



WRIT APPLICABILITY TO CONTRACTS

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ABSTRACT :

For a breach of contract the remedies are available in right in personam. Parties to the contract can file a suit on other party for damages. Generally damages are nominal or substantial damage. In certain circumstances the parties to the contract can directly move to the High Court or Supreme Court under Article 226 or Article 32 for remedies. For breach of contract the aggrieved party generally seeks remedy in the Civil Court but the procedure is lengthy and sometimes the aggrieved party may not get expected relief from the Civil Court, especially when the opposite party is Government. It is very difficult for the plaintiff to get appropriate remedy under these circumstances. It is advisable to the aggrieved party to move High Court or Supreme Court to get quick remedy against the Government and quasi-Governmental Authority.



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INTRODUCTION

The Extraordinary jurisdiction of the High Court to issue Writs under the Article 226 of the constitution of India and that of Supreme Court under Article 32 of the constitution of India for enforcement of Fundamental rights must naturally form the part of public law. The remedies and relief available in Writs like mandamus, Certiorari, prohibition and so on all are directed against the state of India on other authorities within the meaning of Article 12 of the constitution. The article 12 says that the state includes the government and Legislatures of each state and all local and other authorities within the territory. The main reason for following, a way of writ is because it is quicker inexpensive and less cumbersome procedure.

In the case of R.K. Aggarwal V State of Bihar AIR 1977 SC65. The Supreme Court divided the cases involving breach of alleged obligation by the state into three categories:

1. Where a petitioner makes a grievance of breach of promise on the part of the state in cases where on assurance or promise by the state he has acted upon and is prejudice to him but the agreement is short of contract means of Article 299 of the constitution.
2. Where the contract entered into between the person aggrieved and the state is in exercise of statutory power under certain Act or Rules framed there under and the petitioner alleges a breach on part of state.
3. Where the contract entered into between State and the person aggrieved is not statutory but purely contractual and the rights and liabilities of the parties are governed by the terms of Contract and the petitioner complains breach of such contract by the state.

The above first two types of obligations were held to be enforceable under Article 226 and Article 32 but not the third category which purely flows from agreement or contract. In *S.B. Dutt V University of Delhi* AIR 1958 S.C. 1050. When an award was passed by Arbitration Procedure by an arbitrator declaring the dismissal of employee of University to be null and void and treated him to be continued in service, it was held that there was an error on the face of the award, in as much as it sought to enforce a contract of personal service. In *Gujarat State Financial Corporation V Lotus Hotel Pvt. Ltd.* The Court issued an order or Writ to carry out its promise and make a loan. This he could do due to Promissory Estoppel rather than the contract itself. In *Naresh Chandra Roy V Union of India and others*, AIR 1987 Cal. 147. The grievance of petitioner was that the telephone line went out of order but in spite of complaints they have not rectified the line but have been sending bills for it.

The Calcutta High Court issued a writ against the telephone departures and ordered restoration of telephone line. In *Surendra Prasad VONGC* AIR 1987 Calcutta. In this case also the government lost to the supplier and they were asked to implement the recommendation of High Power Committee. In *Ashar Goel V LIC* 1986 Bombay 412. Here the petitioner sought a direction against LIC to pay the amount due under a policy to him as the nominee. The LIC contended that the petitioner was seeking to enforce a contractual right by the means of Writ petition. The High Court rejected the contention and asked the LIC to pay the amount to petitioner.

To say that the doctrine of promissory estoppel is restrictive in its applicability so far as the statutory obligations are concerned, in my view, cannot be termed to be a proper exposition of law considering the changing structure of society involvement of government or governmental agencies in ordinary trade and commerce is now a practical reality which cannot and ought not to be overlooked while dealing with the issue under consideration. If a promise can form part of a cause of action connected with statutory obligation, it is too late in the day to contend that it ought to be restricted 'to the extent above and no further extension ought to be allowed. As most succinctly stated by Bhagwati J. that law is not antique to be taken down, dusted and put back on the shelf again, but it is essentially a social process and it must keep on growing and developing with the changing social concepts and values. The concept cannot be restricted in a strait-jacket formula and applied only in certain specified cases. The ever-growing needs of the changing society cannot support the strait-jacket theory. Nobody is above the law and the government, as stated above, is no exception. The law must keep pace with the time, consider the social changes and suitability be expanded so as to meet the interest of justice in the present day context. To apply the law under the changed circumstances in an expanded form is a plain exercise of the judicial power and the law court would be failing in discharging its duty to that effect if the concept of with the needs of the people, the structure of the society, having due regard to the socio-economic conditions prevalent in promise would be arduous in regard to the enforcement of the doctrine of promissory estoppel by the law courts, though of course, due regard ought to be had to caution administered by the Supreme Court in *M.P. Sugar mill's case* as noted above.

