

8 SCOB [2016] HCD 23

**HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. 232 OF 2011

**Sylhet Janakallayan Bahumukhi
Khudra Baboshayee Samabaya Samity
Limited**

.....Petitioner

Versus

Sylhet City Corporation and others

..... Respondents

Mr. Maqbul Ahmed with
Mr. Shah Alam, Advocates
.....For the petitioner.

Mr. Didar Alam Kollal with
Mr. Zahid Ahmed, Advocates
...For the respondent nos. 1 & 4.

Heard on 19.10.2014, 12.11.2014,
11.12.2014, 19.04.2015, 17.05.2015,
19.05.2015, 01.07.2015 & 02.08.2015.

Judgment on 09.08.2015.

Present:

Mr. Justice Moyeenul Islam Chowdhury

And

Mr. Justice Md. Ashraful Kamal

Legitimate Expectation:

The principle of legitimate expectation, as we see it, is predicated upon the following:

- (a) **The statement or practice giving rise to the legitimate expectation must be sufficiently clear and unambiguous, and expressed or carried out in such a way as to show that it was intended to be binding.**
- (b) **The statement or practice must be shown to be applicable and relevant to the case in hand.**
- (c) **Legitimate expectation is enforced in order to achieve fairness.**
- (d) **If the statement said to be binding was given in response to any information from the citizen, it will not be binding if that information is less than frank, and if it is not indicated that a binding statement is being sought.**
- (e) **He who seeks to enforce must be a person to whom (or a member of the class to which) the statement was made or the practice applied.**
- (f) **Even though a case is made out, the legitimate expectation shall not be enforced if there is overriding public interest which requires otherwise.**

...(Para 16)

In any view of the matter, the members of the petitioner-samity are not at fault. Their legitimate expectation, in all fairness, should be fulfilled by the Sylhet City Corporation Authority by way of constructing the proposed market by removing the sheds from the Bus Terminal. Undeniably, the Sylhet City Corporation Authority has made a commitment to the petitioner-samity to make the proposed construction of the market at the site after removal of the sheds therefrom.

...(Para 23)

Judgment

Moyeenul Islam Chowdhury, J:

1. On an application under Article 102 of the Constitution of the People's Republic of Bangladesh filed by the petitioner, a Rule Nisi was issued calling upon the respondents to show cause as to why they should not be directed to start and complete the construction of a 4(four)-storied Shopping Complex at South Surma Bus Terminal, Sylhet and rehabilitate the members of the petitioner-samity therein and/or such other or further order or orders passed as to this Court may seem fit and proper.

2. The case of the petitioner, as set out in the Writ Petition, in short, is as follows:

On 11.03.2002, the petitioner-samity submitted an application to the then State Minister for Local Government for rehabilitation of 350 small businessmen by constructing a 4(four)-storied market at South Surma Bus Terminal, Sylhet City, Sylhet. The respondent no. 1 prepared a plan for the said purpose and approved the same in its meeting and forwarded it to the respondent no. 2 for necessary approval on 27.03.2003. The respondent no. 3 by Memo No. পৌর-1/7Hj - 2/2003/1137/9/10 dated 09.10.2003 approved the project of the Sylhet City Corporation subject to certain conditions. On 11.08.2005, the petitioner-samity wrote a letter to the respondent no. 1 for construction of the market along with underground parking facilities as per modern design. Subsequently the petitioner-samity submitted several representations to the respondent no. 1 for early construction of the 4(four)-storied Shopping Complex; but in vain. The petitioner-samity deposited a prodigious amount of money to the tune of Tk. 3 crore with the respondent no. 1 by way of salami; but in spite of that, the respondent no. 1 did not take any tangible step for construction of the proposed market. The members of the petitioner-samity are all hawkers. Given this situation, the respondent no. 1 may be directed to complete the construction of the proposed market at an early date.

3. In the Supplementary Affidavit dated 23.11.2014 filed on behalf of the petitioner, it has been stated that the members of the petitioner-samity deposited the construction costs of the proposed market with the Sylhet City Corporation and the City Corporation received the money and issued money receipts to them.

