the work in question and the request for cancellation of the works from responsible quarters came to the notice of the Government. The rates concluded are very high. In view of all these factors it has been decided to recall the tenders as these works are taken up with NABARD loan assistance with 13% interest and such decision was taken in the public interest. It is stated that the Commissionerate of Tenders is a body constituted by the State under the administration and control of Chief Secretary of the Government and the Government has every right to exercise its power and review the decision taken by the Commissionerate.

It is averred in the counter affidavit that the petitioner did not submit detailed monthly construction programme though he was addressed in this regard by the 3rd respondent through his letter dated 4-5-1996 and therefore it cannot be said that the petitioner had acted upon the offer made by the Commissionerate. It is also stated that work of Peddapalli project which is situated at far away from the Maddileru project and the work is of different nature due to field conditions and hence the same is not comparable. Therefore, the plea of discrimination is totally misconceived. It is also stated that the principles of natural justice have no application whatsoever in cases of this nature.

Sri *K. Subramanyam Reddy*, learned senior Counsel appearing on behalf of the petitioner raised manifold contentions mainly:

(a) That the decision of the Government cancelling the acceptance of tender of the petitioner is totally illegal and without jurisdiction as the Government has no power whatsoever to review the orders of the Commissionerate of Tenders constituted under G.O.234, dated 3-6-1987.

(b) The decision of the Government in cancelling the acceptance of the tender of the petitioner is arbitrary, unreasonable and against to Article 14 of the Constitution of India.

(c) The Government is bound by principles of promissory estoppel and under no circumstances can go back on the letter of acceptance of tender dated 30-3-1996. The respondents cannot unilaterally act and cancel the tender after conveying the acceptance through letter dated 30-3-1996 and therefore the impugned action is violative of principle of natural justice.

(d) A legitimate expectation is created in favour of the petitioner by letter dated 30-3-1996 and annulment of tender in favour of the petitioner without adopting a fair procedure and without giving an opportunity to the petitioner is thus bad in law.

It was further held that the submission made on behalf of the petitioner regarding the applicability of doctrine of promissory estoppel and legitimate expectations can be conveniently disposed of together. It is submitted that a right has been created in favour of the petitioner by proceedings dated 30-3-1996 issued by the third respondent after finalisation of the petitioner's tender by the Commissionerate. It is averred that the petitioner not only furnished

EMD also appointed technical supervisory staff by paying huge amounts and advances. The petitioner is stated to have placed order for some machinery worth about lakhs. It is submitted that he has altered his position in view of the assurance given by the Commissionerate and consequential letter of acceptance issued by the third respondent on 30-3-1996. Though a formal agreement has to be entered into in accordance with Article 299 of the Constitution of India yet, the principle of equitable estoppel will apply in the case. I find it difficult to accept the submission made on behalf of the petitioner. The letter upon which the reliance is placed by the petitioner does not induce the petitioner to spend any money on the assumption that the contract is already given to him. The offer made by the third respondent at the most could be said to be a provisional or tentative one, the offer made by the third respondent through the letter is to be understood in the background of the terms and conditions referred to herein above in the tender terms *viz.*, 2.6.5 It is true that the Apex Court in *Motilal Padampt Sugar Mills Company Limited vs. The State of Uttar Pradesh*[1], after referring to the previous decisions on the subject observed. "It was laid down that a party who is giving any reliance in promise made by the Government, altered his position, is entitled to enforce the terms against the Government even though the terms are not in the form of a formal contract as required by Article 299 of the Constitution of India and that Article does not militate against the applicability of the doctrine of promissory estoppel against the Government". The Court further held that, "Where the Government makes promise informing that it would be act on promisee and, in fact the promisee, acting in reliance on it, altered his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promise, notwithstanding that there is no consideration for the promise" and the promise is not

1. AIR 1979 SC 21

recorded in the form of a formal contract as required by Article 229 of the Constitution of India. But in the very same judgment the Apex Court speaking through *Bhagwati*, J., in categorical terms held as follows:

> "But it is necessary to point out that since the doctrine of promissory estoppel is an-equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts which have 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 a promise made to a citizen to act upon it and alter his position and the public interest likely to offer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot, as *Shah*, J. pointed out in the *Indo-*

Afghan Agencies case claim to be exempt from the liability to carry out the promise "on some indefinite and undisclosed ground of necessity or expediency" nor can the Government claim to be the sole judge of the liability and repudiate it "on an *ex parte* appraisement of the circumstances". If the Government wants to resist the liability, it will have to disclose to the Court what are the subsequent events on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those events are such as to render it inequitable to enforce the liability against the Government. More claim of change of policy could not be sufficient to exonerate the Government from the liability: the Government would have to show that precisely is the changed policy and also its reason and justification so the Court can Judge for itself which way the public interest lies and that the equity of the case demand. It is only if the Court is satisfied on proper and adequate material placed by the Government, that overriding public interest requires that the Government should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government".

