

(1988) 11 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 393 of 1987

K. Ram Mohan Rao

APPELLANT

Vs

Endowments Commissioner in Karnataka, Bangalore and
Another

RESPONDENT

Date of Decision : 05-11-1988

Acts Referred:

Constitution of India, 1950 — Article 226
Easements Act, 1882 — Section 34, 52, 59
Transfer of Property Act, 1882 — Section 105

Citation : AIR 1989 Kar 192 : (1988) ILR (Kar) 3289

Hon'ble Judges : H.G. Balakrishna, J

Bench : Single Bench

Advocate : N.K. Gupta, for the Appellant; A. Nimmyswamy, Govt. Pleader, for the Respondent

Judgement

1. The material facts of the case are as follows A canteen building existing in the Traumata Trumpet Hills which is a construction of the Muzrai Department of the State of Karnataka belonging -to the State Government is the subject matter of dispute in this writ petition.

After the building was ready for occupation, the first respondent issued a notification inviting tenders from the bidders for lease of the building for the purpose of running a canteen in order to cater to the needs of the pilgrims and others. The petitioner was one of those who offered tender and being the highest bidder, was the recipient of the lease for a period of 3 years. His tender was accepted by an order of the first respondent dated 29-7-1983 stipulating the rent payable as Rest. 2,405/- per month. In addition to the rent, the petitioner was required to pay a donation to the Karnatka State Charities at the rate of Rs.30/- per square yard apart from payment of an advance of 6 month's rent. The petitioner was also expected to execute an agreement, which is actually a deed of lease. The petitioner deposited a total sum of Rest. 6,150/-being the donation and a further sum of Rest. 14,430/ being what is called the caution deposit. A

lease deed was executed by the petitioner on 2-9-1983 in favour of the second respondent as required by the first respondent. The petitioner, as the Proprietor, has been running a canteen in the leased building under the name and style of "Hotel Annapurna". According to the petitioner, though the canteen building was made available for occupation, the building in its existing condition was not suitable for hotel or canteen business and hence the petitioner was by necessity compelled to spend about a sum of Rest. 3,05,380/- in order to make the building suitable for the intended purpose. It is also stated that the petitioner took courage in investing such a huge amount of money with the fond hope that the lease would be for a long period of 30 years. It is stated that that was the impression petitioner formed by a reading of the guidelines which are appended to the Government. Order dated 10-10-1980. In fact, according to the said guidelines "the lease shall be for a maximum period of 30 years. There was an additional space available in the premises measuring 9.3 yards X 9.3 yards of open space and 9.3 yards X 9.3 yards covered by staircase and the petitioner desired to take that area also on lease. The first respondent, on an application by the petitioner, passed an order leasing out the additional space on 21-9-1984 on rental of Rest. 150/- per month. It was not stipulated that the petitioner should deposit by way of donation a sum of money calculated at the rate of Rest. 30/- per square yard with the Karnataka State Charities, Thirumala. The petitioner accordingly deposited a total amount of Rest. 3,547/- on 14-2-1985. Including the rent payable for the additional space, the total, rental paid by the petitioner per month is Rest. 2,555/-. It is also indisputable that the petitioner had to deposit by way of donation a total sum of Rest. 9,697/- which is not refundable in addition to a sum of Rest. 14,430/ which is known as caution deposit. The lease was due to expire on 1-9-1986. However, on the application for renewal of lease, the lease was extended from 1-9-1986 to 28-2-1987 subject to the same terms and conditions and the same rental per month. Admittedly there was no default whatever or any violation of the terms and conditions of the lease by the petitioner.