4. In the Supplementary Affidavit dated 04.05.2015 filed on behalf of the petitioner, it has been stated that the petitioner-samity deposited a big amount of money with the Sylhet City Corporation as per their promise and as such there is a legitimate expectation of every member of the petitioner-samity that all of them will be allotted shops after construction of the market.

5. The respondent nos. 1 and 4 have contested the Rule by filing an Affidavit-in-Opposition. Their case, as set out in the Affidavit-in-Opposition, in short, runs as follows:

One Hazi Mohammad Solaiman Meah, Secretary, Sylhet Janakallayan Bahumukhi Khudra Baboshayee Samabaya Samity Limited filed an application dated 11.03.2002 to the Sylhet City Corporation for rehabilitation of 350 members of the samity by constructing a 4(four)-storied Shopping Complex on the premises of South Surma Bus Terminal, Sylhet by way of making allotment of a shop measuring 10' X 12' to each of them on taking salami towards the costs of the construction of the Shopping Complex. Anyway, in the monthly meeting of the Sylhet City Corporation dated

09.02.2003, a resolution was taken for construction of a 4(four)-storied Shopping Complex on the vacant space of South Surma Bus Terminal, Sylhet and making allotment of the shops in favour of 350 members of the petitioner-samity subject to the approval of the Government. Accordingly the resolution was sent to the Government vide Memo No. Hpxtpxtpx/প্রকৌঃ/পসি/১৭/৩১২৮/০২ /৪৪০ dated 27.03.2003 and the Ministry of Local Government by its Memo No. পৌর-১/৭Hj - ২/২০০৩/১১৩৭/৯/১০ dated 09.10.2003 conveyed the approval of the Government for construction of the proposed market and allotment of the shops thereof to 350 members of the petitioner-samity. However, during the regime of the Caretaker Government in 2007, several sheds were constructed on the vacant space of the Bus Terminal subject to the approval of the Ministry of Local Government, Government of Bangladesh and are being occupied by some persons as allottees made during that regime. At the moment, the City Corporation is unable to take any step to implement the said decision until removal of those sheds from the premises of the Bus Terminal. By Memo No. পৌর-১/৭Hj -০২/২০০৩/১৬৮ dated 16.02.2010, the Ministry of Local Government asked the respondent no. 4 to apprise them as to the latest development in respect of rehabilitation of the hawkers at the Bus Terminal and the respondent no. 4 informed the authority of the difficulty and the delay in implementing the project of the construction of the market. Moreover, the urban population is increasing day-by-day and vehicles are also on the increase at the Bus Terminal and there is no sufficient space there to accommodate the increasing number of vehicles. Be that as it may, after removal of the aforesaid sheds from the Bus Terminal, the proposed market will be constructed by the respondent no. 1 in greater public interest. As the Writ Petition is premature, the Rule is liable to be discharged with costs.

6. At the outset, Mr. Maqbul Ahmed, learned Advocate appearing on behalf of the petitioner-samity, submits that the facts of the case are virtually admitted and the respondent no. 1 took a hefty amount of Tk. 3 crore from the petitioner-samity for construction of the proposed market at South Surma Bus Terminal; but no concrete step has been taken as yet for construction of the market.

7. Mr. Maqbul Ahmed also submits that indisputably the construction of the proposed Shopping Complex was approved by the Government vide its Memo No. পৌর-১/৭Hj - ২/২০০৩/১১৩৭/৯/১০ dated 09.10.2003 (Annexure-‘E’ to the Writ Petition); but even then the Sylhet City Corporation has been gaining time without any apparent reason in the matter of construction of the Shopping Complex at South Surma Bus Terminal, Sylhet.

8. Mr. Maqbul Ahmed further submits that the members of the petitioner-samity deposited Tk. 3 crore by way of salami for construction of the proposed market and despite the approval of the Government in this regard, the Sylhet City Corporation has been dilly-dallying with the construction thereof without any justifiable reason and the conduct of the Sylhet City Corporation in this respect amounts to denial of the legitimate expectation of the members of the petitioner-samity.

