
(1997) 10 MAD CK 0023
In the Madras High Court

Ravikumar Distilleries Ltd.

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 15-10-1997

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 239

Industrial Development Act, 1961 — Section 25

Pondicherry Village and Commune Panchayat Act, 1973 — Section 122

Citation : (1998) 1 MLJ 222

Hon'ble Judges : P. Sathasivam, J

Bench : Division Bench

Judgement

P. Sathasivam, J.—The petitioner has approached this Court to issue a writ of mandamus directing the respondents to grant the necessary

clearance/licence to enable the petitioner to commence the production of Indian Made Foreign Liquor in its-factory premises at Kuppam village,

Mannadipet Commune Panchayat.

2. The case of the petitioner is briefly stated here-under:

The petitioner is a Public Limited Company registered under the Companies Act, 1956. The object of the company is to carry on the business of

distillers, brewers and other allied activities connected there-with. It is contended that the petitioner applied for the grant of a licence for setting up

of a blending and bottling unit at Pondicherry for manufacturing Indian Made Foreign Liquors (IMFL) before the Excise Department, Pondicherry.

The Excise Department requested the petitioner to approach the Industries Department for guidance by their letter dated 3.1.1995, who in turn

requested the petitioner to approach the Ministry of Food Processing Industries, Government of India, New Delhi. As directed by the Ministry,

according to the petitioner, it again approached the Industries Department, Pondicherry, by its letter dated 4.10.1995 and submitted the

application for the provisional registration for setting up of an SSI Unit for blending and bottling of IMFL. The Industries Department thereupon

issued the provisional Registration Certificate to the petitioner on 16.5.1996 for setting up of an SSI unit for blending and bottling of IMFL with

certain conditions as well as additional conditions. As per the said certificate, the petitioner took further steps and applied to all the concerned

authorities to obtain necessary facilities/clearances. The petitioner purchased lands of more than about ten acres in Kuppam village at a huge cost.

It has secured the necessary clearance from Health Authorities, Fire Service Department, Land Conversion Clearance, Bore-well clearances from

Agriculture Department and also from the Revenue Department to the effect that the above said land is not under any acquisition proceedings.

Finally the feasibility certificate from the Electricity Department for supply of power upto 120 HP has also been obtained. It is further contended

that before commencing construction of a factory, the petitioner also applied to the Inspector of Factories and got the Factory Building Plan

approved vide No. 10-3915/D/CIF & B/97, dated 11.2.1997. The construction of the factory premises is nearing completion. The licence to be

issued ultimately from the Excise Department would be based upon the clearance from the Pollution Control Authorities which is again based upon

clearance from the Commissioner, Mannadipet Commune Panchayat. It is also contended that the said Panchayat published a notice in the

Pondicherry Government Gazette No. 45, dated 5.11.1996 that the petitioner has proposed to set up an industry viz., manufacturing of foreign

liquor and that in conformity with Rule 11 of Pondicherry Commune Panchayat (Grant of Licence and Permission) Rules, 1976, objection, if any to

take up the above industry were invited to reach the Commissioner within 15 days from the date of publication of the said notice in the Gazette.

The said Panchayat by their letter dated 15.10.1996 addressed to various Authorities requesting them to communicate their approval/opinion on

the proposed industry of the petitioner. It is further contended that excepting the Town Planning and Country Planning Department, the Pollution

Control Planning Department, the Pollution Control Authority and the Commissioner, Mannadipet Commune Panchayat and all others have either

