

HIGH COURT OF MADHYA PRADESH,
AT JABALPUR

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 3RD OF SEPTEMBER, 2022

WRIT PETITION No.8213 / 2022

BETWEEN:-

SHRI PAWAN AGRAWAL,

...PETITIONER

(REPRESENTED BY SHRI SANJAY AGRAWAL, SENIOR ADVOCATE
WITH SHRI PRAMOD KUMAR SAHU, ADVOCATE)

AND

SMALL INDUSTRIES DEVELOPMENT
BANK OF INDIA (SIDBI)
STRETCHED ASSETS RECOVERY BRANCH,
SAMRUDDHI VENTURE PARK,
UPPER GROUND FLOOR, MIDC ROAD,
MIDC INDUSTRIAL AREA, MAROL,
ANDHERI EAST, MUMBAI – 400093
THROUGH ITS ASSISTANT GENERAL MANAGER

...RESPONDENT

(REPRESENTED BY NONE, THOUGH REPORTEDLY SERVED)

Reserved on : 03.09.2022

Delivered on : 15.09.2022

(O R D E R)

As per the office note dated 13.08.2022, although notice sent through RAD is not served yet, but as per the appendage document downloaded from the website showing Track Consignment, delivery of notice on respondent-Bank is confirmed on 14.07.2022. However, nobody has put-in appearance on behalf of the respondent-Bank. In the circumstance, the petition is finally heard and decided on the basis of submissions made on behalf of the petitioner, as also taking note of the documents available on record.

2. The encapsulated facts are that the respondent-Bank had sanctioned credit facilities to M/s. Madhya Bharat Phosphate Private Limited and the petitioner being the Director of the said Company stood as guarantor for the Company and mortgaged his immovable property bearing Survey No.233/1/2/2, area admeasuring 0.320 hectare situated at Village Salam, Tahsil Huzur, District Bhopal (M.P.).

Indeed, the loan account of the Company had become NPA and Corporate Insolvency Resolution Process was initiated before NCLT and based on NCLT order dated 11.09.2018, the respondent-Bank obtained a sum of Rs.3,28,91,948/- in lieu of agreed loan facility. Accordingly, the respondent-Bank issued NOC in favour of the Company. A copy of NOC is made available on record

as Annexure-P/1. The NOC granted by the respondent-Bank in favour of main borrower i.e. the Company gives understanding that the recovery of required amount from the borrower has been made, despite they are initiating recovery from the guarantor i.e. petitioner.

In relation to full and final settlement of personal guarantee, the respondent-Bank by letter dated 23.10.2020 (Annexure-P/2) asked the petitioner to submit a compromise proposal.

The petitioner by letter dated 29.10.2020 (Annexure-P/3) submitted a proposal of Rs.30,00,000/- towards full and final settlement of his personal guarantee, but it was brushed aside by the respondent-Bank asking the petitioner to ameliorate the amount of proposal.

Thereafter, the petitioner by letter dated 23.12.2020 (Annexure-P/4) modified his offer by escalating the amount to the extent of Rs.35,00,000/- towards full and final settlement of personal guarantee. However, the respondent-Bank again declined that offer and insisted the petitioner to modify it again.

Then, the petitioner on 15.01.2021 (Annexure-P/5) again modified the offer to the extent of Rs.40,00,000/- towards full and final settlement of personal guarantee. Thereafter, on 21.02.2021 the petitioner was asked to visit the Branch for oral discussion on the issue. On the basis of discourse undergone between the parties, the petitioner extended the offer to the tune of Rs.56.30 Lac and deposited

10% of proposed amount i.e. Rs.5.65 Lac as upfront amount with the respondent-Bank.