9. On this point, Mr. Maqbul Ahmed refers to the decisions in the cases of The Chairman, Bangladesh Textile Mills Corporation...Vs...Nasir Ahmed Chowdhury and others, 22 BLD (AD) 199 and Sirajul Islam (Md) and others...Vs...Bangladesh and others, 60 DLR (HCD) 79.

10. Per contra, Mr. Didar Alam Kollal, learned Advocate appearing on behalf of the respondent nos. 1 and 4, submits that it is true that the Sylhet City Corporation received a sum of Tk. 3 crore from the members of the petitioner-samity for construction of a 4(four)-storied Shopping Complex at South Surma Bus Terminal and the resolution of the Sylhet City Corporation in this regard was approved by the Government as evidenced by Annexure-‘E’ to the Writ Petition; but the fact remains that during the regime of the last Caretaker Government in 2007, some sheds were erected on the vacant premises of the Bus Terminal subject to the approval of the Government and are being occupied by some persons as allottees at present and by that reason, the City Corporation is unable to take any concrete step with regard to the construction of the proposed market till removal of those sheds therefrom.

11. Mr. Didar Alam Kollal also submits that with the exponential growth of population, the number of various types of vehicles has increased manifold and there is no sufficient space available at the Bus Terminal to accommodate those vehicles. In this respect, he draws our attention to the decision in the case of Union of India and others...Vs...Hindustan Development Corporation and others reported in AIR 1994 SC 988.

12. Mr. Didar Alam Kollal next submits that the City Corporation will be able to erect the proposed market after removal of the sheds from the Bus Terminal raised during the regime of the Caretaker Government in 2007.

13. We have heard the submissions of the learned Advocate Mr. Maqbul Ahmed and the counter-submissions of the learned Advocate Mr. Didar Alam Kollal and perused the Writ Petition, Supplementary Affidavits, Affidavit-in-Opposition and relevant Annexures annexed thereto.

14. It is admitted that at the instance of the petitioner-samity, a resolution was taken by the Sylhet City Corporation to erect a 4(four)-storied Shopping Complex on the vacant space of the South Surma Bus Terminal in Sylhet City and the resolution of the Sylhet City Corporation was duly approved by the Government by the Memo No. তপৌর-1/7Hj - 2/2003/1137/9/10 dated 09.10.2003 (Annexure-‘E’ to the Writ Petition). It may be mentioned that the approval was accorded by the Government under certain terms and conditions. It transpires from the Affidavit-in-Opposition filed on behalf of the respondent nos. 1 and 4 that the Government by the Memo No. তপxLx-1/7Hj -02/2003/168 dated 16.02.2010 wanted to know about the latest development of the rehabilitation of the members of the petitioner-samity at the Bus Terminal; but the respondent no. 1 expressed its difficulty and explained away the delay in implementing the project. Given this scenario, it is palpably clear that the Government wants the rehabilitation of the members of the petitioner-samity at the South Surma Bus Terminal, Sylhet.

15. The plea that has been advanced on behalf of the Sylhet City Corporation before us is that at the moment because of exponential growth of population, there is no sufficient space available at the Bus Terminal to accommodate the various types of vehicles. Again in the same breath, the City Corporation has stated in unmistakable, categorical and unequivocal terms that they would construct the proposed market after removal of the sheds from the Bus Terminal which were raised during the regime of the Caretaker Government in 2007. On this issue, the stand of the Sylhet City Corporation appears to be self-contradictory, self-defeating, antithetical and paradoxical. What we are driving at boils down to this: the Sylhet City Corporation cannot blow hot and cold in the same breath.

16. The petitioner-samity has come up with the principle of legitimate expectation in support of their case. The principle of legitimate expectation, as we see it, is predicated upon the following:

- (g) The statement or practice giving rise to the legitimate expectation must be sufficiently clear and unambiguous, and expressed or carried out in such a way as to show that it was intended to be binding.
- (h) The statement or practice must be shown to be applicable and relevant to the case in hand.
- (i) Legitimate expectation is enforced in order to achieve fairness.
- (j) If the statement said to be binding was given in response to any information from the citizen, it will not be binding if that information is less than frank, and if it is not indicated that a binding statement is being sought.
- (k) He who seeks to enforce must be a person to whom (or a member of the class to which) the statement was made or the practice applied.
- (l) Even though a case is made out, the legitimate expectation shall not be enforced if there is overriding public interest which requires otherwise.