granted or signified their approval. Even going by the letter of the Commissioner, Mannadipet Commune Panchayat dated 15.10.1996, it should be deemed that the approval had been communicated. In the net result, it is only the Commissioner, Mannadipet Commune Panchayat, who has to give clearance for which, he could have no objection when all other functionaries had signified their approval. The ultimate licence to be granted by the Excise Department should also be a matter of course, which would have been issued to the petitioner in the normal course. After getting the provisional Registration Certificate, the petitioner has so far incurred expenses to the tune of Rs. 122 lakhs. It is further contended that in view of the oral instructions given by the Government, the other authorities have not cleared the request made by the petitioner. It is further submitted that the provisional certificate was granted on 16.5.1996 that is after the general elections were over and the new council of Ministers have not taken charge. It is also submitted that the Secretary, Industries Department, Government of Pondicherry had placed a note presumably on the instructions of the Lt. Governor of Pondicherry for the consideration of the Cabinet for taking a policy decision as regards the grant or otherwise of such SSI Provisional Registration Certificate to such blending and bottling units for the manufacture of IMFL. Pursuant to the said note, the issue is under consideration of the Cabinet, Pondicherry. In view of the above facts, the respondents are refusing to issue the necessary remaining certificates of clearance applied for by the petitioner. On coming to know of the aforesaid reasons, the petitioner submitted a detailed representation dated 17.1.1997 before Her Excellency the Lt. Governor drawing her attention to the various letters of enquiries received by the petitioner company in which the petitioner has been asked to send samples which cannot be manufactured and sent unless the licence from the Excise Department is issued. It is also stated that in the light of the policy of the Government of India and in view of the decision by the Pondicherry Administration in granting licence to the petitioner, it is not known as to what further policy, the Government of Pondicherry could take in this matter. The whole exercise of re-opening the grant of such a SSI provisional certificate to the petitioner and directing the issue to be placed before the Cabinet for a decision, is totally mala fide besides being wholly illegal and void. It is further contended that any such policy that

the Cabinet might take will only attract the future grant of licenses and such a policy would not affect the grant of licence applied for and granted

already to the petitioner. It is also contended that in law, the Government is perpetual and continues notwithstanding any change in the ruling party

and there is no constitutional or legal bar for the Government or the Council of Ministers to take any decision at any time. In such circumstances,

according to the petitioner, having no other remedy, they approached this Court for necessary relief as claimed above.

3. First respondent has filed a separate counter-affidavit. The defence taken by the first respondent in their counter-affidavit is briefly narrated

hereunder: It is contended that the Department of Industries, Pondicherry issued provisional small scale industries certificate to the petitioner

licensing based on the clearance received the Government of India relating to licensing policy for manufacture of potable alcohol by letter dated

7.8.1995. It is contended that the possession of small scale industries certificate is not at all sufficient for the grant of Excise licence for the

manufacture of IMFL and the same is required to be supported by the clearance of the above mentioned department. It is also clarified that the

policy decision has to be taken by the Government of Pondicherry for grant of licence for manu-facture of IMFL by Excise Commissioner after

obtaining all above specified essential clearance from the concerned departments. It is also stated that even though the petitioner has enclosed

copies of Sale Deed and Land Acquisition Clearance and Power Feasibility Certificate from Electricity Department and No Objection certificate

from the Divisional Fire Officer, it has failed to furnish trade licence from the Commissioner, ""Mannadipet Commune Panchayat, Thirubuvanai,

building plan duly approved by Town and Country Planning Department/Inspector of Factories. No objection Certificate from Pollution Control

Board/Department of Science, Technology and Environment, Pondicherry and permission for conversion of land use and utilisation of bore well

from Department of Agriculture, Pondicherry. It is also contended that as per the communication issued by the Government of India, the power to

grant licence for manufacture of alcoholic drinks entirely vests with the State Government. Further more, the issue of provisional small scale

industry certificate by the Department of Industries is not and cannot be construed to be an issue of final licence. The Department of Excise issue

no licence unless and otherwise any policy decision is taken by the State Government to this effect and communicated to them for issue of such

licence after receipt of all necessary clearance from other departments. No pucca licence was granted at any point of time to the petitioner. The

grant of licence under Excise Act and Rules is not based on any fundamental right and it is on the contrary depending upon the policy of the

Government. It is also contended that especially in regard to issuance of licence in potable liquor trade, the authorities have to scrupulously follow

the requirement of mandatory provision stipulated under the Pondicherry Excise Act, 1970 and the Rules made thereunder. In the matter of trade

in potable liquor of IMFL, the petitioner cannot claim licence as a matter of fundamental right as protected under Article 14 and Art. 19(1)(g) of the

Constitution of India. In the matter of liquor licence of this nature, the Government will have an exclusive say. In the absence of any specific policy

decision taken by the Government, it is not possible for the petitioner to claim pucca licence from the Government. With these averments, the first

respondent prayed for dismissal of the writ petition.

