

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 2nd November, 2018

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.05 of 2017

Petitioners : Dawa Phuti Bhutia and Others

versus

Respondents : State of Sikkim and Others

Application under Article 226
of the Constitution of India

Appearance

Mr. A. Moulik, Senior Advocate with Mrs. K. D. Bhutia, Advocate for the Petitioners.

Mr. J. B. Pradhan, Additional Advocate General with Mr. Thinlay Dorjee, Government Advocate, Mr. S. K. Chettri, Mrs. Pollin Rai, Assistant Government Advocates and Mr. D. K. Siwakoti, Advocate for Respondent No.1.

Mr. Jorgay Namka, Ms. Panila Theengh, Ms. Tashi Doma Sherpa and Mr. Karma Sonam Lhendup, Advocates for Respondent No.2.

Mr. Bhushan Nepal, Advocate for Respondents No.3 to 5.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The Petitioners, crying foul, are before this Court exhorting that the Respondents No.3, 4 and 5 ought not to be allotted stalls in the ground floor of the "Non-Veg." building for the purpose of selling Fish, dressed Chicken and Mutton as it would sound the death knell for similar business being run by the Petitioners on the first floor. It is reasoned that the ground floor

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being easily accessible to customers would deter them from taking the walk up to the first floor when similar goods are available at a convenient location at the same price. It is also the averment of the Petitioners that the stalls now allotted to the said Respondents had infact been earmarked for construction of toilets for use of the vendors, workers and the customers of the said building but has instead been allotted to the Respondents without adherence of the tender process and turning a blind eye to the hygiene conditions in the building.

2. The facts leading to the instant Petition are summarised hereinbelow. The Petitioners are local vendors in the business of selling dressed Chicken, Mutton and Fish from their stalls in the first floor of a building known as the "Non-Veg." building at "Khanchanjunga Shopping Complex" since the year 2006. It is asserted that they have been in the business since the last 60 years viz.; when the Old Lal Market, Gangtok, was functioning from tinsheds. Subsequently the Khanchanjunga Shopping Complex was constructed with structures known as the "Veg." and "Non-Veg." buildings. Twenty-seven stalls each in the ground and first floor of the "Non-Veg." building are allotted for the business of selling meat, inasmuch as live and dressed Chicken, Mutton and Fish are sold on the first floor, known as the "Fish Market", while Beef, Buffen and Pork are sold on the ground floor. The business is the means of livelihood of the Petitioners with which they provide for their families. That one hundred and eighty people including the stall owners work in the said stalls sans provision for toilets since the

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year 2006, resulting in unhygienic conditions including foul smell emanating in the vicinity of the complex consequent to the outside area being utilised by people to ease themselves. Vacant space available on the ground floor adjacent to the staircase leading to the shops of the Petitioners was utilised temporarily by them for disposing garbage. The Petitioners had requested for construction of toilets in the said vacant space towards which a sum of Rs.7,32,600/- (Rupees seven lakhs, thirty two thousand and six hundred) only, was approved by Respondent No.1 but construction was not initiated despite assurances by the said Respondent. In April 2016, the much awaited construction commenced and the Petitioners were informed that this would be utilised as toilets while a portion thereof would be utilised for garbage disposal. Upon completion in January 2017, the stalls were instead allotted to the Respondents No.3, 4 and 5 for running meat shops by arbitrary selection, bypassing the tender or selection process.

