Karnataka High Court
State Of Karnataka And Anr. vs K.K. Mohandas And Ors. on 23 February, 2001
Equivalent citations: ILR 2002 KAR 2872, 2002 (3) KarLJ 450
Author: B Sangalad
Bench: B Sangalad
JUDGMENT B.K. Sangalad, J.

1. Though these appeals were listed for admission, by consent of both the parties, these appeals have been taken up for final disposal.

2. These four appeals arise out of common judgment and decree dated 9-3-1998 passed in R.A. Nos. 223, 221, 222 and 229 of 1996 by the II Additional Civil Judge (Senior Division) and Chief Judicial Magistrate, Mangalore.

3. The respondent in each appeal was the plaintiff and the appellants were the respondents in O.S. Nos. 1261 to 1264 of 1990. In the said suits, the decree was passed in favour of the plaintiffs. As such, the appellants-respondents preferred appeals in R.A. Nos. 220 to 223 of 1996. The learned n Additional Civil Judge (Senior Division) and Chief Judicial Magistrate, Mangalore has disposed off the appeals by common judgment dated 9-3-1998. Being aggrieved by this judgment and decree, the present appeals arise. While narrating the facts of the case, the rank of the parties shall be followed in the lower Court.

4. The plaintiffs filed suits for relief of declaration that the excise contract existing between plaintiffs and the first defendant is enforceable by rectification to the effect that the monthly kist payable shall be at the rate prevailing during excise year 1989-90 and further sought for consequential perpetual injunction restraining the defendants from giving effect to or enforcing the terms of contract entered into between the plaintiffs and the defendants from giving effect to or enforcing the terms of contract entered into between the plaintiff and the defendants in relation to the detail vend of liquor in Karkala and Bantwal Taluks, Dakshina Kannada District for the excise year 1990-91 with regard to the kist amount payable thereunder or alternatively restraining the defendants from claiming kist at the rates higher than what was stipulated for 1989-90 in the said taluk and for costs of the suit. Different plaintiffs are the bidders in different taluks.

5. The plaintiifs are the excise contractors carrying on the business of excise contract. They were also participating in the auction. In the year 1990, they were successful bidders to vend liquor in the taluks of Karkala, Bantwal, Puttur, Sullia, Kundapura, Udupi and Belthangady in Dakshina Kannada District and the auction for 1990-91 took place in Mangalore on 28-5-1990. The 2nd defendant as representing the State of Karnataka accepted the bid of the plaintiffs at Mangalore and they executed contracts in favour of the State of Karnataka. It is further Stated that the sale of liquor and toddy are both controlled by the Government and the consumption of liquor depends upon the availability of the toddy. According to the plaintiffs, if the sale of toddy is prohibited in an area, the consumption of liquor would increase in that area. The vending of toddy was also being auctioned along with vending of arrack. For the year 1990-91, the Government of Karnataka took a policy decision to prohibit tapping and sale of toddy throughout the State of Karnataka in a phased manner

on 16-3-1990. On 16-3-1990, the Minister for Finance of the 1st defendant made a solemn statement on the floor of the assembly in the course of budget speech which is follows.-

"That the State has been following a policy of banning the sale of toddy in a phased manner. At present, the sale of toddy has been banned in the 7 districts. I propose to extend the ban on the entire State with effect from 1-7-1990, The expected loss is about Rs. 60 crores. It is hoped that a portion of this loss would be made good by higher arrack rentals and better enforcement of rules and regulations".