17. In the decision in the case of Union of India and others...Vs...Hindustan Development Corporation and others reported in AIR 1994 SC 988 adverted to by Mr. Didar Alam Kollal, it has been spelt out that the protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words, where a person's legitimate expectation is not fulfilled by taking a particular decision, in that event, the decision-maker should justify the denial of such expectation by showing some overriding public interest.

18. In the decision in the case of Food Corporation of India...Vs...M/S. Kamdhenu Cattle Feed Industries reported in AIR 1993 SC 1601, the Court recognized the legitimate expectation of the highest bidder; but refused relief because of the overriding public interest in getting further higher price obtained through subsequent negotiation with all the bidders.

19. In the decision in the case of Sirajul Islam (Md) and others...Vs...Bangladesh and others reported in 60 DLR (HCD) 79 relied on by Mr. Maqbul Ahmed, it has been held that 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.

20. In the decision in the case of The Chairman, Bangladesh Textile Mills Corporation...Vs...Nasir Ahmed Chowdhury and others reported in 22 BLD (AD) 199 referred to by Mr. Maqbul Ahmed, it has been held that an expectation could be based on an express promise or representation or by an established past action of settled conduct and the representation must be clear and unambiguous. It could be a representation to an individual or generally to a class of persons. It has been further held in that decision that every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense.

21. There goes an age-old adage—“Procrastination is the thief of time”. By unnecessarily making procrastination in the matter of construction of the proposed market at the Bus Terminal, the Sylhet City Corporation Authority has, for all practical purposes, thrown the members of the petitioner-samity in a state of complete incertitude and despair.

22. It is evident from the materials on record that the Sylhet City Corporation Authority did not expressly deny the legitimate expectation of the members of the petitioner-samity in the matter of construction of the proposed Shopping Complex at South Surma Bus Terminal in Sylhet City. Rather it has been averred in the Affidavit-in-Opposition of the respondent nos. 1 and 4 that the Sylhet City Corporation Authority would construct the Shopping Complex after removal of the sheds therefrom which were erected during the regime of the Caretaker Government in 2007.

23. Now a pertinent question arises: why did the Sylhet City Corporation Authority fail in removing the sheds that were erected on the vacant space of the Bus Terminal during the regime of the last Caretaker Government in 2007? What rendered the Sylhet City Corporation Authority impotent and powerless in this regard? That is anybody’s guess. However, having regard to the facts and circumstances of the case, a man of ordinary prudence will be loath to accept the fact that the Sylhet City Corporation Authority is powerless in removing the aforementioned sheds from the Bus Terminal. In any view of the matter, the members of the petitioner-samity are not at fault. Their legitimate expectation, in all fairness, should be fulfilled by the Sylhet City Corporation Authority by way of constructing the proposed market by removing the sheds from the Bus Terminal. Undeniably, the Sylhet City Corporation Authority has made a commitment to the petitioner-samity to make the proposed construction of the market at the site after removal of the sheds therefrom.

24. In view of the discussion made above, we direct the Sylhet City Corporation Authority to remove the sheds from South Surma Bus Terminal, Sylhet which were raised during the regime of the Caretaker Government in 2007 and construct the proposed Shopping Complex there within a specific time-frame and allot shops thereof to the members of the petitioner-samity as agreed upon. But if any overriding public interest intervenes or if any contingency of a compelling nature occurs, then the Sylhet City Corporation Authority may allot shops to the members of the petitioner-samity at some other market or shopping complex constructed or to be constructed in Sylhet City by the Sylhet City Corporation Authority. In case of failure of the above 2(two) options, as a last resort, the Sylhet City Corporation Authority will refund the salami-money along with 10% compensation to the members of the petitioner-samity within a reasonable time.

25. With these directives, the Rule is disposed of without any order as to costs.

26. Communicate a copy of this judgment to the respondent no. 1 for information and necessary action.