3. In the said circumstances, the prayers enumerated in the Petition are as follows;

- "(i) A Rule upon the respondent nos.1 and 2 and each of them to show-cause as to why orders/agreements/allotment of shops in favour of respondent nos.3 to 5 and trade licence of such shops in their respective names be not cancelled and upon hearing the parties to make the Rule absolute;
- (ii) A writ or order or direction or declaration that the space on the ground floor adjacent to staircase leading to first floor which place was used by the petitioners for dumping garbage shall not be allotted to the respondent nos.3 to 5 or to any other persons to use it as shop(s). In the event allotment has already been made to respondent nos. 3 to 5 then all such allotments including agreements if any be cancelled;

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- (iii) A writ or order or direction or declaration against the respondent nos.1 and 2 that the newly constructed concrete structure shall be converted into public toilet by dismantling inner structures and toilets and garbage room be constructed in the said newly constructed structure for user by public and petitioners;
- (iv) A writ or order or direction or declaration that the allotment of the shops in the names of respondent nos.3 to 5 issued by UD&HD stands cancelled and the same space shall be converted into public toilet and garbage room;
- (v) A writ or order or direction or declaration that the licence issued to respondent nos.3 to 5 by Gangtok Municipal corporation/respondent no.2 for running meat shops in the newly constructed rooms on the ground floor similar to those of the petitioners shall stand cancelled and the said stalls/shops be converted into public toilet and for garbage room;
- (vi) A writ or order or direction or declaration that the space and the construction on the ground floor attached to the staircase leading to first floor shall not be allotted to anyone in future and shall stand reserved for public toilet and garbage bin;
- (vii) A writ or order or direction or declaration that no shop(s) of any item be allowed to run in the newly constructed rooms in the ground floor of the Non-Veg. building attached to the staircase leading to the first floor;
- (viii) Costs of the proceedings;
- (ix) Any other writ/writs, order, direction as this Hon'ble Court may deem fit and proper in the interest of justice."

4. The State-Respondent No.1 through the Additional Secretary, Urban Development and Housing Department (UD&HD), by filing Counter-Affidavit would aver that the Respondent Department in 2016 on receipt of request for allotment of stalls in the Non-Veg. building could identify no vacant space in the Fish Market which already had thirty meat stalls, but found space in the ground floor and accordingly allotted it to the Respondents No.3, 4 and 5. That, the grievances of the Petitioners are not genuine and

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bona fide as by filing the Writ Petition they seek to restrain others from entering into the business which they intend to monopolise. In any event, construction of toilets and garbage disposal in the vacant space now allotted to the Respondents No.3, 4 and 5 was discarded in view of the hygiene conditions, as the utilities would be adjacent to the Fish Market. Besides, the Department has constructed toilets for the public on the ground floor of an adjacent Hotel which has compartments for ladies and gents as also bathing space at a distance of about 40-50 metres away from the Non-Veg. building making it easily accessible. A Central Garbage Collection area has also been provided near the Non-Veg. building. The Petition being motivated with the purpose of discouraging competitors, be dismissed.

5. The Respondent No.2 in its Counter-Affidavit through the Municipal Commissioner denied the allegations made by the Petitioners and submitted that the preamble of the Sikkim Municipalities Act, 2007, in clear terms specifies that municipal governance is to be in conformity with the provisions of the Constitution of India and based on the principles *inter alia* of participation to improve the quality of life of the urban dwellers of Sikkim. That, any individual or organisation that fulfils the criteria as laid down for issuance of a Trade Licence will and must be issued a Trade Licence. The Petitioners having fulfilled the criteria were issued the Trade Licence by the Respondent No.2.

6. The Respondents No.3 to 5 filed a joint Counter-Affidavit admitting that presently they are running a business of fish and

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chicken in the space allotted to them below the staircase leading to the Fish Market of the Non-Veg. building with no violation of any law in such allotment. Pursuant to the allotment they have been issued Trade Licences. The Writ Petition is thus liable to be dismissed on the ground that the Petitioner has no *locus standi* to canvass the legality or correctness of the action taken by the Respondent No.1 in allotting premises to the Respondents as the Petitioners' case is not that they had sought for allotment of the premises now allotted to the Respondents. The prayer of the Petitioners is in violation of the fundamental rights guaranteed to the Respondents under Article 19(1)(g) of the Constitution of India. That, the grounds set out by the Petitioners are not sustainable in the eyes of law and hence the Writ Petition is liable to be dismissed outright.

