

(1991) 09 PAT CK 0010

In the Patna High Court

Case No : C.W.J.C. No. 2102 of 1991 with C.W.J.C. Nos. 1923, 1976, 2068, 2122, 2130, 2179, 2180, 2217, 2325, 2525, 2534, 2750, 2880 of 1991 and C.W.J.C. Nos. 1481 and 1879 of 1990

Md. Fida Karim and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-09-1991

Acts Referred:

Citation : (1991) 09 PAT CK 0010

Judgement

S.N. Jha, J.—These sixteen writ petitions have been heard together and are being disposed of by a common judgment. Initially, out of these sixteen cases, fourteen cases of the year 1991 were taken up for final hearing at the admission stage itself with consent of the parties, having regard to the nature of the controversy and resultant state of uncertainty prevailing in the State of Bihar in regard to settlement of country liquor shops, India Made Foreign Liquor Shops (Foreign Liquor, in short) and spiced country Liquor shops during the last two settlement years, namely, 1990-91 and 1991-92. The hearing of these cases commenced on 14th August, 1991. When the hearing was resumed on 16th August, 1991, it was stated at the Bar that two other writ petitions in which the opposite view has been canvassed and which were admitted for hearing in March, 1990, are running on the daily board before another Bench. It was suggested that the merits of the contentions raised in the two groups of writ petitions being opposite to each other, the decision in one group of writ petitions may have bearing on the other group of cases and, in fact, there may be a chance of conflicting judgments being passed. The hearing of this case, accordingly, was adjourned to 20th August, 1991 to enable the parties to move the Hon'ble the Chief Justice for appropriate orders. The above noted two cases, being C.W.J.C. Nos. 1481 and 1879 of 1990 have accordingly, been listed before this Bench for hearing and heard. In this Judgment the petitioners of the writ petitions filed in the year 1991 will be referred to as "the petitioners" while the petitioners of the other group of writ petitions of the year 1990, referred to

above, will be described as the respondents". Although the writ petitions filed in 1991 are more or less on the same lines, C.W.J.C. No. 2102 of 1991 has been treated as the leading case and, as such, wherever necessary, reference will be made to the facts stated and the different documents as numbered in the said case.

2. The controversy in these cases relates to the mode of settlement of the right of vend of country liquor, foreign liquor and spiced country liquor under the provisions of the Bihar Excise Act (in short "the Act") and the rules framed there under. Prior to 1984, settlement of country liquor shops was being done by renewing the license according to, what was called, the sliding scale system. In 1984, the State Government decided to make settlement of country liquor shops by public auction. The said policy decision was unsuccessfully challenged in this Court in various writ petitions. The judgment of this Court is reported in, 1984 BBCJ 417. Thereafter, the settlement of such shops was made by holding public auction annually up to 1989-90, the period commencing from the 1st of April of the year and ending on 31st March of the following calendar year.

3. According to the petitioners, during the currency of licensing period 1989-90, the State Government took a policy decision on the basis of recommendations of a high power committee to make settlement of the aforesaid categories of excise shops for five years by renewing the existing licenses (for the year 1989-90), subject to their fulfilling certain conditions such as their satisfactory record of performance, and their agreeing to take settlement for five years, on annual renewal basis, and subject to further conditions, such as enhancement of license fee at the rate of 10 per cent every year and enhancement of the Minimum Guaranteed Quota (MGQ) at the rate of 5 per cent every year. The petitioners have brought on record a copy of the Cabinet Memorandum dated 25th January, 1990, marked as Annexure-7, which, according to them, contains the underlying rationale for the aforesaid change in policy. It is said that pursuant to the aforesaid policy decision, duly approved by the Council of Ministers, the Excise Commissioner, addressed a communication dated 8th February, 1990, a copy of which has been marked as Annexure-8 informing the licensing authorities to take steps for settlement of such excise shops as per the amended policy of the Government. It would not be out of place to mention at this stage that as a necessary sequel to the aforesaid policy decision, on 17th February, 1990 necessary amendments in the Rules, namely, Rule 44 of the Government Rules framed u/s 89 of the Act as Rule 100 of the Board's Rules framed u/s 90 of the Act were made. The aforesaid amendments were duly published in the official Gazette on 7th March, 1990, to come into force on 1st April, 1990. It is said that, in the meantime, individual offers were made to the various existing licensees (of the year 1989-90) to take settlement of the shops in question for five years i.e. for the period 1991 to 1995, as per the conditions mentioned in the aforesaid letter of the Excise Commissioner dated 8th February, 1990 and it is further said that in pursuance of the aforesaid offers, necessary Ekrarnama (agreement) was also executed by the consenting licensees, it is also said that on 7th March,

1990, six months" license fee was also deposited as per rules for the first year of settlement year i.e. 1990-91. According to the petitioners, thus, a concluded contract came into existence on that very date i. e. 7th March 1990, although this was to come into force from the 1st of April. 1990.

