
(1998) 07 BOM CK 0078
In the Bombay High Court
Case No : Writ Petition No. 2522 of 1997

M/s. Hindustan Distilleries	Vs	APPELLANT
State of Maharashtra		RESPONDENT

Date of Decision : 03-07-1998

Acts Referred:

Bombay Prohibition Act, 1949 — Section 139
Constitution of India, 1950 — Article 19(1), 226
Evidence Act, 1872 — Section 115
Maharashtra Country Liquor Rules, 1973 — Rule 3

Citation : (1998) 4 BomCR 803 : (1999) 1 MhLj 704

Hon'ble Judges : A.D. Mane, J;A.B. Palkar, J

Bench : Division Bench

Advocate : V.M. Thorat and V.M. Bedre, for the Appellant; S.V. Chillarge, A.G.P., for the Respondent

Judgement

A.B. Palkar, J.—This writ petition, filed by M/s. Hindustan Distilleries, seeks an appropriate writ, order or direction to the respondents, directing them to issue license, known as CL-I, to the petitioner, in pursuance of its application, which the Government of Maharashtra had earlier decided to sanction and in turn, to set aside the order dated 28-5-1997 passed by the Honourable Minister, State Excise, bearing Order No. SUT/1096/21-EXC-3.

Facts are not very much in dispute and therefore, the brief resume will suffice to appreciate the controversy.

2. Petitioner was holding a license for manufacture of Indian make Foreign Liquor, which is known as PLL license under the provisions of Bombay Prohibition Act, 1949 (for brevity, hereinafter, "the Act of 1949") and the Maharashtra Distilleries of Spirit and Manufacture of Potable Liquor Rules, 1966, whereas for country liquor the relevant rules are Maharashtra Country Liquor Rules 1973 (for brevity, hereinafter, "the Rules of 1973").

3. It is not in dispute that under the provisions of the Act of 1949, two types of

licenses are issued by the Government, on compliance with certain requirements of the Rules; viz. (i) PLL license for manufacture of Indian Foreign Liquor and (ii) CL-I license for manufacture of Country Liquor. For the purpose of manufacture of Indian Foreign Liquor, when PLL license was issued to the petitioner, a quota of 5,00,000 liters per annum of rectified spirit was granted. According to petitioner, he could not consume the entire quota for a considerable period and as such, petitioner desired to utilize the remaining quota of about 2,00,000 to 2,50,000 liters of rectified spirit, for manufacture of country liquor and for that purpose petitioner required CL-I license. Accordingly, petitioner applied to the Government, on 17-6-1993, for issuance of CL-I license, agreeing to abide by the conditions as laid down by the Rules and Regulations.

4. On 20-11-1993, the request of the petitioner was accepted and the Government directed the petitioner to comply with certain formalities and a letter to that effect was issued. The petitioner also deposited necessary fees. Even after accepting this request of the petitioner and after compliance with the formalities required, no license was issued to the petitioner for manufacture of country liquor. According to the petitioner, the respondents have issued the licenses to other distilleries from and after the year 1985. However, the Government claimed that they have taken policy decision in the year 1985 that no new or fresh license shall be issued for manufacture of country liquor.

5. According to petitioner, he has deposited Rs. 1,50,000 towards fees by challan with the respondents as required, and also spent Rs. 25,00,000 for erecting the new structure in the same premises, where its factory of manufacturing foreign liquor is situated. The Government had called for report of the State Excise Commissioner, who submitted that in view of the policy decision of the Government taken in 1985, imposing a ban on issuance of new licenses for manufacture of country liquor. Government should take a decision, whether to issue a license or not. This application of the petitioner was in process for considerable period of time.

6. On 20-11-1993, the Government took a decision to issue license to the petitioner for manufacture of country liquor and this decision of the Government was communicated to the petitioner by letter of the even date. As the petitioner had complied with the necessary formalities, they were waiting for the formal reply from the Government for issuance of necessary license. However, since, there was no response from the Government they wrote letters dated 17-6-1993, 28-6-1993, 16-12-1993, 6-5-1994, 27-10-1994, 6-4-1995, 19-9-1995 and 18-1-1996. However, not a single letter was replied by the Government.

