

(1981) 09 BOM CK 0068

In the Bombay High Court

Case No : Writ Petition No. 2039 of 1981

Khandesh Roller Flour Mills

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 30-09-1981

Acts Referred:

Evidence Act, 1872 — Section 115

Industries (Development and Regulation) Act, 1951 — Section 3

Citation : (1982) 2 BomCR 299

Hon'ble Judges : R.S. Bhonsale, J; R.D. Tulpule, J

Bench : Division Bench

Advocate : V.R. Manohar, for the Appellant; M.B. Mor, A.G.P. for respondent Nos. 1 and 2, for the Respondent

Judgement

R.S. Bhonsale, J.—This petition filed by petitioners Khandesh Roller Flour Mills under Article 226 of the Constitution of India pray for a writ of mandamus or other appropriate writ, order or direction in the nature of an order against the respondent No. 2 who is the Deputy Secretary, Food and Civil Supplies Department of the State of Maharashtra and is also the Licensing Authority under the Wheat Roller Flour Mills (Licensing and Control) Order, 1957 to grant a milling license as per the application made by the petitioners on September 16, 1980 in favour of the petitioners as expeditiously as possible.

2. This petition raises an important question as to whether an authority which is vested with the discretion to exercise certain powers should act under the direction of any other authority, in this case the Government of India, for disposing of the application for granting a milling license under the said order.

3. In order to appreciate the contentions raised by Shri V.R. Manohar, the learned Counsel appearing for the petitioners, the relevant facts which lie in a narrow compass can be briefly referred to. The petitioners are the registered partnership firm under the provisions of the Indian Partnership Act, having their registered office at Nagpur and were desirous of establishing and installing a roller flour mill

at Jalgaon in response to a press note issued by the State Government inviting applications for setting up a roller flour mill of a capacity of 30 tons per day, made an application to the State of Maharashtra on October 12, 1979 and sought the requisite permission to install a new roller flour mill. At this stage, it must be mentioned that the Government of India had imposed a ban on installation of new roller flour mills earlier to the issuance of this press note which was issued in September 1979. However, the Government of India took a decision and decided to relax its ban and allow the setting up of a roller flour mill plant of a capacity of 30 tons on certain conditions. After the petitioners filed this application, the respondent No. 1 by communication dated January 29, 1980 granted such permission to the petitioners subject to the terms and conditions contained therein. As per his permission, certain conditions were imposed and these conditions may be referred to at this stage since it is the case of the petitioners that notwithstanding their having complied with all the conditions, the respondents have either unjustifiably delayed in issuing the milling license or have not taken decision for reasons which are not germane to issuing of such license. According to the communication dated January 29, 1980 petitioners were informed that their application for permission to install a new roller flour mill within the district of Jalgaon was granted subject to the following conditions :---

- (i) The milling capacity of the unit to be installed by you shall not exceed 30 tonnes per day;
- (ii) The unit shall not be installed within the limits of a municipal town having a population of 5 lakhs or more and also within the limits of the Bombay Metropolitan Regional Development Authority;
- (iii) Installation of the unit shall be completed within a period of 12 months.

There are further ancillary conditions, such as, that land for the purpose of milling must be secured within 60 days and the proof of acquiring such a and must be furnished to the Government within 15 days; that the plans for installing such a mill must be finalised within a period of 120 days. There were other conditions which are not necessary to be referred to since there is no dispute about it excepting to mention that in the last paragraph No. 5, it was specifically stated that after installation of the mill in accordance with the prescribed terms and conditions, the petitioners have to obtain the necessary license under Wheat Roller Flour Mills (Licensing and Control) Order, 1957.

4. The petitioners further averred in their petition that in pursuance of the permission granted to them by this letter dated January 29, 1980 they have procured the necessary land, purchased the necessary machinery and in which more than Rs. 40,000/- were invested and all these installations were completed before May 31, 1980. The petitioners further averred that they have been informed by the respondents that it would be necessary on their part to obtain a "Carry on Business License" under the provisions of the Industries (Development and Regulation) Act, 1951, and therefore, in pursuance of this notification, the