It is clear from the records that consideration of the public interest weighed with the Government in taking decision to cancel the tenders. The initial promise if any is made by the 3rd respondent. Superintending Engineer whereas, the Government after elaborate consideration of the matter and subsequent events that have come to the notice of the Government has decided not to proceed further in the matter and cancel the tenders. After all, public interest is of paramount consideration. It is not as if, the Government chosen its own person and entrusted the contract.

In *State of Himachal Pradesh v. Ganesh Wood Products*[1].

B.P. Jeevan Reddy, J., speaking for the Court after reviewing the entire case law on the subject held as follows (at Pp.1365 to 1368 of AIR (SCW)

The doctrine of promissory estoppel is by now well recognised in this country. Even so it should be noticed that it is an evolving doctrine, the contours of which are not yet fully and finally demarcated. It would be instructive to bear in mind what *Viscount Hailsham* said in *Woodhouse Limited v. Nigerian Produce Limited*[2] :

> "I desire to add that the time may soon come when the whole sequence of cases based upon promissory estoppel since the war beginning with *Central London Property Trust Ltd v. High Trees House Limited,* (1947) 1 KB 130, may need to be reviewed and reduced to a coherent body of doctrine by the regarded with (sic) suspicion. But as is common with an expanding doctrine, they do raise problems of coherent exposition which have never been systematically explored".

Though the above view was expressed as far back as 1972, it is no less valid today. The dissonance in the view expressed by this Court in some of its decisions on the subject emphasise such a need. The view expounded in *M/s. Motilal Padampat Sugar Mills Company Limited v. State of Uttar Pradesh*[3], was departed from in certain respects in *Jit Ram Shiv Kumar v. State of Haryana*[4], which was in turn critisied in *Union of India v. Godfrey*

1. 1995 AIR SCW 3847
2. (1972 AC 741).
3. (1979) 2 SCC 409 (AIR 1979 SC 621)
4. (1981) 1 SCC 11: AIR 1980 SC 1285

Philips India Ltd.[1]. The divergence in approach adopted in *Shri Bakul Oil Industries v. State Gujarat*[2], and *Pournami Oil Mills v. State of Kerala*[3], is another instance. The fact that the recent decision in *Kasinka Trading v. Union of India*[4], is being recognised by larger Bench is yet another affirmation of the need stressed by Lord *Hailsham* for enunciating a coherent body of doctrine by the Courts. An aspect needing a clear exposition- and which is of immediate relevance herein is what is the precise meaning of the words "the promisee... alters his position", in the statement of the doctrine. The doctrine has been formulated in the following words, in *M/s. Motilal Padampat Sugar Mills Co., Ltd.*[5]. "The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing of intending the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promise, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution.

What does altering the position mean? Does it mean such a change in the position of the promisee (as a result of acting on the faith of representation of the promisor that compensating him in money would not be just and equitable to him *i.e.*, a situation where the ends of justice and requirements of equity demand that the promiser should not be allowed to go back on his representation and must be held to it or does altering his position mean doing of some act, big or small, which the promisee does acting on the

1. (1985) 4 SCC 369: AIR 1986 SC 806
2. (1987) 1 SCC 31 : AIR 1987 SC 142
3. 1986 (Suppl) SCC 728: AIR 1987 SC 590
4. (1995) 1 SCC 274: 1995 AIR SCW 680: AIR 1995 SC 874
5. AIR 1979 SC 621 at page 643