7. In Rejoinder, the Petitioners would dispute the contention of the Respondent No.1 that the toilets cannot be allowed in the Non-Vegetarian Complex due to hygiene considerations as toilets exist on each floor of the adjacent Veg. building. The averment that an accessible toilet has been constructed nearby is erroneous, since it is at a distance of 300 feet away from the building where the Petitioners' stalls are located. Moreover, when the space was allotted to the Respondents No.3, 4 and 5 exclusively for the purpose of selling "dry items" it is not conceivable as to how the Trade Licence was granted for selling meat.

8. Mr. A. Moulik, Learned Senior Counsel for the Petitioners while drawing the attention of this Court to the averments made in the Petition submitted that Representations were made to the Chief

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Minister in 2016 and 2017 and to the Secretary, UD&HD in 2016, objecting to the allotment of stalls to the Respondents No.3, 4 and 5 *inter alia* on the grounds that allotment of such shops for the same business on the ground floor would adversely affect the Petitioners' business. The Chief Minister endorsed the representation to the concerned Department to examine the matter in public interest and the Department in sum and substance agreed to incorporate the "Swachh Bharat Abhiyan" in the Non-Veg. building which however remained unimplemented. Meanwhile, three rooms constructed on the ground floor came to be allotted to the Respondents No.3, 4 and 5 for selling dry items, however, contrary to the terms of allotment Trade Licence was issued for sale of meat. That, even if the Licence is for sale of dry items the Petitioners remain aggrieved as the space had been identified for use as toilets. It is suggested that if the Government Respondents seek to accommodate the Private Respondents, allotment of some stalls can be made on the roof of the building above the stalls of the Petitioners thereby causing no negative effect on the Petitioners' business. That, the policy adopted by the State-Respondents is against the principles of fair play, justice and equity and the right to life and means of livelihood of the Petitioners have been jeopardised at the whims and caprice of the Respondents. Relying on the decision of ***Sub-Divisional Inspector of Post, Vaikam and Others, etc. vs. Theyyam Joseph, etc.***¹, Learned Senior Counsel would submit that welfare measures are required to be taken by the State and directive principles of the State Policy enjoin upon the State Government duties under Part IV of the

¹ AIR 1996 SC 1271

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Constitution of India. Hence, being a welfare State it is the responsibility of the Respondent No.1 to provide proper facilities for basic amenities such as toilets. Attention of this Court was also invited to the ratio in ***A. P. Pollution Control Board II vs. Prof. M. V. Nayudu (RETD.) and Others***² and it was urged that in the said matter it was found that drinking water is of primary importance in any country and India was a party to the Resolution of the UNO passed during the United Nations Water conference in 1977, wherein it was held that as drinking water is fundamental to life a duty is cast on the State under Article 21 to provide clean drinking water to its citizens. Similarly, in the matter at hand it is clear that hygienic and clean surroundings are fundamental to life and the State is responsible under Article 21 to provide such surroundings and to ensure that there is no environmental pollution in view of the large number of persons attending to nature's call outside the Non-Veg. building. That, in ***Tamil Nadu Centre for Public Interest Litigation, represented by K. K. Ramesh vs. State of Tamil Nadu and Another***³ the Supreme Court while considering the deaths of farmers in Tamil Nadu would observe that the State stands on the position of a *loco parentis* to the citizens and it was obligatory on the part of the State to express concern and sensitivity to do the needful. The same attitude needs to be adopted by the State-Respondents in the instant matter towards the Petitioners. Further, Senior Counsel would also rely on ***Danial Latifi and Another vs. Union of India***⁴ and contend that the concept of right to life and liberty guaranteed