2. By a letter dated 16-8-1986, the petitioner urged before the 1st respondent that the lease should be extended for a period of 20 years for the reasons stated in the aforesaid letter. The 2nd respondent, on receipt" of the representation from the petitioner, carried out a spot inspection of the canteen premises and having satisfied himself about the claim of the petitioner, recommended to the 1st respondent that the lease should be continued for a further period of 10 years subject to payment of a monthly Kant.195 rent of Rest. 3,000/- instead of Rest. 2,555/, per month for the first five years subject to, revision of the rent thereafter in consonance with the guidelines issued by the State Government and also conditional upon the petitioner catering to the needs of the pilgrims to their satisfaction. The petitioner also has stated that the 2nd respondent desired that the petitioner should invest another sum of. Rest. 1,50,000/- to carry out improvements of the kitchen, the dining hall and on furniture for which the petitioner gave his consent.

3. Hopefully the petitioner expected an order from the 2nd respondent granting the lease for a period of 20 years. But to his rude shock, instead of a reply from the 2nd respondent, there was a notification published by the 1st respondent in "Eenadu" Telugu news-paper dated 2-1-1987 inviting tenders for leasing out the canteen building in the occupation of the petitioner for a sum exceeding Rest. 2,00,000/- for the purpose of running a canteen therein. The tender was essentially for lease of the canteen building. Thereafter, the petitioner came to Bangalore and secured a certified copy of the notification dated 22-12-1986 from the 1st respondent. The notification in the cyclostyled led form dated 22-12-1986 contains the terms and conditions of the tenders. The last date for receipt of the tender was fixed as 25-1-1987 and the opening of the tender by the 1st respondent was scheduled to be done at 4 p.m. on 2-2-1987. The notification and the invitation for tenders are Annexure "H" and J Aggrieved by the action taken by the authorities, the petitioner -has approached this Court invoking relief under Art. 226 of the Constitution.

4. The question which arises for, consideration is whether the action of the authorities through Annexures "H" and J" is arbitrary, illegal and volatile of natural justice apart from being opposed to the Government Order dated 10-10-1980 under Annexure-C.

5. Arguments were heard at length.

6. The earliest document and the most relevant one is the Government Order, emerging on 10-10-1980 under Annexure-C which is reproduced below :

Proceedings of the Government of

Karnataka

Sub : Policy to be adopted in the matter of leasing immovable properties\ \buildings belonging to Muzrai Institutions situated in cities and towns

X X X

Read:- (1) RD 121 MET75, Dated 7-2-1979

(2) RD 067 MLD 79, Dated 7/9-7-79

PREAMBLE:

At present there is no uniform policy followed in the matter of leasing of immovable properties/ buildings belonging to Muzrai and Religious Institutions which are located in cities and towns. Presently, the properties are being leased to persons by the various authorities of Muzrai Department exercising certain powers delegated to them.

Since some instances have come up to the notice of Government wherein properties belonging to temples were leased detrimental to the interest of the institutions, Government felt the necessity of laying down guidelines in the matter of leasing of the properties belonging to Muzrai Institutions and so vide

their letter cited at (2) above issued instructions to all the authorities not to lease any immovable properties or renew the existing leases of these properties without specific approval of Government pending issue of guidelines, thereof. The Endowments Commissioner was consulted in this matter and further this matter was discussed in a meeting convened in the Chambers of the Chief Secretary on 4-21981.

ORDER NO. RD 67 MLD 79, BANGALORE,

DATED: 10-10-1980

After careful consideration of all the aspects of the case and in super session of all Government Orders, Circulars, Official Memorandums issued in the matter of leasing out the immovable properties/ buildings of Muzrai Institutions, Government are pleased to issue the following instructions in the matter of leasing out the properties belonging to Muzrai Institutions.

i) to be granted/renewed in a of immovable properties belonging to temples and other religious institutions under the" management of Govt, will be done by the Endowments Commissioner subject to the guidelines contained in Annexure to this order.

ii) With regard to the existing leases, granted either by Government or Commissioner for, Endowments or other Officer of Revenue Department, the Endowments Commissioner Bangalore will negotiate with the lessees for fixing higher rent keeping in view the rates suggested in the guidelines.