Even in England, the orthodox and narrow view has been given up and it has been held that the doctrine can be used as a sword also. Again, to quote Lord Denning. "There are estoppel and estoppels. Some do give rise to a cause of action. Some do not". The learned Law Lord added that "in the species of estoppel called proprietary estoppel it does give rise to a cause of action.

Again the rule of estoppel applies to the crown as well. There is no justification for not applying this against the government and exempt it from liability to carry out its promises given to an individual. The crown cannot escape from its liability saying that the said doctrine does not bind it. Lord Denning has rightly observed:

"I know that there are authorities which say that a public authority cannot be estopped by any representations made by its officers. But those statements must now be taken with considerable reserve. There are many matters which public authorities can now delegate to their officers. If an officer acting within the scope of his ostensible authority makes a representation on which another acts, then a public authority may be bound by it, just as a private concern would be".

Thus, in *Robertson v. Minister of Pensions*, one R, an army officer claimed a disablement pension on account of war injury. The war officer accepted his disability as attributable to military service relying on this assurance R did not take any steps which otherwise he would have taken to support his claim. The ministry thereafter refused to grant the pensions. The Court held the ministry liable. According to Denning, J. the crown cannot escape by saying that estoppels do not bind the crown, for that doctrine has long been exploded."

So far as Indian law concerned, 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 doctrine has also been applied against the government and the defence based on executive necessity has been categorically negated. Before more than a hundred years ago long before the doctrine was formulated by Lord Denning, in *High Trees* case in England, the High Court of Calcutta applied the said Doctrine and recognised a cause of action founded upon it in *Ganges Mfg. Co. v. Sourujmull*. The Doctrine was also applied against the government by the high court of Bombay in the beginning of this century in *Municipal Corporation of Bombay v. Secretary of state*.

In this historic case an "Export promotion scheme" was published by the textile commissioner. It was provided in the said scheme that the exporters will be entitled to import raw materials upto hundred per cent of the value of the exports. Relying on this representation, the petitioner exported goods worth 5 lakhs of rupees. The textile commissioner did not grant the import certificate for the full amount of the goods exported. No opportunity of being heard was given to the petitioner before taking the impugned action. The order was challenged by the petitioners. It was contended by the government that the scheme was merely administrative in character and did not create any enforceable right in favour of the petitioner. It was also argued that there was no formal contract as required by Article 299 (1) of the constitution, & therefore it was not binding on the government was bound to carry out the obligations undertaken in scheme. Even though the scheme was merely executive in nature and even though the promise was not recorded in the form of a formal contract as required by the Article 299(1) of the constitution, still it was open to a party who had acted on a representation made by the government to claim that the government was bound to carry out the promise made by it. Speaking for the court. Shah, J. (as he then was) stated:

"We are unable to accede to the contention that the executive necessity release the Government from honouring its solemn promises relying on which citizens have acted to their detriment".

Generally for a breach of contract remedy is available in a civil court for damages after a specific performance. But many a times it was proved that this civil remedy is labourious and time taking the aggrieved party may not get expected relief after a couple of years. Sometimes the matter may take a long time if the party refers appeal. In the interest of justice the remedy under writ jurisdiction is beneficial to the parties. In the business community the delay causes irreparable loss to the aggrieved party and he may be forced to close the business for financial problems such as non-recovery of damages and other dues from the other party. Sometimes taking the advantage of procedural delay the party who is in default prefers civil court remedy to delay the payments. So it is appropriate to say that writ relief under Article 226 it will be beneficial to aggrieved party.

In particular the apparently scholarly treatment meted out in *Radhakrishna Agarwala* and the three-fold classification of situations therein for deciding when a writ may issue and when it may not, lack validity and are the causes of all the present ills. The threshold-stage argument under which the state is alleged to be amenable to writ jurisdiction but not beyond it when it has entered into the contractual arena, has no doubt an air of profundity but is undconvincing. There should therefore be a weaning away of our courts from the old ideas of contract which implied that they were merely to hold their hand back when the aggrieved party is found to be in the contract arena.

