

(1998) 03 CAL CK 0035

Calcutta High Court

Case No: M.A.T. No. 4004 with M.A.T. No. 4027 of 1997

Sisir Kumar Das

APPELLANT

Vs

Kumarish Chandra Das

RESPONDENT

Date of Decision: March 27, 1998**Acts Referred:**

- Constitution of India, 1950 - Article 226

Citation: (1999) 2 ILR (Cal) 136**Hon'ble Judges:** Satyabrata Sinha, J; Dibyendu Bhusan Dutta, J**Bench:** Division Bench**Advocate:** Jayanta Kumar Biswas and Rafiqul Islam, for the Appellant; Dhilon Sarkar, for Respondent No. 1, Arun Kumar Mitra, for Respondent Nos. 5 and 6 and Bikash Ranjan Pratanabish, for State of West Bengal, for the Respondent**Final Decision:** Allowed

Judgement

Satyabrata Sinha, J.

These two appeals are directed against the judgment and order dated November 5, 1997 passed by a learned single Judge of this Court in Civil Order No. 8815(W) of 1993 whereby and whereunder the writ application filed by the writ Petitioner was allowed.

2. The fact of the matter lies in a very narrow compass.

3. Allegedly the mother of the writ Petitioners, Smt. Sabitri Bala Dasi, sold some immovable property in favour of the organising Governing Body of the College on payment of consideration of Rs. 4000.00. The said deed is contained in annex. "B" to the writ application. The Petitioner on or about September 9, 1987 filed a representation for his employment in the College. A statutory Governing Body of the College was formed on November 30, 1988. The College authority issued an advertisement for the appointment in the post of Officebearer of the College. The Petitioner as also the Appellant applied for the said post. It appears that written test

had taken place on August 2, 1992 wherein both the Petitioner and the Appellant participated. The Petitioner, however, filed a writ application on July 15, 1993 questioning the proposed appointment of the Appellant who admittedly was at serial No. 1 of the panel. On August 18, 1993 the Governing Body of the College adopted a resolution to the following effect:

Resolved that the 3rd post of office bearer be kept vacant in view of a High Court injunction passed by the Hon'ble Justice Sushanta Chatterji of Calcutta High Court on 15.7.93 restraining the College authority to keep the third post vacant till disposal of the writ application of Kumarish Chandra Das of Karimpur via Nalhati, Dist. Birbhum.

Sisir Kumar Das of Kadashi via Nalhati, Dist. Birbhum (who secured 2nd position in the category) will-be appointed against the third post if and when the injunction is vacated".

4. The writ application was filed on the basis that at the time of execution of the deed of sale, the mother of the Petitioner was assured that her son would be given appointment. The learned trial Judge, inter alia, proceeded on the basis that the writ application disclosed a cause of action meriting absorption of the Petitioner. Considering the case as if of land loser, the learned trial Judge invoking the doctrine of promissory estoppel held that the Governing Body of the College is bound thereof and thus held:

Accordingly, I direct the Respondent authorities to absorb the Petitioner in Class-D group staff in Hiralal Bhakat College, Nalhati, District-Birbhum within four weeks from the date of service of the copy of the order as passed today. In order to absorb and regularise the absorption, Petitioner should be allowed to submit an application and higher age limit shall be relaxed in absorbing the Petitioner in the group-D post as directed. Relaxation of higher age limit shall not be considered as precedent.

5. The learned Counsel appearing on behalf of the Appellant, inter alia, submits that in the facts and circumstances of this case the doctrine of promissory estoppel and legitimate expectation have no role to play. According to the learned Counsel, on the Petitioner's own showing, one member of the Governing Body of the College allegedly made certain promise which has not been made by the Governing Body and as such the same was not binding on the Governing Body nor the Petitioner can claim an appointment as a matter of right on the basis thereof.

6. Mr. Sarkar, Learned Counsel appearing on behalf of the writ Petitioner/Respondent on the other hand submits that the Petitioner's mother was an illiterate lady. The learned Counsel contends that from annex "C to the writ application it would appear that recommendation has been made by one of the members of the Governing Body of the College for his absorption before the District Magistrate, who was the President thereof and thereafter only the Petitioner was directed to appear at the interview.

7. It is admitted at the Bar that there does not exist any statutory rule laying down the procedure for recruitment of Class-VI staff. However, there cannot be any doubt that the Governing Body of the College is bound to follow the normal procedure for such recruitment and for the aforementioned purpose an advertisement had been issued and the Applicants were directed to appear at the written test and the interview. He did not succeed at the test as he obtained 19 marks out of 100 marks whereas the first empaneled candidate being the Appellant obtained 68 marks out of 100 marks in the examination. There cannot be any doubt whatsoever that in the instant case a Writ of Habeas Corpus or in the nature of Mandamus can not be issued by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India as the Petitioner has failed to establish a legal right in himself and a corresponding legal duty of the Respondents. The Petitioner has also failed to prove that the College authority has violated any provision of the statutory rules. In fact, as noticed hereinbefore, there does not exist any statutory rules.