By Order and In The Name Of The Governor Of Karnataka, Sd/- (A. Lakshman Rao), Under Secretary to Government, Revenue Department.

7. The proceedings of the Government of Karnataka under Annexure-C were in relation to the governmental policy to be adopted in the matter of leasing immovable properties/ buildings belonging to Muzrai Institutions situated in cities and towns. The preamble to the proceedings predicates that until the said proceedings, there was no uniform policy in force in the matter of leasing of immovable properties/ buildings of the Muzrai and Religious Institutions located in cities and towns and that the properties were being leased to persons by various authorities Of Muzrai Department by virtue of exercise of certain powers delegated to them. What prompted the Government to consider and lay down a firm policy was the indiscriminate leasing of properties detrimental to the interest of Muzrai Institutions. Therefore, under the direction issued by the State Government bearing reference No. RD 67 MLD 79 dated 7/9-7-1979, all the authorities were instructed not to lease any immovable properties or renew the existing leases of such properties without specific approval of the Government pending issue of guidelines thereof, It is also apparent from Annexure-C that the Endowments Commissioner was consulted in the matter and further the matter was discussed at a meeting convened in the chambers-of the Chief Secretary to the Govt of

of Karnataka on 4-2-1980 and ultimately the Government Order No RD 67, MLD 79. Bangalore, -dated: 10-10-1980 came to be issued.

8 It is relevant to note that the said order dated 10-10-1980 was issued "after careful consideration of all the aspects of the case and in" super session of all Government Orders, Circulars, Official Memorandums issued in the matter of leasing out the immovable properties/buildings of Muzrai Institution's. This Government Order contains categorical instructions in the context stated above to be followed in the matter of leasing of the properties belonging to the Muzrai Institutions. The instructions are once again excerpted below:

"I) All leases to be granted/renewed in respect of immovable properties belonging to temples and other religious institutions under the management of Govt. will be done by the Endowments Commissioner subject to the guidelines contained in Annexure to this order.

ii) With regard to the existing leases, granted either by Government or Commissioner for Endowments or other Officer of Revenue Department, the Endowments Commissioner, Bangalore, will negotiate with the lessees for fixing higher rent keeping in view the rates suggested in the guidelines."

9. The position is beyond dispute in so far as the governmental policy and instructions issued in pursuance to such a policy are concerned

10. The first instruction is to the effect that the granting of lease will be done by the Endowments Commissioner subject to the guidelines contained in Annexure to the order dated 10-10-1980. The second instruction relates to the leases already in existence having been granted either by the Government or by the Endowments Commissioner or other Officer of Revenue Department and provides that the Endowments Commissioner will negotiate with the lessees for fixing higher rent keeping in view the rates suggested in the guidelines.

11 According to the undisputed facts of the case, lease was granted in favour of the petitioner, by the Its respondent by order dated 29-7-1983/10-8-1983 fixing the monthly rent besides other amounts payable accordance with the to her a the Govt. order dated 10-10-1980. Whereas the Government Order came, into force on 10-10-1980, the lease in favour of the petitioner was granted in the year 1983. It would be difficult to accept the argument that the lease granted to the petitioner has no nexus with the Government Order dated 10-10-1980 and the guidelines prescribed there under for grant of lease and for imposition of the terms and conditions of the lease. If this position is regarded as a reasonable basis, the only reasonable inference that could be reached is that the lease was granted to the petitioner subject to the guidelines contained in annexure to the Government Order dated 10-10-1980. It is not the case of the respondents that the lease was granted in ignorance of both the Government Order and the guidelines. It is also necessary to advert of the relevant guidelines relating to the properties situated in towns and villages having population of less than one lakh According to the guidelines annexed to the Government Order No. RD 67 MLD 79

