

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR

**BEFORE
SHRI JUSTICE SUJOY PAUL
&
SHRI JUSTICE DWARKA DHISH BANSAL
ON THE 21st FEBRUARY, 2022**

WRIT PETITION No. 22127 of 2021

BETWEEN :-

Shri Mohanlal Patidar
S/o. Late Shri Daulatram Patidar,
Aged about 58 Years,
R/o. House No.206, Mandir Chowk,
Village Jharkheda, Tahsil Shyampur,
Distt. Sehore (M.P.)

.....**Petitioner**

(By Shri Mohd. Wajid Hyder, Advocate.)

AND

1. Bank of Maharashtra
Zonal Office : Wright Town,
Jabalpur (MP) 482001
Through its Asstt. General Manager,
2. Bank of Maharashtra,
Branch Office : Arera Colony Branch,
Bhopal (MP) 462003
Through its Chief Manager

.....**Respondents**

(By Shri Abhijit Chakrabarti Thakur, Advocate)

WRIT PETITION No. 22131 of 2021

BETWEEN :-

Shri Brijesh Patidar
S/o. Shri Mohanlal Patidar,
Aged about 35 Years,
R/o. House No.206, Mandir Chowk,
Village Jharkheda, Tahsil Shyampur,
Distt. Sehore (M.P.)

.....**Petitioner**

(By Shri Mohd. Wajid Hyder, Advocate.)

AND

1. Bank of Maharashtra
Zonal Office : Wright Town,
Jabalpur (MP) 482001
Through its Asstt. General Manager,
2. Bank of Maharashtra,
Branch Office : Arera Colony Branch,
Bhopal (MP) 462003
Through its Chief Manager

.....**Respondents**

(By Shri Abhijit Chakrabarti Thakur, Advocate)

Whether approved for reporting	Yes.
Law Laid down :-	<p>1. <u>One Time Settlement (OTS) Scheme</u> – Amount offered by the bank to the petitioner as per settlement formula given in the scheme. Petitioner was required to deposit 10% of amount so proposed. The petitioner deposited more than 95% of amount within stipulated time. Thereafter, Bank was only required to examine the 'eligibility' of the petitioner and pass the 'sanction order'. Deviation from OTS scheme cannot be approved.</p> <p>2. <u>Doctrine of Legitimate Expectation</u> - European origin is traced along with Indian pronouncements. It was held that policy may be for policy makers but fairness of its implementation in the touchstone of legitimate expectation remains the concern of the Court.</p> <p>3. <u>Article 226 of the Constitution of India</u> – Administrative Decision- Judicial Review- The judicial review can be made on the parameteres of illegality, irrationality and procedural impropriety.</p> <p>4. <u>The Automatic Lapsation Clause in the OTS Scheme & Principles of Natural Justice</u> – The petitioner accepted</p>

	<p>the offer of the Bank to settle the dispute in Rs.36,50,000/- and promptly deposited Rs.35,00,000/-. The Bank could not have unilaterally enhanced the amount to Rs.50.50 lakhs. This runs contrary to the principles of natural justice and is irrational in nature. This arbitrary unilateral action cannot result into invocation of lapsation clause of the policy. Moreso when petitioner has promptly challenged it in the writ petition.</p> <p>5. <u>Law of Precedent</u> – The precedent is what is actually decided by the Supreme Court and not what is logically flowing from it. One singular change in the facts may change the precedential value of a judgment.</p> <p>6. <u>Relief</u> – The Bank is directed to issue 'sanction letter' after fulfilling the formality.</p>
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O R D E R (Oral)

Sujoy Paul, J.:-

This common order will dispose of W.P. Nos.22127/2021 & 22131/2021.

