

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 4254 OF 2022  
(Arising out of S.L.P. (C.) No. 30438 of 2019)**

**THE STATE OF WEST BENGAL & ORS.                      ...APPELLANT(S)**

**VERSUS**

**GITASHREE DUTTA (DEY)    ...RESPONDENT(S)**

**J U D G M E N T**

**S. ABDUL NAZEER, J.**

Leave granted.

2. This appeal is directed against the judgment dated 06.03.2019 in M.A.T No.1341 of 2018 whereby the Division Bench of the High Court of Calcutta has allowed the appeal and set aside the order of the learned Single Judge in Writ Petition No. 661(W) of 2017. The question for consideration in this appeal is whether the State of West Bengal was justified in cancelling the declaration of FPS (Fair

Price Shop) vacancies in view of the implementation of National Food Security Act, 2013 (for short '2013 Act').

3. Shorn of details, by a Gazette Notification dated 30.01.2014, the vacancy for FPS dealership was declared in the District of Alipurduar. The respondent participated in the selection process and was recommended as a first priority candidate in respect of the said vacancy. However, no final order appointing the respondent was issued by the State Authority. While the application of the respondent was pending, a notification dated 17.08.2015 was issued by the Food and Supplies Department of the State of West Bengal cancelling the declaration of vacancies. This notification was issued in the light of implementation of the 2013 Act, which is as under:

“In view of the implementation of the National Food Security Act, 2013 in the State, the Governor is pleased to cancel with immediate effect the FPS vacancies notified vide Memo. Nos. 2480/FS/O/Sectt./CSS/7S-16/2013 dated 26.08.2013, 3062-FS/Sectt/Food/4M-04/2013 dated 06.11.2013, 152-FS/Sectt/Food/4M-16/2013 dated 20.01.2014, 540-FS/Sectt/Food/4M-16/2013 dated 04.03.2014 and G-295/FS/Sectt/Food/6F-19/2009 dated 08.01.2015. No further action will be taken in connection with applications received against such vacancies.”

4. Being aggrieved by the cancellation of declaration of vacancies, the respondent moved an application under Article 226 of the Constitution before the High Court of Calcutta *inter alia* praying for quashing of the Notification dated 17.08.2015. The State of West Bengal contested the writ petition by filing affidavit in opposition and the said writ petition was dismissed by the learned Single Judge. The said judgment of the learned Single Judge was assailed by the respondent before the Division bench of the Calcutta High Court. This intra Court appeal along with three other matters were taken up by the Division Bench simultaneously and decided finally by a judgment dated 06.03.2019. The Division Bench while deciding the said appeals held that the State of West Bengal has failed to justify the decision to recall the vacancies and that it has acted in an arbitrary and unreasonable manner, and hence, quashed the Notification dated 17.08.2015. As noticed above, the State of West Bengal and its functionaries have challenged the legality and correctness of the said judgment in this appeal.

5. We have heard the learned counsel for the parties.

6. The contention of the learned counsel for the appellants is that the Notification dated 17.08.2015 was issued in public interest in view of the 2013 Act. Therefore, the plea of legitimate expectation of the respondent is without any basis. It is argued that there is no estoppel against the statute. It is further argued that the Division Bench failed to appreciate that due to the implementation of the 2013 Act, the number of beneficiaries has been reduced in the State at that time after mapping of ration card holders, thus it was no more viable to create or go through with the process of filling up of vacancies. It is urged that the selection shown pursuant to the Notice dated 30.01.2014 does not vest the respondent with any justiciable right to agitate before the Writ Court.

7. However, the learned counsel for the respondent while supporting the judgment of the Division Bench submits that the respondent had participated in the selection process and became successful thereat. The respondent altered the material position to her prejudice, on the basis of the directions issued by the State in terms of the said notification. The justification for cancellation given in the impugned notification dated 17.08.2015 is the coming into effect of the 2013 Act. The said Act was in force prior to the

notification dated 30.01.2014. Therefore, the Authorities are deemed to have taken into consideration the parameters laid down in the 2013 Act while declaring vacancy on 30.01.2014. At this stage, the Authorities cannot resile from their declared position.

8. We have carefully considered the submission of the learned counsel made at the bar and perused the materials placed on record.

9. The respondent has contended that she has legitimate expectation to be treated fairly even if she may not have a vested right in getting the appointment. It is the duty and the obligation of the State to act fairly and not arbitrarily. A decision not to fill up the vacancies must be bona fide and for justifiable and appropriate reasons.