petitioners in fact applied on July 5, 1980 for obtaining such "Carry on Business License". It is the sheet anchor of the petitioner's case in this petition that though they have applied for "Carry on Business License" in response to the notification issued by the Government of India and also as advised by the respondents, the Government of India by their letter dated July 16, 1980 informed the petitioners that the proposal of the petitioners did not attract the licensing provisions of the Industries (Development and Regulation) Act, 1951 inasmuch as the staff and the labour to be employed in the setting up of the project are less than 50. It needs to be mentioned here that there is no dispute between the parties that the total number of staff engaged in this project was and has been less than 50. At the end of this communication, it was also stated that the application of the petitioners for such a permission under the said Act was returned to the petitioners. The petitioners were, however, cautioned that in case there are additional facts which are not furnished by the petitioners in the aforesaid application or should the facts materially alter so as to warrant an industrial license, it will be the petitioner's responsibility to obtain the required license therefore.

5. According to the last paragraph of the permission given by the respondents to install the plant in question, petitioners were required to obtain a license under the said Wheat Roller Flour Mills (Licensing and Control) Order, 1957. The Union of India in exercise of the power conferred u/s 3 of the Essential Commodities Act, 1955 had framed the said order and as per the relevant provisions of this order, the second respondent to this petition, the Deputy Secretary is the appropriate Licensing Authority for the purpose of granting such a license in the State of Maharashtra. The other provisions of the order are formal in nature. However, since the controversy centres round Clause 10 of the said order, it may be stated here that according to the said Clause 10 it was one of the powers of the Licensing Authority to issue directions to the licensees. The proviso to this clause says that no direction under item (a) i.e. for the purchase of wheat for the purpose of manufacture into wheat products, shall be issued without obtaining the prior concurrence of the Central Government. It is further, averred in the petition that in spite of complying with the first communication of the respondents and fulfilling all the conditions laid down in that permission to install the flour mill, the respondents did not take a decision on the application dated July 16, 1980 for the license under the said order. It is also the case of the petitioners that the respondents have in fact been anxious to grant the license in favour of the petitioners. However, for no rhyme or reason such grant of license has been deferred for an administrative concurrence of the Union of India to grant such a license under the said order. The petitioners have made reference to number of communications from the respondent No. 2, the Union of India for expediting the matter of concurrence for granting such a license. According to the petitioners, respondents have gone to the extent of recommending the case of the petitioners that this was the only unit in the State of Maharashtra which had fulfilled all the conditions in response to the press note issued by the

Government of India.

6. According to the petitioners, discretion of refusing to grant license is vested in the respondent's authority particularly respondent No. 2, the Deputy Secretary of Food and civil supplies Department and the deferring of such decision to grant license in absence of a concurrence from the Union of India is unwarranted and not justified or not supported by any authority, enactment or rules framed thereunder. The learned Counsel for the petitioners has contended that the attitude adopted by the respondents that in the absence of a concurrence from the Union Government, the respondents could not grant such a license is unwarranted. The petitioners have also challenged the attitude adopted by the respondents on the ground of promissory and equitable estoppel. It is contended by the petitioners in the petition that but for the representation made in the press note, the petitioners would not have invested such a large amount for installing the flour mill and in absence of the decision from the respondents they are greatly prejudiced and put to a disadvantageous position, and therefore, respondents are estopped from deferring or delaying the grant of license to the petitioners under the provisions of the Licensing Order. The petitioners, therefore, as stated above prayed for a writ of mandamus directing the respondent to dispose of the application for grant of such a license made as far back as in September 1980 and that too as expeditiously as possible.

7. In response to the averments in the petition, the respondents have filed a return and annexed certain documents to it. The learned Assistant Government Pleader Shri Mor, who appeared for the respondents, apart from relying on the contents of para 1 of the return that the Union of India was a necessary party and in absence of the Union of India being joined as the necessary party, the orders of this Court will not be carried out effectively, has also contended that initially there was a complete ban on installation of such flour mills. However, the Government of India having reconsidered the entire matters issued a press note referred to above. He further contended that the Department of Industrial Development, Ministry of Industry by notification issued on May 23, 1980 has now substituted for entry No. 3 in Schedule IV of the said Industries (Development and Regulation) Act, 1951 the following :---

"Milk foods falling under "(2) Milk Foods", Malted foods falling under "(3) Malted Foods" under the heading 27. Food Processing Industries".