By letter dated 22.06.2021 (Annexure-P/8), the respondent-Bank principally accepted the offer of the petitioner to consider One Time Settlement (OTS) offer of Rs.56.30 lac subject to upfront deposit of Rs.5.63 Lac i.e. 10% of OTS amount. In response thereto, the petitioner submitted a compromise offer (Annexure-P/9) in the prescribed format as demanded by the respondent-Bank. Thereafter, the respondent-bank demanded a copy of order dated 11.09.2018 passed by NCLT, Ahmedabad. Then the petitioner submitted a copy of the order dated 11.09.2018 passed by the NCLT, Ahmedabad Bench vide Annexure-P/11. Thereafter, vide order dated 23.11.2021 (Annexure-P/12) the respondent-Bank itself gave an offer to the petitioner to pay Rs.75,21,690.80 with 5% upfront amount towards full and final satisfaction of his personal guarantee.

On 26.11.2021 vide Annexure-P/13, the petitioner accepted the offered OTS amount by the respondent-Bank to pay Rs.75,21,690.80. As per the petitioner, astoundingly, the respondent-Bank by letter dated 03.12.2021 (Annexure-P/14) withdrew its offer dated 23.11.2021.

Then, the disgruntled petitioner made a representation to the respondent-Bank on 29.01.2022 vide Annexure-P/15. However, the respondent-Bank vide letter dated 04.03.2022 (Annexure-P/16) demanded the entire outstanding dues from the

petitioner. Then, the petitioner again represented before the respondent-Bank by letter dated 14.03.2022 for settling the issue as offered by the respondent-Bank, but that representation is yet not responded and therefore left with no option, the petitioner has knocked the door of this Court praying for the following relief(s);

“7.1 Issue a Writ of Certiorari quashing the Letter dated 03.12.2021 (Annexure-P/14) & Letter dated 04.03.2022 (Annexure P/16) issued by Respondent Bank.

7.2 Issue a Writ of Mandamus commanding the Respondent for accepting the bona fide compromise offer dated 26.11.2021 of Petitioner which was given on the basis of the letter dated 23.11.2021 issued by Respondent Bank.

7.3 The Hon’ble Court may please be kind enough to direct the Respondent Bank to provide all the benefits of their Letter dated 23.11.2021 to the Petitioner.

7.4 The Respondent Bank may please be commanded not to make illegal demand from the Petitioner who was the guarantor.

7.5 Any other relief the Hon’ble Court deems fit in the circumstances may kindly be granted.

7.6 Cost of the petition may also be awarded.”

3. The learned Senior counsel appearing for the petitioner submits that after much correspondence of haggling between the petitioner and respondent-Bank with regard to full and final settlement of the petitioner’s personal guarantee under OTS, the respondent-Bank itself gave an offer to the petitioner vide letter dated 23.11.2021 (Annexure-P/12) to pay Rs.75,21,690.80 with 5% upfront amount towards full and final satisfaction of his personal guarantee and that offer was accepted by the petitioner vide letter dated 26.11.2021 (Annexure-P/13), then there

was no reason for the respondent-Bank to digress by withdrawing the said offer. He emphasizes on the very object of One Time Settlement Scheme formulated by the respondent-Bank and submits that there was no reason or justification in withdrawing the offer, that too made on the basis of offer given by the respondent-Bank itself, even without assigning any reason. He accentuates that the respondent-Bank even did not respond to the representation made by the petitioner despite certain amount has already been deposited by the petitioner as per terms of offer. He vigorously castigates the conduct of the respondent-Bank inasmuch as neither the Bank responded to his representation nor did it appear before this Court to justify their withdrawal of offer, which was offered by them and accepted by the petitioner. He propounds that the petitioner is not the main borrower, but he is settling his dispute relatable to his personal guarantee and casting a slur upon, learned Senior Counsel submits that the respondent-Bank is a Government Bank and it is highly unexpected from it to behave in such a manner. Lastly, he submits that since the respondent-Bank has not come-forward before this Court to justify its action, it is equivalent to have no logical reason behind it. Ergo, the petition filed by the petitioner deserves to be allowed.