6. According to the plaintiffs, they acted on this promise that the sale of toddy would be prohibited and the sale of liquor would be on the higher side. With this logic in their mind, they raised bidding amount and they were highest bidders for the respective places. On 28-5-1990, the excise auction took place at Mangalore. They were highest bidders, as such they entered into agreement with the Government. Since the Government had made a policy, it had not auctioned the right to tap and vend toddy. On account of this, the toddy tappers of D.K. District made representation to the Government to remove the ban and also created a law and order problem. They went to the extent of violating the law by resorting to illegal toddy tapping and selling the same. By 1-7-1990 when the contract in favour of the plaintiffs in O.S. Nos. 1262 and 1264 of 1990 would become effective, they were also facing the deprivation of income consequent upon illegal tapping and sale of toddy. Though plaintiffs made repeated representations to take action to curb such illegal activities, the State has failed to maintain law and order and prevent the illegal tapping and sale of toddy. This caused utter prejudice and hardship to the plaintiffs. As such, they were constrained to file suits before the Trial Court for declaration that the excise contract existing between the plaintiffs and the first defendant is enforceable by rectification to the effect that monthly kist payable shall be at the rate prevailing during the excise year 1989-90. The defendants have filed their written statement admitting that the plaintiffs are the excise contractors in various taluks of Dakshina Kannada District and also admitted on 28-5-1990 the plaintiffs were the highest bidders for the excise contract. It is further admitted that the Finance Minister made a speech and also proposed to ban toddy. It is further admitted by doing so, there would be loss of 60 crores and the same would be made good by higher arrack rentals. But it is strongly contended that whatever the speech that is made by the Finance Minister on the floor of the assembly is only a proposal and it is subject to the discussions and approval of the Government and therefore, mere proposal made by the Finance Minister is not a promise. In addition to this, it is also stated the various organisations, MPs, MLAs and MLCs also made representations to the Government and there were some resignations also in the event the ban was not lifted. But it is denied that the vending of arrack depends upon the consumption of the toddy. The plaintiffs are bound to pay the kist as per the rate agreed by the auction held on 28-5-1990. In addition to this, they have also taken up a contention regarding the maintainability of the suit.

7. There is concurrent finding regarding promissory estoppel and with regard to speech made by the minister. The plaintiffs have examined P.Ws. 1 to 4 and Exs. P1 to P60 are marked. For defendants, no witness is examined but Exs. D1 to D20 are marked. Both the Courts have opined that the suits filed are maintainable and they have been decreed. These are concurrent findings by both the Courts below. In the second appeal, this Court has to be very slow in disturbing the concurrent finding.

Moreover the Supreme Court in the case of Mohd. Amirullah Khan and Ors. v. Mohd. Hakumnullah Khan and Ors., has stated in the second appeal, the High Court ought not to reappreciate the evidence and reverse the finding of fact arrived at by the First Appellate Court.

7-A. Mr. Gopal Hegde, the learned Counsel for the plaintiffs further relied upon the following decisions:

8. In the case of Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and Ors., it is held as follows.-

"(A) Civil Procedure Code, 1908, Section 100 (as amended in 1976)

-- Second appeal -- Scope of Section 100 after 1976 amendment

-- Held: (1) High Court must adhere to the procedure and conditions prescribed in the section and no Court has the power to add to or enlarge the conditions of appeal; (2) High Court must satisfy itself that a substantial question of law is involved and must then formulate the question on which the appeal would then be heard; (3) the respondent has the right to argue that no substantial question of law is involved; (4) a second appeal cannot be decided on merely equitable grounds; (5) the Court must distinguish between a question of law and a substantial question of law; (6) a substantial question of law must be distinguished from a substantial question of fact; and (7) concurrent findings of fact, however, erroneous, cannot be disturbed under the section -- Proviso to Section 100 however, in the interests of justice permits the High Court to hear an appeal on a substantial point of law even though not formulated by it -- Held, on facts, no question of law was involved and High Court wrongly disturbed the findings of facts of the First Appellate Court without adhering to the principles of and limitation imposed by Section 100 -- Practice and procedure -- Second appeal -- Interference in".

9. It is manifestly clear that the concurrent finding of fact however erroneous cannot be disturbed under this section. However, in the interest of justice, the High Court may hear an appeal on substantial questions of law.

10. In case of Thimmaiah and Ors. v. Ningamma and Anr., the Hon'ble Supreme Court has held as follows.-

"(C) Civil Procedure Code, 1908, Section 100 -- Second appeal --Concurrent findings of fact -- Unless High Court in second appeal expressly comes to conclusions contrary to concurrent findings of lower Courts, held, it must be taken that such findings were accepted -- Necessary inferences from such findings must be made".

11. In the case of M.G. Hegde and Ors. v. Vasudev D. Hegde, it is held as follows.-

"Civil Procedure Code 1908, Section 100 -- Second appeal -- Jurisdiction limited -- Words "prima facie perverse and error apparent on the face of the record" are not a "mantra" and cannot be employed to permit High Court to do in second appeal what the law enjoins on it not to do -- Held,

High Court erred in going into the evidence and reaching a conclusion contrary to that of lower Court".

12. The substantial question of law involved in this case is that whether the promissory estoppel operates against the Government in view of the facts and circumstances of the case.