8. The question which arises for consideration as to whether the learned trial Judge was right in issuing the aforementioned direction or not relying on or on the basis of doctrine of promissory estoppel or legitimate expectation.

9. The deed of sale was executed in the year 1976 by the mother of the Petitioner. The deed of sale as contained in annex. "B" to the writ application does not disclose any promise. If any promise has been made by one of the members of the Governing Body it has rightly been pointed out by the learned Counsel for the Appellant that the said promise is not binding on the Governing Body. The Governing Body must take a decision by adopting a resolution. If a decision is taken which would adversely affect the interest of the Governing Body, the same must be taken by way of resolution. There is nothing to show that there was any resolution adopted by the Governing Body and thus the question of giving any assurance to the Petitioner or his mother does not arise.

10. In the year 1976 when the aforementioned deed of sale was executed, the Petitioner was aged about 18 years. It is not the case of the Petitioner that any promise had been made to him at that stage. The contract of sale was entered into by and between the Managing Committee and the mother of the Petitioner. Having sold the property upon receipt of consideration of Rs. 4000.00, the mother of the Petitioner was not and could not have been a "land looser". The purpose of executing the aforementioned deed of sale has been stated in the deed itself which has no nexus with the alleged promise made to her by the Governing Body of the College or any member of the College authority.

11. Reliance has been placed by Mr. Sarkar, Learned Counsel, on Annex. "C" to the writ application. Annex. "C" is a representation made by the writ Petitioner. The said representation of the Petitioner was merely forwarded by one of the members of the Governing Body to the District Magistrate. It is, therefore, not correct to contend that the recommendations had been made for his appointment by the President of

the Governing Body of the College or only pursuant thereto he had appeared at the tests. In fact the said representation is dated March 31, 1988. As noticed hereinbefore, the written test and the interview took place in the year 1992-93. The Petitioner took a chance by appearing at the written test and the interview. He did not succeed therein. In fact being un-successful candidate, he is estopped from questioning the empanelment of the candidate.

12. Unfortunately this aspect of the matter has not been considered by the learned trial Judge. Furthermore in view of the fact that no binding promise had been made to the Petitioner by the Governing Body of the College, the doctrine of promissory estoppel and legitimate expectation cannot be said to have been any application in the instant case.

13. It is now well-settled that no writ application would be maintainable by invoking the doctrine of legitimate expectation alone. This aspect of the matter has been considered by this Court in the case of [D. Wren International Ltd. and another Vs. Engineers India Ltd. and others](#). This Court in the said decision has taken into consideration the judgments of the Apex Court in [Union of India and others Vs. Hindustan Development Corpn. and others](#), and several other decisions.

14. In the case of [A. Mahudeswaran and Others Vs. Govt. of T.N. and Others](#), the Apex Court has laid down the law in the following terms:

Having given our anxious consideration to the respective contentions, the question that arises for consideration is ; whether the Government was justified in directing re-regularisation of the services of the Appellants? Salem has committed any illegality or violated the orders of the regularisation issued by the State Government in the respective Government orders. We have been taken through all the Government orders which would indicate that the Government was conscious of giving benefit to 2000 section writers whose services were sought to be utilised in the Survey and Settlement Department. They were appointed on regular basis by way of relaxation of the Statutory Rules of recruitment in the Department. It also indicates that they would be appointed with effect from the date on which they were discharging their duties. In other words, the principle adopted by the Government is fair and consistent with Rules 10 (a)(i) and 23 of the Tamil Nadu State and Subordinate Service Rules. It would be given effect from the date the candidate first discharged his duty on that post. Thus, it could be seen that the regularisation of the services is consistent with the General Rules, namely, the Tamil Nadu State and Subordinate Service Rules".

15. In the instant case the learned trial Judge held that the Petitioner was bound to get the relief as a land looser. In our considered view the approach was not correct in view of the decision of the Apex Court in the case of [Butu Prasad Kumbhar and Others Vs. Steel Authority of India Ltd. and Others](#), wherein the Apex Court has clearly held that when award is made for acquisition of land no employment can be

claimed as a matter of right. It is now well-settled that neither there can be any estoppel against statute nor any direction can be issued by the courts to act in violation of the statute.

16. For the reason aforementioned, we are of the opinion that the learned trial Judge has exceeded his jurisdiction in passing the impugned judgment and order which is accordingly set aside.

17. Both the appeals are allowed. There will be no order as to costs.

D.B. Dutta, J.

18. I agree.