4. It would appear that at this very stage the aforesaid Government Policy communicated by the letter dated 8th February, 1990, was challenged in four writ petitions of this Court in which interim orders were passed on 9th March, 1990 and 23rd March, 1990, while admitting the writ petitions for hearing. The aforesaid interim orders (in C.W.J.C. No. 1455 of 1990), in so far as they may be relevant for the purpose of these cases, read as follows:

In the meantime, it will be open to the respondent State and its authorities to make settlement in respect of different country liquor foreign liquor and spiced liquor shops in the State of Bihar for one year only through public auction and in accordance with rules, which existed prior to the amendments introduced in those rules, which are under challenge.... As such it will be open to make settlements of such shops without public auction on the basis of the orders passed by the Commissioner of Excise in appropriate cases. But the period of the such settlements shall not exceed four months. It is expected that before that period this Court shall dispose of this writ application.

**** ** *** Normally, we would have passed a further order not to allow the existing licenses to continue to run the country liquor shops in question beyond 31st March, 1990, in view of the interim order passed above, but the learned Advocate General appearing for the State, submitted that without going into the question whether the communication dated 15 March, 1990, has been issued in terms of the interim order dated 9-3-1990, the revenue of the State should not suffer. The learned Advocate General pointed out that it is not possible to hold public auction before the 31st March, 1990, as such the existing licenses should be allowed to continue on monthly license fee in accordance with the terms of the licenses, which was operative up to 31st March, 1990, till 30th April, 1990 at enhanced rate except in such cases where steps for public auction have already been taken. He also stated that if no arrangement is made up to 30th April, all existing shops have to be closed up to 30th April, 1990, because no license can be granted in the meantime after holding public auction. He also assured the Court that before 30th April, 1990, public auctions shall be held, in accordance with the Rules, and the period of such licenses shall be only one year and subject to the result of this writ application.

Accordingly, we direct that the steps for grant of licenses be taken after public auction before 30-4-1990 in terms of order aforesaid dated 9-3-1990. This direction shall not be applicable in respect of shops where public auction has already been held or are to be held prior to 31-3-1990.

It would appear from the aforesaid orders of this Court that the period of renewal of the licenses was restricted to four months i.e. period ending July, 1990

Applications were later filed for modification of the aforesaid interim orders dated 9th March, 1990 and 23rd March, 1990 pointing out certain difficulties and this Court by its order dated 13th April 1990 modified the previous interim orders in the manner and the extent indicated below:

We, therefore, direct the authorities to renew the licenses for the year 1990-91 on monthly basis until the disposal of this writ application and until that is done the successful bidders in the auction will not be granted license and in case the actual period is less than 11 months then there shall be a proportionate reduction in the bid amount. The orders dated 9-3-1990 and 23-3-1990 are modified to the extent indicated above. We again reiterate that part of the order dated 9-3-1990 passed in C.W.J.C. No. 1481/90 is as follows:

The pendency of this application will not stand in the way of the State Government in reviewing the policy decision as contained in Annexure-1.

The aforementioned writ petitions filed in this Court, however, for certain obvious and unavoidable reasons could not be heard finally and by virtue of and in terms of the aforesaid interim orders of this Court, the licenses continued to be renewed, initially for a period of four months, and, therefore, on monthly basis till the expiry of the licensing year, 1990-91.

5. In the meantime, it appears that the process of reconsideration or review of the previous policy decision dated 25th January, 1990/8th February, 1990 had started in the State Government in view of the observations of this Court in C.W.J.C. No. 1455 and 1481 of 1990, referred to above, that pendency of the cases will not stand in the way of the Government in reviewing its policy, as asserted on behalf of the State. The memorandum dated 7th July, 1990 (Annexure-B to the counter-affidavit), accordingly, was put up before the Council of Ministers proposing that the settlement of country spirit shops spiced country spirit shops and foreign liquor shops should be made by auction-cum-tender mode, according to which the persons interested were required to submit their sealed tender and also to participate in the public auction ; settlement finally to be made with the person making the highest offer whether by way of tender or at auction. The Cabinet approved the aforesaid proposal on 16th August, 1990. Necessary corresponding amendments in Rule 44 of the Government Rules and Rule 100 of the Board's Rules were made on 18th May and 10th June, 1991 respectively.

6. The Excise Commissioner sent necessary instructions to all licensing authorities by his letter dated 25th February, 1991 (Annexure-5) in regard to the proposed mode of settlement by auction-cum-tender for the year 1991-92. Several writ petitions were filed in this Court challenging the aforesaid Government Order/Policy. However, while refusing the prayer for stay of auction for settlement for the year 1991-92, this Court admitted the writ petitions but passed an interim order permitting the existing licenses to take settlement of the shops in question at the highest bid offered at the auction. These existing

licensees are the same persons who had held licenses during the year 1989-90 and continued to hold the same, albeit on temporary basis in the manner indicated above. When the instant writ petitions (of 1991 group) came up for admission before this Bench, as indicated at the very outset, having regard to the nature of the controversy and the state of uncertainty prevailing in the whole State regarding the mode of resultant settlement of the excise shops affecting the excise revenue, it was considered fit and proper to decide these cases finally at the admission stage itself, to which course learned Counsel for the parties agreed and that is how these cases have been heard finally and are being disposed of along with two cases, out of four, filed in 1990 ; the other two having been withdrawn in the meantime.