faith of the representation which he would not have done but for the representation? In other words, is it enough that the promisee has spent some money or has taken some step acting on the basis of representation, which can be recompensed in money or otherwise. Is it not ultimately a matter of doing equity and justice between the parties a case of holding the scales even between the parties and deciding whether in the interest of justice and equity and promiser can be allowed to resile from his promise and compensate the promisee appropriately or the promiser ought to be held to his promise and not allowed to go back since such a course is necessary in view of the change in position of promisee? Our view of the matter is probably evident from the way we have posed the above questions. To wit, the rule of promissory estoppel being an equitable doctrine, has to be moulded to suit the particular situation. It is not a hard and fast rule but an elastic one, the objective of which is to do justice between the parties and to extend an equitable treatment to them. If it is more just from the point of view of both promisor and promisee that the latter is compensated appropriately and allow the promisor to go back on his promise, that should be done; but if the Court is of the opinion that the interest of justice and equity demand that the promisor should not be allowed to resile from his representation in the facts and circumstances of that case, it will do so. This in our respectful opinion, is the proper way of understanding the words "promisee altering his position". Altering his position should mean such alteration in the position of the promisee as it makes it appear to the Court that holding the promisor to his representation is necessary to do justice between the parties. The doctrine should not be reduced to a rule of thumb. Being an equitable doctrine it should be kept elastic enough in the hands of the Court to do complete justice between the parties. Now can the doctrine of promissory estoppel be put on the higher pedestal than the written contract between the parties? Take a case where there is a contract between the parties containing the very same terms as are

found in the "approval" granted by IPARA (Sub-Committee) and then the Government resile from the contract and terminates the contract. The promisee will then have to file a suit for specific performance of the contract in which case the Court will decide, having regard to the facts and circumstances of the case and the provisions of the Specific Relief Act, whether the plaintiff should be granted specific performance of the contract or only a decree for damages for breach of contract. It must be remembered that the doctrine of promissory estoppel was evolved to protect a promisee who acts on the faith of a promise/representation made by promisor and alters his position even though there is no consideration for the promise and even though the promise is not recorded in the form of a formal contract. Surely a representation made or undertaking given in a formal contract is as good as, if not better than, a mere representation. All that we wish emphasise is that anything and everything done by the promisee on the faith of the representation does not necessarily amount to altering his position so as to preclude the promisor from resiling from his representation. If the equity demands that the promisor is allowed to resile and the promisee is compensated appropriately that ought to be done if however equity demands in the light of the things done by the promisee on the faith of the representation, that the promisor should be precluded from resiling and that he should be held fast to his representation that should be done. To repeat, it is a matter of holding the scales even between the parties to do justice between them. This is the equity implicit in the doctrine.

I am not impressed by the submission that the petitioner had altered his position and spent huge amounts on the promise made by the third respondents. There is no promise as such made by the third respondent except intimating the petitioner that the Commissionerate has finalised the tender by accepting the same. The contents of the letter would not support the case of

the petitioner that he has spent money or altered his position to his disadvantage basing upon the same.

It is urged that by issuing letter of acceptance dated 30-3-1996 a legitimate expectation has been created in favour of the petitioner that the contract would be entered into with him and, therefore it is not open to the respondents to annul the acceptance letter dated 30-3-1996 without proper procedure and without giving opportunity. The respondents have not adopted a fair procedure and violated the legitimate expectation of the petitioner. The petitioner places reliance upon two well known decision of the Supreme Court *viz.*, *Navjyoti Co-Group Housing Society v. Union of India*[1], *Union of India v. Hindustan Development Corporation*[2].

The doctrine of legitimate expectation also known as reasonable expectation relates to procedural fairness in decision making and is an aspect of the rule of non-arbitrariness. In matters of this nature the letter itself does not confer any right and no legitimate expectation could arise on these facts. There is no statutory restriction in resiling from that decision if the public interest required. After all, public interest is of paramount consideration in matters of this nature. In an appropriate case public interest can outweigh the legitimate expectation of a person particularly in the sphere of contractual relations.