² (2001) 2 SCC 62

³ (2017) 6 SCC 734

⁴ (2001) 7 SCC 740

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under Article 21 of the Constitution of India would include the right to live with dignity which the Petitioners have been deprived of as the absence of toilets in the Non-Veg. building causes them immense inconvenience. That, allotment of three stalls in the ground floor where the toilets ought to have been constructed is in abrogation of the fundamental rights of the Petitioners to a clean, healthy and hygienic environment. Invoking the doctrine of legitimate expectation and Promissory Estoppel Learned Senior Counsel would canvass that funds for construction of toilets had been sanctioned and the plan approved, hence after the construction the State-Respondent ought not to have altered the plan of utilisation of the space as toilets. That apart, the Private Respondents failed to obtain any permission from the Animal Husbandry Department before the Respondent No.2 issued Licences to them for selling Fish and meat, therefore the Licences have been obtained contrary to established practice. Hence, the prayers in the Petition be granted.

9. The *contra* arguments of Learned Additional Advocate General were that the Petitioners are not entitled to make unreasonable demands to prevent the Private Respondents from carrying on trade for their livelihood as they are also citizens of the country and equally entitled to the right to livelihood as manifest in Article 19(1)(g) and Article 21 of the Constitution of India. The Petitioners in the garb of objecting to non-construction of the toilets are infact urging that allotment of stalls ought not to be made to the Private Respondents for selling meat. This would tantamount to

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depriving the Private Respondents of their right to livelihood when no Statute debars them from running a business in the country. That, Respondent No.1 is infact the allotting authority and the Respondent No.2 is the authority who issues Licences. There is no restriction on the powers of the Respondent No.2 to issue Licence on assessment of the requirements of the Petitioners who are entitled to make a living. There is no illegality on the issuance of the Licence and the Petition reflects the utter selfishness of the Petitioners in depriving the Respondents No.3, 4 and 5 to earn income, on this count Learned Additional Advocate General would rely on ***Mithilesh Garg and Others vs. Union of India and Others***⁵. That the ratio clearly lays down that Article 19(1)(g) of the Constitution guarantees to all citizens the right to practice any profession or to carry on any occupation, trade or business subject to reasonable restrictions imposed by the State under Article 19(6) of the Constitution. Hence, the Petitioners herein being private individuals cannot seek to impose any restrictions on the issuance of Licence or the carrying on of the business or any other restriction which the State Legislature has opted not to as it is only the State which can impose reasonable restrictions within the ambit of Article 19(6) of the Constitution. That the Petitioners have no *locus standi* under Article 226 of the Constitution to challenge the issuance of Licence since no right vested on the Petitioners have been infringed. That, in ***Nataraja Agencies vs. The Secretary, Ministry of Petroleum and Natural Gas, Government of India, New Delhi and Others***⁶ the Division

⁵ (1992) 1 SCC 168

⁶ 2005 (1) Current Tamil Nadu Cases (CTC) 394 : MANU/TN/1588/2004

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Bench of the Madras High Court has categorically stated that a rival businessman cannot file a Writ Petition challenging the setting up of a similar unit by another businessman on the ground that establishing a rival business close to his business place would adversely affect business interest, even if the setting up of the new unit is in violation of law. That, merely because the Petitioners apprehend a shift of allegiance of their customers to rival retail dealers does not mean that public interest will suffer, to the contrary it will benefit the consumers because when there is competition, businessmen are compelled to provide better quality products at reasonable rates. Therefore, the Petition deserves a dismissal.

10. Learned Counsel for the Respondents No.2 and 3, 4 and 5 would submit that they endorse the arguments made by Learned Additional Advocate General. Learned Counsel for Respondent No.2 would add that there are no Rules whatsoever that require the Respondent No.2 to obtain permission from the Animal Husbandry Department for issuance of Licence for sale of meat and fish. That the Respondent No.2 is empowered to issue such Licences after due assessment as per its own Rules. Besides, the Petitioner has failed to show by way of any documentary evidence that either such Rules exists or that has such practice been followed.