4. The second respondent-pollution Control committee filed a separate counter affidavit wherein it is contended that the matter is pending for

making a policy decision at the Government level about the desirability or otherwise of starting additional units of the type claimed by the petitioner,

in keeping with the directive principles of state policy. They also clarified that the provisional registration certificate does not bind other department

in any manner and they have to examine independently on the basis of their statutory directions and thereafter on the basis of policy of the

Government. When once the policy of the Government is spelt out regarding issuance of license to liquor industry, the 2nd respondent department

would examine other aspects of the matter especially in relation to environment.

5. The third respondent-Chief Town Planner in the Town and Country Planning Department in the Government of Pondicherry, has filed a counter

affidavit wherein it is contended that it is settled law that no citizen is having a legal right to do the trade as a matter of right except and otherwise by

way of a licence in that behalf granted by Government. The third respondent has to follow the procedure, established under the Pondicherry Town

and Country Planning Act, 1969 and the procedure prescribed under Pondicherry

Building Bye-laws and Zoning Regulations, 1972. The third respondent has to scrupulously follow the procedure prescribed under the Act, 1969 and Regulations, 1972 before ever granting permission to the petitioner. The petitioner is to obtain permission from the fourth respondent u/s 122 of the Pondicherry Village and Commune Panchayat Act, 1973 before embarking upon the process of manufacture of IMFL goods. After obtaining permission from the fourth respondent as required u/s 122 of the Act, 1973, the petitioner from the Planning Authority. But the petitioner has unilaterally put up construction totally ignoring and violating all laws governing the grant of license and permission for the construction of the building. Hitherto the Pondicherry Excise Department has not granted licence to the petitioner to manufacture of potable IMFL. So also, the 4th respondent and the Planning Authority have not given permission to the petitioner. As a matter of fact, the fourth respondent also issued stop construction notice to the petitioner- vide their communication dated 21.11.1996 after inspection on 19.1.1996. The plea of the petitioner that promissory estoppel will apply for his case is misconceived and the said principle of promissory estoppel has no application so far as the case of the petitioner is concerned. With these averments, the third respondent prayed for dismissal of the writ petition.

6. The fourth respondent has filed a separate counter-affidavit wherein it is contended that the fourth respondent, commune Panchayat is governed and regulated by the provisions of Pondicherry village and Commune Panchayat Act, 1973 and also governed by Rules framed u/s 123 read with 318 of the said Act, 1973, Pondicherry Commune Panchayat (Grant of licence and Permission) Rules, 1976. Persons who want to put up factory in regard to nature as envisaged u/s 122 should make application to the 4th respondent in accordance with Rule 7 of the said Rules, 1976. The 4th respondent authority is empowered to grant licence under Rule 9 for an application made under Rule 7 seeking permission u/s 122 of the Act, 1973. Before exercising powers under Rule 9, it is bounden duty to follow the mandatory procedure ordained under Rule 10 and 11 of the Rules. In accordance with the mandatory procedure envisaged under Rules 10 and 11 of the Rules, the fourth respondent submitted the application of the petitioner by communication dated 16.10.1996 to various statutory

authorities by sending copy of the same to the petitioner. Based on the communication dated 16.10.1996 the Government of Pondicherry published Gazette Notification on 5.11.1996 vide No. 45 by which the public was put on notice about the proposed industry of the petitioner to manufacture IMFL in conformity with Rule 11. The Gazette Publication was effected both in Tamil and English by which public was called upon to send their objections to the 4th respondent. Pursuant to the Gazette notification dated 5.11.1996, within the stipulated period of 15 days, the residents of Katterikuppam have made objections to the fourth respondent. On inspection, it was found that the petitioner was putting up construction without obtaining permission from the 4th respondent in violation of Section 122 of the Act as well as Rule 9 of the said Rules. Inasmuch as the petitioner has breached the mandatory procedure stipulated u/s 122 of the said Act and has put up unauthorised construction according to his fancies cannot be heard to complain against 4th respondent who has followed mandatory procedure as envisaged under Rules 10 and 11. Absolutely there is no merit in the writ petition and the fourth respondent prayed for dismissal of the same.

7. In the light of the above pleadings, I have heard Mr. V.T. Gopalan, learned senior counsel for the petitioner and Mr. T. Murugesan, learned Government Pleader Pondicherry, for respondents.