7. The petitioner, therefore, knocked the doors of this Court with the writ petition bearing No. 2646/1996. When the said writ petition came up for hearing before this Court, on 6-5-1997, this Court directed the respondents to decide the representation of the petitioner company dated 18-1-1996 within four weeks from the date of order.

8. After this, letter dated 26-5-1997 was received by the petitioner and the petitioner was called for hearing. Hearing took place on 27-5-1997 and vide order dated 28-5-1997, ultimately, license was refused to the petitioner. As such, the present writ petition came to be filed.

9. On behalf of the respondents, reply affidavit is filed by one Shri Pratapsingh Dhumaji Rathod, working as Deputy Commissioner of State Excise, Aurangabad Division. According to the respondents, the Government has considered petitioner's application dated 17-6-1993 addressed to the Honourable Minister of State Excise for grant of license in form CL- I, in pursuance of Rule 3 of the Rules of 1973. It is also admitted that a similar application was addressed by the petitioner to the Secretary to the Government of Maharashtra in Home Department. However, the application was required to be made to the Commissioner in the prescribed format along with challan showing the payment of necessary fees and the Commissioner is required to take further action if he is satisfied about the suitability of the applicant for grant of license. The respondents considered the application and agreed to the request for issuance of CL-I license under the Rules of 1973 on the conditions mentioned in their letter dated 20-11-1993, addressed to the petitioner.

10. After processing the application by the Home Department, it was found that the petitioner had not utilized full quota of 5,00,000 liters of rectified spirit allotted to them. Thereafter, in view of the ban imposed by the Government vide order dated 26-2-1985, which is still in force, Government did not issue license for manufacture of country liquor to the petitioner. The petitioner's license for manufacture of foreign liquor (PLL license) is still in force.

11. The affidavit-in-reply further shows that, PLL license is governed by Maharashtra Distillation of Spirit and Manufacture of Potable Liquor Rules, 1966 whereas, CL-I is governed by the Rules of 1973. Thus, According to the respondents, the import of these two separate set of rules and separate types of licenses issued under the Rules is distinct, having no nexus with each other and even the rates of excise duty are different for these two products. These two types of products i.e. foreign liquor and country liquor, cannot be manufactured in one and the same premises.

12. It was further pointed out to the Secretary that the Government's policy prohibits grant of CL-I license and, therefore, request of the petitioner cannot be granted as it would be contrary to the ban in force and would amount to modifying the policy laid down by the Government vide order dated 26-2-1985 which has been published in the Government Gazette. The matter was thereafter re-examined and considered afresh. It was found that the said policy was in force. It was not modified and therefore, it would not be permissible or in any case proper, to grant such a license to petitioner for manufacture of country liquor. Therefore, according to respondents, the ban continues and it is not possible to accept request of the petitioner.

13. In the petition, the petitioner has given certain instances of CL-I licenses having been issued by the Government after the aforesaid policy decision. One of such instance quoted is of Kosang Co-operative Distilleries. According to the respondents this was not a case of fresh or new license. There are three Co-operative sugar factories, (i) Kolpewadi Co-operative Sugar Factory: (ii) Sanjeevani Co-operative Sugar Factory :and (iii) Ganesh Cooperative Sugar Factory. All the three factories are based in the District of Ahmednagar and the word "Kosang" was adopted to indicate that all these sugar factories have jointly undertaken manufacturing of country liquor under one license and the name itself indicates that the first alphabet of each factory was taken in order to name the Distillery as "Kosang". Subsequently, the request was made to bifurcate the distillery by three sugar factories and in view of this request, different licenses were issued and as such there was no new license issued by the Government after the aforesaid policy.