11. The submissions put forth by Learned Counsel were heard at length. I have carefully perused and considered the pleadings, the entire documents appended, as well as the Judgments cited at the Bar.

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12. The question that arises for determination is whether the Respondents No.3, 4 and 5 can be restrained by the Petitioners from carrying on the business of selling meat in the allotted space in view of the Petitioners' assertion that the State-Respondents are estopped from allotting stalls and Licence to the Private Respondents, having promised construction of toilets therein in addition to which such allotment and sale thereof would adversely affect their business.

13. Article 19 of the Constitution lists a group of rights from Clause (a) to Clause (g) which are recognised as fundamental rights. Article 19(1)(g) extends to every citizen the right to practice any profession or to carry on any occupation trade or business. The rights enumerated under Article 19 are recognised as natural rights and although they may have different underlying philosophies, the consistent common thread however is that the State is empowered to impose restrictions to achieve certain objects. In other words, although Article 19 of the Constitution assures citizens of the rights enumerated therein the rights cannot be absolute, uncontrolled or wholly free from restraint, they are indeed subject to reasonable restrictions as may be deemed necessary by the Government as essential for safety, health, peace, decency and order of the community. The Constitution thus seeks to strike a balance between individual liberty and social control. If the restriction imposed is greater than permitted under Clause (2) to Clause (6) of Article 19 of the Constitution the Courts will necessarily declare the same as unconstitutional, as imposition of restrictions limit a

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person's enjoyment to the rights guaranteed. It may be emphasised that violation of the fundamental rights of one individual by another, without State support is not envisaged in the ambit of Article 19. In this context, we may look into the observation of the Hon'ble Supreme Court in ***Hans Raj Kehar and Others vs. The State of U.P. and Others***⁷ where it was held that;

"8. The contention that the impugned notification is violative of the rights of the appellants under Article 19(1)(f) or (g) of the Constitution is equally devoid of force. There is nothing in the notification which prevents the appellants from acquiring, holding and disposing of their property or prevents them from practising any profession or from carrying on any occupation, trade or business. **The fact that some others have also been enabled to obtain permits for running buses cannot constitute a violation of the appellants' rights under the above two clauses of Article 19 of the Constitution. The above provisions are not intended to grant a kind of monopoly to a few bus operators to the exclusion of other eligible persons. No right is guaranteed to any private party by Article 19 of the Constitution of carrying on trade and business without competition from other eligible persons. Clause (g) of Article 19(1) gives a right to all citizens subject to Article 19(6) to practice any profession or to carry on any occupation, trade or business. It is an enabling provision and does not confer a right on those already practising a profession or carrying on any occupation, trade or business to exclude and debar fresh eligible entrants from practising that profession or from carrying on that occupation, trade or business. The said provision is not intended to make any profession, business or trade the exclusive preserve of a few persons. We, therefore, find no valid basis for holding that the impugned provisions are violative of Article 19."**

[emphasis supplied]

14. In ***The Nagar Rice and Flour Mills and Others vs. N. Teekappa Gowda & Bros. and Others***⁸ the Supreme Court would observe as follows;

"9. The right to carry on business being a fundamental right under Art.19(1)(g) of the Constitution, its exercise is subject only to the restrictions imposed by law in the interest of the general public under Article 19(6)(i)."

⁷ AIR 1975 SC 389

⁸ AIR 1971 SC 246

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15. In *T. B. Ibrahim, Proprietor, Bus Stand, Tanjore vs. The Regional Transport Authority, Tanjore*⁹ the Supreme Court emphasised that reasonable restrictions can be put in place by the government and would elucidate as hereinunder;

"13. The next contention was that the order is repugnant to Art. 19(1)(g) of the Constitution, according to which all citizens must have the right to practise any profession or to carry on any occupation, trade or business. It cannot be denied that the appellant has not been prohibited from carrying on the business of running a bus-stand. What has been prohibited is that the bus-stand existing on the particular site being unsuitable from the point of view of public convenience, it cannot be used for picking up or setting down passengers from that stand for out-stations journeys. But there is certainly no prohibition for the bus-stand being used otherwise for carrying passengers from the stand into the town, and 'vice-versa'. The restriction placed upon the use of the bus-stand for the purpose of picking up or setting down passengers to outward journeys cannot be considered to be an unreasonable restriction.