dated 10-10-1980, in respect of such properties intended for commercial purpose, the lessee should pay good-will at the rate of Rest. 30/- per square meter and if the lease is for public purpose, the good-will payable is at the rate of Rest. 20/- per square meter. In the instant case, the lessee was called upon to pay a good-will at the rate of Rest. 30/- per square meter and obviously the lease was for commercial purpose. Under the guidelines, the lease shall be for a maximum period of 30 years which means that the petitioner could legitimately aspire for a maximum period of 30 years of lease after investing huge amounts of money for the purpose of business, progressive building up of business reputation and expansion of the existing business apart from provision of improved business facilities in order to cater to the reasonable satisfaction of the pilgrims visiting the canteen. One of the guidelines provides that the lessee shall, pay rent on monthly basis; the rent being subject to upward revision by 10% every five years. It is also provided that the lessee shall pay six months rent in advance adjustable at, the end of the lease period. It is to be noticed that there is some purpose behind the guideline which stipulates upward revision of the monthly rent by 10% at the end of every five years. This guideline gives rise to a, reasonable probability that the lease was intended to be for a long duration and possibly for not less than five years at a time. The guideline also provides for execution of a lease-deed by the lessee binding himself to the terms and conditions of the lease. In the I sty clause of the guidelines, it is provided that the same terms and conditions of lease as applied to vacant land shall apply to lands on which buildings have already been constructed and the lands and the buildings thereon are to be leased. This clause eliminates the doubt, if any, that the guidelines are applicable only to vacant lands and not to buildings which have come into existence on the vacant lands.

12. Annexure-C, in my opinion, is a deliberate, well-considered and well documented policy of the administrative authorities issued by an order and in the name of the Governor of Karnataka. It is not open to the respondents to back-track and resale from this governmental policy and it is binding on the respondents as well as the petitioner. Any lease-deed executed subsequent to the coming into force of the said Government Order after 10-10-1980 is subject to the guidelines and the policy behind the guidelines of the said Government Order.

13. The lease that was executed on 2-9-1983 to begin with was for a period of 3 years due to expire on 2-9-1986. Under the said lease-deed, it is provided that the lessee shall be liable for eviction if he fails to comply with any of the above conditions. But it is significant to note that it is nowhere provided in the said lease-deed that on the expiry of the lease period, the lessee shall vacate and deliver possession of the leased premises to the lesser. This aspect leads to the presumption that the

lease is one in the nature of a continuing ,lease with the life being extended from time to time by renewal or extension subject to the guidelines attached to the

Government Order dated 10-10-1980. It is equally significant to note that notwithstanding a provision in the guidelines that on the expiry of the lease period the entire building with all its fixtures shall vest in the Endowments Department free from all encumbrances and that the lessee shall hand over vacant possession of the entire building (shopping complex, including all fixtures) and that the lessee shall not be entitled for any compensation whatsoever for the same under any circumstances, there is no similar term or condition stipulated in the lease-deed that was executed by the petitioner on 2-9-1983. This feature lends credence to a reasonable presumption that the intention was not to determine the lease at the end of 3 years. It also stands to reason because there is a provision for an upward revision of rent by 10% every 5 years.