2. The facts are taken from W.P. No.22127/2021. The admitted facts between the parties are that the petitioner – a borrower, obtained a loan and intended to repay it in terms of One Time Settlement (OTS). During the correspondence made for this purpose between the petitioner and the Bank, the Bank issued the letter dated 09.03.2021 (Annexure A/1) to the petitioner. In this letter, the amount of OTS was quantified as Rs.36,50,000/- by mentioning that it is "*as per settlement formula given in the scheme*". The petitioner, in furtherance thereof, deposited Rs.35,00,000/- with the Bank.

3. The petitioner is aggrieved by communications dated 25.08.2021 (Annexure P/4) and 22.09.2021 (Annexure P/13). By communication dated 25.08.2021, the Asset Recovery Branch of the Bank informed the petitioner that the proposal of petitioner was put up before the competent authority which has sanctioned the compromise proposal of the petitioner on certain terms. The first term was that petitioner will be required to deposit Rs.50.50 lakhs as full and final settlement of the dues. Aggrieved, the petitioner preferred representation dated 13.09.2021 (Annexure P/5) followed by communication through e-mail. The respondents, in turn, sent another letter dated 13.09.2021 and informed the petitioner that on 25.08.2021, the petitioner was informed about acceptance of the proposal. The Bank has neither received the petitioner's express acceptance nor denial of the petitioner. Thus, it was presumed that the petitioner has accepted the proposal and in turn, the petitioner was directed to deposit the remaining amount as per OTS sanction. This was followed by another letter of similar effect dated 17.09.2021 (Annexure P/7).

4. Shri Wajid Hyder, learned counsel for the petitioner submits that the petitioner sent a legal notice dated 29-01-2021 and apprised the Bank that Bank is not justified in asking the amount over and above Rs.36,50,000/- mentioned in communication dated 09-03-2021 (Annexure A/1). The petitioner also sent an e-mail regarding the aforesaid stand of the petitioner. Lastly, the respondent sent the impugned letter dated 22-09-2021 and informed the petitioner again that OTS has been sanctioned by the competent authority for Rs.50.50 lakhs only. The petitioner was directed to follow up with Zonal Office, Jabalpur/ARB Jabalpur for further

clarification. It is argued that when Bank did not accede to petitioner's request, petitioner promptly filed this petition on 05-10-2021. This petition is filed immediately after receiving the communication dated 22-09-2021.

5. Learned counsel for the petitioner submits that a careful reading of the letter dated 09-03-2021 shows that the petitioner was required to pay minimum 10% of the OTS amount within stipulated time. The petitioner deposited Rs.35,00,000/- out of Rs.36,50,000/- within the stipulated time. The only option left with the Bank was to proceed further after the stage of issuance of 'intimation letter' and if the petitioner was eligible, issue a 'sanction letter'. The respondents have miserably failed to accept the same and on the contrary, decided to enhance the compromise amount to Rs.50.50 lakhs unilaterally. This runs contrary to the OTS scheme. The OTS scheme is binding, submits Shri Wajid Hyder, on the basis of **Sardar Associates and Ors. Vs Punjab and Sind Bank and Ors [2009 (8) SCC 257]**. It is submitted that since OTS scheme is binding, the Bank could not have enhanced the amount nor by any stretch of imagination can treat that the offer which was duly accepted as elapsed.

6. A Division Bench judgment of this Court reported in **AIR 2007 MP114 (Laxmi Grih Udyog and Another vs State of Madhya Pradesh and Another)** is relied upon to bolster the submission that once an amount for OTS is quantified in pursuance to an offer given by the Bank and the said amount is deposited, the Bank cannot take a different stand, enhance the amount or treat the document Annexure P/1 as only an 'intimation letter'. In fact, it should be treated to be accepted and respondents are bound by the principles of 'estoppel' flowing from Section 115 of Indian

Evidence Act.