4. I have heard the learned senior counsel for the petitioner patiently and perused the documents available on record.

5. Indeed, the dispute herein is only with regard to personal guarantee given by the petitioner. In the petition, it is averred that the respondent/Bank has already recovered a huge amount of Rs.3,28,91,948/- in June/July 2020 from the borrower. It has become a conundrum as to why the respondent-Bank is not settling the dispute finally despite the fact the offer was itself made by them to the petitioner, which he accepted and also complied with the necessary stipulations therein by depositing the required upfront amount. It is to be kept in mind that when the Bank sponsors One Time Settlement Scheme for settling the liabilities finally, thereby it proffers an opportunity to the borrower for settling his dispute with the Bank by offering a lump sum amount so as to amicably settle the account. The basic object of the OTS Scheme is that the account which became irregular and/or declared Non-Performing Account and if an acceptable offer is made by the defaulter for settling the dispute finally, then to avoid time consuming litigation in the courts and wasting energy in recovering the amount, it could be settled so as to recover the amount, which is undoubtedly a public money. In other words, the Bank may be writing off possibly substantial portion of its liabilities, but once it agrees, the borrower can take appropriate steps to raise the amount, and ordinarily, the bank should not resile from this arrangement. In the case at hand, the petitioner being a guarantor had mortgaged his personal property and after much haggling happened between the parties, the offer made by the respondent-Bank was accepted

by the petitioner and therefore looking to the object of OTS Scheme which ensures speedy closer of the cases to avoid tardy recovery from borrower in which to larger extent the bank faces difficulty to recover the amount, unflinching I find no justifiable reason for the respondent-Bank to back-out from the offer accepted by the petitioner that too pursuant to the offer made by the Bank. Conversely, it can be understood that if the offer given by the borrower does not appeal to the Bank, then the Bank is not under obligation to accept it and no borrower can, as a matter of right, pray for grant of benefit of One Time Settlement Scheme. However, in the case at hand, the offer given by the Bank has been accepted by the borrower, but then the Bank backed out from the said offer that too without assigning any reason. Obviously, the respondent-Bank is a Government Bank and creation of Statute come within the definition of State, therefore, it is expected to act in a *bona fide* manner and take a prudent decision having regard to involvement of the public money.

6. The Division Bench of this court in the case of **Shri Mohanlal Patidar v. Bank of Maharashtra & Another** rendered in **W.P.No.22127/2021** on 21.02.2022 dealing with the matter of One Time Settlement (OTS) Scheme has also discussed the doctrine of 'Legitimate Expectation' and relied upon a decision rendered by the Supreme Court *in re Sardar Associates and Ors. v. Punjab and Sind Bank and Ors. (2009) 8 SCC 257* in which it is observed that OTS Scheme is

binding and Bank could not have enhanced the amount nor by any stretch of imagination can treat that the offer which was duly accepted as elapsed. Here in this case, from the documents available it is clear that letter dated 23.11.2021 (Annexure-P/12) was given by the respondent-Bank to the petitioner informing that his case was found eligible for settlement under the OTS-NDND2022 with certain terms and conditions mentioned in the letter itself. The said letter contained OTS amount as Rs.75,21,690.80 and the petitioner was asked to submit his willingness till November 30, 2021 so that the matter will be processed for acceptance. In response thereto, the petitioner vide letter dated 26.11.2021 (Annexure-P/13) which was prior to the last date of submitting willingness i.e. 30.11.2021, accepted the offer given by the Bank and also submitted the details as to in what period the amount would be paid.

