

**CASE COMMENTARY- BANNARI AMMAN SUGARS LIMITED VS
COMMERCIAL TAX OFFICER AND OTHERS**

ABSTRACT

There have been many instances in the history of our legal system where the cases of doctrine of promissory estoppel and doctrine of legitimate expectation often overlaps with each other due to the reason that both are laws of equity and based upon unambiguous and patent promises. However, sometimes the interest of the public overrides upon such clear promise or legitimate expectation. Such is the case in the Supreme Court ruled judgement- *Bannari Amman Sugar Limited v. Commercial tax officer and others*, wherein, it is laid down that guarding of both the doctrines should not come at the cost of dissatisfaction to the interest of public. The case law revolves around the implication of the doctrines to the facts of the case and discusses how the decision-making body can hide behind the blanket of ‘overriding public interest’.

KEYWORDS: Promissory Estoppel, Legitimate Expectation, Public interest, State, Constitution of India

CASE DETAILS

Case Title	Bannari Amman Sugars Limited VS Commercial Tax Officer and Others
Case Number	Civil Appeals No. 8605 of 2002
Citation	(2005) 1 SCC 625
Judgement Date	November 22, 2004

Court	Supreme Court of India
Quorum	Hon'ble Justice Arijit Pasayat and Hon'ble Justice C. K. Thakker
Author of the judgement	Hon'ble Justice Arijit Pasayat
Appellant	Bannari Amman Sugar Ltd.
Respondent	Commercial Tax Officer and Others
Counsel for Appellant	Senior Advocate A. M. Singhvi, Prabha Shanker Mishra and A. K. Ganguli Advocate V. Giri, Vikas Mehta, Amit Bhandari, Indu Malhotra, Ambrish Kumar, N Prasad, Sandeep and K. K. Mani
Counsel for Respondent	Senior Advocate and Additional Advocate General for the State of T. N. R. Muthukumarswamy Advocate Subramonium Prasad

Acts, Sections and Doctrines involved	<ul style="list-style-type: none"> • The Constitution of India, 1950, Article 14, 166 • Doctrine of Promissory Estoppel • Doctrine of Legitimate Expectation
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I. INTRODUCTION

The case law, Bannari Amman Sugar Limited v. Commercial tax officer was decided in the year 2004 by a two-judge bench and deals with roles of doctrines of promissory estoppel and legitimate expectation in a case of withdrawal of the benefits provided by the state to the sugar mills set up after the extension of grant of subsidy by the state. In this case, Justice Arijit Pasavat meticulously deals with the clash between the interest of the public and the positive promises made by the state.

II. BACKGROUND AND FACTS OF THE CASE

- A. The Appellant i.e., Bannari Amman Sugar Ltd. was granted subsidy equivalent to the quantum of purchase tax for sugarcane due from it for a period of five years from the date of commencement of their production by a govt. order dated 16.04.1987.
- B. However, the government by its order dated 01.09.1988 modified the scheme of purchase tax subsidy and directed cessation of the extension of the scheme in case of those mills which exceeded the ceiling of Rs. 300 Lakh during the period of five years. Adding to that, another order dated 28.12.1988 made the aforesaid order to be operative retrospectively from 01.04.1988.
- C. The Appellants of the present case, filed writ petitions in the Madras High Court against the withdrawal of the purchase tax subsidy on the basis of Doctrine of Promissory Estoppel and Legitimate Expectation from the State Government.
- D. The matter was initially decided by the Tamil Nadu Special Tribunal on the transfer of the case by the High Court, which held that after the application of the aforesaid doctrines, the withdrawal of benefit was not valid in the eyes of law.
- E. The State, being dissatisfied, questioned the correctness of the judgement before the High Court which, in turn, resulted in reversal of the decisions arrived by the Tribunal.

F. Thus, the Appellant, in the present case, appealed to the Hon'ble Supreme Court, thereby questioning the legality of the judgement delivered by the Madras High Court.

III. ISSUES INVOLVED

- A. Whether the action of withdrawal of the benefits by the state is struck by the doctrines of promissory estoppel and legitimate expectation?
- B. Whether the state is responsible to justify itself to the appellants before any alteration of benefits flowing from the notifications or withdrawal of any benefit?

IV. ARGUMENTS IN FAVOUR OF APPELLANT:

- A. The Doctrines of promissory estoppel and legitimate expectation are applicable in this case.
- B. No opportunity of hearing was provided before the withdrawal of the benefits by the State.
- C. The High Court wrongly came to the conclusion that the State Government has not filed any counter affidavit.
- D. The materials produced before the High court, on which it has relied upon for the production of its judgement against the appellants, that the withdrawal is in order, was not even pleaded in the pleadings and during the arguments and thus was unknown to the appellants. It is a clear violation of the principles of natural justice.
- E. The order dated 28.12.1988 was not authenticated as required under Article 166 of the Constitution of India and is therefore, ineffective. In addition, a retrospective withdrawal of the benefit by an executive decision is not allowed, at any event.