According to this notification, in pursuance of section 29B of the said Act, the Central Government specified a period of six months from the date of publication of the notification as the period after the expiry of which no owner of any industrial undertaking which was previously exempted from the operation of sections 10, 11, 11-A and 13 of the said Act and which is not exempted by virtue of this notification shall carry out the business of such undertaking except under and in accordance with the license issued in this behalf by the Central Government and in the case of the State Government except under and in accordance with the previous permission of the Central Government. What the

learned Counsel emphasised was that such an undertaking as that of the petitioners was now under this notification required to take a license even though in the past such units were not under obligation to take a license. The learned Government Pleader further placed reliance on a communication dated 14th July, 1980 addressed by the Government of India, Ministry of Agriculture, Department of Food to the respondents. According to this notification, consequent on the withdrawal of the exemption from the licensing provisions in the case of roiling flour mills in the small scale sector with effect from 24-5-1981 (i.e. the notification referred to above), the permission issued by the State Government is no longer valid and such units would require industrial licenses under the Industries (Development and Regulation) Act, 1951. The learned Government Pleader further placed reliance on para (a) of the said communication which states that all such units in whose cases the exemption was withdrawn with effect from May 23, 1980 and in whose case permission letters have been issued would have to obtain necessary licenses under the provisions of the said Act. Under the provisions of the Industries (Development and Regulation) Act, in the case of units which have already been established or in respect of which effective steps as defined in the Registration and Licensing of Industrial undertakings Rules, 1952 have been taken, they have to obtain COB licenses under the said regulation. Paras (c) and (d) of the letter are relevant and have been said heavily relied upon by the Government Pleader. Paragraph (d) is as follows :---

"(d) In regard to the units which have been already established but production has not commenced, the State Governments should not issue the milling licence until and unless the unit obtains a license under the Industries (Development and Regulation) Act."

8. The learned Assistant Government Pleader, therefore, contends that notwithstanding the fact that the respondents have issued the permission to the petitioners to install the machinery and notwithstanding the fact that they have fulfilled all the conditions, in view of the changed policy of the Union of India, even in respect of units such as established by the petitioners, the petitioners were under obligation to take not only COB license but also the license under the Industries (Development and Regulation) Act, 1951. The learned Assistant Government Pleader also relied upon the communication annexed at Annexure Nos. R-3 and R-4 to the effect that it has been decided by the Government of India that the State Government could issue milling license to small scale sector units which employs less than 50 persons and such units hereafter should obtain prior administrative clearance from the Department of Food before actual issue of milling license. It was clarified in the communication dated December 15, 1980 by the Under Secretary to the Government of India, Ministry of Agriculture (Department of Food), that even under such categories only those cases where effective steps were taken by May 24, 1980 and where applications for milling license or COB or Industrial license were received by the State Government before May 23, 1980 should be processed and referred to the Department of Food for approval. In other orders, the submission of the learned Government

Pleader has been that while the respondents were prepared to issue a license under the said order they had deferred issue of such a license only for the administrative concurrence of the Government of India. In fact, as the correspondence on record would indicate that the delay in issuing such a license to the petitioner was not of the volition of the respondents but was because of the want of administrative clearance by the Union of India.

9. In view of these pleadings and submissions of both the learned Counsel for the petitioners and the learned Assistant Government Pleader, a narrow controversy is raised before us and the question that falls for determination is whether in granting a license under Clause 3 of the said Wheat Roller Flour Mills (Licensing and Control) Order, 1957, the respondent No. 2 i.e. the Licensing Authority also needs administrative clearance or concurrences of the Government of India. In order to find out whether the notifications relied upon by the learned Assistant Government Pleader i.e. Notification dated May 23, 1980 or other communications addressed by the Union of India to the respondents are at all attracted and whether such concurrence is at all needed, we have to examine the provisions of the Industries (Development and Regulation) Act, 1951. This Act is enacted to provide for the development and regulation of certain industries. u/s 2 of the said Act it was declared that it was expedient in public interest that the Union should take under control industries specified in Scheduled I. As stated above, by notification dated May 23, 1980 the Government of India amended Schedule IV to the Act and the added Item No. 27 i.e. the Food Processing Industries. The flour mill, therefore, came under the control of the Government of India by addition of Item No. 27 to Schedule IV of the said Act. As per the provisions of section 10 of the said Act which occurs in Chapter III dealing with regulation of a scheduled industry, the wheat flour mills now have been added in scheduled industry. The owner, within such period as the Central Government may be notification in the Official Gazette fix in this behalf with respect to industrial undertakings, shall take out the necessary license. Section 10A deals with revocation of registration of such an industrial undertaking. Section 11 deals with the new industrial undertaking. Section 11A deals with licenses for producing and manufacturing new articles by such an industrial undertaking. Section 13 deals with other provisions of licensing of industrial undertaking in special cases. The main contention of Shri Manohar, the learned Counsel appearing for the petitioners, is that the unit which he has been permitted to establish by the Government of Maharashtra by their order dated January 29, 1980 is not covered by the definition of industrial undertaking u/s 3(d) of the said Act. Since the main controversy centres on whether the unit of the petitioners is an industrial undertaking and, therefore, whether all other notifications relied upon by the learned Counsel are attracted or not, it will be of some assistance to quote the definition of industrial undertaking as given in section 3(d) of the Act which is as follows :---