8. Mr. V.T. Gopalan, learned senior counsel has raised the following contentions:

(i) Inasmuch as the petitioner was given Provisional Registration Certificate dated 16.5.1996 by the director of Industries for establishment of a factory for manufacture of Indian Made Foreign Liquor (blending and bottling, the respondents are bound to issue necessary licence to enable the petitioner to Commence production.

(ii) On the principle of promissory estoppel, it is not open to the respondents to refuse to grant licence contrary to the Provisional Registration

Certificate issued earlier by the Directorate of Industries. In support of the above contentions, he has relied on the following decisions:

Bihar Distillery and Another Vs. Union of India (UOI) and Others, ; State of M.P. and Others Vs. Nandlal Jaiswal and Others, Doongaji and

Company v. State of Madhya Pradesh (1991) 2 S.C.C. 313 (Supp.). ; Amrit Banaspati Co. Ltd. and another Vs. State of Punjab and another,

and Sulochana Cotton Spin-ning Mills (P) Ltd v. State (Madras) (1995) 98 S.T.C. 125.

9. On the other hand, learned Government Pleader, Union Territory of Pondicherry raised the following contentions:

(i) The petitioner was granted only Provisional Reg-istration Certificate as a small scale unit by the directorate of Industries on 16.5.1996, which is

not a statutory document and hence it is not open to the petitioner to compel the other respondents to grant clearance/licence.

(ii) The petitioner had not made any application on the basis of the invitation made by the Government of Pondicherry. In other words, the

petitioner had voluntarily applied for establishment of Indian Made Foreign Liquor Unit.

(iii) Inasmuch as the Provisional Registration Certificate was not granted by the Government/Admin-istrator of Pondicherry Union Territory based

on which it is not open to the petitioner to claim licence from the respondent.

10. I have carefully considered the rival submissions. 11. It is seen that the petitioner after getting clarification from the Government of India,

namely, the distillation and brewing of alcoholic drinks in small scale sector will not attract compulsory licensing provisions especially the units

under which employ less than 50/100 workers with/without the aid of power, has approached the Industries Department, Government of

Pondicherry, by its letter dated 4.10.1995 and submitted an application form for provisional registration for setting up of an SSI unit for blending

and bottling of IMFL. The Industries Department through the Director of Industries issued provisional Registration Certificate to the petitioner for

setting up a SSI unit for blending and bottling of IMFL with certain conditions as well as additional conditions. A perusal of the said certificate

which is annexed at page No. 19 of the typedset of papers filled by the petitioner shows that the Government of Pondicherry, Directorate of

Industries issued a provisional Registration Certificate in favour of the petitioner to show that the petitioner, namely, M/s. Ravikumar Distill-eries

Limited is provisionally registered as small-scale undertaking/unit. This is dated 16.5.1996. Relying on Clauses 3 and 4 of the said Certificate, it is

contended that the petitioner has made several arrangements by spending nearly Rs. 122 lakhs for land and site development, construction of

factory and building, erection of plant and purchase of machinery etc. He has also secured the necessary clearance from the Health Department

authorities, Fire Service Department, land conversion clearance, bore well clearance from the Agriculture Department and also from the Revenue

Department to the effect that the land is not under any acquisition proceedings. The petitioner has also obtained feasibility certificate from the

Electricity Department for supply of power upto 120 H.P. After getting several clearance, the petitioner has also applied to the Inspector of

Factories and got the Factory Building Plan approved. According to the petitioner, the remaining facilities/clearances are to be obtained from the

following persons:

(i) Clearance from Town and Country Planning Department.

(ii) Clearance from Pollution Control Authorities.

(iii) Clearance from Commissioner, Mannadipet Commune Panchayat, and

(iv) Licence from Excise Department, Pondicherry.