7. The Division Bench dealing with the case of OTS has also taken note of letter of Bank given to the borrower and reproduced the same in which the Bank had informed that the proposal was under consideration and had to be processed and sanction letter will be conveyed if the borrower's case is found eligible. Meaning thereby, the Division Bench determined the case of petitioner therein whether it comes under the eligible case or not. But, here in this case as per letter of respondent-Bank, the case of petitioner was already shortlisted as eligible case for settlement and the only process was to be done for acceptance of the same. The

Division Bench finally criticized the action of the Bank that once offer is given then the Bank should not enhance the amount by increasing the amount of offer already proposed. But, here in this case, the offer given by the Bank was timely accepted by the petitioner and even though the respondent-Bank has withdrawn its offer on false premise that the eligibility of account of petitioner was reviewed and account was found ineligible for settlement under OTS-NDND2022. Lo and behold, nothing has been shown in the letter as to why, when account has already been shortlisted as eligible account and offer given by the Bank was accepted by the petitioner, the account was reviewed by the Bank and as to how when it was found eligible, the Bank without assigning any reason found the same ineligible. The Apex Court in the case of **Sardar Associates** (supra) has held as under:-

“While making a deviation, the Board of Directors of a public sector bank could not have taken recourse to a policy decision which is per se discriminatory. The respondent Bank is ‘State’ within the meaning of Article 12 of the Constitution of India apart from the fact that it is bound to follow the guidelines issued by Reserve Bank of India. If, therefore, the broad policy decision contend in the guidelines were required to be followed, the power of the Board of Directors to make deviation in terms of Clause 4 thereof would only be in relation to some minor matters which does not touch the broad aspects of the policy decision and in particular the one governing the non-discriminatory treatment. In a case of this nature, we are satisfied that the respondent Bank is guilty of violation of the equality clause contend in the Reserve Bank of India Guidelines as also Article 14 of the Constitution of India.”

Although in the present case, the Scheme of OTS was formulated and sponsored by the respondent-Bank itself and therefore it was binding upon them. The Division Bench of this Court in the case of **Shri Mohanlal Patidar** (supra) has also observed while dealing with the doctrine of legitimate expectation as under:-

“Legitimate Expectation :

29. The impugned action of the Bank can be tested on the doctrine of legitimate expectation. The concept of legitimate expectation is of European origin. It is one of the fundamental Principles of European Community Law. (See: **Durbeck v Hauptzollant Frankfurt an Main Flughafen, (1981) ECR 1095, at 1120; Mulder v. Minister Van Landbouw en Visserji, (1988) ECR 2321; Spagl v. Hauptzollant Rosenteim (1990) ECR 453. For some more cases on legitimate expectation from European Law, see, Sedley, J.’s opinion in R. v. Maff, ex p. Hamble Fisheries, (1995) 2 All ER 714).**

The statement of Lord **DIPLOCK** in CCSU [1985] AC 374 at 408 is regarded as envisaging legitimate expectation extending to an expectation of a benefit. This may arise from-

(i) what a person has been permitted by the concerned authority to enjoy and which he can legitimately expect to be permitted to continue to enjoy until “there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment”;

(ii) he has received assurance from the concerned authority that the benefit will not be withdrawn without giving him first an opportunity of advancing reasons for contending that it should not be withdrawn.

(iii) It may also extend to a benefit in the future which has not yet been enjoyed but has been promised.

30. Lord FRASER {Page No.1656 of Principles of Administrative Law by M.P. Jain & S.N. Jain} also observed as follows:

“ But even where a person claiming some benefit or privilege has no legal right to it, as a matter of private law, he may have a legitimate expectation of receiving the

benefit or privilege, and, if so, the courts will protect his expectation by judicial review as a matter of public law... Legitimate or reasonable expectation may arise from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue.”

31. Characterizing the doctrine of legitimate expectation as a valuable and developing doctrine, **BINGHAM, L.J.**, stated in the case of **R. v. Inland Revenue Commissioners, ex. p. MFK Underwriting Agents Ltd., (1990) 1 All ER 90** as under:

“If a public authority so conducts itself as to create a legitimate expectation that a certain course will be followed it would often be unfair if the authority were permitted to follow a different course to the detriment of one who entertained the expectation, particularly if he acted on it... The doctrine of legitimate expectation is rooted in fairness.”