7. No doubt, Shri Wajid Hyder submits that the receipt of the letter Annexure P/5 (at page-26) mentions the name of sender as Rukmani Devi Public School, fact remains that apart from the said letter, the e-mails for the same purpose were sent by the petitioner not accepting the enhancement of amount to Rs.50.50 lakhs. There is no denial about those e-mails sent by the petitioner. The said school is also run by the petitioner and therefore, the concerned clerk/peon has erroneously mentioned the name of the school in lieu of name of the petitioner, which will not make any difference. In nutshell, Shri Wajid Hyder submits that petitioner has fulfilled the requirement of letter dated 09-03-2021. The petitioner cannot be said to be 'ineligible'. The formula prescribed in the scheme is fulfilled and the amount quantified in the letter dated 09-03-2021 is in consonance with clause-4 of the scheme. The 'ledger amount' as per affidavit of Shri Aditya Prakash, General Manager of the Bank is Rs. 0.50 Crores. The petitioner was required to pay 40% of that amount whereas Rs.50.50 lakhs quantified by them is almost equal to the complete 'ledger amount'. Thus, said quantification of Rs.50.50 lakhs runs contrary to the OTS scheme.

8. Shri Abhijit C.Thakur, learned counsel for the respondent/Bank has taken a diametrically opposite stand by contending that :-

- (a) No assurance was given that OTS of Rs.36.50 lacs will be accepted.
- (b) It was clarified that OTS will be processed subject to eligibility of the scheme.
- (c) It was specifically mentioned in the said intimation letter that the said letter is only an intimation letter and the said letter should not be construed as sanction letter.

(d) It was also clarified that on receipt of written application with requisite down payment, the proposal will be processed and approval amount by competent sanctioning authority in eligible cases will be conveyed by sanction letter.

(e) By mentioning the words “eligible cases”, it was made clear that inspite of moving application for OTS, it will be sanctioned in eligible cases and not in all cases.”

9. To elaborate, learned counsel for the respondent/Bank submits that letter dated 09.3.2021 is only a letter of 'intimation' and not letter of 'sanction'. The petitioner is misconstruing the same, which is impermissible.

10. Neither the letter dated 09.3.2021 nor the OTS scheme has any binding effect. The petitioner has not deposited the entire amount of Rs.36,50,000/-, indeed deposited only Rs.35,00,000/- on 19.3.2021, which was realized by the Bank on 16.9.2021. Thus, the conditions mentioned in the letter dated 09.3.2021 are not satisfied.

11. Shri Thakur has taken pains to contend that the letter allegedly written by the petitioner and filed alongwith the petition were never served on the Bank. He indirectly doubted the genuineness of the said document by placing reliance on the receipt wherein the name of the sender is mentioned as 'Rukmani Devi Public School, Bhopal' and not the name of the petitioner.

12. The next limb of argument of Shri Thakur is based on the letter of the bank dated 25.8.2021, wherein it was clearly mentioned that compromise proposal of petitioner is accepted for Rs.50.50 lacs. Thereafter, by letter dated 13.9.2021, it was made clear that it is presumed

that petitioner has accepted the proposal. A reference is made to clause-7 of the OTS Scheme, wherein it is mentioned that OTS is valid for two months from the date of sanction. If borrower fails to comply for repayment within two months, the OTS will automatically expire after two months of sanction or 31.3.2022 whichever is earlier. Thus, by operation of this provision itself, the OTS came to an end automatically after two months from 25th of August 2021.

13. Furthermore, it is submitted that the Apex Court in **Bijnour Urban Cooperative Bank Vs. Minal Agrawal (Civil Appeal No.7411/21)** opined that the OTS scheme does not have any binding force. In the impugned judgment therein, the High Court has materially erred and exceeded its jurisdiction in issuing writ of mandamus against the Bank. The Division Bench Judgment of Allahabad High Court reported in **AIR 2004, All. 164, (Mahalaxmi Floor Mills Pvt. Ltd. Vs. State of U.P.)** was relied upon to contend that OTS scheme is not binding and the borrower has no right whatsoever to get a writ of mandamus from this Court.