14. Before the lease period came to an end, the petitioner submitted a representation to the Commissioner for Endowments, Bangalore, on 16-8-1986 setting out the details of the investment and expenditure made by him on fixtures, vessels, utensils, cooking gas stoves etc., and giving the expenses incurred by him on each item since he had to cater as "A" Class Vegetarian Canteen to the best satisfaction of the pilgrims and the members of the public, the total amount being Rest. 3,05,380/and explaining to the authority that the petitioner has not been able to recoup even 30% of the investment from the returns on account of various reasons mentioned in the said representation. The petitioner also impressed upon the authority in the said letter that the initial lease period was too short for him to realize reasonable returns for his investment. In the said representation, the petitioner sought for a long lease of 20 years commencing from 2-9-1986 willing to invest an additional sum of Rs.1.5 lacs for modernization of the canteen by providing modern kitchen with glazed tiles, equipments etc. marble stones to the dining hall and modernizing the existing furniture. The petitioner also volunteered to pay the rent to be fixed by the Government and to abide by the terms and conditions enforceable from time to time. In response to the representation of the petitioner, The Special Officer of Karnataka State Charities, Thirumala, Throaty, inspected the canteen premises and apprised himself of the details of the investments made by the petitioner satisfying himself that the claim of the petitioner was genuine. He also observed that there were no arrears due from the petitioner. Accordingly the Special Officer of Karnataka State Charities addressed a letter dated 16-8-1986 to the Commissioner for Endowments, Bangalore, recommending that the lease may be granted to the petitioner for a further period of 10 years commencing from 2-9-1986 at an enhanced rent of Rest. 3,000/- per month for the first 5 years and an upward revision of rent according to the guidelines of the Government after the expiry of 5 years with a direction to the lessee to cater to the satisfaction of the pilgrim-public with good quality of food. Thereafter, nothing was heard from the Commissioner for Endowments in spite of the recommendation made by the Special Officer. It was only on 12-9-1986 a letter was addressed by the Commissioner for Endowments, Bangalore, to the Special Officer, Karnataka State Charities, Thirumala Tirupathi that the lease which was to

have expired on 2-9-1986 is permitted to be continued or extended from 1-9-1986 to 28-2-1987. An examination of this letter shows that the circumstance in which the extension was granted is totally different from the circumstance in which the petitioner urged for grant of lease for a period of 20 years and also different from the circumstances in which the Special Officer recommended to the Endowments Commissioner for the continuation of the lease in favour of the petitioner for a period of 10 years. The order issued by the Commissioner for Endowments dated 12-9-1986 was on account of a number of applications received by him for grant of lease of the canteen building and for the consideration of the same. Since it was a time consuming situation, the Commissioner for Endowments deemed fit to permit the extension of the lease to the petitioner from 1-9-1986 to 28-2-1987. The said order does refer to the representation of the petitioner dated 16-8-1986 for continuation of the lease for a period of 20 years. However, -no reference is made to the contents of the representation and the points urged by the petitioner in the representation.

15. At any rate, it is not the case of the respondents that there is any impediment caused either by the petitioner himself or by the guidelines or by any change of governmental policy that the claim of the petitioner could not be conceded.

16. However, a submission was made by the learned Government Pleader appearing for the respondents that new Government Order and policy came into force in super session of (he Government Order and policy dated 10-10-1980. I have gone through the Government Order produced by the learned Government Pleader. I am satisfied that this order refers only to vacant land and not to buildings constructed on vacant land by the Muzrai Institutions. It is my opinion that the said Government Order is of no assistance to the respondents and it does not supersede the Government Order dated 10-10-1980 in so far as buildings constructed on Muzrai lands are concerned.

17. The policy once laid-down by the Government is binding on the one who formulated and gave effect to the policy. It is on the basis of this policy and the guidelines appended to the Government Order that the petitioner acquired the right to the benefit of a lease in the year 1983. The right that is invested in the petitioner by virtue of the Government policy cannot be taken away unless and until the policy is changed by the Government, In the circumstances of the case, I am of the view that the policy laid down by the Government on 10-10-1980 continues to exist and so also the right of the petitioner to take advantage of such a policy. The notification inviting tenders for lease of the canteen building which is in the occupation of the petitioner by virtue of a valid lease, appears to be totally unjustified and arbitrary. These notifications were issued on 22-12-1986. where as the lease in favour of the petitioner was extended from 1-9-1986 to 28-2-1987. Particularly in the light of the fact that the notifications had been issued inviting tenders during the rightful occupation of the petitioner of the canteen building, is most, unjustified and does not carry moral conviction.

18. An administrative authority, while acting in its quasi-judicial capacity, cannot act contrary to its own policy and it is open to judicial correction if the quasi-judicial action has by violation of the very policy which the Government itself has laid-down interfered With the rights of the citizen.