13. The learned Advocate General Mr. A.N. Jayaram strenuously contended that the promise made by the Finance Minister is only a proposal and that the plaintiffs are the third persons and since the plaintiffs are the third persons, the doctrine of promissory estoppel is inoperative. On the other hand, learned Counsel Mr. Gopal Hegde, opposed this submission and submitted that promissory estoppel is very much applicable and since there are concurrent findings, the High Court cannot interfere with the findings of both the lower Courts.

14. The learned Advocate General has relied upon the decision,' namely, Union of India and Ors. v. Godfrey Philips India Limited, , it is held as follows.-

"Of course we must make it clear and that is also laid down in Motilal Padampat Sugar Mills Company Limited v. State of Uttar Pradesh and Ors., that there can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. 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 that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it. This aspect has been dealt with fully in M/s. Motilal Padampat Sugar Mills case, supra, and we find ourselves wholly in agreement with what has been said in that decision on this point".

15. Relying upon this decision, the learned Advocate General submitted that this decision makes it clear that the promissory estoppel is not applicable against the Government or public authority. 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 that having regard to the facts as they have transpired. In the case on hand, in my opinion, this decision would not come to the rescue of the Government because on the floor of the assembly the Minister had made a speech while delivering the budget speech that he would ban vending of toddy in the Dakshina Kannada District. The speech is believed by these excise contractors. It is not case of the plaintiffs that they are participating in the bid for the first time. They are regular bidders and they have taken words of Minister literally and have acted upon his words and participated in bid and ultimately they were

highest bidders They were under the impression that in the event of banning the toddy, the sale of arrack would go up. But subsequently the Government yielded to the pressure of the politicians and toddy associations and lifted the ban on toddy and these aspects have been made clear by the subsequent notifications. In view of the facts and circumstances, it cannot be said that this decision is applicable. This decision would not come to the rescue of the Government. On the other hand this would help the respondents.

15-A. He also relied upon another decision, namely, in the case of Vasantkumar Radhakisan Vora v. The Board of Trustees of the Port of Bombay, wherein it is held that the promissory estoppel cannot be used to compel 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 or power of the officer of the Government or the public authority to make. The doctrine of promissory estoppel being an equitable doctrine, it must yield place to the equity, if larger public interest so requires and 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. Equally it is further held that promissory estoppel should not be extended, though it may be founded on an express or implied promise stamped from the conduct or representation by an office of the State of public authority when it was obtained to play fraud on Constitution and the enforcement would defeat or tend to defeat the constitutional goals. The private interest would always yield place to the public interest. Though executive necessity is not always a good defence, this doctrine cannot be extended to legislative acts or to acts prohibited by the statute. Relying on this decision, the learned Advocate General submitted that both the Courts have not appreciated the evidence in a proper perspective manner.

16. The learned Advocate General also relied upon another judgment, namely, Union of India and Ors. v. Ganesh Rice Mills and Anr., wherein it is held as follows.-

"Sections 115 and 116 -- Promissory estoppel -- Speech made by Finance Minister on the floor of the house, held, cannot be treated to be promise or representation made to writ petitioner. Principle of promissory estoppel was wrongly applied by High Court. Appeal allowed".

17. The learned Advocate General Sri Jayaram relied upon the following decision also viz., in the case of Jalandhar Improvement Trust v. Sampuran Singh, . According to him the promises made on the floor of the assembly, unless gets sanctioned, it cannot be termed as a promise made to the public at large. As such the Government is not bound on such promise. In the cited case, it is seen that the suits for declaration and mandatory injunction were filed against Jalandhar Improvement Trust and in that case the Courts held that the Trust having once allotted the plots and having collected part of the consideration, it could not have cancelled the allotments probably basing the respondent's case on the principle of promissory estoppel. The Trial Court is some cases decreed the suits and in other cases, dismissed the suits. In appeal the First Appellate Court decreed all the suits and granted the reliefs prayed for. The High Court of Punjab and Haryana confirmed the judgment of the First Appellate Court giving rise to those appeals. The facts of the cited case and the facts of the case on hand are entirely different. As such, in my view this case does not come to his rescue.

18. These decisions in my opinion clearly shall not clinch the issue in favour of the Government as the learned Counsels appearing for the plaintiffs/respondents have also relied upon the judgments of the Supreme Court, and various High Courts. Both the Courts have also referred other decisions. It is not necessary to reproduce all of them here but however, important decisions are mentioned especially to meet the contentions of the learned Advocate General who submitted that promissory estoppel cannot operate against the Government.

