

## Doctrine of legitimate expectation: The emerging trends in Indian Judiciary

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### Abstract

Expectation of a person can be conceived in various forms and degrees. A new recruit in service expects to be given an annual increment, in keeping with the escalation of prices, to mitigate the cost of. Likewise, living an expectation of time scale promotion in service hierarchy and even an out of turn promotion, for one who is dedicated, hardworking, and sincere and is producing succeeding excellent results. Legitimate Expectation of a person is of being treated in a certain way by an Authority even though one has no right in a Private Law to be treated as expected. Legitimate Expectation may arise either from a representation or promise made by the Authority, including an implied representation, or from consistent past practice. Concept of legitimate expectation in administrative law has now gained sufficient importance. "Legitimate Expectation" is the latest recruit to the long list of concepts fashioned by the Courts for the review of administrative actions, and this creation takes its place beside such principles as the rules of natural justice, unreasonableness, the judiciary duty of local authorities and in future perhaps, the principle of proportionality.

In the present paper an attempt has been made to discuss the emerging trends of this doctrine in the Indian context.

**Keywords:** expectation, legitimate expectation, public interest, judiciary

### Introduction

*"A man should keep his words. All the more so when promise is not a bare promise but is made with the intention that the other party should act upon it"* - Lord Denning

It is a common practice in any law that the decision maker is normally compelled or expected to give effect to his representation in regard to the expectation based on previous practice or post conduct until and unless some overriding public interest comes in the way. The doctrine requires that reliance must have been placed on the said representation and the represented must have thereby suffered detriment. Now the question arises that whether the decision maker can sustain the change in policy by revert to Wednesbury principles of rationality or balanced the legitimate expectation as against the need for change. It is very important and essential aspect and in the later case, the court would obviously be able to go into the proportionality of the change in the policy. In this situation, the Wednesbury test of reasonableness may be applied to find out that whether the change from one policy to another was justified or not.

The court is not to judge the merit of the decision maker's policy. The public authority in question is to judge the issue that whether 'overriding public interest' justifies such a change in the policy. However, it must be noted that the change of policy like any discretionary decision by a public authority must not contravene the Wednesbury principles. While the policy is, the policy of the decision maker alone the court's concern is to see that whether there has been fairness in his decision or not. Because if any change of policy is not justified on Wednesbury reasonableness, it can defeat legitimate expectation. So the decision maker has the choice

of balancing the pros and cons relevant to the change in policy. It is, therefore, clear that the choice of change in policy is for the decision maker and not for the court. What the judiciary has to decide is about the minimum fairness to be adopted by the administrative authorities both in substantive and procedural aspects. In India, Supreme Court is the final arbiter of the Indian Constitution, which is based upon the doctrine of rule of law. In order to secure rule of law, the judiciary is provided with power of judicial review under Article 13.

The doctrine of legitimate expectation has developed a lot under administrative law in India. It has brought a substantial change in course of action. The approach of judiciary about the legitimate expectation is kept on changing since the very starting.

### Emerging Trends of Doctrine of Legitimate Expectation

Some emerging trends of doctrine of legitimate expectation are as under:

#### A) Changes of Long Standing Practices

In *Airports Authority of India v. Shri Shakti Resorts & Hotels*, the first issue concerns the duration of the PIP and who was responsible for delay in implementation of the project and from which date SSRHL was liable to pay 100% lease rent. The learned Arbitrator, after noticing the repeated extensions given by AAI of the PIP till 30<sup>th</sup> June 1993 applied the test of 'pragmatic consideration' and concluded that the delay in AAI responding to the last request of SSRHL for extension was unreasonable and that such delay "has obviously created a legitimate expectation of possible extension of PIP". This in

turn persuaded the learned Arbitrator to hold that it was AAI which had contributed to the delay in actual implementation of the project for which SSRHL should be compensated on the basis of legitimate expectation. Therefore, the differential payment made in excess during these 14 months by SSRHL was awarded to it as compensation. This worked out to a sum of Rs. 23, 75,996. The court referred the decision of Supreme Court in *Union of India v. Kaushalendu Mishra* and held that the arbitrator was justified in awarding compensation to SSRHL on account of the delay on the part of AAI in granting extension of the PIP. The court also held that the doctrine of legitimate expectation has no place in contractual matters.