It may be that the appellant by reason of the shifting of the bus-stand has been deprived of the income he used to enjoy when the bus-stand was used for outward journeys from Tanjore, but that can be no ground for the contention that there has been an infringement of any fundamental right within the meaning of Art. 19(1)(g) of the Constitution. There is no fundamental right in a citizen to carry on business wherever he chooses and his right must be subject to any reasonable restriction imposed by the executive authority in the interest of public convenience."

16. In *Harman Singh and Others vs. Regional Transport Authority, Calcutta Region and Others*¹⁰, it was observed that;

"8. The next contention of Mr. Choudhry that the introduction of small taxis in the streets of Calcutta will bring about a total stoppage of the existing motor taxi cab business of large taxi owners in a commercial sense and would thus be an infringement of the fundamental right guaranteed under Article 19(1)(g) of the Constitution is again without force. Article 19(1)(g) declares that all citizens have the right to practise any profession, to carry on any occupation, trade or business. Nobody has denied to the appellants the right

⁹ AIR 1953 SC 79

¹⁰ AIR 1954 SC 190

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to carry on their own occupation and to ply their taxis. This article does not guarantee a monopoly to a particular individual or association to carry on any occupation and if other persons are also allowed the right to carry on the same occupation and an element of competition is introduced in the business, that does not, in the absence of any bad faith on the part of the authorities, amount to a violation of the fundamental right guaranteed under Article 19(1)(g) of the Constitution. Under the Motor Vehicles Act it is in the discretion of the Regional Transport Authority to issue permits at different rates of tariff to different classes of vehicles plying in the streets of Calcutta and if that power is exercised in a 'bona fide' manner by the Regional Transport Authority for the benefit of the citizens of Calcutta, then the mere circumstance that by grant of licence at different tariff rates to holders of different taxis and different classes of vehicles some of the existing licence holders are affected cannot bring the case under Article 19(1)(g) of the Constitution."

[emphasis supplied]

17. All the decisions of the Supreme Court extracted hereinabove are indicative of the fact that every person is entitled to practice any profession or to carry on any occupation, trade or business as provided under Article 19(1)(g) of the Constitution and no one can monopolise a business. Merely because one individual apprehends loss of business on the entry of another person into the same business does not clothe him with powers to expect the State to intervene and impose restrictions on the new entrant. It follows that, the exercise of a fundamental right by an individual is equal for all thus one individual cannot infringe or deter another from exercising his exact same right, unless and until reasonable restriction as found essential by the State are in place. The term "reasonable restrictions" has been elucidated in a plethora of decisions of the Hon'ble Supreme Court and connotes that the restriction imposed on the exercise of the right must have reasonable relation to the object which the legislature seeks to

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achieve and ought not to be in excess thereof or arbitrary. In *M/s. Laxmi Khandsari and Others vs. State of U.P. and Others*¹¹ it was held that the nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing condition at the time should all enter into the judicial verdict.

18. That having been said the sweep of Article 21 of the Constitution would necessarily have to be looked into. This Article mandates that no person shall be deprived of his life and personal liberty except according to procedure established by law. Enjoyment of quality life by a person is the essence of the right guaranteed under Article 21 of the Constitution, which means not merely survival or animal existence, but the right to live with human dignity and thereby includes all issues of life which involve the making of a meaningful and complete life. Obviously these facets of the right can only be achieved by means of a proper livelihood, thus the right to livelihood is an integral part of the right to life under Article 21 and cannot be infringed by withholding the means of livelihood by any process whatsoever. The action of the State is to be based on reasonableness and cannot deprive the basic human rights afforded under the Constitution. It also includes the right of a citizen to carry on business wherever he chooses or at any time subject to ofcourse to reasonable restrictions imposed by the Executive in the interest of public convenience.