7. Mr. Soli, J. Sorabjee, appearing for the petitioner in C.W.J.C. No. 2102 of 1991, has chiefly raised three contentions. He has firstly submitted that there is no provision in the Act or the Rules to revoke the decision regarding the grant of license or to curtail or reduce the period of license except as provided under Sections 42 and 43 of the Act and, therefore, license for the period of five years i.e., from 1990 to 1995 having already been granted, in the absence of any order of cancellation suspension or withdrawal of the license, the purported settlement for the year 1991-92 by auction-cum-tender mode has made the aforesaid licenses granted for the period of five years in effective and, in substance, amounts to cancellation or withdrawal of the license, without compliance with the mandatory requirements of Sections 42 and 43. According to the learned Counsel, it is not permissible to do something indirectly which cannot be done directly. Learned Counsel has next contended that even assuming that there is such power to reduce the period of settlement, the Government is estopped from doing so on the principle of promissory estoppel. The third and the last contention raised by learned Counsel is that in any event, the exercise of power, on the facts of the case, is arbitrary, irrational and patently unreasonable and therefore, is violative of the constitutional mandate of Article 14. As regards the effect of the aforesaid order of this Court in the earlier group of writ petitions filed in 1990, it was submitted that those orders are only interim in nature and do not determine the rights of the parties, which are still to be determined on account of pendency of those writ petitions and unless it is held finally that the previous policy of the Government in regard to making settlement for five years is arbitrary and/or against public policy and, therefore, in conflict with Article 14 of the Constitution, it cannot be said that merely because this Court had passed certain interim orders enabling the existing licensees to carry on their business on the basis of monthly renewal of licenses, with the expiry of licensing period 1990-91, the rights flowing from the contract and/or the license would come to an end. It was also pointed out in this connection this Court never directed the State Government to review its policy of five years settlement and had only allowed the Government to reconsider or review the said policy, notwithstanding the pendency of the cases.

8. The argument of Mr. K.N. Jain, learned Additional Advocate General No. 1

appearing for the State, on the other hand, was that although the settlement was purported to be made in terms of the previous policy for five years, it is apparent from a bare perusal of the aforementioned Cabinet memorandum as also the Government order dated 8th February, 1990 that the said settlement was on annual (renewal of licenses) basis. Accordingly, it was submitted that with the expiry of the license period 1990-91 on 31st March, 1991, and in the absence of any further renewal for the next year, the cause or claim of the writ petitioners, on the basis of those licenses has become in fructuous. In this connection, relying on the provisions of Section 45 of the Act, it was submitted that no person to whom any license has been granted in the Act can claim renewal of such license as a matter of right. It was, accordingly, submitted that the submission of Mr. Sorabjee regarding absence of any provision for curtailment or reduction of the period of license has got no relevance. Alternatively, Mr. Jain also submitted that the impugned action will amount to in order of withdrawal of license as provided u/s 43(1)(b) of the Act.

Apropos to the question of applicability of principle of promissory estoppel, Mr. Jain submitted that there cannot be estoppel against the Government in exercise of its legislative, sovereign or executive powers. More so while the Government is dealing with the matter of privileges of parting with the right of vend in excisable articles. Mr. Jain in this connection pointed out that the promise which is sought to be enforced against the State is contrary to law inasmuch as on 7th March, 1990 there was no law authorising settlement of liquor shops for a period of five years. According to him, it is true that necessary amendments had been made in the rules but they were to be effective from the 1st of April, 1990 and, therefore, prior to that date settlement could have been made only for one year as per the then existing rules. He has also pointed out in this connection that no right can be said to accrue in favor of any person unless a license is duly granted and issued in his favor. Therefore, even if a contract providing for five years settlement is said to have been entered into between the parties on 7th March, 1990 that can be of no avail to the petitioners since as on that date there was no legal sanction for making settlement for five years and so far as the period commencing from the 1st April, 1990 is concerned, the "license" granted in favor of the petitioners being only for one year and that period having already expired on 31st March, 1991, the petitioners cannot maintain his claim.