14. The parties confined their arguments to the extent indicated above.

15. We have heard the parties at length and perused the record.

16. It is apposite to quote the document dated 09.3.2021, (Annexure A-1)

in toto, which is foundation for the case set up by the petitioner :-

"To,
Shri Mohanlal Patidar
206, Kharkheda, Teh-Shyampur
Dist : Sehore (M.P.)

Without Prejudice

Dear Sir,

**Scheme for One Time Settlement – Maha Samadhan
Yojana 2020-21 Intimation Letter**

CIF No.40129973884_ Branch Asset Recovery branch,
Jabalpur.

1. Bank of Maharashtra has come out with a scheme for One

Time Settlement (OTS) of Non-Performing assets as on 31st March 2020 in some eligible categories. In this connection, we would like to advise you to contact the Bank for eligibility under **MAHA SAMADHAN YOJANA 2020-21** scheme :

Outstanding Balance as on:

(Rs. Actuals)

Facility	Account No.	O/s Balance	Unapplied Interest	Total Dues
Term Loan	60209599612	5046451.80	4964650.00	10011101.80
	Total			

(ii) Amount of OTS Rs.36,50,000/- (**As per Settlement formula given in the scheme**) plus processing Fees @ 0.05% with applicable GST.

(iii) Application for OTS will be processed subject to eligibility under the Scheme and on deposit of minimum *down Payment mentioned at S.No.4 below.

(iv) The balance amount be paid within two months of conveying sanction or any date specified in the sanction whichever is earlier, failing which the OTS will automatically expire, which please note.

2. (Wherever and as applicable) Since your case is pending before DRT/Lok Adalat/Other Court any settlement will be subject to consent decree/necessary orders from the respective Court, and this letter is without prejudice to the right and contention of the Bank in the said proceedings.

Since you have been issued notice under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, this notice is without any prejudice to our rights to take/continue actions under the act unless your dues are settled under the present **MAHA SAMADHAN YOJANA 2020-21** scheme as stated above, or otherwise.

3. Please advise your willingness immediately to settle the dues. *Your request for settlement will be processed only after ensuring the eligibility under the scheme and receipt of upfront amount/No lien amount.

4. Minimum 10% of the OTS Amount as upfront amount to be credited to the loan account or minimum 25% of OTS amount to kept in "No Lien Account".

5. Please note that this is only intimation letter and should not be construed as sanction letter. On receipt of your written application under the scheme along with requisite *down payment, the proposal will be processed and the sanction letter will be conveyed, in eligible cases after due approval by competent sanctioning authority.

Yours faithfully

D.S. Sur
AGM, ARB, Jabalpur."

17. A plain reading of this letter makes following things clear :-

(a) It is issued in furtherance of scheme for one time settlement, (**Maha Samadhan Yojna 2020-2021**).

(b) The bank quantified the amount of **OTS** as Rs.36,50,000/-,

(c) The said quantification is based on **settlement formula** given in the scheme.

(d) The application of OTS will be processed '**subject to eligibility**'.

(e) The petitioner, if willing, was required to deposit minimum of 10% of the OTS amount as 'upfront amount' in the bank, which shall be kept in the 'no lien account'.

(f) The letter is termed as 'intimation letter' and can not be construed as 'sanction letter'.

(g) On receipt of written application with requisite 'down payment', the proposal will be processed and sanction letter will be conveyed in eligible cases.

18. It is clear like noon day that the amount was quantified by the Bank as per settlement formula given in the scheme. The respondents in their pleadings nowhere stated that the amount so quantified i.e. Rs.36,50,000/- was erroneously quantified or runs contrary to the settlement formula given in the scheme. The respondents could not point out the basis on the strength of which a magic figure of Rs.50.50 lakhs was determined by them in letter dated 25.8.2021.

19. The letter dated 25.8.2021 shows that compromise proposal of petitioner was accepted for Rs.50.50 lakhs. We are unable to countenance this action of the Bank. If the petitioner gave proposal pursuant to Bank's quantification for Rs.36,50,000/-, Bank cannot unilaterally treat acceptance for Rs.50.50 lakhs. Putting it differently, the petitioner never gave his consent for the said magic figure of Rs.50.50 lakhs.