14. Similarly, the respondents contended that another case quoted by the petitioner of M/s. Nevitad Distilleries Pvt. Ltd., District Raigad also stands on a different footing, inasmuch as, much prior to the ban they were granted Letter of Intent on 7-8-1981. The plant and machinery and other items were ready and extension of time was given from time to time and therefore, in compliance of the letter of intent on fulfilment of the necessary conditions CL-I license was granted to the said distillery.

15. The third example quoted by the petitioner is of M/s. Konkan Agro Marine Industries Pvt. Ltd. Nagpur and according to the respondents it also stands on a different footing, inasmuch as in that case, Letter of Intent was issued much prior to the imposition of ban on 2-8-1973 and therefore, even though license is granted after 1985, it does not mean that the ban imposed by 1985 notification has been relaxed in their case. The case of the petitioner is therefore, totally different. It was considered independently and when the Government found that under the existing policy no new license could be issued to the petitioner, the request has been rightly rejected and the petition deserves to be dismissed.

16. Facts being more or less undisputed the question is of interpretation of Rules, the policy decision of the Government and its application, specially to the petitioner's case with reference to other distilleries to whom licenses have been granted.

17. On behalf of the petitioner Shri Thorat, learned Counsel contended that this Court should take into consideration that while granting permission to the petitioner the Government had initially considered the policy decision of 1985 imposing ban on new licenses for manufacture of country liquor and after taking conscious decision had decided to issue license to petitioner. It was further contended by learned Counsel that, the ban contained in the notification of 1985 does not control the powers of the State Government under Rule 3 of the Rules of 1973. It was further contended that Rule 3(2) of the Rules of 1973 applies to the powers of the Commissioner and the prohibition or ban, if any, is to the

exercise of power's by the Commissioner of State Excise. The power of the Government u/s 139 of the Act of 1949 are intact and are unaffected by the aforesaid policy decision as declared in the Government Notification. In any case, action of the Commissioner, rejecting license to the petitioner by pointing a finger to the said notification is unjust, unfair and also inequitable and illegal as the Government had earlier taken decision on being made aware of the said policy. In the end, it was contended that by taking a conscious decision at the highest level of the Government and by communicating the same to the petitioner, Government induced petitioner to act in pursuance of that decision. The petitioner also spent considerable amount, took necessary steps and therefore, the Government is now estopped from taking a contrary stand in respect of its own earlier decision which induced the petitioner to change his position materially. This has resulted in manifest injustice to petitioner. The treatment meted out to petitioner is also discriminatory when other persons have been issued licenses which are for all practical purposes new licenses issued.

18. As against this, Shri Chillarge, learned Assistant Government Pleader submitted that the Government has taken policy decision long back in the year 1985 and in pursuance thereof, no license was issued and as such the petitioner's request being for issuance of new license for the manufacture of country liquor was rightly rejected. Further according to him, the instances relied upon by petitioner are not of issuing new licenses but they all pertain to the renewal of old licenses and, therefore, no reliance can be placed on those instances for considering the case of the petitioner, which was properly considered by the respondents. Even assuming that other persons were granted license in breach of the policy that cannot be a ground to urge that similar wrong action be repeated in petitioner's case.

19. The powers for issuance of license under the Act of 1949 are conferred on the Commissioner of State Excise and no other alternative arrangement is made by the State by issuing license. The Government had made its intention abundantly clear in totally prohibiting issuance of new licenses and after the said policy, it is within the powers of the Government to take an appropriate decision. As regards the communication sent to the petitioner, it was contended that this was probably without reference to the policy decision of the year 1985 and in any case, if it was wrongly issued, the petitioner cannot take advantage of the same and the Court cannot direct the Government to issue license on the basis of such communication.

20. We have carefully considered the arguments of the learned Counsel appearing for both the sides and we find sufficient force in the arguments advanced by the learned Counsel for petitioner.