9. Mr. Ram Balak Mahto, learned Advocate General, who also later appeared on behalf of the State, submitted that the underlying idea behind both the policies has been the augmentation of revenue i.e., to serve public interest, and they are not intended to serve public interest, and they are not intended to serve individual interests. He pointed out that even in the old policy, auction system had not been done away with completely nor the right of transfer of license was discontinued. Dealing with the question of applicability of the principle of promissory estoppel is a right in equity, which is not in favor of the petitioners. According to learned Counsel, there was no "promise" to make settlement for five years and as a matter of fact, as would appear from the memorandum dated

25th January, 1990, the letter dated 8th February, 1990, as also the departmental instructions as contained in the letter dated 20th February, 1990 (Annexure-9) accompanied by the copy of sale notification in Form No. 127, the grant of license was on annual basis, renewable on fulfillment of certain conditions for one year only at a time and subject to any change in policy. In the absence of any right of renewal, both in terms of Section 45 of the Act as also in terms of the aforementioned documents, no promise could be said to have been made for making settlement for five years. He also pointed out that it is not a case where a person can be said to have "altered" his position inasmuch as the petitioners are the same very persons who were licensees earlier also i. e. during 1989-90. Deposit of six months' license fee was not a new condition and as per the sale notification, whether it is settlement for five years or one year deposit of six months' license fee is a condition precedent for grant of license.

Learned Advocate General also submitted that not only on account of pendency of the writ petitions in this Court challenging the policy decision a cloud had been created on the validity of the said policy, but it was also realised that making settlement for five years would give rise to rise to monopolistic tendency, which will not be in public interest. A further consideration that weighed with the Government was that the purported for five years on the basis of "renewal" of the existing licenses (for the year 1989-90) was itself contrary to the provisions of the Act, as contained in Sections 30 to 34. He further pointed out that in the former policy, the interest of revenue was not fully protected inasmuch as a licensees could walk out by surrendering the license even during its currency, giving rise to state of uncertainty. He also pointed out with reference to the averments made in paragraph 13 of the counter-affidavit that new policy of settlement by auction-cum-tender mode has resulted in 25% rise in revenue year 1990-91 whereas the previous policy contemplated a rise of only 10% in terms of the license fee.

10. Learned Counsel for the writ petitioners of 1990 group of cases (C.W.J.C. Nos. 1481 add 1879 of 1990) have submitted that the policy of five years' settlement was discriminatory, denying to them an opportunity to bid for the settlement and, at the same time, giving a favored and unequal treatment to the existing licensees and was thus violative of Article 14 of the Constitution and against public interest.

11. Before considering the merits of respective submissions of learned Counsel, it would be appropriate to have a quick look at the basic features of settlement of excise shops. As has been stated in paragraph 84 of the Board's instructions as contained in the Excise Manual (Vol. III.):

When an excise shop is settled, what is settled is a right to vend certain excisable article in certain locality.

This right of vend of excisable articles is exclusively and absolutely owned by the State and while making settlement the State only parts with this right, which

really is in the nature of privileges, for fees to be fixed in the manner as may be prescribed. This "fee" is nothing but the price of the privileges, which the State grants to an individual and it is open to the State to fix the fee by whatever mode it thinks fit and proper, whether by the mode of auction or tender or, If considered desirable by the Excise Commissioner, without auction or tender at fees fixed in accordance with the sliding scale sanctioned by him or at fixed fee or even by negotiation. The main object for determining the mode of settlement is augmentation of revenue i.e. public interest and nothing beyond that. The State is competent to regulate the trade in intoxicants in a manner different from other trade or business. While doing so, it is open to it lay down or fix the criteria or manner of settlement to ensure that it gets the best price for parting with its exclusive rights in favor of a private person (s). In the case of Excise Commissioner Uttar Pradesh Allahabad and Others Vs. Prem Jeet Singh Gujral and Others, , while dealing with the aforesaid aspects, the Supreme Court had this to say:

The right of the State to sell the exclusive privilege of selling liquor is undeniable. That the main and important purpose of selling the privilege is to raise revenue for. the State Exchequer is also undeniable. All the States in India have enacted Excise Laws for the purpose of raising excise revenue among other objects. The task of protecting the revenue by securing the best price for the privilege, eliminating possible decrements, has necessarily to be entrusted to the Executive Government and this is what has been provided in all the State Excise Laws. A public auction is considered to be one of the modes of getting the best possible price.

The same view had been taken earlier in the well known case of Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others, and State of Orissa and Others Vs. Harinarayan Jaiswal and Others, . In the latter case, the mode of settlement was tender or auction. I have indicated at the outset that in the State of Bihar prior to 1984, excise licenses were being granted according to what was known as sliding scale system then the Government decided to make a settlement by public auction after making necessary amendments in the Rules etc. The said policy was challenged in this Court in a batch of writ petitions. This Court, while upholding the power of the State Government to amend the Rules provided for settlement by public auction held as follows in its judgment reported in 1984 BBCJ 417:

We do not discover any objectionable element in adopting a mode whereby the true market value of the rights to be parted with can be determined by holding an auction where every member of the public is entitled to offer a bid. The State has adopted a method where nobody is discriminated against and every body can take part in a spirit of healthy competition. The question of revenue may not be of paramount importance but in view of the observations made in paragraph 4 of the judgment of the Supreme Court in The Exsise Commissioner, U.P. v. Premjeet Singh Gujral it cannot be ignored altogether.