20. Irrationality, illegality and procedural impropriety are three important parameters on which an administrative decision can be put to test. **Lord Diplock, L.J. in Council of Civil Service Unions Vs. Minister for the Civil Service** applied the said text as under :-

(i) '**Illegality**' which means that the "decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it".

It means that the decision-maker must keep within the scope of his legal power. Illegality means that the decision-maker has made an error of law; it represents infidelity of an official action to a statutory purpose. Such grounds as excess of jurisdiction, patent error of law, etc. fall under the head of "illegality".

(ii) '**Irrationality**' denotes unreasonableness in the sense of *Wednesbury* unreasonableness.

(iii) '**Procedural Impropriety**' – The expression includes failure to observe procedural rules including the rules of natural justice or fairness wherever these are applicable.

This principle was followed by the Apex Court in **(1994) 6 SCC 651**

Tata Cellular vs. Union of India.

21. If impugned action is tested on the anvil of said principles, it will be clear that :-

Irrationality :-

22. The Bank quantified the amount as per the formula given in the scheme as Rs.36,50,000/-. No justifiable reason, formula or enabling clause is shown to us for enhancing the amount from Rs.36,50,000/- to Rs.50.50 lakhs in the order dated 25.8.2021.

23. The amount so quantified unilaterally i.e. Rs.50.50 lakhs also runs contrary to the OTS scheme (Annexure R/1). A conjoint reading of clause-4 (which deals with “*Settlement amount as per the proposed scheme*”), 40% of ledger balance is the criteria for determining the OTS amount. At the cost of repetition, in the letter dated 09.3.2021, the Bank stated that amount of Rs.36,50,000/- was determined as per the settlement formula of the scheme. Thus, any enhanced amount by the Bank cannot be said to be in consonance with the OTS scheme.

24. Law has reached its finest moments’, stated **Douglas, J.** in ***United States v. Wunderlich* [96 L Ed 113 : 342 US 98 (1951)]** , ‘*when it has freed man from the unlimited discretion of some ruler.... Where discretion is absolute, man has always suffered.*’ It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as **Lord Mansfield** stated it in classic terms in ***Wilkes [R. v. Wilkes, (1770) 4 Burr 2527 : 98 ER 327 : (1558-1774) All ER Rep 570]***, (ER p. 334): **Burr** at p. 2539 ‘*means sound discretion guided by law. It must be governed by rule, not by humour: it must not be arbitrary, vague, and fanciful.*

25. This view was quoted with profit by Supreme Court in the case of ***Natural Resources Allocation, In Re, Special Reference No. 1 of 2012 (2012) 10 SCC 1.***

26. Thus, we are unable to hold that Bank had any unfettered discretion under the scheme or otherwise to enhance the amount from Rs.36,50,000/- to Rs.50,50,000/-.

Illegality and procedural impropriety :

27. The enhanced amount determined in the communication dated 25.8.2021 is an outcome of unilateral exercise at the end of the Bank. The petitioner was not a party to this decision. Thus, by no stretch of imagination, this document can be construed to be an acceptance of a compromise proposal on the part of the petitioner. For this reason also, the letter dated 25.8.2021 and subsequent letters issued in furtherance thereof cannot sustain judicial scrutiny. We are unable to persuade ourselves with the line of reasoning given in the letter dated 13.9.2021 where Bank presumed that proposal has been accepted. There cannot be any one-sided presumption of acceptance in a matter of this nature where no acceptance was ever given by the petitioner directly or indirectly regarding Rs.50.50 lakhs.