21. In order to appreciate the merits of the arguments, it is necessary to refer to the certain provisions of the Act of 1949 and the Rules of 1973 framed thereunder for issuance of the license. Section 139 of the Act of 1949 deals with the general powers of the State Government in respect of licenses etc. The

section begins with the non obstante clause, "Notwithstanding anything contained in this Act or Rules made there under .Therefore, the powers of the State Government are not withstanding the provisions of the Act and the rules framed thereunder and/or by general or special order, the State Government can take the actions, stated in further sub-sections of the said provision. So far as the case in hand is concerned, the Rules of 1973 are only material, inasmuch as the petitioner already has a license for manufacture of Indian Foreign Liquor i.e. PLL license. The provision of Rule 3(2) of the Rules of 1973 is as below:

"If the Commissioner is specified (sic) that the materials satisfied (sic), utensils, premises, plant and implements or apparatus to be used in connection with the manufacture of Country Liquor and arrangements for the storage and issue thereof are suitable, he may, with the previous sanction of the State Government, grant a licence in Form C.L.I, to the applicant (hereinafter referred to as manufactory licensee) on payment of fee (inclusive of consideration) of rupees fifty thousand (Rs. 50,000) or may, after recording the applicant of the decision therefore refuse to grant it, and inform the applicant of the decision....."

22. The policy decision of the Government is contained in the Government Gazette (Part IV) published on 26-2-1985, and the same is as below:

"In exercise of the powers conferred by Clause (a) of sub-section (1) of section 139 of the Bombay Prohibition Act, 1949 (Bom. XXV of 1949), the Government of Maharashtra, from the date of publication of this order in the Official Gazette, hereby prohibits the grant of licences in Form C.L.I, under sub-Rule (2) of Rule 3 of the Maharashtra Country Liquor Rules, 1973 for the manufacture of country liquor throughout the State.

2. For the removal of doubts, it is hereby declared that nothing in this order shall attract the operation, of any such licensees which are in force immediately before the date of commencement of this order or the renewal thereof.

(Underlining is ours)

23. At this stage, it will be worthwhile to point out that the notification declaring the Government Policy clearly applies to sub-rule (2) of Rule 3 of the Rules of 1973, which specifies the powers of the Commissioner, and cannot be construed as controlling the powers of Government which are clear from the provision of section 139 of the Act of 1949.

24. Shri Chillarge, learned Assistant Government Pleader has produced the concerned file pertaining to the case of the petitioner, before us. At page 5 of the said file, there is a note of the Secretary, dated 18-11-1993, wherein the Secretary after taking into consideration the note put up by the Deputy Secretary, raising two different objections to the grant of CL-I license, in view of the policy decision of 1985, stated;

"2. Government Notifications in respect of licensing and other matters pertaining to the alcohol industry, both potable and industrial, reflect changes made from

time to time in Government's policy in this regard. We are all aware of the new economic policy in which maximum freedom to entrepreneurs to invest their money is given to produce the goods which may be required by the consumer and these matters are not decided either in Udyog Bhavan, Delhi, or Mantralaya, Bombay. It is for this purpose that the policy of "Board Banding" has been introduced to permit a Unit, which has a license for manufacture of particular brand of goods to manufacture other similar goods. For instance, Bajaj Auto Ltd., which is licensed to manufacture scooters, can manufacture cars or trucks and conversely Telco, originally licensed to manufacture trucks, is now, without the need of a fresh license, manufacturing cars.

3. Government of India's General policy about new capacity for potable alcohol should be seen in this light. After the liberalisation of price and distribution control of molasses and alcohol, a broad guideline that percentage of potable alcohol should not exceed 35 or 40% of the total molasses based alcohol produced in the country has been given. Within this broad parameter, a Unit licensed for manufacturing one type of potable alcohol need not be restricted to that particular item. It is for this reason that I am of the opinion that instead of keeping the issue restricted to the issue of a fresh license, where an initial letter of intent to the party is required, we may grant him a CL I license, basically as a measure of broad banding mentioned above, since he already holds a IMFP license. The fact that the unit has not even utilised the full 5 lac liters of alcohol allotment given to it in the Control dispensation, has proved that there is no demand for his IMFL product....."