In *GNCT of Delhi v. Naresh Kumar*, Delhi High court summarized the legal position with regard to legitimate expectation and said that

- **Firstly** mere reasonable or legitimate expectation of a citizen may not by itself be a distinct enforceable right, but failure to consider and give due weightage to it may render the decision arbitrary.
- **Secondly** legitimate expectation may arise if (a) there is an express promise given by a public authority; or (b) because of acceptance of a regular practice, a claimant can reasonably expect it to continue; and (c) such expectation may be reasonable.
- **Thirdly**, for a legitimate expectation to arise decision of administrative authority must affect the person by depriving him of some benefit or advantage which he had in the past been permitted, by the decision maker, to enjoy and which he can legitimately expect to be permitted to continue, until some rational grounds for withdrawing it have been communicated to him.
- **Fourthly**, if the authority proposes to defeat a person's legitimate expectation, it should afford him an opportunity to make a representation in the matter.
- **Fifthly**, the doctrine of legitimate expectation permits the court to find out if the change in policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made.

In the present case, there was no promise or assurance given by AAI at any time to the effect that as and when SSRHL made a request for extension of PIP, it would be granted. The fact that AAI delayed its response to the last request for such extension made by SSRHL could not lead to the inference that AAI had impliedly agreed to such extension. On the contrary, these circumstances could have given rise to a 'legitimate expectation' by SSRHL of a 'possible extension of PIP'. This conclusion of the learned Arbitrator can only be explained by his 'pragmatic' approach based on 'equitable considerations' and not on the basis of the evidence or law. This in turn led the learned Arbitrator to erroneously hold that SSRHL should be compensated by AAI for the sum equivalent to 100% lease rent fee collected for the period from 1st July 1993 to 30th August 1994. This part of the Award as regards Claim No.1 is plainly unsustainable in law.

In the instant case, the IOC and the Government of India and its functionaries have taken a stand, before Supreme Court, that the decision of change of methodology for sale of R.P.C. through open auction, was taken in the light of judgment of the Supreme Court in the case of *Centre for Public Interest*

*Litigation v. Union of India*, popularly known as 2G Spectrum case. Though, the notings of the Joint Secretary dated 11.4.2012 does not contain reference of this Judgment, but it appears that, auction route suggested by the Comptroller and Auditor General of India in the matters of 2G Spectrum and allocation of coal mines, was discussed in the meeting held on 31.3.2012 in presence of the Minister of the Department. The petitioners submitted that the judgment of the Supreme Court in 2G Spectrum case was not applicable to the present case as the same was related to natural resources with unlimited availability, whereas present case is related to an industrial by-product of the refining process of Refineries of the IOC, being produced in limited quantity and hence related to a scarce commodity.

Thus, while observing above mentioned cases, it can be said that the changes in long standing practices with regard to doctrine of legitimate expectation is an emerging trend in Indian judiciary.

### **B) Change of Procedure**

In *Archana v. State & Ors*, the court held that when a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the doctrine of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the doctrine of legitimate expectation cannot be invoked to seek a positive relief of being made permanent in the post. The most important feature of this judgment is declaration of 'Rule of Equality' in public employment as basic feature of our Constitution. Adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution; a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, the Supreme Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis; the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for

a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. The doctrine of legitimate expectation of an employee for regularization in service can not be accepted by the Court.

In *Asha Sharma v. Chandigarh Administration & Ors.*, the court held that allotments of government accommodation to the government employees under different categories and with the restrictions as stated in the Allotments Rules and the guidelines shall continue to be in force and should not be amended or altered except in exceptional circumstances by the appropriate body. This alone can add some certainty to the application of these provisions and to the expectations of the government employees, who have a legitimate expectation of allotment of government accommodation as part of their perks.

The court expect that the authorities to be consistent in their decisions and bring certainty to the Allotment Rules. This can only be done by making fair, judicious and reasoned decisions on the one hand and refraining from amending the allotments rules except in exceptional and extraordinary circumstances on the other. The Doctrine of Certainty can appropriately be applied to legislative powers as it is applicable to judicial Pronouncements. The court must not be understood to say that the power of the Legislature to amend rules is restricted by judicial pronouncements, but we want to impress upon the legislature that the rules of the present kind should not be amended so frequently that no established practice or settled impression may be formed in the minds of the employees. Where the employer has limited resources, there, the employee has a legitimate expectation of being dealt with fairly in relation to allotment to such government accommodation.