10. The doctrine of “legitimate expectation” has been developed in the context of principles of natural justice. ‘Legitimate expectation’ is a public law right whereas ‘promissory estoppel’ is a private law right. The doctrine of legitimate expectation in public law is based on the principle of fairness and non-arbitrariness in governmental actions.

11. However, the doctrine of legitimate expectation ordinarily would not have any application when the legislature has enacted the statute. Further, the legitimate expectation cannot prevail over a policy introduced by the Government, which does not suffer from any perversity, unfairness or unreasonableness or which does not violate any fundamental or other enforceable rights vested in the respondent. When the decision of public body is in conformity with law or is in public interest, the plea of legitimate expectation cannot be sustained. In **Punjab Communications Ltd. v. Union of India and Ors.**<sup>1</sup> this Court held that policy decision creating the legitimate expectation which is normally binding on the decision maker, can be changed by the decision maker in overriding public interest. It was held as under:

**“37.** The above survey of cases 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 based on previous practice or past conduct unless some overriding public interest comes in the way.....”

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<sup>1</sup> 1999 (4) SCC 727

12. In **Sethi Auto Service Station and Another v. Delhi Development Authority and Others**<sup>2</sup>, this Court after referring to various precedents observed as under:

**“32.** An examination of the aforementioned few decisions shows that the golden thread running through all these decisions is that a case for applicability of the doctrine of legitimate expectation, now accepted in the subjective sense as part of our legal jurisprudence, arises when an administrative body by reason of a representation or by past practice or conduct aroused an expectation which it would be within its powers to fulfil unless some overriding public interest comes in the way. However, a person who bases his claim on the doctrine of legitimate expectation, in the first instance, has to satisfy that he has relied on the said representation and the denial of that expectation has worked to his detriment. The Court could interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. But a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles.

**33.** It is well settled that the concept of legitimate expectation has no role to play where the State action is as a public policy or in the public interest unless the action taken amounts to an abuse of power. 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

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<sup>2</sup> (2009) 1 SCC 180

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. Therefore, a 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. [Vide: **Union of India v. Hindustan Development Corporation** – (1993) 3 SCC 499]

13. In **Union of India v. Lt. Col. P.K. Choudhary**<sup>3</sup>, this Court held that the legitimate expectation, as an argument, cannot prevail over the policy introduced by the Government which does not suffer from any perversity, unfairness or unreasonableness or which does not violate any fundamental or other enforceable rights vested in the respondents.

14. There is a necessary inter-play between the plea of legitimate expectation and Article 14. For a decision to be non-arbitrary, the reasonable/legitimate expectations of the claimant have to be considered. However, to decide 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 claimant's perception but in larger

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<sup>3</sup> 2016 (4) SCC 236



public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. In **Food Corporation of India v. M/s Kamdhenu Cattle Feed Industries**<sup>4</sup>, this Court has pointed out as under:

“8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by 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 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 a 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 claimant’s perception but in larger public interest wherein other more important considerations may outweigh 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.”

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4 (1993) 1 SCC 71

15. Bearing in mind the above legal principles, let us examine the present case. The 2013 Act was enacted to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith or incidental thereto. It is beneficial to refer to the ‘Introduction’ to the 2013 Act in order to understand the scope and purpose of the Act:

#### “INTRODUCTION

Eradicating extreme poverty and hunger is one of the goals under the Millennium Development Goals of the United Nations. It casts responsibilities on all State parties to recognize the right of everyone to adequate food. Food security means availability of sufficient foodgrains to meet the domestic demand as well as access, at the individual level, to adequate quantities of food at affordable prices.

Providing adequate food has always been focus of the Government’s planning and policy. However, this legislation marks a paradigm shift in addressing the problem of food security from the current welfare approach to a right based approach. This legislation would confer legal rights on eligible beneficiaries to

receive entitled quantities of foodgrains at highly subsidized prices. Besides, it also confers legal rights on women and children and other special groups such as destitute, homeless, disaster and emergency affected persons and persons living in starvation to receive meal free of charge or at affordable price.”

16. The ‘Statement of Objects and Reasons’ of 2013 Act, *inter alia*, states as follows:

“(i) progressively undertake necessary reforms by the Central and State Governments in the Targeted Public Distribution System in consonance with the role envisaged for them in the proposed legislation.”

17. Section 3 of the 2013 Act provides for the right to receive foodgrains at subsidized prices and Section 4 provides for nutritional support to pregnant women and lactating mothers. Similarly, Section 5 provides for the nutritional support to the children. Section 6 provides for prevention and management of child malnutrition.