Another broad aspect to be noticed in regard to the nature of trade in liquor is that the State has got the power to regulate it in a manner different from other trades. A Constitution Bench of the Supreme Court in *Amar Chandra Chakraborty Vs. The Collector of Excise, Government of Tripura and Others*, outlined the special features of such a trade in these words:

In the case of country liquor, therefore, the question of determining reasonableness of the restriction may appropriately be considered by giving due weight to the increasing evils of excessive consumption of country liquor in the interests of health and social welfare, Principles applicable to trades which all persons carry on free from regulatory controls do not apply to trade or business in country liquor : this is so because of the impact of this trade on society due to its inherent nature.

12. In order to appreciate the submissions of learned Counsel for the parties, it would be worth while first to examine the various aspects of the previous policy. As would appear from the contents of the memorandum dated 25th January, 1990 or the subsequent Government order and communications pursuant thereto, the whole idea behind introducing the policy of settlement for the period of five years was to assure steady rise in revenue. But the policy suffered from certain obvious inherent infirmities. The offer to make settlement for five years by renewal, although subject to certain conditions, such as, satisfactory record of performance during the previous years, was nonetheless available to only such persons, who were holding license during the period 1989-90. When the settlement was made for the year 1989-90 it was only for one year and those, who participated, or those who did not participate, knew at that stage that the settlement was going to be made only for one year. How, during the currency of the license i.e. in the midst of the licensing period, a decision could be taken to settle the shops with the existing licensees for five years which virtually amounts to renewal of existing licenses, subject to further renewal for yet another period, not exceeding six years ; without giving opportunity to the other interested persons from participating in the process. Learned Advocate General submitted in this connection that in view of the provisions of Sections 30 and 31 of the Act, which are mandatory in nature, duty is cast upon the licensing authority to submit proposals showing what licenses are proposed to be granted for the retail sale, also indicating the next period of settlement. This decision to make five years settlement with the existing licensees, however, indirectly had circumvented the procedure laid down under Sections 30 to 34. There appears to be substance in the submission. But, without going into the fineness of the argument of the learned Advocate General, to me, it appears that one could understand the policy decision being taken by the State Government first followed by consequential amendments in the Rule and thereafter making settlement for any number of years not exceeding six years, in terms of amended Rule 44, by holding public auction making it known to one and all that the public auction, which was going to be held, was for a period of five years. When auction was held in 1989, the period of settlement as mentioned in the

sale notification was one year only i.e. 1st April, 1989 to 31st March, 1990.

A person can legitimately make a grievance that had he known that during the currency of the license period, the existing licensees (for that year) would be allowed the option of renewal for five years, he too would have participated, That could have made the auction more competitive, fetching more revenue. In this process, if no auction at all is held and the license is renewed for five years, the prospective bidders are deprived of the opportunity to participate. Whether it can be said, therefore, that the purported settlement for five years by renewal of the existing licenses without giving a chance of participation in the process of grant settlement for the said period would be reasonable, in public interest and in consonance with the mandate of equality enshrined under Article 14. This aspect of the matter came up for consideration before the Constitution Bench in *Amar Chandra Chakraborty's* case (supra) and their Lordships stressed the desirability of public in these words:

The underlying policy of Section 22 seems to be not to allow such an important matter to be decided in the secrecy of office without giving it proper publicity. All the conditions of the proposed grant including the duration are expected to be notified. Such notification would serve also to eliminate chances favoritism and corruption. Section 22 seems also to have its roots in these deeper considerations. Failure to give such public notice was, therefore, in our opinion, rightly considered by the learned Judicial Commissioner to be fatal to the grant of the exclusive privilege to the appellant.

It is obvious, therefore, that an undue advantage had been conferred on the existing licensees (of 1989-90) by purporting to "renew" their existing licenses for a period of five years resorting to what can loosely be called back door method. Thus learned Advocate General appears to be right in taking the stand that the former policy had an inbuilt tendency to somewhat monopolies the business in the vend of liquor, which would not be in public interest. In this connection, paragraph 91 of the Excise Manual (Vol. III), in its relevant part, may be seen, which is as follows:

The real value of a shop is unknown if it remains for a long period in the hands of one man.

Further it would not be out of place to refer to certain passage occurring in paragraph 14 of the Judgment in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, , which reads as follows:

It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State ; such an auction would be both unreasonable and contrary to public interest. The Government, therefore, cannot for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it

reasonable and in public interest to do so.