19. The learned Government Pleader labored hard to convince me that what was granted to the petitioner was only a license and not a lease. The contention is unconvincing. The lease deed transferring the legal interest in the Immovable property to the petitioner conditional upon payment of monthly rental to the lesser, besides Goodwill donation, advance deposit and similar payments to the lesser bears the hall-marks of a lease as defined under S. 105 of the Transfer of Property Act. None of the relevant documents contain any reference to a license and the word, "license" is indeed conspicuously absent. Even the impugned tender notifications do not refer to any license but unequivocally spell out an invitation for tender for grant of a lease of the canteen building. The Government order dated 10-10-1980, the appended guidelines, the new Government Order dated 5-9-1986 and the impugned tender notifications apart from the lease deed and the renewal order dated 12-9-1986 all point to a lease simplicities and not to any license..

Section 105 of the Transfer of Property Act provides:

"A lease of Immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied or in perpetuity, in consideration of a price paid or promised or of money, a share of crops, service or any other thing of value to be rendered periodically or on specified occasions to the transferor by the transferee who accepts the transfer on such terms.

The transferor is called the lesser, the transferee is called the lessee, the price is called the premium and the money, share, service or other thing to be so rendered is called the rent".

Considering the nature of the instrument and applying the criteria, set out in the above definition, I have no hesitation in rejecting the contention that it is a license and hold that it is a lease pure and simple. What is relevant is the substance of the instrument and not mere words, The intention is apparent on the face of the document and the intention is to transfer to the lessee the interest in the Immovable property on rent all basis for the purpose of carrying on canteen business in it for an initial period of three years on the terms and conditions incorporated in the lease deed which is duly registered and does not contemplate mere user.

Section 52 of the Easements Act 5 of 1882 defines license as a right to do or continue to do in or upon the Immovable property of the licensor something which would in the absence of such right be unlawful and such a right does not amount to an easement or an interest in the property.

Thus it is clear that a license does not envisage transfer of interest in the

Immovable property unlike the lease. The argument that the lease in question is in truth only a license is without any basis.

The contention that the impugned notifications are not amenable to judicial review under Art. 226 of the Constitution is unacceptable. Merely because a lease is involved, it cannot be said that the impugned notifications are removed from the realm of judicial control. Arbitrary administrative action clearly deviating from the ruling policy in regard to the grant of leases of Muzrai building and sites are susceptible to challenge under writ jurisdiction of this Court.

As held in *The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay*, , "administrative authorities must bona fide though not judicially". .

What, is in question is deviation from public policy. The existing policy is neither repealed nor superseded by another in its place it is said that in a democratic system, no government is run without a public policy nor it ought to. What is firmly rooted in such a system is the rule of law and the rule, of men. Rule of law does not exclude a policy oriented rule The administration is intended to be policed by a declared policy (a general line of action" articulated in the policy) in order to achieve the State's goals or objectives. Unless one policy is substituted by another in its place, it continues to hold the field binding both the State which made it and the citizen with whom transactions are entered.

A departure from an accepted public policy is a departure from fairness and justice.

"Powers of purely administrative character must be exercised "fairly", meaning" in accordance with natural justice - which after all is only fair play in action (*Ridge v. Baldwin* (1963) 1 QB 539 (578)).

"If the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision."

General Medical Council v. Spaceman (1943) A C 627 (644)]

when a policy is laid down directing the authorities to exercise administrative power in a particular manner as indicated by the guidelines issued there under, if the authorities act in ignorance of the same or different from them, administrative action throws the door ajar for judicial intervention. Rule of law in the context means that the government must have legal warrant for its actions and that if it acts unlawfully and contrary to its declared policy the citizen has an effective legal remedy. Quasi-judicial decision consists of determination of facts and application of administrative policy. Discretion ought to be exercised in accordance with the policy and the guidelines prescribed there. under.

