

NEED FOR LAYING DOWN PRINCIPLES OF DOCTRINE OF LEGITIMATE EXPECTATION.

The Doctrine Of Legitimate Expectation as part of administrative law has evolved over the last few years in the legal system of different countries of the world including India.

The said doctrine is based on the requirement of administrative fairness and rule of estoppel.

The following Judgements of the Supreme Court will bring out the scope and the restriction of Doctrine Of Legitimate Expectation

1) Navjyoti Coo-Group Housing ... vs Union Of India And Others AIR 1993 SC 155

The new criteria which was laid down for the allotment of land was challenged in this case. According to the policy which was originally laid down, the seniority for the purpose of allotment was to be decided on the basis of the date of registration. Consequently, when a major change was incorporated in the policy in the year 1990, the criteria for deciding seniority was changed from the date of registration as the basis to the date of approval of the final list.

It was held by the Supreme Court that the housing societies were entitled to 'legitimate expectation' owing to the continuous and consistent practice in the past in matters of allotment. The court also explained on the principle stating that presence of 'legitimate expectations' can have different outcomes and one such outcome is that the authority should not fail 'legitimate expectation' unless there is some justifiable public policy reason for the same. It also highlighted that availability of reasonable opportunity to those likely being affected by change in the policy which was consistent in nature is well within the ambit of acting fairly and held that such an opportunity should have been given to the Housing Societies by way of a public notice.

2) Food Corporation of India v. Kamdhenu Cattle Feed Industries (1993) 1 SCC 71

The Supreme Court gave a detailed explanation in this case on the nature of the doctrine of legitimate expectation. The court held that since there is a huge responsibility on the part of public authorities to act fairly, therefore every citizen of this country is entitled to have legitimate expectation that they will be treated in a fair manner and the public authorities must give due weightage/importance to those expectations for the purpose of satisfying non-arbitrariness in state action because otherwise it may be counted as abuse of power. The court also made an extraordinary point that any such legitimate/reasonable expectation may not be a directly

enforceable right always but failing to take into consideration such an expectation make deem a authority's decision arbitrary. Nevertheless, the determination of an expectation to be a legitimate one or not must be decided on a case to case basis.

- 3) ***M.P. Oil Extraction v. State of M.P*** ((1997) 7 SCC 592) The doctrine of legitimate expectations operates in the realm of public law and is considered a substantive and enforceable right in appropriate cases. It was held that the industries had a legitimate expectation with regards to past practice and the renewal clause, that the agreements are renewed in a similar manner. The Supreme Court held that it cannot be over emphasized that the concept of legitimate expectation has now emerged as an important doctrine and in appropriate cases constitutes an enforceable right. The principle at the root of the doctrine is rule of law which requires regularity, predictability and certainty in government's dealing with public. In short, the doctrine of legitimate expectation imposes a duty on government to act fairly, more so, as the Government has to discharge its duty as a welfare state in consonance with the directive -Principles of State Policy of the Constitution. It has been said that power i.e. judicial or executive, has a tendency to expand its parameter by stretching its limits. The doctrine of legitimate expectation owes its birth to screen this urge of expansionism. It is in fact a legal curiosity and gives sufficient locus-standi for judicial review. Thus it is a doctrine of Check and Balance. In spite of its expanding recognition about its parameter and characteristic continue to be undefined. Some of the factors which relate specifically to the question of Legitimacy are, legitimacy in an expectation that a public body will not breach its statutory duty. Representation made must be by actual or ostensible authority. High fact specific exercise be conducted in respect of purely subjective adjudication. Unwieldy attempt to thwart claim of legitimate expectation under the guise of overriding public interest must be weighed against the fairness of the interest. National security measures and those of natural Justice provide a separate basis for requiring some form of consultation prior to the making of an adverse decision and government, while formulating and reformulating policy must consider constitutional principles vis-à-vis legitimate expectation. In short, the concept of legitimate expectation vis-à-vis doctrine of legitimate expectation, which, it has come to be lately known, has been recognized as the basis for judicial review of administrative actions. Legitimate expectations may be based upon some express statements, or undertaking by or on behalf of the Public authority which has the duty of making the decision or from the existence of a regular practice which the claimant can reasonably expect to continue. The concept of legitimate expectation has made the area of applicability of Natural Justice much broader.

4) Chief Commissioner Of Income Tax & ... vs Smt. Susheela Prasad And Ors – MANU/SC/8140/2007

Secretary, State of Karnataka, Uma Devi, - MANU /SC/ 1918/2016

Poonam Verma V/s Delhi Development Authority AIR 2008 SC 870

When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or Procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a Person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

The above observation only reiterates the position that no legitimate expectations arises out of a promise or practice that is contrary to law and the Constitution. The doctrine of legitimate expectation would apply only when a practice is found to be prevailing. It is a positive concept. But, in cases where purported expectation is based on an illegal and unconstitutional order, the same is wholly inapplicable, as the same cannot be found on an order, which is per se illegal, and without foundation.

5) Mahabir Vegetable Oils Pvt. Ltd. & ... vs State Of Haryana & Ors on 10 March, 2006

The Supreme Court had held that Mahabir Vegetable Oils had the legitimate expectation of being entitled to sales tax exemption pursuant to 'Note 2' by which certain rights had accrued on the industrial units. The State of Haryana, had announced an industrial policy for the period of April 4, 1988 to March 31, 1997 by which incentive by way of sales tax exemption was to be given to the industries set up in backward areas in the state. The schedule to the Haryana Generals Sales Tax Rules 1975 provided for a negative list of industries which were not to be covered by the exemption. Initially, 'solvent extraction plant' had not been in the

negative list. In January, 1996, notice was given of the intention of the government to amend the rules. A draft for the information of persons likely to be affected by it was also circulated. Amendment in terms of the draft rules were notified on January 16, 1996, whereby 'solvent extraction plant' was put in the negative list of industries not entitled to exemption 'note 2' appended thereto provided that 'the industrial units in which investment has been made up to 25% to the anticipated cost of the project and which have been included in the above list for the first time shall be entitled to the sales tax benefits related to the extent of investment made up to January 3, 1996.'

However, in May, 1997, the said rules were amended inter alia by omitting 'note 2' deeming to have always been omitted. Mahabir Vegetable Oils Private Limited applied for sales tax exemption which was rejected in terms of the omission of 'note 2'. In Mahabir Vegetable Oils (P) Ltd V State of Haryana the Supreme Court had held that Mahabir Vegetable Oils had the legitimate expectation of being entitle to sales tax exemption pursuant to ' Note 2' by which certain rights had accrued on the industrial units.

Conclusion

Doctrine Of Legitimate Expectation though used in India in an ad-hoc manner by the judiciary, it is necessary to lay down principles for its application and restrictions on the doctrine.

The same can come from the Judiciary or the Legislature.

[Source – Doctrine Of Legitimate Expectation by Satish Chandra, 62 JILI (2020) at Pg. 101]