¹¹ AIR 1981 SC 873

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19. In *Olga Tellis and Others vs. Bombay Municipal Corporation and Others*¹² the Supreme Court while discussing the right to life guaranteed by Article 21 of the Constitution and consequently the right to livelihood held as follows;

"32. As we have stated while summing up the petitioners' case, the main plank of their argument is that the right to life which is guaranteed by Article 21 includes the right to livelihood and since, they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional. For purposes of argument, we will assume the factual correctness of the premise that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live: Only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. That is the context in which it was said by Douglas, J. in *Baksey* [347 US 442, 472 : 98 L Ed 829 (1954)] that the right to work is the most precious liberty that man possesses. It is the most precious liberty because, it

¹² (1985) 3 SCC 545

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sustains and enables a man to live and the right to life is a precious freedom. "Life", as observed by Field, J. in *Munn v. Illinois* [(1877) 94 US 113] means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. This observation was quoted with approval by this Court in *Kharak Singh v. State of U.P.* [AIR 1963 SC 1295 : (1964) 1 SCR 332 : (1963) 2 Cri LJ 329].

33. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21." [emphasis supplied]

20. The fulcrum of the Petitioners' prayer is to ensure that the Private Respondents are not allotted stalls in the Non-Veg. building as also Licence to sell meat therefrom, *inter alia* on grounds that it would affect the Petitioners' business. Ofcourse a tangential argument has also been incorporated that the area which was to have been converted into toilet was allotted to the Private Respondents causing inconvenience to the Petitioners herein. It is not the case of the Petitioners that they have been restricted in any manner by the State-Respondents from carrying out their business and occupation. It is also not the case of the Petitioners that the State- Respondents have not made efforts to provide basic facilities and convenience to the Petitioners by constructing accessible toilets for their use be it at a distance of 40-50 metres not necessarily at their doorstep as envisaged. It has been specifically averred and argued by learned Counsel for the State-Respondents that the facilities are for men and women replete with bathing compartments and nothing contrary thereto emerges.

21. The doctrine of legitimate expectation is invoked when a person may have been treated in a certain way by an administrative

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authority although he has no legal right in private law to receive such treatment. In **Bannari Amman Sugars Ltd. vs. Commercial Tax Officer and Others**¹³ while explaining this concept the Supreme observed that the expectation may arise either from a representation or promise made by the authority, including an implied representation or from consistent past practice. Legitimate expectation can provide sufficient interest to enable one who cannot point to the existence of a substantive right to obtain the leave of the Court to apply for judicial review. It is generally agreed that "legitimate expectation" gives the applicant sufficient *locus standi* for judicial review. The doctrine does not give scope to claim relief straightway from the administrative authorities as no crystallized right as such is involved. 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 of a particular decision, then the decision-maker is to justify the denial of such expectation by showing some overriding public interest. In the same line, we may also look at the doctrine of Promissory Estoppel which is a rule of equity flowing out of fairness, striking on behavior deficient in good faith. While applying this concept, the Court ought to be concerned with the conduct of a party for determination as to whether he can be permitted to take a different stand in a subsequent proceeding. The doctrine is thus premised on conduct of a party making a representation to the other so as to enable him

¹³ (2005) 1 SCC 625

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to arrange his affairs in such a manner as if the said representation would be acted upon.