The Supreme Court further observed that any action creating monopoly would not be in public interest. In my opinion, therefore, the policy as contained in the memorandum dated 20th January, 1990 and the resultant Government orders and the so-called promise pursuant thereto cannot stand the test of the reasonableness. That being the position a question would necessarily arise as to whether it would be proper exercise of power and discretion conferred on this Court Article 226 of the Constitution to interfere in the matter and quash the subsequent policy decision and the follow up action purporting to make settlement by auction-cum-tender mode, the result of which would be revival of the former policy and the consequential Government Orders, which cannot be said to be reasonable or in public interest. It is settled by several decisions of this Court as well as of the Supreme Court that the High Court should not exercise its discretionary and extraordinary power under Article 226 so as to revive a wrong or illegal order. Reference in this connection may be made to the case reported in *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, . The relevant part of the judgment reads thus:

Both the orders of the Government, namely, the order dated March 7, 1962, and that dated April 18, 1963, were not legally passed ; the former, because it was made without giving notice to the Panchayat Samiti, and the latter because the Government had no power u/s 72 of the Act to review an order made u/s 62 of the Act and also because it did not give notice to the representatives of Dharmajigudem village. In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the Government dated April 18 1963? If the High Court had quashed the said order, it would have restored an illegal order it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samiti. The High Court, therefore, in our view, rightly refused to exercise its extraordinary power discretionary in the circumstances of the case.

This Court has consistently held and followed the above rule in all such cases. Reference may be made to only few of them, namely cases of *Abdul Mazid v. State Transport Appellate Tribunal*, AIR 1960 Pat 332 *Devendra Prasad Gupta v. The State of Bihar* 1977 BBJ 543 and *Hari Prasad Mandal s. Additional Collector* 1978 BBJ 575.

13. However, in all fairness to learned Counsel for the petitioners as also learned Counsel appearing on behalf of the State, who have addressed long and painstaking arguments, whatever I have said above, cannot be said to be the end all of the controversy in hand. Adverting (sic) therefore, to the submissions of Mr. Soli, J. Sorabjee, I would first deal with the question as to whether the impugned Governmental action making settlements by auction-cum-tender mode for the year 1991-92 can be said to be curtailment or reduction of the period of license without taking recourse to the power of cancellation, suspension or withdrawal of the license under Sections 42 and 43 of the Act. While dealing with

the salient feature of the Government policy as contained in the memorandum dated 25th January, 1990 and the Government orders/instructions issued pursuant thereto, I have indicated that although the policy contemplated a settlement for five years, it was on the basis of annual renewal of license. In other words, the license even in such cases could be renewed for a period of only one year at a time being renewable for further period on yearly basis, subject to fulfilling certain conditions. Sub-section (2) of Section 22 of the Act provides that no grantee of any privilege under Sub-section (1) shall exercise the same unless and until he has received a license in that behalf. It has been contended on behalf of the petitioners that the instant case is not a case of grant of a privilege u/s 22 but a case of grant of license u/s 20 of the Act. Be that as it may, the principle that is contained in Section 22(2) of the Act is one of general application and it can be said that in all such cases where a grant is to be made in the form of a license unless and until a license is issued to the grantee or settle, no right can be claimed by him in respect of the subject-matter of such settlement or grant. If it is a fact that the settlement, although purportedly for five years, was conditioned or circumscribed by renewal of license every year, it cannot be said that after expiry of a particular licensing year, say 1990-91, the person concerned can claim renewal for the next year i.e. 1991-92 also as a matter of right. I am conscious of the legal position, as it obtains so far as ordinary lease deeds are concerned where a renewal clause constitutes a separate contract by itself between the parties, which can be enforced legally by way of suit for specific performance of contract. However, having regard to the fact that no person can claim any such right of trade in excisable articles, in view of catena of judicial pronouncements, it cannot be said that such a renewal clause, even if it be there, would confer any legal right on the person concerned. It is an admitted position that by virtue of the interim orders passed by this Court referred to above the petitioners herein and others continued to get their existing licenses, as on 31-3-1990, renewed initially for a period of four months and, thereafter on monthly basis, till the expiry of the period i.e. 31st March, 1991. The said period being, thus, over, the right or claim of such licensees by virtue of the license in question must, therefore, be deemed to have become in fructuous and un-enforceable after 31st March, 1991, so far as the terms and conditions of the license are concerned. It would not be out of place to mentioned here that a bare look at the licenses granted to the different persons herein would show that although the period of licenses was mentioned as 1st April, 1990 to 31st March, 1991, and in some cases 1990-1995 it was subsequently changed in view of the interim orders of this Court referred to above. It has to be borne in mind in this connection that although the licenses in some cases might have been granted before 31st of March, 1990, it cannot be denied that they were to come into effect only from 1st of April, 1990 and prior to that this Court had already made interim orders directing renewal of license, initially for a period of four months only. There is no dispute at the Bar that the aforesaid interim orders of this Court were intended to be made applicable not only to the cases of the writ petitioners of those writ petitions but also to all such

similarly situate persons in the State of Bihar. In other words, the interim orders were in the nature of order in remand not in personam. Therefore, in my opinion even if, in some case, the period of licenses might have been mentioned as 1st April, 1990 to 31st March, 1995, this has to be read down in the context of the interim orders of this Court as well as subject to the final decision in the said writ petitions. In my concluded opinion therefore, the instant case is not one of reduction or curtailment of the period of license, as suggested by learned Counsel and, therefore, the question of noncompliance with the provisions of Sections 42 and 43, as alleged by him does not arise.