"3(d) : Industrial undertaking means any scheduled industry carried on in one or more factories by any person or authority including the Government."

There is no dispute that by virtue of notification dated May 23, 1980 food processing industries are now included in Schedule IV and therefore, the petitioner's mill mainly producing and intended to produce wheat flour products would be covered. However, the only question is whether the unit is also a factory as provided in section 3(c) which is as follows :---

"(3)(c) Factory means any premises including the precincts thereof in any part of which a manufacturing process is being carried on or is ordinarily so carried on ---

(i) with the aid of power, provided that 50 or more workers are working or were working therein on any day of the preceding 12 months;

(ii) without the aid of power, provided that hundred or more workers are working or were working thereon any day of the preceding twelve months and provided further that in no part of such premises any manufacturing process is being carried on with the aid of power."

10. It has been argued by the learned Counsel Shri Manohar that his initial application for permission from respondents as well as the application to the respondent No. 2 for the license under the said order has specifically stated that the staff would be less than 50. This statement of fact has not been controverted on behalf of the respondents. The submission of the learned Counsel, therefore, is that in view of this definition itself, the petitioners are not obliged to take a license under the Industries (Development and Regulation) Act, 1951. This interpretation is plain enough on reading the definition but we are satisfied that the Union of India has also understood and has also placed the same interpretation on the provisions of the said Act. A communication dated July 16, 1980 from the Section Officer, Government of India, Ministry of Industry, Department of Industrial Development, which has already been referred to as Annexure No. J to the petition leaves no scope for any doubt whatsoever. As stated earlier, it is positively stated by the Union of India in this communication that as the existing staff and labour to be employed in the setting up of the project are less than 50, provisions of Industries (Development and Regulation) Act, 1951 were not attracted. This position has been further clarified by the Government of India by the circular issued by the Government of India, Ministry of Agricultural, Department of Food, on August 12, 1980 to all State Governments and Union Territories on the subject of license to new roller flour mills and expansion of the existing units. It is at Annexure R-3 filed by the respondents and also relied upon by them. At the very outset of this communication, it is clarified that the industrial undertaking which employs less than 50 workers with the aid of power or 100 workers without the aid of power are not attracted by the licensing provisions of the Industries (Development and Regulation) Act, 1951. Such factories which employ less than 50 or 100 workers respectively are not, therefore, required to obtain either "Carry on Business" license or an industrial license. Such units need only a milling license under the Wheat Roller Flour Mills (Licensing and Control) Order, 1957.

11. In our opinion, nothing could be clearer and reliance placed by the learned Assistance Government Pleader on the submission that the petitioners ought to have taken out such a license is, therefore, clearly misplaced. If the provisions of the said Act, i.e. provisions of the Industries (Development and Regulation) Act, 1951 are not attracted to such a unit in respect of which the petitioners have made an application for milling license, then it follows that part of that Act also is not attracted, that is to say, section 29B under which the Notification dated May 23, 1980 is issued by the Government of India. In view of the plain interpretation and the plain language used in the definition of "industrial undertaken" and "factory" u/s 3(d) and (c) respectively and in view of the communication from the Union of India to the effect that they too have understood and interpreted the meaning of industrial undertaking in the same way as the learned Counsel for the petitioners has submitted before us, we see no scope for any doubt and accordingly we hold that the petitioner's unit according to the averments in the petition having employed less than 50 staff and labour in number is not governed by the provisions of the Industries (Development and Regulation) Act, 1951 and they are not obliged to take out a licence under the provisions of the said Act. If that be the clear position in law, the fact that by notification dated May 23, 1980, Schedule IV came to be amended and food processing industries were added to Item No. 27 is, in our opinion, of no consequence and not relevant at all. In fact, in our view, there could have been no controversy in view of the communications addressed to the respondent by the Union of India especially the one to which we have made a reference, i.e. the circular dated August 12, 1980.