On receipt of the application from the petitioner, the fourth respondent-Commissioner, Mannadipet Commune Panchayat, published a Notice in

the Pondicherry Government Gazette No. 45 dated 5.11.1996 stating that the petitioner has proposed to set up an industry viz., manufacturing of

foreign liquor. The said notification is in conformity with Rule 11 of Pondicherry Commune Panchayat (Grant of Licence and Permission) Rules,

1976. On receipt of the said application, the fourth respondent has for-warded to various authorities requesting them to Communicate their

approval/opinion on the proposed industry of the petitioner. It is also brought to my notice that if any such approval is not communicated within the

prescribed period, it shall be deemed that the approval has been communicated. At this stage, it is submitted that since the Provisional Registration

Certificate was issued on 16.5.1996 after the Gen-eral Elections were over and before the new Council of Ministers have taken charge, the

present Government is reluctant to approve the permission granted by the Director of Industries. One more objection was that the secretary,

Industries Department, Government of Pondicherry, had placed a note presumably on the instructions of the Lt. Governor of Pondicherry for the

consideration of the Cabinet for taking a policy decision as regards the grant or otherwise of such SSI Provisional Registration Certificate to such

blending and bottling units for the manufacture of IMFL and in the absence of policy decision by the present Government, the respondents have

not granted permission even though statutorily they are bound to grant.

12. In the light of the above factual position, the learned senior counsel for the petitioner contended that inasmuch as on satisfaction the application

of the petitioner was considered by the Director of Industries and a proper Provisional Registration Certificate was issued on 16.5.1996 and in

the light of industrial policy 5/97 of the Government of Pondicherry, the respondents are bound to grant licence. In other words, according to him,

on the principle of promissory estoppel, it is not open to the Government to turn back and refuse to grant licence. I shall now consider the

decisions referred to by the learned senior counsel for the petitioner.

13. In Bihar Distillery and Another Vs. Union of India (UOI) and Others, Their Lordships have observed thus:

The power to permit the establishment of any industry engaged in the manufacture of potable liquors including IMFLs, beer, country liquor and

other intoxicating drinks is exclusively vested in the States. The power to prohibit and/or regulate the manufacture, production, sale, transport or

consumption of such intoxicating liquors is equally that of the States, as held in McDowell's case.

14. Relying on a decision of the Apex Court reported in State of M.P. and Others Vs. Nandlal Jaiswal and Others, , the learned senior counsel

submitted that when a State decides to grant right or privilege in relation to intoxicants-its manufacture, storage, export, import, sale and

possession, it cannot escape the rigour of Article 14 and cannot act arbitrarily or at its sweet will. The following passage is very much relied on by

the learned senior counsel:

There is no fundamental right in a citizen to carry on trade or business in liquor. The State under its regulatory power has the power to prohibit

absolutely every form of activity in relation to intoxicants-its manufacture, storage, export, import, sale and possession. No one can claim as

against the State the right to carry on trade or business in liquor and the State cannot be compelled to part with its exclusive right or privilege of

manufacturing and selling liquor. But when the State decides to grant such right or privilege to others the State cannot escape the rigour of Article

14. It cannot act arbitrarily or at its sweet will. "" There is no dispute that when the State decides to grant the right or privilege in respect of matters

relating to intoxicants, the State has to strictly follow the Rules and it cannot escape the rigour of Article 14 or act arbitrarily or at its sweet will.

15. The other decision relied on by the learned se-nior counsel is Doongaji and Co., v. State of Madhya Pradesh (1991) 2 S.C.C. 313 (Supp.).

The following observation has been pressed into service:

The State under its regulatory power, has power to prohibit absolutely any from of activity in re-lation to an intoxicant, its manufacture, possession,

import and export. No one can claim, as against the State, the right to carry on trade or business in any intoxicants, nor the State be Compelled to

part with its exclusive right or privilege of manufacture, sale, storage of liquor. Further when the State has decided to part with such right or

privilege to the others, then State can regulate consistent with the principles of equality enshrined under Article 14 and any infraction in this behalf at

its pleasure is arbitrary violating Article 14. Therefore, when the State deals with the exclusive right or privilege of manufacture, storage, sale import

and export of the liquor through any agency other than the State and invites tenders for the grant of the privilege of establishing or manufacturing

intoxicants, rectified spirit or denatured spirit, spirit (country-made liquor) in a distillery owned or regulated by it, it should conform to the rigour of

Article 14

This is similar to State of M.P. and Others Vs. Nandlal Jaiswal and Others, . It is true that when the State invited tenders fro the grant of the

privilege of establishing or manufacturing intoxicants, rectified spirit or denatured spirit, spirit (country-made liquor) in a distillery owned or

regulated by it, necessarily it should conform to the rigour of Article 14. I have already noted the statement of the learned Government Pleader of

Pondicherry that the Government of Pondicherry by way of a notification has not invited any one to establish Indian Made Foreign Liquor unit. On

the other hand, the petitioner made a voluntary application to register its unit as a SSI unit.