14. The submission of Mr. Sorabjee, in substance, is alternative in nature. His first submission regarding absence of power to reduce or curtail term of license is based on the grant of license including the terms thereof. His alternative argument based on principle of promissory estoppel, however, is de hors the license and is founded on the contract or the promise which the State Government is said to have made to the petitioners and others that on their fulfilling certain conditions and in the absence of anything adverse against them, the State would make settlement for five years. Accordingly, the moot question that arises for consideration is whether on the facts of the case and in view of the nature of the trade in intoxicants to which such a promise relates the State can be bound by its aforesaid action the principle of promissory estoppel? I shall now endeavor to deal with this question. Before I do so, I would like to express my serious reservations as to whether the principle of promissory estoppel, having regard to the fact that it is a principle evolved by equity to avoid injustice and to promote honesty, can be applied for taken aid of while seeking to enforce the so-called right to deal in excisable articles. Besides the fact that there is neither any inherent nor any fundamental right of any citizen to carry on any trade or business in intoxicants, a proposition that is now too well established to be doubted, I would briefly refer to the celebrated passage in the case of *Crowley v. Christensen* 137 U.S. 86 quoted with approval in *Bharucha's* case (supra). The passage in so far as it is relevant for the purpose of this case, runs as follows:

By the general concurrence of opinion of every civilized and Christian community, there are few sources of crime and misery to society equal to the drama shop, where intoxicating liquors, in small quantities, to be drunk at the time, are sold indiscriminately to all parties applying. The statistics of every State show a greater amount of crime and misery, attributable to the use of ardent spirits obtained at these retail liquor saloons than to any other source.

In the case of *The State of Bombay Vs. R.M.D. Chamarbaugwala*, , Chief Justice as; while dealing with the question of making regulatory provisions to control gambling stated that "Crime is not a business", and upheld the regulatory provisions. In *Sheoshankar v. State of Madhya Pradesh* AIR 1952 Nagpur 58, Paragraph 174, a Full Bench of the Nagpur High Court, after referring to *Miller v. Schoene* 276 US 272 : *Clark v. Haberie Crystal Spring Brewing Co.*, 280 US 384 ;

State Board v. Young Market's Co., 299 US 59 and other decisions as mentioned therein, called out the characteristic features of the trade in intoxicants in these words:

it follows that intoxicating liquor must be regarded as a noxious object. It therefore, ceases to be legitimate object of commerce. What has been rendered contraband cannot be object of "property".

The question, therefore, is that if it is not "property" nor business, but a kind of activity which is inherently vicious and pernicious and opposed to public morality, how can the principle of promissory estoppel, which is based on good conscience and morality and has been evolved to promote honesty in public dealings, so far as State/Public authorities are concerned, be taken aid of for the purpose of compelling state to do something in relation to a "trade" or "business", which in the very nature of it, is opposed to public morality. The underlying idea behind the two concepts appears to be mutually inconsistent with each other and cannot stand together. It is true that in two Bench decisions of this Court, namely, AIR 1975 Patna, 123 and Shree Krishna Gyanoday Sugar Ltd. and Others Vs. The State of Bihar and Others, , relied upon by Mr. Sorabjee, the principle has been applied to cases arising under the Excise Act, but it "would appear that only the facts and the background of the dispute (relating to price and the goods having already been delivered) were different, but also that the question, in the form that I am putting, was neither canvassed nor answered. But, perhaps, if these case can be disposed of on facts, as I am advised to do, it is not necessary to make an in depth examination of the question and to record my concluded opinion on the point, which I reserve for some more appropriate case in future. But I have thought it proper to raise the question so that it may be properly debated and answered.

15. As would appear from the reasons mentioned hereinafter, even if it is assumed for the sake of argument that the principle of promissory estoppel is applicable, on facts/merits also, no such case has been made out by the petitioners in the instant case. As has been said by Justice Bhagwati in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , on which heavy reliance has been placed by Mr. Sorabjee:

It is a principle evolved by equity to avoid injustice and though commonly named promissory estoppel it is neither in the realm of contract nor in the realm of estoppel.

The same learned Judge in Kehar Singh and Others Vs. Chanan Singh and Others, , while outlining the possible exceptions to the applicability of the principles of estoppel stated:

We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires, if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public

authority to the promise or representation made by it, the court would not raise an equity in favor of the person to whom the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it. This aspect has been dealt with fully in Motilal Sugar Mill's case (supra) and we find ourselves wholly in agreement with what has been said in that decision on this point.