12. Having held that the petitioners' unit does not attract the provisions of the Industries (Development and Regulation) Act 1951, we must further examine the contentions of the respondents that according to the communication issued by the Government of India on July 14, 1980 that even flour mill units which have already been established but the production of which has not yet commenced on December 12, 1978 the State Government should not issue the milling licence until and unless the administrative clearance from the Department of Food, Government of India has been actually obtained. The learned Assistant Government pleader placed reliance on the contents of this circular and submitted that the respondents were helpless in absence of such administrative concurrence or clearance by the Union of India for issuing of milling license under the said license. Probably it is for this reason that the learned Government Pleader in his affidavit had heavily relied on the absence of the Union of India being joined as a party.

13. In our opinion, these submissions of the learned Government Pleader are misconceived in principle and erroneous in details. As we have pointed out and it is clear from the plain interpretation of the words employed in definition section that the petitioners' unit does not attract at all any of the provisions of the Industries (Development and Regulation) Act, 1951 and the petitioners are not required under any of these provisions to take out the said license. We have also made it clear that the petitioners also are not required to take out the COB

licence as per the circulars of the Union of India, though the petitioners by way of abundant caution had already applied for such COB permission as advised by the respondents. The learned Counsel for the petitioners Shri Manohar had argued before us that this mis-conception in law on the part of the respondents stems not only from wrong interpretation of the provisions of the said Act, but also from wrong interpretation placed by them on the provisions of the said order itself. The learned Asstt. Government Pleader, however, emphasised that the power to issue license vested in the Licensing Authority also implies under the provisions of Clause 10, to issue certain directions and no such direction under Item A shall be issued without obtaining prior concurrence of the Central Government. The necessity to obtain concurrence of the Union Government was, according to the learned Asstt. Government Pleader, two-fold. One was as per the provisions of Clause 10, and second was as per the circulars or communications issued by the Union of India. In our opinion, neither of these interpretations is correct. It would be clear by reading of Clause 10 itself that the provisions of this clause will be attracted after the Licensing Authority has issued the licence to the owners of the units including the petitioners. After having obtained license under Rule 3 which says that no owner or person incharge of a roller flour mill shall manufacture or to cause to be manufactured any wheat products except under and in accordance with the terms and conditions of a license issued thereunder. The license is issued and it is only after the license is issued and certain formalities are complied with that the power in the Licensing Authority to issue such directions would arise. As contended by the learned Counsel in this case, the petitioners are at the threshold and they have been repeatedly pleading with the respondents to grant license under this order. In our opinion, the submission is well founded and there is no question of issuing any direction for which the concurrence of the Union of India is required, because no license has been so far issued in this case. That disposes of the first obstacle, which according to the learned Asstt. Government Pleader is in the way of issuing the license.

14. As far as the second submission of the learned Asstt. Government Pleader that unless there is administrative clearance or concurrence, no license can be issued under this order. We are of the opinion that this is again a misconception entertained by the respondents.

15. We have already made it clear in the earlier part of our judgment that the petitioners not having been required to take out the license under the Industries (Development and Regulation) Act, 1951 or to obtain COB license, we fail to see as to how the administrative concurrence or clearance of the Government of India is required in this case and how for that reason alone the respondents have not been able to issue the license to the petitioners.

16. The learned Counsel Shri Manohar has further submitted before us that the discretion to grant or refuse to grant a license is vested absolutely in respondents and especially in respondent No. 2 who is the Licensing Authority under the said

rules. If that be so, it is for that authority to decide the application without waiting for any direction of any other authority i.e. in this case the concurrence of the Government of India or for any other extraneous material. This submission is well founded and it is hardly necessary to state that this proposition has been laid down and reiterated by several decisions of the Supreme Court and of the House of Lords in England. The learned Counsel relied on the passage in D.C. Smith's "Administrative Law" dealing with principles governing the exercise of discretionary power which the respondent No. 2 possesses in this case. He emphasised the following observation :---

"The authority in which a discretion is vested can be compelled to exercise that discretion (in this case by a writ of mandamus) but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. The authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising a discretion in each individual."