It is as if some beneficial advantage has been conferred upon the petitioner giving rise to a legitimate expectation that he would be permitted to continue to enjoy the same benefit until he was given reasons for withdrawal and the opportunity to give it on such reasons. Therefore the decisions relied upon by the learned Counsel do not lend any support. The petitioner himself

1. AIR 1993 SC 155
2. AIR 1994 SC 998

stated in the affidavit that inspite of repeated requests for conclusion of the agreement so as to enable him to start the work, the third respondent had not taken any steps for concluding the contract/agreement. Ultimately, the third respondent by his proceedings dated 1-6-1996 informed the petitioner that the orders of the Government are awaited for concluding the contract. The petitioner filed this writ petition on 22-7-1996 in this Court. It is clear that the petitioner himself knew that the matter was under consideration by the Government and in such circumstances, it would be rather difficult to accept the petitioner's plea that he had spent huge amount as under the expectations that the work would be entrusted to him. There is no material on record, which could be said to be the foundation for making the petitioner to believe that the work was likely to be entrusted to him. The matter was being processed at various levels and it is not as if the ultimate decision makers made any representation or induced the petitioner to act pursuant to such representation. There may be circumstances where even the decision maker may resile "from an objectively clear, but erroneously made, representation, where it can be shown that it would not be unfair or inconsistent with good administration for the decision maker to be permitted to withdraw the representation". *R. v. Secretary of State for Home Department Exp. Silva*. Judicial Review of Administrative Action *De Swith*, Woolf & Jowel.

The facts and circumstances of the case, ultimately show that the decision to cancel the tenders is fair and consistent with good administration. There was obvious compelling reasons for the Government to act in the matter and as a guardian of the public finances, it was bound to consider and review the decision of the Commissionerate of Tenders.

The next argument relates to the action being violative of principles of natural justice. It is urged that the Commissionerate

through the third respondent having issued the acceptance letter on tender of the petitioner, it is not open to the Government to annul or cancel the acceptance letter without an opportunity and without assigning any reason. So far as the complaint regarding the action being without any reason is required to be noted only to be rejected. The record would show that the matter was considered on various stages and the entire course of events would revival that the Government has taken into account all relevant considerations. It is not a case where an order is passed by statutory authority in exercise of any statutory power. It is not a decision of an individual decision maker in exercise of any statutory power with reference to any particular statute. It is an executive decision involving more than one person and authority. In *Shri Sachidahand Pandy v. The State of West Bengal*[1].

The proposition that a decision must be arrived at after taking into account all the relevant considerations eschewing all irrelevant considerations cannot for a moment be doubted. We have already pointed out that relevant considerations were not ignored and, indeed, were taken into account by the Government of West Bengal. It is not one of these cases where the evidence is first gathered and a decision is later arrived at one fine morning and the decision is incorporated in a reasoned order. This is a case where discussions have necessarily to stretch over a long period of time. Several factors have to be independently and separately weighed and considered. This is a case where the decision and the reasons for the decision can only be gathered by looking at the entire course of events and circumstances stretching over the period from the initiation of the proposal to the taking of the final decision. It is important to note that unlike *Mohinder Singh Gill's* case where the Court was dealing with a statutory order made by a statutory functionary who could

1. AIR 1987 SC 1109

not, therefore, be allowed to supplement the grounds of his order by later explanations, the present is a case where neither a statutory function nor a statutory functionary is involved but the transaction bears commercial though public character which can only be settled after protracted discussion, clarification and consultation with all interested persons. The principles of *Mohinder Singh Gill's* case[1], has no application to the factual situation here.

The petitioner further places reliance upon *Tata Cellular* case[2], (supra) in support of submission that a notice ought to have been issued before cancelling the acceptance of tenders. The Apex Court in the said decision with reference to the facts and circumstances of the case held as follows:

> "From this letter we are not able to fathom the reason for omission. As seen above, Tata Cellular was originally selected for Delhi. By implementation of the judgment of the High Court it has been left out. Before doing so, as rightly urged by Mr. *Soli J. Sorabjee*, the appellant ought to have been heard. Therefore, there is a clear violation of the principle of natural justice. On an overall view we find it has two distinctive qualifications. In that:
>
> (1) It has not borrowed from any commercial bank.
>
> (2) It has an annual turnover from Indian parameters of Rs.12,000 crores and the annual turnover of the foreign parameters, Rs.51,000 crores. Comparatively speaking the other companies do not posses such high credentials

1. (AIR 1978 SC 851)
2. (AIR 1996 SC 11)

yet it has been awarded low marks with regard to the reliance on Indian public financial institutions and the financial strength of the parameters/ partner companies.

These qualifications could have been validly urged had it been heard. Then, we do not known what decision could have been arrived at.