32. SEDLEY, J., ruled that even though policy change may take place from time to time, the policy maker should seek to accommodate legitimate expectations.

33. SEDLEY, J., has observed :

“Thus it is an obligation to exercise powers fairly which permits expectations to be counterpoised to policy change, not necessarily in order to thwart it but. in order to seek a proper exception to the policy within the British Oxygen principle.” {see *British Oxygen Co Ltd v. Minister of Technology*, (1970) 3 WLR 488}

He went on to observe:

“While policy is for the policy maker alone, the fairness of his or her decision not to accommodate reasonable expectations which the policy will thwart remains the court’s concern....”

While the court accepts ministerial freedom to formulate and to reformulate policy, ‘it is equally the court’s duty to protect the interest of those individuals whose expectation of different treatment has a legitimacy which in fairness out-tops the policy choice which tends to frustrate it’.

Finally, SEDLEY, J., has said:

“Legitimate expectation is now in effect a term of art, reserved for expectations which are not only reasonable but which will be sustained by the court in the face of changes of policy; secondly, that whether this point has been reached is determined by the court, whether on ground of rationality, of legality or of fairness, of all of which the court, not the decisionmaker is the arbiter {see R v. Ministry of Agriculture Fisheries and Food ex p Hamble (offshore) Fisheries Ltd., (1995) 2 All ER at 732.}

34. The Supreme Court of India in the case of **National Buildings Construction Corporation v. S. Raghunathan, AIR 1998 SC 2779** has held as under:

“The doctrine of ‘Legitimate Expectation’ has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statement cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in his context that the doctrine of ‘Legitimate Expectation’ was evolved which has today become a source of substantive as well as procedural rights. But claims based on ‘Legitimate Expectation’ have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel.”

(Emphasis Supplied)

35. The Apex Court opined that the doctrine of legitimate expectation is a 'latest recruit' to a long list of concepts fashioned by the courts for review of administrative actions. No doubt, the doctrine has an important place in the review. Under the said doctrine, a person may have reasonable or legitimate expectation of being treated in a certain way by an administrative authority even though he has no right in law to receive the benefit. In such a situation, if a decision is taken by an administrative authority adversely affecting his interests, he may have justifiable grievance

in the light of the fact of continuous receipt of the benefit, legitimate expectation to receive the benefit or privilege which he has enjoyed all throughout. Such expectation may arise either from the express promise or from consistent practice which the applicant may reasonably expect to continue **(See: Confederation of Ex-Serviceman Associations v. Union of India, (2006) 8 SCC 399, 416).**”

8. As such, the decision taken by the respondent-Bank backing out with its proposal, which had already been accepted by the petitioner, is nothing but an arbitrary action and it can very well be held that the Bank has not acted in just, proper and reasonable manner.

9. In view of above discourse, the action of respondent-Bank of withdrawing its offer already accepted by the petitioner and asking him to deposit full amount, cannot be given stamp of approval. Accordingly, the letter dated 03.12.2021 (Annexure-P/14) withdrawing the final offer dated 23.11.2021 and letter dated 04.03.2022 (Annexure-P/16) demanding the entire outstanding dues from the petitioner are hereby set aside. The petitioner is directed to deposit the amount within a period of 10 days from today as per the offer dated 23.11.2021 (Annexure-P/12) given by the respondent-Bank itself for paying Rs.75,21,690.80 with 5% upfront amount (after adjusting the amount already paid by the petitioner i.e. Rs.5.63 Lac) towards full and final satisfaction of his personal guarantee. In turn, the respondent-Bank is directed to accept the amount within a period of 10 days of its payment by the petitioner. Consequently, the petitioner shall be freed and

discharged from his personal guarantee, which he had tendered by way of mortgaging his property with the Bank.

10. *Ex consequentia*, the petition is allowed with the aforesaid directions.

(Sanjay Dwivedi)
Judge

Sudesh