The learned Counsel also relied on the passage in "The Principles of Administrative Law" by M.P. Jain and S.N. Jain, Third Edition at page 512 which is as under :---

"Where discretion has been conferred on an authority, it is expected to exercise it by applying its mind to the facts and circumstances of the case in hand. If the authority takes action without applying its mind to the case before it, the action will be bad."

The situation of non-application of mind by the authority concerned arises when it does not consider the matter itself but exercises the discretion under the dictation of superior authority. Several decisions of the Supreme Court are referred to in support of this well known proposition of law.

17. The first of such case was decided by the Supreme Court in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, The consideration of that case involved a question as to whether the Commissioner of Police for Greater Bombay invested with the power to grant the licence for construction of a cinema house could have refused such permission on the ground of the orders of the superior authority i.e. a Minister in that case. The Supreme Court repelling the contention that exercise of such a power would depend on the superior authority observed as follows :---

"The power to grant the licence was vested in the Commissioner and not in the State Government and could only be exercised by him at his discretion. The discretion vested in the Commissioner of Police under Rule 250 had been conferred upon him for public reasons involving the convenience, safety, morality and welfare of the public at large and such power invested in the public authorities must be exercised by them only and not at the dictates of any superior authority."

In that case the Commissioner granted licence for construction of cinema on the

recommendation of the Cinema Advisory Committee but later cancelled it at the direction of the Government. The Supreme Court held that the cancellation order was bad, as it had come from the Government and the Commissioner merely acted as a transmitting agent.

18. We have already observed that the respondents had either delayed or deferred granting a licence under the Wheat Roller Flour Mills (Licensing and Control) Order, 1957 under the misconception of law that administrative clearance or concurrence from the Union Government was required and in absence of such administrative concurrence and clearance the respondents were unable and powerless to grant such a licence. The correspondence between the respondents and Union Government indicate that the respondents have been anxious to give the licence but for the administrative concurrence from the Central Government. We are unable to accept the stand taken by the respondent in the affidavit also. Their earlier orders must be judged by the reasons mentioned and cannot be supplemented by fresh reasons mentioned and cannot be supplemented by fresh reasons in the shape of affidavits. The conduct of the respondents in delaying to grant licence cannot be justified on the grounds which are not sought to be advanced by way of affidavit. It will be of some benefit to take into account the observations of Bose, J., in *Gowardhandas Bhanji's* case (supra) in paragraph 8 which are reproduced below :---

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

"Orders are not like old wines becoming better as they grow older. A Caveat"

19. Reliance is placed by the learned Counsel for the petitioners on a number of Supreme Court decisions but, in our opinion, it would be sufficient to refer only to some of them in support of the submission that an authority in which the power is vested alone can take the decision and such discretion cannot be dictated by other authorities for extraneous reasons.

20. *The Purtabour Company Ltd. v. Cane Commissioner of Bihar and others*, AIR 1970 S.C. 1897 was a case in which the Cane Commissioner was empowered to pass necessary orders under Sugar Cane Control Order. He had excluded 99 villages from the areas reserved by him in favour of the sugar company. The only reasons assigned by him was that he had been dictated by the Chief Minister to impose his direction on the Cane Commissioner. The Supreme Court again reiterated its earlier decision and pointed out that the Sugar Cane (Control) Order vested absolute discretion in the Cane Commissioner and this power was exercisable by him alone. Therefore, he alone should have exercised the power

and could not have abdicated his responsibility in favour of the State Government or the Chief Minister. In our opinion, in the present case also the Union Government's insisting on its administrative clearance, even in respect of those units which were not covered by the definition of industrial undertaking, is wholly unwarranted and amounts to interference with the discretion vested in the State Government under the said order.