The observation of the Apex Court that there is a clear violation of principles of natural justice, is to be understood in the context of facts and circumstances and the submission made in that case. In *Tata Cellular*[1], appellant therein was a animated from consideration by implementation of the judgment of the Delhi High Court and the precise argument in this regard is required to be noticed, which reads as follows:

> "Even otherwise in the implementation of the judgment of the High Court of Delhi, if this appellant is to be eliminated it ought to have been afforded an opportunity. Had that been done it would have pointed out several factors namely the omission to consider relevant material, namely parameter seven, the prejudice caused by the award of marks after the bids were opened. The DoT was obliged to disclose the maximum marks for each criterion at the threshold of the financial bid in the interest of transparency and to ensure a non-arbitrary selection".

It was a case where the bids of various competing tenderers were under consideration and elimination of one bidder on the basis that the reconsideration of the matter in the light of judgment by the High Court of Delhi without any notice to the provisionally

1. (AIR 1996 SC 11)

selected justice. I find it difficult to accept the submission made on behalf of the petitioner that the action of the respondents in the instant case is violative of the principles of natural justice. The decision relied upon by the petitioner does not really support his case.

It is alleged that the Government have acted on political and extraneous considerations and adopted different stand in setting aside the acceptance letter issued to the petitioner. The Government having made a statement on the floor of the Assembly that they would be cancelling Peddapally and Maddileru projects in view of the rates being higher than the estimated rates ultimately cancelled the acceptance of Maddileru project alone. The Government thus acted on extraneous and political considerations as M/s. Balaji Constructions to which Pedapalli Project was allotted is the follower of authority in power. The allegations made in the affidavit filed in support of the writ petition are totally indefinite and vague. No details whatsoever about the work relating to Peddapally Project are stated in the affidavit and it is not possible to express any opinion under what circumstances the tender in the said case was not cancelled. The acceptance of the tender in that case is not the subject-matter of debate before this Court. In such view of the matter, the same cannot form the basis for holding that the action of the Government is discriminatory.

In the affidavit filed in support of the writ petition in round No.F it is alleged that the cancellation was effected by the Chief Engineer at the instance of the Government particularly the Chief Minister purely due to political reasons, "the Chief Minister is not made a party to this writ petition. The allegation that the decision is taken as the instance of the Chief Minister by the Chief Engineer is totally baseless. The decision was taken by the Government itself at various levels and ultimately the matter was reserved for consideration by the Chief Minister himself, it is thus

clear that the allegations are levelled by the petitioner without ascertaining the true and correct facts. It is settled law that the burden of establishing *mala fides* is very heavy on the person who alleges it. Such allegations are more often made than proved. The Court cannot come to conclusion on the basis of allegations, no inference could be drawn from incomplete facts brought before the Court. The facts alleged by the petitioner are totally vague and indefinite and it is not possible to draw any adverse inference under the facts and circumstances of the case.

In the case of *State of W.B. vs. Niranjan Singha*[1], the Supreme Court on application of legitimate expectation held as under:-

> "The respondent filed a writ petition in the High Court contending that under an agreement he was appointed as an agent for collection of toll/taxes from vehicles plying over Matangini Setu on the Haldia River at Nargat in the district of Midnapore for one year from 4-4-1999 to 3-4-2000. The agreement between the parties provided for a clause as follows:
>
> "5. After expiry of one year the term may be extended provided that one month before expiry of such one year the agent shall by registered letter request the Executive Engineer concerned for such extension and provided that payment up to the date of such application have been received by the Executive Engineer regularly and there have been no default of any of the terms and conditions herein contained. The decision as to whether there has been any default or not on the part of the agency shall rest with the Executive Engineer, and shall be binding on the agent".

1. (2001 (2) SCC 326)