This was put up for consideration of the concerned Minister and after careful consideration and necessary deliberations in the Department, letter conveying the Government's decision was sent to petitioner, a copy of which is produced at page 24 of the paper book as Exhibit C.

25. In categorical terms, the letter Exhibit "C" states that Government has considered the claim of the present petitioner and has agreed to the request for issue of CL-I license under the Maharashtra Country Liquor Rules, 1973, using the same facilities in the existing unit under PLI license. It is further stated that it will be subject to the upper limit of utilization of 5 lac liters of rectified spirit for this purpose.

26. It is in pursuance of this decision of the Government, communicated under the signature of the Secretary of the concerned department, that petitioner undertook several steps i.e. deposited Rs. 500 by challan and also deposited of Rs. 1,50,000 as license fee. The petitioner also erected a separate unit for manufacture of country liquor in the same premises by spending Rs. 25,00,000 and also invested the amount in the National Savings Scheme as required, and in short, spent a considerable amount and substantially altered his position, placing reliance on the said letter.

27. It is after this that when petitioner was not getting response to his repeated

letters, that he was required to approach this Court by filing earlier writ petition, bearing No. 2646 of 1996, wherein this Court directed the Government to consider the petitioner's case, after giving him an opportunity of being heard, within a period of one month. The petitioner was given an opportunity of hearing in the matter but the Government, ultimately, refused to grant the petitioner license for utilization of the excess quota of rectified spirit for manufacture of country liquor. While passing this order on 28-5-1997, the Government also referred to the cases of other distilleries to whom the licenses have been issued and distinguished petitioner's case on the ground that issuance of a new license is against the policy decision of the Government dated 26-2-1985, referred to above. It is on this background that petitioner questions the propriety, legality or otherwise of the Government order.

28. It needs no elucidation to state that the powers are with the State Government in view of section 139 of the Act of 1949 and the powers of issuing license are delegated to the Commissioner of State Excise by Rule 3(2) of the Rules of 1973, In view of the earlier discussion it is clear that it does not lie in the mouth of the respondents to say that the decision was taken without noticing the policy decision declared in the Government Gazette inasmuch as the policy was very much present to the mind of the concerned authority, specially the Secretary to the Government, who made a specific reference to the note of the subordinate officers and prepared an independent note, which was approved and conscious decision was taken by the Government to allow the petitioner to consume his remaining quota of rectified spirit for the manufacture of country liquor. Therefore, the reliance placed by the learned Assistant Government Pleader on the judgment of the Apex Court, reported in Chandigarh Administration and another Vs. Jagjit Singh and another, is of no avail to the respondents, in which, the Apex Court has observed that:

"We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order...."

This is not a case in which the petitioner has relied on earlier wrong or illegal decision of the Government to support his case for grant of license. If it were

reality so, we would not have even considered petitioner's case further.

29. What has happened in the present case is that after a conscious decision of the government some subordinate officer felt that the decision was running counter to the declared policy of the Government and in view of such Government Policy, note was put up or submission was made to the concerned Minister by the Officer who was admittedly subordinate to the Secretary. On the basis of which the later decision of rejecting the license to the petitioner for manufacture of country liquor was taken. In fact, this decision is also taken by the concerned Minister and is a Government decision. In view of the earlier decision of the Government communicated to the petitioner in clear terms. Inducing petitioner to act upon it and to materially alter his position, the State is challenging its own earlier decision, although it has not come to the Court, but has been brought before us as respondent. It is an established principle that the State, as a petitioner cannot challenge the validity of its own order as it is governed by general principle of estoppel, and if it is debarred from doing so, as a petitioner, the same principle would apply preventing the State from attacking its own decision even if it has come to the Court as a respondent.