"Discretion means when it is said that something Is to, be done within the

discretion of the authorities that something is to be done according to the rules of reason and Justice not according to private opinion Rooks", case, ((1 598)t 5 Co Rep .99 bop 100a)

according to law and not humor It is to boo not arbitrary, vague and fanciful but legal and regular., And it must be exercised within the limit to which an honest man competent to the discharge of his office ought to confine himself."

Lord Asbury speaking in Sharp V Wakefield (1891) AC 173 (at p. 179)

Equally telling is the principle enunciated by Coke in Stick v. City of London, (1647) Style 42 :

"Whosoever a commissioner or other person hath power given to do a thing at his discretion, it is to be understood of sound discretion, and according to law, and that this court hath power to redress things otherwise done by them".

An administrative exercise laying down a public policy to regulate administrative action and the accompanying guidelines form an integral part of executive legislation and cannot be treated as either empty rituals or pious declarations. The policy reflects governmental thinking and its decision on the defined course of action guiding and controlling administrative conduct, through guidelines issued after due deliberation and debate. They are meant to be obeyed and not avoided.

20. The expression "administration" signifies the Government of the day or the machinery of the government which implements the Governmental policy and the word "policy" connotes the formation of a general line or course of action - the idea of leadership and the taking of a major decision on a matter of discretion. And administration involves the execution of the policy according to general principles (Garnet's Administrative Law).

In the case in hand, the general principles are none other than the guidelines annexed to the Government order dated 10-10-1980 which are intended to aid the implementation of the policy of the State Government in the matter of leasing of Muzrai property. The respondents are bound to act in conformity with the avowed policy of, the government, and it is not open to them, act capriciously by side-stepping it and by switching over to a strategy based on expediency on the ground that there are a number of fresh applicants knocking on the door offering tantalizing bids. It should not be forgotten that the policy was formulated and decided At the level of the Chief Secretary to the State Government solely in respect of leasing of Muzrai buildings and lands after elaborate and meaningful deliberations. There is no material to hold that the Governmental policy of 10-10-1980 was superseded by any subsequent policy in relation to leasing of buildings applicable to the relevant period. Such a policy cannot be regarded as a pious declaration and disowned by the authorities. The policy is a solemn declaration in the eye of the citizen, and to the lessee it is solemn charter to be acted upon. Bureaucrat's accountability to the citizen will

not admit the beating of a retreat from the professed official policy. I am, therefore, convinced that the impugned administrative action is amenable to writ jurisdiction. Neither legally nor morally can the Governmental authorities circumvent their own policy. The impugned notifications stem from arbitrary and unreasonable exercise of power and fail the test of fairness.

21. By virtue of the extension of lease granted in favour of the petitioner from 1-9-1986 to 28-2-1987, the petitioner is the holder of an existing lease and the Government Order dated 10-10-1980 contemplates only negotiation by the Endowments Commissioner with the petitioner for fixing higher rent keeping in view the rates suggested in the guidelines. That is the conclusion which could be reached in the circumstances and I hold that the impugned notifications are not supported by the existing Government Order dated 10-10-1980.

22. I would now refer to some of the precedents cited by the learned counsel for the respondents

In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , the Supreme Court interpreted the terms of contract provided in the tender notice for running a restaurant and snack bars at the AirPort. But what is in question in the instant case is the administrative action in issuing tender notices and its legality and propriety. The decision is not attracted to the facts of this case.

In *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, , the questions considered were (at pp. 1123-24).