28. A microscopic reading of the letter dated 09.3.2021 shows that intimation letter needs to be processed subject to 'eligibility' of the petitioner and further subject to down payment by the petitioner of 10% of the amount so quantified. Indisputably, the petitioner deposited 95.89% amount i.e Rs.35,00,000/- out of Rs.36,50,000/-. Thereafter, in our considered opinion, the Bank was only required to examine whether petitioners fall within the 'eligibility' clause and whether he has deposited the 10% of the said amount. It cannot be said that the petitioner was not falling within the "Eligibility Clause". We say so for the simple reason that

if petitioner would have been ineligible, there was no occasion for the respondents to even consider the claim of the petitioner for enhancement of amount from Rs.36,50,000/- to Rs.50.50 lakhs. The petitioner was very much eligible and in the teeth of 'eligibility clause' of OTS also, we are unable to hold that petitioner was not eligible.

Legitimate Expectation :

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

The statement of Lord DIPLOCK in *CCSU** is regarded as envisaging legitimate expectation extending to an expectation of a benefit. This may arise from-

- (i) what a person has been permitted by the concerned authority to enjoy and which he can legitimately expect to be permitted to continue to enjoy until “there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment”;
- (ii) he has received assurance from the concerned authority that the benefit will not be withdrawn without giving him first an opportunity of advancing reasons for contending that it should not be withdrawn.

* [1985] AC 374 at 408

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

30. Lord FRASER¹ also observed as follows:

“ But even where a person claiming some benefit or privilege has no legal right to it, as a matter of private law, he may have a legitimate expectation of receiving the benefit or privilege, and, if so, the courts will protect his expectation by judicial review as a matter of public law... Legitimate or reasonable expectation may arise from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue.”

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

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

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

33. SEDLEY, J., has observed :

“Thus it is an obligation to exercise powers fairly which permits expectations to be counterpoised to policy change, not necessarily in order to thwart it but. . . in order to seek a proper exception to the policy within the British Oxygen principle.”²

¹ See : Page No.1656 of Principles of Administrative Law by M.P. Jain & S.N. Jain

² *British Oxygen Co Ltd v. Minister of Technology*, (1970) 3 WLR 488

He went on to observe:

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

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

“Legitimate expectation is now in effect a term of art, reserved for expectations which are not only reasonable but which will be sustained by the court in the face of changes of policy; secondly, that whether this point has been reached is determined by the court, whether on ground of rationality, of legality or of fairness, of all of which the court, not the decision-maker is the arbiter.”³

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

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

(Emphasis Supplied)

³*R v. Ministry of Agriculture Fisheries and Food ex p Hamble (offshore) Fisheries Ltd.*, (1995) 2 All ER at 732

35. The Apex Court opined that the doctrine of legitimate expectation is a 'latest recruit' to a long list of concepts fashioned by the courts for review of administrative actions. No doubt, the doctrine has an important place in the review. *Under the said doctrine, a person may have reasonable or legitimate expectation of being treated in a certain way by an administrative authority even though he has no right in law to receive the benefit.* In such a situation, if a decision is taken by an administrative authority adversely affecting his interests, he may have justifiable grievance in the light of the fact of continuous receipt of the benefit, *legitimate expectation to receive the benefit* or privilege which he has enjoyed all throughout. Such expectation may arise either from the express promise or from consistent practice which the applicant may reasonably expect to continue (See: ***Confederation of Ex-Serviceman Associations v. Union of India, (2006) 8 SCC 399, 416.***)

36. If the present case is examined on the anvil of principles laid down in aforesaid cases, it will be crystal clear that the petitioner was clearly given to understand that the OTS amount determined is based on a valid OTS scheme and in order to get the benefit of said scheme, petitioner was required to fulfill certain formalities. It was further made clear in the communication dated 4.1.2021 (Annexure P/1) that if petitioner is willing to pay the said amount (10% of which was required to be paid forthwith) the only formality on the part of the Bank will be to examine the petitioner's eligibility. As discussed above, the petitioner cannot be treated as ineligible. Thus, doctrine of legitimate expectation can be pressed into service in a case of this nature where a Public Sector Bank, a 'State' within

the meaning of Article 12 of the Constitution has given the petitioner to understand that if he accepts the offer and acts in a particular manner, he will get desired result.