21. In *Orient Paper Mills Ltd. v. Union of India*, AIR 1968 S.C. 48 in para 9 of the judgment after making reference to the earlier authorities in *Mahadayaal Premchandra Vs. Commercial Tax Officer, Calcutta and Another*, and in *B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others*, Hegde, J., who delivered the judgment for the Bench had approvingly quoted certain observations of Gajendra, C.J., in *Rajagopal Naidu's* case. The relevant observations are of great assistance in deciding this case and they may be briefly referred to as follows :---

"It is of the essence of fair and objective administration of law that the decision of the Judge or the Tribunal must be absolutely unfettered by any extraneous guidance by the executive or administrative wing of the State. If the exercise of discretion conferred on a quasi judicial Tribunal is controlled by any such direction, that forges fetters on the exercise of quasi judicial authority and the presence of such fetters would make the exercise of such authority completely inconsistent with the well accepted notion of judicial process".

22. There is no dispute and none has been raised before us by the learned Assistant Government Pleader that the respondents and especially the respondent No. 2 in exercising his powers in issuing orders acts quasi judicially. There is no difficulty in holding that there is a lis and the respondent No. 2 is vested with quasi judicial powers whether to grant or refuse to grant the licence. By reading the provisions of the order, he has to make up his mind whether to grant or refuse to grant licence. Though under misconception of law, the respondents have been delaying granting of such a license, in our view, they were not justified. Their misconception should have been clear by the two communications addressed by the Union of India to them that the petitioner's unit was not covered by the definition of "Industrial Undertaking" and neither license under the Industries (Development and Regulation) Act, nor Carry on Business license was necessary. Even then, the respondents insisted that in absence of such an administrative concurrence they could not have granted licence to the petitioner. As stated above, in our view, the respondents have completely misread their powers and have unnecessarily depended for the administrative clearance. However, the only relevant case which we think is of again some assistance is *Purtabour Co.'s* case (supra). In para 15 of that judgment, the Supreme Court has again referred to *Gowardhandas Bhanji's* case (supra) as well as *State of Punjab and Another Vs. Hari Krishan Sharma*, It has been observed therein that the State Government was not justified in assuming jurisdiction which had been conferred on the Licensing Authority by section 5(1)

and (2) of the Punjab Cinemas (Regulation) Act. It is not as if the Union Government is interfering in its appellate judicial power in this case. This is interference in the jurisdiction vested in the Licensing Authority i.e. respondents.

23. The learned Counsel for the petitioners also relied upon certain observations in the well known case of *Padfield v. Min. of Agriculture etc.*, 1968 (1) All.E.R. 694. In that case, all Law Lords had unanimously held though for different reasons that when representations were made to the Minister by the members of the Milk Marketing Board, it is the minister who ought to have decided those objections. In that case, the minister had declined to take the decision and the three law Lords held that under the relevant provisions of the statute, the minister was bound to exercise it lawfully not to misdirect himself in law nor to take into account irrelevant matters nor to omit relevant matters from consideration. It was further observed by one of the Law Lords that it was the duty of the minister not to act so as to frustrate the policy and objects of the Act of 1958. Another Law Lord, Lord Hodson in the same judgment observed that a person entrusted with the discretion must direct himself properly in law. He must exclude from his considerations matters which are irrelevant to the matter that he has to consider. If a minister has complete discretion under the Act, the only question was whether he had exercised it lawfully. These observations of the House of Lords were relied upon by the learned Counsel for the petitioners in support of his submission that deferring or delaying grant of licence in this case, though did not amount to an outright refusal to consider the matter, the respondents have certainly taken into account irrelevant or extraneous considerations though purely under misconception of law. In our opinion, the submissions are well founded and, as indicated above, supported by the observations of the House of Lords in *Padfield's* case (*supra*) as well as several decisions of the Supreme Court. The petitioners are entitled to succeed on this ground alone that respondents have taken into consideration irrelevant and extraneous considerations in delaying or deferring the decision of grant of licence and have abdicated exercise of authorities vested in them.