No longer can there be any justification for driving a party to a civil suit when his alleged claim arises from contract. It is not the nature of the transaction but rather the arbitrary character of state action that should form the basis of deciding the availability of Writs in the matters. The conservative approach

whittling down the ambit of 226 is totally out of the tune with the necessities of the present times. In the telling phraseology of Krishna Iyer, J..

Art 226 is a sparring surgery but the lancet operates where injustice supports. While traditional restraints like availability of alternative remedy hold back to the court, and the two branches fear to tread, judicial daring is not daunted where glaring injustice demands even affirmative action.... There is a native hue about Art. 226 without being anglophilic or anglophobic in attitude. (*Gujarat Steel Tubes Ltd v. Mazdoor Sabha*).¹

A recent judgement of our Supreme Court has confirmed the views expressed above and the trend development seems to lie in the direction of riding ourselves of an unjustifiable limitation on the power of our High Courts and the Supreme Court to issue writs in the matters of contract with the state and its is a trend which should be welcomed. This is the decision in *Shrilekha Vidyarthi v. State of U.P.*² where in the power of judicial review of has been proclaimed in no uncertain terms. In this case, the U.P. government terminated the services of all the government consel in all the districts of the state of U.P. The aggrieved persons challenged such termination through writ petitions. The reply of the government inter alia was that of the contractual rights and therefore no: amenable to correction through writs. The Supreme Court rejected and therefore of the Government and allowed the writ petitions. It said; arbitrariness is the very negation of rule of law.... The state cannot claim comparision with a private individual even in the field of contract. The State cannot be attributed the split personallity of Dr. Jekyll and Mr. Hyde in the contractual field so as to impress on it all characteristics of the State at the threshold while making a contract or thereafter possibility to cast off its garb of State to adorn the role of a private body during the substance of the constructs to act arbitrarily subject only to the contractual obligations and remedies from it.

So there is an 'implied' rejection by the Supreme Court in this latest case of the 'threshold stage' argument of Radhakrishna Agarwal vintage. We call it an 'implied' rejection because we find in the entire judgement no mention of Radhakrishna Agarwal. The omssion is, for ought we know, deliberate on the part of the Supreme Court, for this latest decision being one delivered by a bench of two judges of the Supreme Court (verma and sahai, JJ.) could not except by the gross violation of stars dicisis overrule the decision in Radhakrishna Agarwal which was a judgement by a bench of three judges of the Supreme Court. Such as what we feel a deleberate omission is rather unfair, if nothing worse. But this is a defect which is endemic to out system of binding judicial precedents which will bind however illogical or unjustifiable they may be.

All the same it is a matter for satisfaction that the metaphor employed above a leopard of a state being unable to change its spots on entering the contractual arena has found an echo in this latest decision of the Supreme Court in its reference to the artificiality of attributing to the State the split personality of Dr. Jekyll and Mr. Hyde. We only wish that this later decision of two judges will prevail over the earlier one of three judges in Radharakrishna Agarwal's case.

In the 21st century the old and consercative view of police state is replaced by modern view of Welfare State. In the foregone chapters we have seen how the view of Supreme Court with regard to maintability of writ petitions for the enforcement of contractual obligations, is changed from time to time. As we have seen earlier in the recent years the Supreme Court has bypassed theory and intervned in the contractual field wherever the action of one of the party to contract is arbitrary or unjustified.

We can strongly believe our Supreme Court and High Courts, in the neat future, will hold the writ petitions are maintainable for the enforcement of contractual obligation in order to do equity and justice between the contracting parties. We can also believe the fetters like threshold theory will weam away.

¹ AIR 1980 SC 1896, 1916

² AIR 1991 SC. 537

REFERENCES

1. Durga Das Basu – Constitutional Remedies and Writs
2. Atiyah – Rise and Fall of Freedom of Contract
3. A.G. Guest – Anson’s Law of Contract
4. T.S. Venkatesa Iyer’s – Law of Contracts
5. Durga Das Basu – Shorter Constitution of India
6. All India Reporter
7. Supreme Court Cases
8. Law Weekly
9. Writ Law Reporter
10. Supreme Court Journal



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