(1) The Excise and Taxation Commissioner (who in the Punjab exercised the powers of a Financial Commissioner under the Act) had no jurisdiction to determine the method, of disposal of the country liquor vends;

(2) The power conferred on the Financial Commissioner under S. 34 of the Act to grant a license, permit or pass on payment of such fees, if any, as he may direct did not extend to disposing of the country liquor vends by auction;

(3) The impugned auctions conducted under the amended R. 36 on the basis of estimated quota in proof liters was in substance founded on the same system which had been struck down by the High Court in *Jag Ram's* case (Civil Writ No. 1376 of 1967, D/- 12-3-1968 (Pun)) where it was held that the levy imposed through the medium of auctions was a tax and not a license fee;

(4) The State Government alone was competent to impose a tax or an excise duty under the Act; that power could not be delegated to the Financial Commissioner or any other officer;

(5) Section 34 of the Act which empowered the Financial Commissioner to levy fees was not a charging section; but if it is construed as containing a delegation to him of the power of the State to levy taxes, no guidelines were laid down and thus the delegation was excessive;

(6) The fee which could be imposed by the Financial Commissioner under S. 34 of the Act could only be justified if it had a reasonable relation to the services rendered to the licensees. If it was imposed solely or mainly for the purpose of collecting revenue, it was outside the ambit of Item 66 of List 11 of the Seventh Schedule of the Constitution. The amounts realized in the auctions in the guise of license fees were so exorbitant that they could not possibly be justified under item 66;

(7) The rule fixing the maximum price at which licenses could sell a bottle of liquor was ultra vires of the rule-making powers of the Financial Commissioner under S. 59 of the Act. The Court held in the above context (at p. 1126)

"Analyzing the situation here, a concluded contract must be held to have come into existence between the parties. The appellants have displayed ingenuity in their search for invalidating circumstances but a writ petition is not an appropriate remedy for impeaching contractual obligations."

The decision is not apposite to the facts of the instant case.

In *Ambica Quarry Works v. State of Gujarat and Ors.*, (1987) 1 SCC 213, the Supreme Court observed :

"The ratio of a decision should be understood in the fact situation of the particular case." It is an authority for what it actually decides and not what logically follows."

It may also observe that taking an overall view of the factors featured in both the Government Order dated 10-10-1980 along with the guidelines appended to it, besides the lease deed, in the conduct of the respondents is explicit a promise or an assurance that the petitioner would be continued as a lessee on the basis of which the petitioner established, consolidated and improved his business investing huge capital, the respondents are stopped from deviating from the policy to which they are committed in the absence of statutory support to the contrary.

"The basic principle of estoppel is that a person who by some statement or representation of fact causes another to act to his detriment in reliance on the truth of it is not allowed to deny it later, even though it is wrong, Justice here prevails over truth. Estoppel is often described as a rule of evidence, but more correctly it is a principle of law."

[*Canada and Dominion Sugar Co. Ltd v. Canadian National (West Indies) Steamships Ltd.* (1947) AC 46 (56)]

It is no doubt true that there is a limitation that the principle of estoppel does not operate at the level of Government policy. Where there is a change of Government policy, the statement is applicable but not in a case where there is neither a change in the Government policy nor a replacement of the earlier by a new one.

In *Lacer Airways Ltd. v. Department of Trade* (1977) QB 643 - Lawton L.J., it was held:

"A. government department which encourages an airline to invest in aircraft on the understanding that its license will be continued is not stopped, if there is a change of government and a reversal of policy, from withdrawing the license."

I am, therefore, reinforced in the conviction that the principle of estoppels is, attracted to the facts of this case.

Lord Denning M. R. in *wells v. Minister of Housing and Local Government* (1967) 1 WLR 1000 (1007) observed:

"Now I know that a public authority cannot be stopped from doing its public duty, but I do think it can be stopped from relying on technicalities."

"A public authority, furthermore, has a duty to act fairly and consistently. If it issues contradictory and misleading rulings, this may amount to an abuse of discretion which the court can condemn."

(Page 234, *Administrative Law*, Fifth Edition by H.W.R. Wade).

23. In the result, for the reasons stated above, rule is issued and made absolute, The writ petition is allowed and the impugned Notifications (Annexures "H" and "J") are quashed.

24. There will be no costs in the circumstances of the case.

25. Petition allowed.