19. The respondents' Counsel also relied upon the decision in the case of Godfrey Philips India Limited, supra, relevant page 373, wherein it is held as follows.-

"The true principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relations or effect 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 or representation is made and it is in fact so acted upon by the other party, the promise or representation 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. The doctrine of promissory estoppel is not limited in its application only to defence but it can also found a cause of action. This doctrine is applicable against the Government in the exercise of its governmental, public or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of this doctrine".

20. This principle is squarely applicable to the case on hand. In this case, the plaintiffs have believed the promise made by the minister on the floor of the assembly and also in furtherance of the speech, the Government issued the notification dated 11-5-1990. It is in the form of the letter bearing No. HD 27 EDC 90, dated 11-5-1990. This letter indicates that the State Government had taken policy decision to ban all the sale of toddy in the entire State of Karnataka with effect from 1st July, 1990. Hence, according to the learned Counsel for the plaintiffs, the Government has not only promised but also has made the plaintiffs go in for higher bids. The argument of the learned Counsel appears to be reasonable in view of this letter addressed to the Commissioner of Excise in Karnataka, Bangalore from Secretary to Government, Government of Karnataka, Bangalore.

21. He also relied upon the decision in the case of Express Newspapers Private Limited and Ors. v. Union of India and Ors., :

"Administrative law -- Promissory estoppel -- Doctrine of applicability against Government -- Limitations if approval accorded by a minister is not ultra vires and person to whom such approval is accorded to act upon it, Government would be precluded by promissory estoppel from questioning the minister for granting the approval".

22. The learned Advocate General also relied upon same case. But it is already observed earlier that this case helps the plaintiffs more than the defendants.

23. This ratio also helps the plaintiffs than the defendants. The minister has made the speech on the floor of the assembly. The promissory estoppel could be made use of against the Government. The persons who are affected are plaintiffs. They have acted upon the words of the minister. Hence, this decision is also in favour of plaintiffs. It is also held further as follows.-

"The basic principle of estoppel is that a person who by some statement or representation of fact causes another to act to his detriment in reliance on the truth of it is not allowed to deny it later even though it is wrong. Justice here prevails over truth. Estoppel is often described as a rule of evidence, but more correctly it is a principle of law. As a principle of common law it applies only to representations about past or present facts. But there is also an equitable principle of promissory estoppel which can apply to public authorities".

24. He also relied upon the decision in the case of Motilal Padampat Sugar Mills Company Limited, supra, wherein it is held as follows;

"(B) Equity -- Promissory estoppel -- Applies to Government or State in whichever capacity it acts -- Position in England and United States compared -- However, Government will not be bound if it can show that equity lies in its favour -- Heavy burden on Government in such a situation to bring the relevant facts and circumstances on record -- Government can also save itself on notice and reasonable opportunity being given by it, the promisee can resume his position, not otherwise also promissory estoppel cannot be applied against the Government if it is under an obligation or liability imposed by law to act differently".

25. In the case on hand the facts are entirely different. First of all the Government has taken decision to ban the toddy. The plaintiffs have believed this statement. Subsequently ban is lifted and within a day after lifting of the ban, after the notification, the plaintiffs have entered into an agreement. At least at that time the Government should not have suppressed the notification regarding lifting of the ban of the toddy. The Government has also not led evidence to show that the lifting of the ban was within the knowledge of the plaintiffs and having knowledge, the plaintiff voluntarily entered into agreement. The Government also has failed to lead any evidence in defence of it to show that the plaintiffs knowing fully well were inviting the risk. On the other hand the Government is silent. Hence the Government has not discharged its burden. Therefore, the promissory estoppel can be invoked.

26. He also relied upon the decision in the case of Gujarat State Financial Corporation v. Lotus Hotels Private Limited, wherein it is held as follows.-

"Estoppel -- Promissory estoppel -- Applicability of -- Government undertaking estopped from backing out from its promise held out to the contracting party which, acting upon the promise, incurred expenditures and suffered liabilities.

Government contracts -- Loan to entrepreneurs -- Once sanctioned cannot be refused except on valid ground -- State Financial Corporation sanctioning loan to a private entrepreneur at a lower rate of interest in case of Industrial Development Bank agreed to refinance the loan and otherwise,

at a higher rate of interest -- Later, on an enquiry the Bank refusing to refinance --Sanctioning of the loan not being conditional upon refinancing, held, corporation bound by its agreement to disburse the loan and cannot back out on the ground of the Bank's refusal to refinance".