In order to decide the question as to whether the principle of promissory estoppel can be taken aid of on the facts of the case it has first to be seen and decided as to where equity lies. This is the real test. Learned Advocate General has rightly submitted that in both the policies the underlying idea was to serve and protect the interest of the revenue and not the individual interest. On reconsideration of the matter, after it was challenged in this Court as being opposed to public policy and being arbitrary and, thus, in conflict with Article 14, it was realised that the policy would, in fact, work out to serve the individual interest of the persons concerned rather than to serve the interest of the revenue. As is well established, the underlying consideration behind the State parting with its exclusive rights and privileges is two-fold, namely, revenue and public interest. Since it was found that the old policy was neither in the interest of the revenue nor in public interest, the Government decided to do away with the policy of settlement for five years. I have already mentioned above the inherent infirmities in the aforesaid policy giving rise to monopolistic tendencies and also giving undue advantage to one class of persons, namely, the existing licensee of the year 1989-90 over all others, which could hardly be said to be in consonance with Article 14 as has been interpreted in several decisions of the Supreme Court in the recent times. That being the position, it is difficult to uphold the contention that the equity lay in favor of the petitioners and they are entitled to enforce their so-called right flowing from the consideration of the equity.

16. It has also to be kept in mind that if the settlement for five years was circumscribed by the clause regarding annual renewal of license depending on the conduct of the licensee during the previous year and also subject to any change in policy, there cannot be said to be any unequivocal promise on the part of the Government or any public authority. If renewal of license after expiry of one particular licensing year cannot be claimed as a matter of right and it is dependent amongst others on consideration of good conduct to be judged by the licensing authority every year, it is difficult to hold that any promise was made, in the sense it is being alleged or canvassed on behalf of the petitioners.

In M.P. Sugar Mills case (supra), it has been held that in order to attract the applicability of the doctrine it is necessary "that" the promise should have altered his position in reliance on the promise." Whether deposit of six months' license fee, on the facts of the case, will amount to "altering" the position, as argued by

the learned Counsel? It is to be borne in mind that the petitioners are the old licensees (of 1989-90) in trade. Deposit of six months' license fee or security money is a condition precedent for grant of license, as per the sale notification, irrespective of whether the settlement is for one year or five years. Therefore, while laying the policy for five years settlement and the consequential Government order or the sale notification, no new condition was laid down. As a matter of fact, except for providing annual enhancement of license fee or MGO @ 10 per cent and 5 per cent, respectively, there was absolutely no other material change in the procedure or mode. But that enhancement would have been effective in the year i.e., 1991-92. Thus, the element of any so-called "alteration is also found to be lacking. In my opinion, therefore, in the absence of either promise" or "altering" one's position relying thereon, no case of promissory estoppel is made out.

17. It is true that in *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, , the Supreme Court in Paragraph 32 of the judgment held that where the State Government decides to grant license to manufacture or sell liquor it cannot be said that the mandate of Article 14 can have no application. However, in the same breath in Paragraph 33 of the judgment it was stated as follows:

But, while considering the applicability of Article 14 in such a case, we must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State Government for grant of licenses for manufacture and sale of liquor. The Court would, in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy of regulating, manufacture and trade in liquor. Moreover, the grant of licenses for manufacture and sale of liquor would essentially be a matter of economic policy where the court would hesitate to intervene and strike down what the State Government had done, unless it appears to be plainly arbitrary, irrational or mala fide.

On the basis of what has been stated above, it would appear that the purported settlement by auction-cum-tender made and the policy underlying the same, is based on consideration of relevant factors, such as, securing the best price and raising of revenue, and is in public interest and therefore, cannot be said to be arbitrary or irrational. On the other hand, the earlier policy, for the reasons stated above, must be held to be discriminatory and contrary to public interest and, thus, violative of the constitutional mandate of Article 14.

18. Before I conclude, I would take notice of one decision taken by Mr. Shivanand Prasad Sinha, in reply, in the case of *State of Andhra Pradesh v. Guntakal Toddy Tappers Co-operative Society* AIR 1976 SC 1676 particularly Paragraph 5 of the judgment, A perusal of the judgment would show that the facts of that case were quite different and distinguishable. licenses had been granted for a period of five years with effect from 1st October, 1982. In August, 1983, rule was amended and there was reversion to settlement on annual basis. Plea was taken that "the State intended to obtain more revenue and when it was found that settlement on

annual basis by public auction was in the interest of revenue, a reversion to the old method of settlement was accepted." Their Lordships found the stand of the State "attractive", However, when it transpired that the State had switched over to three yearly settlement from October, 1983, during pendency of the case, it became difficult to explain the change in policy for the obvious reason that the plea (interest of revenue) could hardly be justified or reconciled in the changed situation. Therefore, in my respectful opinion, the decision in that case was rendered on the facts of the case and does not lay down any law of general application.

19. In the result, all these writ petitions, except C.W.J.C. Nos. 1481 and 1879 of 1990 are dismissed as being devoid of any merit. The other two writ petitions, i.e., C.W.J.C. Nos. 1481 and 1879 of 1990, however, are dismissed as having become infructuous in view of change in the policy. There will be no order as to costs.