30. We are conscious of the fact that this is a case of grant of license for manufacture of country liquor. The State has all the power to impose prohibition and if it takes such a decision, the courts would not come in its way, nor call upon it to change such a policy decision in any manner. However, when the State has taken the decision to allow business of manufacture of foreign liquor or country liquor as legitimate business, to be carried out after following certain procedures and after complying with certain requirements within the parameters of law and the Rules framed thereunder, then the right of the petitioner to carry on the said business cannot be curtailed unreasonably. If it is so curtailed, it would be contrary to the guarantee granted under Article 19(1)(g) of the Constitution of India. We are supported in this view by the judgment of the Apex Court reported in *Krishna Kumar Narula etc. Vs. The State of Jammu and Kashmir and Others*, . In para No, 13 of the said judgment, the Apex Court has observed that:

"A scrutiny of these decisions does not support the contention that the courts held that dealing in liquor was not business or trade. They were only considering the provisions of the various Acts which conferred a restricted right to do business, None of them held that a right to do business in liquor was not a fundamental right."

31. In view of this it can also be examined as to whether while granting licenses to different persons under the provisions of the Act and the Rules framed thereunder the State has followed the policy of pick and choose and has discriminated the petitioner, without there being any reasonable nexus to classify the petitioner's case as belonging to a particular class of cases.

32. Therefore, the policy decision nowhere affects or curtails the power of the

Government for issuance of license. It has only affected the powers of the Commissioner under sub-Rule (2) of Rule 3 of the Rules of 1973 and the State cannot take shelter under the said policy decision for curtailing its own powers and contend that in view of this policy it has no other option but to reject the petitioner's request.

33. This takes us to consider the grounds on which the respondents attempted to distinguish the petitioner's case. Admittedly, licenses have been issued after 1985 i.e. after the notification in the Government Gazette regarding the aforesaid policy decision of the Government to different distilleries for manufacture of country liquor. The respondent's stand in this regard is that these were the cases of renewal of old licenses or mere bifurcation of the old licenses, to say the least, is contrary to the record produced before us in respect of some other claimants.

34. At page 45 of the writ petition, a letter addressed to another claimant by the department, dated 28-12-1990 is produced. This letter indicates that the said claimant had given a Letter of Intent on 7-8-1981 for three licenses, namely (i) licence in form I for manufacture of spirit, (ii) license in PLL form for manufacture of India made foreign liquor, and (iii) a license in CL-I form for manufacture of country liquor. After complying with the necessary formalities by the said claimant, license was issued in CL-I form for manufacture near Patalganga. District Raigad on condition that new manufactories should be in two separate buildings. Said claimant was also granted permission to shift its factory from another place near Patalganga in Raigad district.

35. The case of Nevitad Distilleries Pvt. Ltd. is also of PLL and CL-licenses. Letter of Intent in this case was dated 7-8-1981 and since no proper follow up action was taken the Government had issued show cause notice in December, 1983 and thereafter the Government considered the request for grant of CL-I and PLL licenses and both these licenses were granted for manufacture of two different types of liquors it was long after 1985 i.e. after the aforesaid policy decision.

36. The case of Kosang Distilleries also stands on similar footing. There was one distillery set up jointly by three Co-operative sugar factories. Subsequently, they decided to set up three separate distilleries. Therefore, the quota of rectified spirit allotted to the "Kosang" was divided and all three distilleries started functioning separately. This was starting three new distilleries in place of one existing distillery as three new licenses were required to be issued and were in fact issued by the Government. The plea that it was not setting up of any new distillery and was only renewal of old license is taken as the respondent has no other reply for having issued three licenses for the first time to three new distilleries starting the manufacturing activity. In all these cases, the argument that it was only a renewal of existing licenses, is required to be rejected outright. Such an argument is advanced to escape out of the situation. In all these cases new license were issued and they are not covered by the later part of the policy of the Government published in Government Gazette dated 28-2-1985.