27. This case clearly clinches the issue in favour of the plaintiffs and hammers the last nail on the coffin of Government.

28. It is pertinent to note that the Hon'ble Finance Minister made the speech on the floor of the assembly on 16-3-1990 stating that the Government would propose to extend the ban of toddy throughout the State. The plaintiffs are the highest bidders. Believing this they participated in the bidding and they were successful highest bidders. Naturally the bid has gone much higher than the previous year. The version of the plaintiff is to be believed when they contend that because they believed the proposal made by the Finance Minister, they were forced to bid for the higher amount with the idea that there would be a total ban of vending of toddy in Dakshina Kannada and their sale would go up. When this is backed out, the plaintiffs have not only lost the extra money but also were put to great hardships because of the subsequent policy of the Government. At least at the tune of entering into the agreement, the Government should have clarified the situation stating that the law and order situation on account of the speech made by the Minister had gone beyond control. As such they were constrained to change the policy of the Government. If this was brought to the notice of the plaintiffs and subsequently if the plaintiffs had volunteered to enter into agreement, the Government could not have been responsible. On the other hand, it is vice versa. In the letter bearing No. HD 27 EDC 90, dated 11-5-1990, it is clear that the State Government had taken a policy decision to ban sale of toddy in the entire State of Karnataka with effect from 1st July, 1990. The auction had taken place on 28-5-1990. In the second notification, dated 29-6-1990, there is reference of the letter mentioned supra. In the preamble itself it is stated that the State Government had taken a policy decision to ban the sale of toddy for the year 1990 and pursuant to this decision, the excise contractors, MPs, MLAs, MLCs and other associations have represented to the Government not to ban sale of toddy as the toddy tappers and other workers would lose employment. Therefore, the cabinet meeting held on 2-5-1990 constituted sub-committee consisting of Minister for Finance and Excise, Minister for Health and Minister of Law to examine and come up with suitable proposals for providing alternative employment to the displaced toddy tappers. After several meetings and after representations made by the above stated persons, the committee recommended to authorise the Excise Commissioner, DK and to work out the price, linkage, transport etc., and to arrange for sale of toddy tapped by the toddy tappers of the DK District and that the price to be fixed by the Excise Commissioner till the proper arrangements were finalised. The learned Advocate General submitted that this notification is purely in respect of alternative remedies. This notification is nowhere connected either with the interest or with the disinterest of the plaintiffs. But the learned Advocates for the plaintiffs strenuously contended that in this notification, there is mention of the letter dated 11-5-1990. Therefore, the Government could not go back on their promise by lifting the ban on toddy. The letter bearing No. HD 107 EDC 90, dated 17-11-1990 addressed to the Excise Commissioner in Karnataka by Commissioner and Secretary to Government, Home Department reads as follows:

"In partial modification of the Government letter DE 27 EDC 90, dated 11-5-1990,1 am directed to convey approval of Government to allow the toddy tappers of DK District to sell their toddy through their own toddy tappers society".

29. These three documents relied on by both the sides cut the roots of the Government. In the first instance, there is proposal by the Minister in his speech. In pursuance of this proposal, the plaintiffs have acted and came out as the successful highest bidders, and subsequently the Government has gone back on its own statement without giving any opportunity to the plaintiffs and permitted the vending of toddy not only to sell their toddy but also sell the toddy to their own toddy tappers society.

30. In the earlier notification it is stated that if fenny units in DK are to directly buy the toddy from the tappers of allotted trees at the price to be fixed by the Excise Commissioner till the above said arrangement is finalised. In my opinion, the act of the Government cannot be said to be sustainable in view of the decisions cited above by the plaintiffs. At the cost of repetition, it has to be stated that in spite of best efforts by learned Advocate General he has partially won the battle but ultimately lost the war. On the other hand, the plaintiffs have not only won the battle but also won war at the end. In the light of the observations made supra I am constrained to hold that the Government has failed to make out a case on both fronts, namely, concurrent findings and promissory estoppel. Therefore, the following order:

In the result these appeals arising out of R.A. Nos. 223, 221, 222 and 229 of 1996 stand dismissed. The parties to bear their own costs.