In *Association of Recognized Passport Agents of Gujarat v. Union of India*, the petitioners submitted that neither the policy decision nor change in the system is immune from challenge under Articles 14 and 19 of the Constitution of India. The respondents are bound by the doctrine of due process of law and fairness of action. It was also submitted that the actions of the respondents are not guided by due process of law and fairness in action; hence, the claim based upon legitimate expectation is required to be entertained. It was further argued that the policy maker namely, the Union of India has not filed an affidavit justifying its action of eliminating passport agents from the system of issuance of passports. It was further submitted that in effect and substance, what has been done is that the work being done by 94 passport agents who have been given login facilities will be transferred to three Passport Seva Kendras who are private individuals. It was argued that the new system does not, in any manner, obviate the hardship to the citizens. It was also contended that if the reasons for change in the policy are not sufficient and the reason therefore, is not rational, the policy can be set aside by the court.

According to the petitioners, in the facts of the present case, overriding interest for change in policy has not been made out. Reliance was placed upon the decision of the Supreme Court in the case of *Navjyoti Coop. Group Housing Society and*

*others v. Union of India and others*, wherein a new criterion of allotment was given by the memorandum impugned therein, prior to which priority in the matter of allotment to Group Housing Societies had all along been made with reference to the date of registration. The court held that since prior to the new guidelines contained in the memorandum of January 20, 1990, the principle of allotment had always been on the basis of date of registration and not the date of approval of the list of members, the Group Housing Societies were entitled to 'legitimate expectation' of following consistent past practice in the matter of allotment, even though they may not have any legal right in private law to receive such treatment. It was also held that the doctrine of 'legitimate expectation' imposes in essence a duty on the public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation'. The existence of 'legitimate expectation' may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat the 'legitimate expectation' without some overriding reason of public policy to justify its doing so. Adverting to the facts of the present case, the petitioners submitted that they had a 'legitimate expectation' that they would be integrated in any system in relation to issuance of passports and that it was the duty of the respondents to act fairly; that the respondents ought not to have acted to defeat their 'legitimate expectation' without any overriding justifiable reasons.

### **C) Change of Policy**

The concept of legitimate expectation again came up for consideration before Supreme Court in *Union of India v. Hindustan Development Corpn.* Referring to a large number of foreign and Indian decisions, and elaborately explaining the concept of legitimate expectation, the supreme court observed that if a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognized general principles of administrative law, applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding in the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is 'not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which shuts the court out of review on the merits', particularly when the element of speculation and uncertainty is inherent in that very concept.

In *Dr. Ananta Kumar Das v. Principal, Vijaygarh Jyotish Ray*, it was emphatically mentioned by the respondents that the petitioner's prayer purely based on legitimate expectation does not deserve to be entertained and dismissal of the application was so prayed for. The crux of the controversy in the instant

case is how far a claim on the basis of legitimate expectation can be entertained. It was submitted that the petitioner was asked to continue for more than eight and half years as teacher of Microbiology and this was allowed by taking into consideration his qualification and experience. Thus, it was his legitimate expectation to continue further in the said post. On behalf of the petitioner, it was then submitted that the respondent-authorities had all along assured the petitioner that he would be absorbed in the Department of Microbiology.

Relying upon the decision of the Supreme Court in *Confederation of Ex-servicemen Associations & Ors. v. Union of India & Ors.*, in which the Supreme Court held that the court may not in all cases insist an administrative authority to act judicially but may still insist it to act fairly held that the doctrine of legitimate expectation is the '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 development of administrative law and particularly law relating to 'judicial 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. The court further held that the doctrine is based on the principle that good administrative demands observance of reasonableness and where it had adopted a particular practice for a long time even in the absence of a provision of law, it should adhere to such practice without depriving its citizens of the benefit enjoyed or privilege exercised.