The respondent requested the Executive Engineer concerned for extension of the agency for a period of another one year in terms of clause 5 of the agreement having complied with the conditions stated therein. The appellant having invited fresh bids for appointment of the agent to collect toll or taxes instead of extending the period of agency in favour of the respondent, a writ petition was filed by the respondent in the High Court seeking for quashing of the notification calling for fresh bids and to consider the representation of the respondent for extension of the period of agency. The learned single Judge directed for consideration of the representation of the respondent. The appellants took the stand that extension of period of agency is a matter of discretion with them and not a matter of right with the respondent and rejected the representation. Thereafter, the writ petition was allowed by upholding the claim of the respondent for renewal of the agreement for another period of one year and directed the authorities concerned to grant such renewal in his favour from 4-4-2000 to 3-4-2001 subject to his compliance with the other terms and conditions and other formalities requires under the law. The matter was carried in appeal to the Division Bench to contend that the discretion to grant a fresh lease in pursuance of clause 5 of the agreement, to which we have adverted to earlier, was left to the Executive Engineer concerned and there is no right available to the respondent and further it was contended that the learned single Judge could not have granted the relief in favour of the respondent. On behalf of the respondent the contention put forth before the Court was that clause 5 of the agreement entered into between the appellant and the respondent, involved an element of "legitimate expectation" and non-consideration of the same would amount to arbitrary exercise of the power and, therefore, the learned Single Judge was justified in issuing the writ. The Division Bench took the view that clause 5 of the agreement provided for extension of the period of agency though not renewal, and inasmuch as the conditions imposed in

respect of such extension had been fulfilled, it was not a case involving grant of a fresh agency but extension of the existing one and relied upon a decision of this Court in *Food Corpn. of India v. Kamdhenu Cattle Feed Industries*[1], and upheld the order made by the learned Single Judge. Hence this appeal.

We may notice that the distinction sought to be made by the High Court that this is not a case involving grant of a fresh agency but extension of the existing one does not make such sense. An extension of an agreement or renewal is granted on the expiry of the period of the existing agreement. Either the extension or the renewal of the existing agreement may be on the same terms or on different terms. If it is a case of extension of the existing agreement on the same terms and conditions and such consideration gives rise to a question of legitimate expectation being a part of the agreement concerned, economic consideration of getting higher bid for the same period would be a relevant consideration. If the Governmental authorities had found that it would be feasible to have the agency, as in the present case, on fresh terms by enhancing the amount payable to the Government, it would be a relevant factor and in such a case it cannot be said that the legitimate expectation of the respondent had been affected because the public interest would outweigh the extension of the period of the agreement. The doctrine of "legitimate expectation" is only an aspect of Article 14 of the Constitution in dealing with the citizens in a non-arbitrary manner and thus, by itself, does not give rise to an enforceable right but in testing the action taken by the Government authority whether arbitrary or otherwise it would be relevant. The decision in *Food Corpn. of India v. Kamdhenu Cattle Feed Industries*[1], does not lay down any principle which detracts from what we have stated now. In a case where the agency is granted for collection of toll or taxes, as in

1. (1993) 1 SCC 71

the present case, it can be easily discerned that the claim of the respondent for extension of the period of the agency would not come in the way of the Government if it is economically more beneficial to have a fresh agreement by enhancing the consideration payable to the Government. In such an event, it cannot be said that the action of the Government inviting fresh bids is arbitrary. Moreover, the respondent can also participate in the tender process and get his bid considered. Hence, we do not think that the view taken by the High Court can be justified.

According to Wade (Wade Administrative Law) 1994 P.419, 'Although there is some similarity between in two doctrines and arguments under the table of "estoppel" and "legitimate expectation" are substantially the same both the doctrine are district and separate. The element of acting to applicant's detriment which is *sine qua non* for invoking estoppel is not necessary ingredient of legitimate expectation.

CONCLUSION

Our study on the doctrine of 'Legitimate Expectation' in the light of pelethora of decisions of various Courts would lead us to conclude that Government and authorities acting as quasi-judicial authorities are bound to act fairly and in accordance with the golden Principles of Natural Justice which have taken into its fold this doctrine. The doctrine of legitimate and reasonable expectation is significant as it affords a standing to a class of persons who have no right as such.

The positive and potent content of the doctrine is principle of substantive fairness which is capable of securing justice by making the decision which fails to consider legitimate expectation as violative of the principles of natural justice and, therefore, a void doctrine therefore is incapable of securing relief for those who have the right as such except when cogent considerations of public interest would justify the decision. The doctrine is thus a conscience keeper of the Government as it introduces a shade of morality and fairness which is enquired to be observed by Government and its authority in all its dealings with the public. It is a savior for those petitioners who are likely to be denied relief on the short ground that they have no right to claim relief. The doctrine is the result of ingenious and innovative application of settled principles of law within the frame work of law.

M. Osman Shaheed's

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Off. : 21-1-983, Ricabgunj, Opp. High Court,
Hyderabad - 500 002. ✆ : 55700278 Fax : 040-24578310
E-Mail : andhra_legal_decisions@yahoo.com