37. The stand unilaterally taken by the Bank in the subsequent communication dated 25.8.2021 runs contrary to the OTS scheme and doctrine of legitimate expectation.

The decision dated 25.8.2021 (Annexure P/4) whereby Bank enhanced OTS amount unilaterally has an adverse impact on the petitioner which is arbitrary and contrary to Principles of Natural Justice. Fairness is an integral part of good administration. The Bank has not acted in a just, proper and reasonable manner.

38. The Apex Court in the case of **Sardar Associations (supra)** has held as under:-

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

(Emphasis Supplied)

39. So far judgment of the Supreme Court in **The Bijnor Urban Cooperative Bank vs. Meenal Agrawal (Civil Appeal No.7411 of 2021)**

is concerned, it is clear that main question before the Apex Court was that whether a writ of mandamus can be issued directing the Bank to positively consider the grant of benefit under the OTS scheme and that too *dehors* the eligibility criteria mentioned under the OTS scheme. As noticed above, the petitioner's claim was not *dehors* the eligibility criteria mentioned in the OTS scheme. Indeed, letter dated 09.03.2021 shows that amount was quantified as per the settlement formula given in the scheme. In the said judgment, the interference was made because the borrower therein did not deposit the requisite amount and there was no procedural impropriety in the decision making process. The Bank provided even personal hearing to the borrower. A securitization proceeding was pending against the borrower. Thus, in a different factual backdrop, the said judgment was delivered which cannot be pressed into service in the instant case.

40. It is well settled that there is no precedent of facts. Only legal propositions are binding (See - *Ram Prasad Sarma v. Mani Kumar Subba*, (2003) 1 SCC 289 ; *Rekha Mukherjee v. Ashis Kumar Das*, (2005) 3 SCC 427 and *Jayant Verma v. Union of India*, (2018) 4 SCC 743). It is equally trite that a singular different fact may change the precedential value of a judgment. The *ratio decidendi* of judgments cited by Shri Thakur does not cover the case in hand.

41. The judgment of Allahabad High Court in the case of **M/s Mahalaxmi Floor Mills v. State of U.P. [2005(1) Banker's Journal 87]**, is also of no assistance to the respondents because we have examined the impugned orders and action of the Bank on the touchstone of legitimate expectation, irrationality, illegality and procedural impropriety.

42. As noticed above, we are unable to give stamp of approval to the impugned orders and action of the Bank. Since petitioners promptly filed instant petitions within two months from the date of issuance of order dated 22.9.2021, we are unable to hold that because of clause-7 of OTS scheme, offer stood expired automatically. The petitioner not only promptly challenged the said order, it is noteworthy that petitioner never acceded to the unilateral decision dated 25.08.2021. Even otherwise when letter dated 25.8.2021 is held to be illegal by us, clause-7 of policy cannot take away the fruits of OTS benefits.

43. In view of foregoing analysis, the impugned letters dated 25.8.2021 (Annexure P/4) and 22.9.2021 (Annexure P/13) are set aside. Since petitioner is eligible and he accepted the offer of quantified amount and deposited 95.89% of Rs.36,50,000/- within the stipulated time, the respondent/Bank is bound to accept the same and issue the 'sanction letter'. The same course will be followed by the Bank in the connected matter, where as per learned counsel for the parties, the legal questions are same and only amounts involved are different.

44. Thus, impugned orders in both the cases are set aside. The OTS proposal given by the petitioners in both the cases shall be accepted by the Bank and 'sanction letters' be issued forthwith. Needless to emphasise, the Bank shall complete remaining formalities and provide all consequential benefits flowing therefrom to the petitioners.

45. The petitions are **allowed**.

(SUJOY PAUL)
JUDGE

(DWARKA DHISH BANSAL)
JUDGE