#### **D) Withdrawal of Policy**

In *Karm Kumar v. Union of India & Ors.*, it was submitted by petitioner that the past practice of permitting both the PIOs and OCIs to represent India in international sporting events has given rise to a legitimate expectation of continuation of that practice. The petitioner submits that Karm Kumar was permitted to represent India prior to the change in the policy. He was also placed on the Long- Term Development Plan of the SRFI in 2006. All this constituted a representation held out to him that he will continue to play for India in international sporting events. This legitimate expectation cannot be frustrated by introducing a policy to his detriment. Relying on such representation, Karm Kumar had made India his place of domicile expecting to play for it. It is submitted that although Karm Kumar is the holder of a U.K. passport, the fact that he has represented India in an international sporting event, disentitles him to represent the U.K. in an international sporting event for three years. As a result, Karm Kumar will not be in a position to play for any country in international events for quite some time to come. This, it is contended, adversely affects Karm Kumar's participation in other professional championships as well since his international ranking will depend on the number of tournaments he is able to play for India. The supreme court held that no specific assurance was held out to Karm Kumar by the Union of India that he will be permitted to represent India for all times to come. The facts and circumstances outlined did not give rise to a legitimate expectation that the past practice of permitting OCIs and PIOs to represent India in international sporting events would continue indefinitely. As an important exception

to the doctrine is a justifiable policy change. Every legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense. The doctrine does not give scope to claim relief straightaway 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 a particular decision then decision-maker should justify the denial of such expectation by showing some overrating public interest. Therefore, even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfill. The protection is limited to that extent and a judicial review can be within those limits.

After emphasizing that the burden was on the person who bases his claim on the doctrine of legitimate expectation to satisfy that there has been a representation or a past practice that has given rise to such expectation, it must be shown that the decision of the authority was arbitrary, unreasonable and not taken in public interest. The court also observed that it is a question of policy, even by way of change of old policy, the courts cannot interfere with the decision. Even if the court was satisfied that a case of legitimate expectation was made out, it can grant relief only where the failure to give an opportunity of hearing prior to such decision has resulted in failure of justice.

Consequently, the Supreme Court found no merit in the submission that either of the Petitioners can claim that they have a legitimate expectation about representing India in the international sporting events.

In *M. Arun kumar v. W.P.No.21318/201182*, On the issue of legitimate expectation, the court held that no legitimate expectation could arise out of an illegal action. Persons who were admitted to educational institutions in contravention of statutory regulations could only have illegitimate expectation than legitimate expectation. The Supreme Court also held that the decision in *Poovizhi (Minor) v. The Government of Tamil Nadu* arose under different circumstances. The case was concerned about a Scheme introduced by the Government for the students of Higher Secondary Examination to improve their performance by appearing for a supplementary examination known as 'improvement examination'. The Scheme, as it was originally evolved, enabled the students to write only those papers in which they had secured less marks. But suddenly, a circular was issued followed by a Government Order stipulating that those students will have to write examinations in all the papers. This modification to the Scheme was made at the last minute, when the improvement examinations were about to be held. Therefore, the court invoked the principle of legitimate expectation as the students did not have sufficient time.

In *M. Chandrasekaran v. The Secretary*, the court held that when the application of legitimate expectation is concerned, it is a well settled principles of law that the said principle is not

a very strong right, but it based upon various other factors and it can be invoked incidentally. The doctrine of legitimate expectation can be invoked where there is an irreparable loss to the party and public interest does not suffer. A person may have a 'legitimate expectation' of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice. The doctrine of legitimate expectation has an important place in the developing the law of judicial review. It is, however, not necessary to explore the doctrine in present, it is enough merely to note that a legitimate expectation can provide a 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 and that the doctrine of legitimate expectation to be confined mostly to right of a fair hearing before a decision which results in negating a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway 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 a particular decision then the decision-maker should justify the denial of such expectation by showing some overriding public interest. By applying the above said principles to the facts of the present case, the Supreme Court opined that the doctrine of legitimate expectation also would be applicable to the present case on hand, since the petitioners' expectation to get enrolled is a legitimate one after allowing them to complete the law course.