22. In *M/s. Motilal Padampat Sugar Mills Co. Ltd. vs. State of Uttar Pradesh and Others*¹⁴ the Supreme Court while considering this concept also discussed the origins of the doctrine as follows;

"7. That takes us to the question whether the assurance given by Respondent 4 on behalf of the State Government that the appellant would be exempt from Sales Tax for a period of three years from the date of commencement of production could be enforced against the State Government by invoking the doctrine of promissory estoppel. Though the origins of the doctrine of promissory estoppel may be found in **Hughes v. Metropolitan Railway Co.** [(1877) 2 AC 439 : 36 LT 932] and **Birmingham and District Land Co. v. London and North-Western Rail Co.** [(1888) 40 Ch D 268, 286 : 60 LT 527], authorities of old standing decided about a century ago by the House of Lords, it was only recently in 1947 that it was rediscovered by Mr Justice Denning, as he then was, in his celebrated judgment in **Central London Property Trust Ltd. v. High Trees House Ltd.** [(1956) 1 All ER 256 : 1947 KB 130] This doctrine has been variously called "promissory estoppel", "equitable estoppel", "quasi estoppel" and "new estoppel". It is a principle evolved by equity to avoid injustice and though commonly named "promissory estoppel", it is, as we shall presently point out, neither in the realm of contract nor in the realm of estoppel. It is interesting to trace the evolution of this doctrine in England and to refer to some of the English decisions in order to appreciate the true scope and ambit of the doctrine particularly because it has been the subject of considerable recent development and is steadily expanding. The basis of this doctrine is the inter-position of equity. Equity has always, true to form, stepped in to mitigate the rigours of strict law. The early cases did not speak of this doctrine as estoppel. They spoke of it as "raising an equity"."
[emphasis supplied]

Hence, the doctrine of Promissory Estoppel would be applicable in a case where the appellant would suffer a detriment by acting on a representation made by the Government.

¹⁴ (1979) 2 SCC 409

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23. The documents on record do not indicate any assurance from the Government to the Petitioners for construction of toilet. It is the Petitioners who have submitted the representations, the prayers of which did not materialize. Legitimate expectation would have arisen if assurances had been made to the Petitioners by the Respondents No.1 and 2, nothing emanates in this context. The Petitioners already being in the trade have not acted to their own detriment in any manner whatsoever. Moreover, as pointed out in ***Bannari Amman Sugars Ltd. (supra)*** the legitimate expectation is not required to be fulfilled where overriding public interest is to be given priority as in the instant case where the Respondents' right to life and as a corollary right to livelihood are involved. Hence, neither of the doctrines are applicable to the Petitioners in the present case.

24. Therefore, in the light of the matter at hand in my view it is evident that the Petitioners cannot seek to restrain the private Respondents from also carrying on business for their livelihood and achieving their economic requirements. It is the aim and goal of the Government to enable the society to be an egalitarian one. The Petitioners cannot put hurdles in the path of the private Respondents in the garb of inconvenience caused by non-construction of toilets. The documents on record also indicate that infact an estimate of Rs.7,32,600/- (Rupees seven lakhs, thirty two thousand and six hundred) only, had been placed for approval of the authorities by the Engineers concerned but was at no point of time either approved or sanctioned. Contrary to the submissions of the Petitioners that they had made several representations to the

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authorities the records stand sentinel to the fact that only two representations were made in the year 2016, i.e., on 08-04-2016 and 12-04-2016 and one in the year 2017, i.e., on 03-02-2017. The argument that the Respondent No. 2 ought not to have issued Licenses for selling of meat apart from seeking non-allotment of stalls is in itself an incongruous argument since the statute clothes the State Respondents with powers to make assessments and issue Licences if the requisite criteria thereof stand fulfilled. The Petitioners cannot seek to trample on the fundamental rights of the Private Respondents by way of prayers that are indeed absurd.

25. In conclusion, in view of the entire foregoing discussions, the Writ Petition deserves no consideration and is accordingly dismissed.

26. No order as to costs.

Sd/-
(Meenakshi Madan Rai)
Judge
02-11-2018

Approved for reporting : **Yes**

Internet : **Yes**