24. Secondly, the learned Counsel for the petitioners also submitted before us that in response to the press note issued on 12-9-1979 that the petitioner thought of installing a unit for producing wheat produces. The petitioners had fulfilled all the conditions mentioned in the press note. The respondents have not only not disputed it but in fact recommended the case of the petitioners with the Union Government that the unit of the petitioners being only unit the entire State of Maharashtra should be granted an administrative clearance expeditiously. The learned Counsel for the petitioners has drawn our attention to the averments of the petitioners that in a time bound programme, the petitioners have purchased the land; have imported certain machinery; installed it and spent about over 40.00 Lakhs of Rupees. In this background the learned Counsel has submitted that respondents are now estopped from delaying, deferring or refusing licence on the grounds which are not relevant. Whether principle of promissory estoppel is applicable against the Government has been the subject matter in a very well

know judgment in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, After reviewing the entire law in India as well as in United Kingdom and in America. His Lordship Bhagwati, J., who delivered the judgment for the Court has come to the conclusion that doctrine of promissory estoppel has also been applied against the Government and all defences to such doctrine of estoppel operative against the Government had been negated. It is not necessary is not necessary for us to go into the detail reasoning of the learned Judge. We respectfully follow that judgment and, in our opinion, it is applicable on all fours to the facts of this case.

25. We are not unmindful that in a later decision in *Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others*, another Division Bench of the Supreme Court has differed as far as an application of doctrine of promissory estoppel against Government is concerned and it has held that doctrine of promissory estoppel is not applicable against the legislative policies of the Government. In para 39 of the said judgment after fully and exhaustively discussing the judgment in *M.P. Sugar Mill's case* (supra) the Division Bench has laid down the scope of the doctrine of promissory estoppel against the Government to the following effect :---

"(1) The plea of promissory estoppel is not available against the exercise of the legislative functions of the State.

2) The doctrine cannot be invoked for preventing the Government from discharging its functions under the law.

3) When the officer of the Government acts outside the scope of his authority, the plea of promissory estoppel is not available. The doctrine of ultra vires will come into operation and the Government cannot be held bound by the unauthorised acts of its officers.

4) When the officer acts within the scope of his authority under a scheme and enters into an agreement and makes a representation and a person acting on that representation puts himself in a disadvantageous position, the Court is entitled to require the officer to act according to the scheme and the agreement of representation. The officer cannot arbitrarily act on his mere whim and ignore his promise on some undefined and undisclosed grounds of necessity or change the conditions to the prejudice of the person who had acted upon such representation and put himself in a disadvantageous position.

5) The officer would be justified in changing the terms of the agreement to the prejudice of the other party on special considerations such as difficult foreign exchange position or other matters which have a bearing on general interest of the State."

26. In paragraph 41, Their Lordship also observed that the correct ratio of (*Indo-Afghan's*), case AIR 1968 S.C. 718 was that the Court can enforce an obligation incurred by an authority on which another has acted upon and put himself in a

disadvantageous position, when the authority resiles arbitrarily or on mere whim or on some undefined and undisclosed grounds of necessity.

27. For the purpose of decision of this case, there is no difficulty in holding that there are no special reasons for the authorities to go back on the representation which they had made in issuing press notes and as a consequence of which petitioners acted to their disadvantageous position. In our opinion, all the four conditions mentioned by Their Lordships in paragraph 39 of the judgment are applicable on all fours in the facts of this case. This Court, therefore, has power to enforce the scheme under the Wheat Roller Flour Mills (Licensing and Control) Order, 1957 and we are also of the opinion that though under misconception, the officers especially respondent No. 2, cannot arbitrarily act on mere misconception that too ignoring the permissions given by the respondents on some undefined and undisclosed grounds. In this case, the grounds are disclosed that the respondents were waiting for the administrative clearance of the Union of India. However, as we have pointed out earlier that the Union of India itself has taken a stand that the unit of the petitioners was not covered by the definition of "Industrial Undertaking" as defined in section 3(d) of the Industries (Development and Regulation) Act, 1951. We are also of the opinion that the petitioners have changed their position to their disadvantage and the respondents are now deferring or delaying to grant licence on grounds which are neither germane nor relevant for the scheme as laid down in the said order referred to above. We also cannot ignore that the petitioners have invested a huge amount and have been waiting for a licence for nearly a period of one year. In our opinion as we have cleared the misconception under which the respondents were labouring, there should be no difficulty for them in granting the licence applied for on September 16, 1980 by the petitioners under the said order.

28. We, therefore, direct that the respondents shall grant licence applied for within a period of two weeks from today. If the petitioners are required to submit any forms for the administrative requirements or formal compliance, they will do so within a period of a week. The petition, therefore, succeeds. Rule is made absolute. In the circumstances of the case, however, there shall be no order as to costs.