18. Section 12 reposes a duty on the State to progressively undertake reforms necessary in the Targeted Public Distribution

System and the same should be in consonance with the Act. The same is reproduced as under:

“12. (1) The Central and State Governments shall endeavour to progressively undertake necessary reforms in the Targeted Public Distribution System in consonance with the role envisaged for them in this Act.”

Further under Section 12(2)(e), the Act envisages power of the State to undertake various steps in furtherance to reform the system, which shall, *inter alia*, include that the state can give preference to any public bodies/panchayats/SHGs/cooperative societies etc. The same has been reproduced herein :-

“12. (2) The reforms shall, *inter alia*, include—

(e) preference to public institutions or public bodies such as Panchayats, self-help groups, co-operatives, in licensing of fair price shops and management of fair price shops by women or their collectives;”

Sub-section (23) of Section 2 defines the expression “Targeted Public Distribution System” is as under:

“Targeted Public Distribution System” means the system for distribution of essential commodities to the ration card holders through fair price shops”.

19. It is clear from the different provisions of the 2013 Act that there is a paradigm shift in addressing the problem of food security from the current welfare approach to a right based approach. The Act confers legal right on the eligible beneficiaries to get the essential commodities through fair price shops at a highly subsidized price. The Act also envisages reforms necessary for distribution of essential commodities to the ration card holders.

20. This Court in **Swaraj Abhiyan v. Union of India & Ors.**<sup>5</sup> has held that the 2013 Act is a social welfare legislation and its provisions are mandatory. It is held thus:

“**42.** The provisions in the NFS Act mentioned above are mandatory and yet almost four years down the line they have not been fully implemented by some States.

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**44.** These questions have been troubling us since this matter was listed on 24-10-2016 subsequent to our order dated 13-5-2016 in *Swaraj Abhiyan (II)* [*Swaraj Abhiyan (2) v. Union of India*, (2016) 7 SCC 498 : (2016) 7 SCC 534 : AIR 2016 SC 2953] . We had expected the State Governments concerned to implement the provisions of the NFS Act with all due seriousness since it is a social welfare legislation enacted by Parliament.”

21. In the present case, upon scrutiny, it was found that declaration of vacancies vide notification dated 30.01.2014 was not

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5 (2018) 12 SCC 170

in conformity with the 2013 Act and thus, cancellation of the said notification was necessary for the implementation of the provisions of the said Act. In view of above, the plea of legitimate expectation of the respondent is without having any basis.

22. We are also of the view that, in the instant case, no promise of any kind was made to continue the existing policy on the part of the State. Furthermore, Clause 4 of the Conditions of the Notification dated 30.01.2014, calling for vacancies, provided that the State could reject applications without ascertaining any reasons. The agency which initiated the selection process is entitled to recall it upon reasonable grounds. Participation in the selection process or being a selected candidate does not vest such candidate with the right to direct the Authorities to give him appointment. Having regard to the above, it cannot be said that the State has acted with material irregularity in issuing the impugned notification dated 17.08.2015.

23. This Court in **Sarkari Sasta Anaj Vikreta Sangh v. State of M.P.**<sup>6</sup> has held that no person can claim a right to run a fair price shop as an agent of the government and he could only have a right

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<sup>6</sup> (1981) 4 SCC 471

to be considered for appointment. In this context, this Court observed as follows:

“11. .... No one could claim a right to run a fair price shop as an agent of the Government. All that he could claim was a right to be considered to be appointment to run a fair price shop. If the Government took a policy decision to prefer cooperative societies for appointment as their agents to run fair price shops, in the light of the frustrating and unfortunate experience gathered in the last two decades, we do not see how we can possibly hold that there was any discrimination.”

24. The appellant has contended that the State Government was reposed with a responsibility for implementing the 2013 Act which, *inter alia*, entrusted a responsibility to reform the existing Targeted Distribution System. The respondent in an unfinalized selection process has no vested right in his favour to seek continuation of the notified vacancies. Hence, by recalling the vacancy notification, the State endeavored to enforce the statute and that there can be no estoppel against a statute.