#### **E) Policy Alteration**

In *Shimnit Utsch India Pvt. Ltd. & others v. W.B. Tpt. Infrastructure*, the court agreed with the judgment passed in *Punjab Communications Ltd. v. Union of India* in which court elaborately examined the principle of legitimate expectation and a change in policy by the Government. The court held that a change in policy cannot, be said to be irrational or perverse according to *Wednesbury* principles. In the circumstances, on the basis of the clear principles, the *Wednesbury* principle of irrationality or perversity is not attracted and the revised policy cannot be said to be in such gross violation of any substantive legitimate expectation of the appellant which warrants interference in judicial review proceedings sought to be remedied thereby, the disproportion of the imposition, the prevailing condition at the relevant time, enter into judicial verdict. The reasonableness of the legitimate expectation has to be determined with respect to the circumstances relating to the trade or business in question. Canalization of a particular business in favour of even a specified individual is reasonable where the interests of the country are concerned or where the business affects the economy of the country.

It has been finally decided by the Supreme Court, that the State Government, which was party to the litigation, ought to

have proceeded accordingly but, in a case such as, the present one, where the circumstances changed in some material respects as aforementioned, departure from the earlier policy cannot be held to be legally flawed, particularly when there is no challenge to the changed policy reflected in second NIT on the ground of *Wednesbury* reasonableness or principle of legitimate expectation or arbitrariness or irrationality. In considering, whether there has been a change of circumstances, sufficient to justify departure from the previous stance, the Division Bench of Calcutta High court recorded a finding that reasons stated by the State Government for departure from the conditions in the first NIT did exist and accepted the contention of the State Government that by increasing the area of competition, greater public interest would be sub-served because of financial implications. The Supreme Court found justifiable reason to take a view different from the High court insofar as correctness of these reasons is concerned. The courts have repeatedly held that government policy can be changed with changing circumstances.

In *State of Bihar & Ors. v. Kalyanpur Cements Ltd.* the court held that the principle underlying legitimate expectation which is based on Article 14 and the rule of fairness has been restated in *Bannari Amman Sugars Ltd. v. CTO*. The court observed that the doctrine of legitimate expectation has an important place in the developing law of judicial review. It is, however, not necessary to explore the doctrine in this case, it is enough merely to note that a legitimate expectation can provide a 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 and that the doctrine of legitimate expectation to be confined mostly to right of a fair hearing before a decision which results in negating a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway 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 a particular decision then the decision-maker should justify the denial of such expectation by showing some overriding public interest.

In *Susme Builders Private Limited v. Chief Executive Officer*, the Supreme Court has also reiterated the principle that there is a legitimate expectation on the part of the litigant before a tribunal that there will not be any possibility of justice being denied or being not done fairly. Thus, the court have to consider whether in the fact situation as in the present case, it could be said that a man of reasonable prudence would consider participation of the CEO in the appeal over his own judgment as a facet of bias. In *The Haryana State Cooperative society v. Presiding Officer, Industrial Tribunal* the court accepted the violation of legitimate expectation and held that it is the legitimate expectation of every section of the society, in a developing society like ours which is full of unbridgeable and ever widening gaps of inequality in status and of opportunity, law is a catalyst to reach the ladder of justice.

### **F) Overriding the Public Interest**

In *B.P. Singhal v. Union of India*, the court held that the legitimate expectation of the petitioners to hold the office till the end of the term of the elected body is misconceived as the nomination of the petitioners was for all purposes at the pleasure of the Government. In *N.Pappa Kannan v. The Collector*, the court held that in contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law. A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision. Legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context, is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant.

In *Nagendra Singh Chauhan v. State of Rajasthan & Others*, the court held that the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, the Supreme Court while laying down the law, has necessarily held that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. The theory of legitimate expectation of an employee for regularization in service can not be accepted by the Court.

The court also said that when a person enters a temporary

employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

In *Sterling Computers Ltd. v. M.& N. Publications Ltd.*, the court held that even in commercial contracts where there is a public element, it is necessary that relevant considerations are taken into account and the irrelevant consideration discarded. In *Union of India v. Graphic Industries Co.* the court held that 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 requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