V. ARGUMENTS IN FAVOUR OF RESPONDENT

- A. Failure of appellants to showcase any evidence that they were in any way actuated by the government to set up the industries.
- B. Further, the exemption from the purchase tax on sugarcane was only extended to the sugar mills established in "cooperative and public sectors" and there was no misunderstanding in the order that the scheme was in favour of the private sector-based sugar mills too.
- C. Representation was made by the appellants to the government to claim the exemption on par with the mills operating in the cooperative and public sectors. Now, since there

was no promise or assurance from the side of the state, the doctrine of promissory estoppel does not apply.

- D. Based on the well-known ground of public interest, the subsidy provided by the state can always be withdrawn. Thus, the consciousness of this fact by the units set up, makes the principle of legitimate expectation non applicable in the present case.

VI. ORDER OF THE COURT

A. Doctrine of Promissory Estoppel

1. The Court explained the doctrine as a rule equity which is neither covered in the realm of contract nor in the realm of estoppel. The object of the doctrine is to interpose equity shorn of its form to mitigate the rigour of strict law.¹
2. The Court further went on to clarify the principle of the doctrine and stated that for the creation of cause of action under this doctrine, the promise created by one party to another must be supported by consideration and thus a promise without consideration cannot bring a cause of action.
3. The court laid down that the rule of promissory estoppel can be invoked only if the industry was established to avail the benefit of exemption, on the basis of the representation made by the government.
4. However, there was no assurance or promise made by the government at the point of time when the appellants units were set up, thus there is no application of the doctrine to the facts of the case as the units were established prior to the government orders granting the subsidy. The promise succeeds the act of establishment.
5. Moreover, the government is competent to rescind the promise even if there is a superior equity to represent to i.e., public interest.²

B. Directions to High Court

1. The Supreme Court directed the High Court to hear the matter afresh and take decisions of two issues-
 - i. According to the Supreme Court, the counter affidavits were filed, as contrary to what the High Court has stated and although the appellants

¹ Union of India v. Anglo Afghan Agencies, (1968) SC 718

² Shrijee Sales Corporation v. Union of India, (1997) 3 SCC 398

are not entitled to any opportunity of hearing before the modification or withdrawal of the benefits yet according to the principles of natural justice, the state has to take a stand justifying the withdrawal, which are not indicated in the affidavits filed before the High Court but was relied upon by the High Court to hold the withdrawal as valid. Thus, amended affidavits are to be filed to the High Court by the respondents.

- ii. Further, the High Court has not dealt with the matter of “retrospective withdrawal of benefit by an executive order” at all.
2. The court also ordered to take the plea of appellants of legitimate expectation in the light of materials to be placed by the respondents in the affidavit. However, the Supreme Court explains the principles underlying legitimate expectation.

C. Doctrine of Legitimate Expectation

1. This doctrine, according to the Hon’ble Supreme Court provide a sufficient interest which enables a person, who cannot point out the existence of a substantive right, to obtain a leave of court to apply for judicial review. However, the doctrine does not give a scope to claim relief straightaway from the authorities.
2. The court also laid down that where a person’s legitimate expectation is not being fulfilled because of a particular decision, then the decision maker should justify the denial of such expectation by showing some overriding public interest.³
3. Article 14 lays down that the change in policy must be made fairly and should not be arbitrary in nature and where the decision by the authority is found to be arbitrary and not taken in public interest, then the doctrine of legitimate expectation can be applied.
4. The Court finally, reiterated that the reasonableness of a restriction is to be defined from the viewpoint of the general public and not from the standing of the interests of the persons upon whom the restrictions gave been imposed. Thus, if the state acts within the boundary of reasonability, then it is legitimate to take into account the national interests priorly.

³ Union of India v. Hindustan Development Corporation (1993) 3 SCC 499

VII. CONCLUSION

The case law of Bannari Amman Sugar Ltd v CTO and others, thus, importantly highlights how the government has the power to prioritize the interest of the public over any of its word given to the people concerned. Adding to that, the case lays down that, if there is any denial of a legitimate expectation that is arbitrary or unreasonable in nature or violates the principle of natural justice, then by invoking Article 14, the same denial or decision can be questioned.

VIII. RELATED CASE LAWS

- A. CENTRAL LONDON PROPERTY TRUST LTD. V. HIGH TREES HOUSE LTD.
(1947) 1 KB 130: 175 LT 332
- B. UNION OF INDIA V. ANGLO AFGHAN AGENCIES (1968) SC 718: (1968) 2
SCR 366
- C. UNION OF INDIA V. HINDUSTAN DEVELOPMENT CORPORATION (1993) 3 SCC
499
- D. KASINKA TRADING V. UNION OF INDIA (1995) 1 SCC 274
- E. PUNJAB COMMUNICATIONS LTD. V. UNION OF INDIA (1999) 4 SCC 727:
AIR 1999 SC 1801
- F. SHRIJEE SALES CORPORATION V. UNION OF INDIA, (1997) 3 SCC 398.