25. It is trite law that there can be no estoppel against a statute. This Court has settled this principle in a catena of judgments,

starting as early as 1955. A Constitution Bench of this Court in

**Thakur Amar Singhji v. State of Rajasthan**<sup>7</sup> held as follows:

“....We are unable on these facts to see any basis for a plea of estoppel. The letter dated 28.11.1953 was not addressed to the petitioner; nor does it amount to any assurance or undertaking not to resume the jagir. And even if such assurance had been given, it would certainly not have been binding on the Government, because its powers of resumption are regulated by the statute, and must be exercised in accordance with its provisions. The Act confers no authority on the Government to grant exemption from resumption, and an undertaking not to resume will be invalid, and there can be no estoppel against a statute”.

26. A Constitution of Bench of this Court in **Electronics Corpn.**

**of India Ltd. v. Secy. Revenue Deptt., Govt. of A.P.**<sup>8</sup> also upheld

this principle and held as follows:

“21. There are two short answers to this contention. In the first place, there can be no estoppel against a statute.....”

27. This Court in **A.P. Dairy Development Corpn. Federation v.**

**B Narasimha Reddy**<sup>9</sup>, has held that when the actions of the

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7 (1955) 2 SCR 303

8 (1999) 4 SCC 458

9 (2011) 9 SCC 286



government are not in conformity with law, the doctrine of estoppel would not apply. This Court observed:

“40.....The State, being a continuing body can be stopped from changing its stand in a given case, but where after holding enquiry it came to the conclusion that action was not in conformity with law, the doctrine of estoppel would not apply.”

28. It is clear that this Court in several judgments has also upheld that the plea of promissory estoppel would stand negated when the mandate of a statute is followed. This Court in **A.P. Pollution Control Board II v. Prof. M.V. Nayudu & ors.**<sup>10</sup>, held as under:

“69. The learned Appellate Authority erred in thinking that because of the approval of plan by the Panchayat, or conversion of land use by the Collector or grant of letter of intent by the Central Government, a case for applying principle of “promissory estoppel” applied to the facts of this case. There could be no estoppel against the statute....”

29. In the instant case, we have already noticed that the appellants were reposed with a responsibility of implementing the mandate of the 2013 Act, and more importantly, to bring about reforms in the existing Public Distribution System as stipulated under Section 12 of the said Act. The respondent herein being a

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<sup>10</sup> (2001) 2 SCC 62

mere applicant in an un-finalised selection process, has no vested right in his favour to seek continuation of the notified vacancies, when by recalling the vacancy notification, the appellants endeavored to enforce the statute. Moreover, as discussed above, there can be no estoppel against a statute. Even going by the observations of the Division Bench in the impugned judgment, that the State was aware of the 2013 Act while issuing the 30.01.2014 vacancy notification, the said notification cannot be sustained, being contrary to the mandate of the National Food Security Act, 2013, more importantly of Section 12 thereof as held in **A.P. Dairy Development Corpn. Federation** (supra).

30. There is also no merit in the contention of the respondent that the Authorities have taken into consideration the parameters laid down in 2013 Act while declaring the vacancies on 30.01.2014. There is nothing on record to suggest that when the vacancies were declared on 30.01.2014, the Authorities kept in mind the provision of the 2013 Act. The 2013 Act came into effect on 10.09.2013. The vacancy notice is dated 30.01.2014. The vacancy notice does not refer to the provisions of 2013 Act. In our view, it would be

improper to infer that the provisions of 2013 Act were kept in mind while issuing vacancy notice dated 30.01.2014. The respondent has not made out a case of arbitrariness or unreasonableness or *mala fide*. In our view, the Division Bench ought to have held that the notification dated 17.08.2015 was issued to keep the public distribution system in tune with the mandate of 2013 Act, more specifically Section 12 which provides for reform in the public distribution system.

31. Resultantly, the appeal succeeds and it is accordingly allowed. The judgment of the Division Bench impugned herein is set aside and the judgment of the learned Single Judge is restored. Parties are directed to bear their respective costs.

32. All pending applications also stand disposed of.

.....**J.**  
**(S. ABDUL NAZEER)**

.....**J.**  
**(VIKRAM NATH)**

New Delhi;  
April 20, 2022.



**ORDER**

Leave granted.

(2) In terms of the order passed by this Court in Civil Appeal No. 4254 of 2022 (Arising out of SLP(C)No.30438 of 2019) dated 20<sup>th</sup> April, 2022, these appeals are also allowed and the judgment(s) of the Division Bench impugned herein is set aside and the judgment(s) of the learned Single Judge dated 24.08.2018 is restored. Parties are directed to bear their respective costs.

All pending applications also stand disposed of.

.....**J.**  
**(S. ABDUL NAZEER)**

.....**J.**  
**(VIKRAM NATH)**

New Delhi;  
April 20, 2022.