37. Another case is of M/s. Konkan Agro Industries which was initially situated at Vengurla, in Konkan area. Its earlier license had been cancelled for want of manufacturing activities having not been commenced. The unit was taken over by another owner. Said person proposed to set up two different factories, one at Nagpur and another at Aurangabad, and inspite of this the Government granted license, which was also after the policy of the 1985 and with background of said policy decision in mind, as is clear from the file of the said industry, produced before us. It is, therefore, not possible for us to accept that these were the cases of renewal of licenses. It may be convenient for respondents to contend that it was only renewal but the facts detailed above, clearly show that it was nothing but granting new license to the industries commencing business of manufacturing country liquor and that too after 1985. The statement in the affidavit that these, cases were distinct and were cases of renewal of existing license, to say the least is totally unaccepted.

38. Admittedly, for rejecting the petitioner's request for grant of CL-I license, the Government has admittedly not given any other reason than the policy decision of 1986 and as discussed in detail, that policy decision does not even apply to the decision of the Government and it does not in any way control the decisions of the Government. Had the Government treated the case of the claimants at par with that of the petitioner, while applying the criteria of policy decision of 1985, in that case it ought not to have granted licenses to other claimants in the aforesaid circumstances.

39. The last limb of the argument of the learned Counsel for the petitioner was that the Government having communicated its decision in clear terms to petitioner and petitioner having complied with the necessary requirements and had substantially spent money and altered his position by erecting a separate unit, the Government cannot be allowed to go back on its decision. In this connection reliance is placed on a decision of the Apex Court reported in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, . In this case the appellant before the Supreme Court was given sales tax exemption for the period of three years from the date of commencing of production, which decision of the Government was reiterated and confirmed in various letters sent to the appellant by high ranking officers of the Government, including the Chief Secretary of the State. Relying on this decision of the Government, factory was established at Varanasi and afterwards the Government did not want to abide by the earlier decision. It was contended on behalf of the Government that there can be no estoppel to executive action and in fact in an earlier judgment, said view had been taken by the Apex Court. However, enlightening the legal position and discussing the Doctrine of Promissory estoppel at length, the Apex Court has observed in the judgment:

"Doctrine of promissory estoppel has been variously called promissory estoppel, requisite estoppel, quasi estoppel, and new estoppel . 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 true principle of promissory estoppel seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he should not be entitled to go back upon it, if it would be inequitable to allow him to do so

40. It is further observed by the Apex Court, that it equally applies to the executive action of the Government, although it can never apply to legislative action. This view has been consistently followed in further judgments and for the present purpose it is sufficient to cite judgment of the Apex Court reported in Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI), .

41. We are conscious of the fact that this principle of estoppel cannot be used to compel the Government or public bodies to carry out any promise of representation which is contrary to law or which is outside their authority or power. No such point has been and could be made out in the present case by the respondents. It was within powers of the Government to grant license. The shelter taken by the Government under the policy decision of 1985 is misconceived. Petitioner has substantially altered his position relying on the Government decision and not any decision of an officer of the Government and therefore, it is a fit case in which the Government cannot be allowed to backtrack from its own decision to the detriment of petitioner and we are therefore, convinced that this is a case in which the petitioner deserves the reliefs prayed for.

42. In the result, petition is allowed, the decision of the respondent No. 1 State Government bearing No. SUT/1 096/21 -EXC-3, dated 28-5-1997 is hereby quashed. The respondent No. 1 is directed to issue CL-I license to the petitioner, within six weeks from today which shall however, be limited to its existing quota of five lacs of litres of rectified spirit. This order will not be availed of by petitioner, in any manner, to claim additional quota of rectified spirit. It is, however, made clear that it is sole discretion of the Government to grant or to extend the aforesaid quota if the circumstances so deserve.

Rule is accordingly made absolute in aforesaid terms.

In the circumstances, however, we are not inclined to pass any order as to costs.

Shri Chillarge, learned Assistant Government Pleader orally requests for leave to appeal. Leave refused.

43. Petition allowed.