In *P.Suseela v. University Grants Commission*, the court held that prior to the making of the Regulations of 1991, there was no statutory requirement regarding clearing the eligibility test for the purpose of appointment on the post of Lecturer. Such a requirement was introduced for the first time by the Regulations of 1991. At the time when the Regulations of 1991 were made, the provisions contained in the Regulations of 1982 had given rise to a legitimate expectation that a person having a Ph.D. or M.Phil degree and having good academic record as prescribed under the Regulations of 1982 would be eligible for appointment on the post of Lecturer without anything more. While introducing the requirement of clearing the eligibility test in the Regulations of 1991, the UGC did not intend to deprive the persons who had obtained M.Phil degree or Ph.D degree prior to the making of the Regulations of 1991 of their 'legitimate expectation' in the matter of appointment on the post of Lecturer in universities or colleges. It was also felt that the said requirement in the Regulations of 1991 should not operate to the prejudice of persons who, having regard to the qualifications prescribed in the Regulations of 1982, had registered for the Ph.D. degree or had joined study for M.Phil degree course prior to making of the Regulations of 1991 and, therefore, provision was made for granting exemption to such candidates with the condition that they should have passed M.Phil examination or should have submitted Ph.D. thesis by a particular date. In so far as the date of submission of Ph.D. thesis is concerned, the said date, i.e., December 31, 1993 has remained unchanged in the Circulars dated February 10, 1993 and June 15, 1993 and the notification dated June 21, 1995. For M.Phil degree the date was, however, changed from March 31, 1991 to December 31, 1992 by Circular dated June 15, 1993 and from December 31,

1992 to December 31, 1993 by notification dated June 21, 1995. The amendment in the Regulations of 1991 that has been made by the notification dated June 21, 1995, in substance, postpones the date of applicability of the requirement regarding clearing the eligibility test in the Regulations of 1991 till December 31, 1993 in respect of candidates who had joined the M.Phil course or registered for Ph.D. degree. Such candidates constitute a distinct class who could be treated separately in so far as the requirement of clearing the eligibility test was concerned. Such a classification of the candidates for the purpose of applicability of the requirement of clearing the eligibility test has a rational basis which has a reasonable nexus with the object sought to be achieved by the Regulations of 1991. Therefore, the exemption that has been granted by the amendment introduced in the Regulations of 1991 by notifications dated June 21, 1995 is not violative of the right to equality guaranteed under Article 14 of the Constitution. The court further observed that after giving full consideration on the regulations time to time framed by the Commission after 1991 and the amendment brought therein, the question arises as to whether the candidates who have obtained M.Phil degree on or before 31.12.1993 are still entitled to claim exemption on the ground of legitimate expectation and also on the ground that such candidates were held to be treated as a different class as held by the Supreme Court while deciding the validity of Regulations of 1991.

#### **G) Imposition of Sanction**

In *The Tamil Nadu Dr. M.G.R. Medical v. P. Anand*, the Madras High court held that such requirement has never been intimated to the students at the time when they were admitted in the First Year of M.B.B.S. Course. Admittedly, the impugned guidelines were introduced sometime in September, 2010 in respect of the writ petitioners and similarly situated persons who were to write the final examinations in Part-II in February, 2011. Certainly such an event would not have been anticipated by any of the students and therefore, the principle of legitimate expectation is also attracted to the facts of the present case. Though the High court observed that it is true that in respect of academic matters, courts should be slow in interfering therewith for various reasons, the most important one being that the court is not an expert in the subject and it is the University which has to decide such issues and it cannot be compelled to act against its own Statute, on the facts of the present case. It was also held that it is the Medical Council of India which consists of experts in the field and which can grant remedy in an effective manner.

In *The Management of C.P.W.D v. Ram Singh*, the court held that there is no case that any assurance was given by the Government or the department concerned while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the Government. Though, there is a case

that the State had made regularizations in the past of similarly situated employees, the fact remains that such regularizations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High court and in some cases by Supreme Court. Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularized in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases, the court had directed regularization of the employees involved in those cases cannot be made use to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf has therefore to be the equality before law is basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, the court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. The theory of legitimate expectation of an employee for regularization in service cannot be accepted by the Court.

When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

#### **Conclusion**

To sum up, on behalf of studying the above mentioned cases,

it can be safely said that the doctrine of legitimate expectation is literally setting new trends in Indian Judicial system. It arises when an administrative body by reason of a representation or by past practice or conduct aroused an expectation which it would be within its powers to fulfill unless some overriding public interest comes in the way. However, a person who bases his claim on the doctrine of legitimate expectation, in the first instance, has to satisfy that he has relied on the said representation and the denial of that expectation has worked to his detriment. The court could interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation or principles of natural justice and not taken in public interest. But a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles.

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