16. On the principle of promissory estoppel, the learned senior counsel cited a decision of the Apex Court reported in Amrit Banaspati Co. Ltd.

and another Vs. State of Punjab and another, . In that case, it is seen that the

Chief Minister, Government of Punjab while meeting the representatives of the trade made a statement that he was interested in encouraging Vanaspathy manufacturing unit in the state. It is also seen that the Director of Industries has also written a letter assuring that concession as announced by the Chief Minister shall be available and further informed that the Government was willing to consider such additional concession which the entrepreneurs may require for implementation of the scheme. It was followed by exchange of correspondence and various meetings between the representatives of the trade and officials of the Government. On that basis, several persons purchased land to establish industries. In such a circumstance, Their Lordships have observed that it is not open to the Government of Punjab to turn round and reject. The following conclusion is very much relied on by the learned senior counsel and the same is extracted herender:

It is, thus, obvious that there was representation to the appellant that it would be entitled to con-cession and incentives announced by the Government if it set up its unit in the focal point. Whether such representation resulted in binding agreement is different issue but the representation coming from the industries Secretary and the Director of Industries in pursuance of Government policy cannot be held to be unauthorised or beyond the scope of authority. The Government functions through its officials and so long they are action bona fide in pursuance of Government policy the Government cannot be permitted to disown it as a citizen can have no means to know if what was being done was with tacit approval of the Government. And if it is found that the representation made by the official concerned was such that any reasonable person would believe it to have been made on behalf of the Government then unless such representation is established to be beyond scope of authority it should be held binding on the Government. It is another matter that even if it is binding it may be contrary to law and therefore unenforceable. In *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, the Government was held bound to grant exemption from sales tax to the sugar mill even though the manufacturer had written letter to the Director of Industries on a news item published for grant of exemption from sales tax, based on a statement issued by the Secretary of Industries which was favourably

replied first by the Director of Industries endorsed later by the chief

Secretary informing the manufacturer that Government was willing to consider the request and necessary form etc. may be obtained from

Secretary, Industries. As is clear from the nothing of the Secretary which by a notification issued by Government was in-cluded in focal point. It

was not denied that by January 1979 the appellant had purchased the land and various other material at a cost of Rs. 15 lakhs and had placed and

order for purchase of plant and machinery of value of Rs. 35 lakhs which was intimated by a telegram sent on January 11, 1969. Even rules were

framed in February, 1969 by sanction of the President of India which provided for refund of sales and purchase tax to new and expanding

industries. All this indicates that the promise was made on behalf of the Government by its officials in pursuance of and in line with the declaration

of policy by the Government that a new unit shall be entitled to concession. Acting on the assurance, both express and implied, the appellate

invested substantial amount in setting up the unit requesting, in the mean-while, for grant of written sanction from the Government which, too, came.

But even if it would not have made any difference in law as the equity arose in favour of appellant not by the letter dated June 16, 1969 but by

altering its position on assurance given by authorities. In Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., it was observed:

Now the doctrine of promissory estoppel is well-established in the administrative law of India. It represents 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 basis of this

doctrine is the interposition of equity which has always, true to its form, stepped in to mitigate the rigour of strict law.

Basic ingredients of promise by the Government, belief of the appellant that it was true and if acted upon shall entitle it to refund of sales tax, and

finally altering its position by investing substantial amount were thus established to invoke prom-issory estoppel against the Government. "" In our

case, a perusal of the file as well as the order dated 16.5.1996 at the most shows that the petitioner was granted Provisional Registration

Certificate as a small scale unit to establish an industry in the Union Territory of Pondicherry. Except this, no other material was placed before, this

Court to substantiate the plea of promissory estoppel. 17. The other decision relied on by the learned se-nior counsel for the petitioner is in the

case of Sulochana Cotton Spinning Mills (P) Ltd v. State (Madras) (1995) 98 S.T.C. 125. In that case relying on the promise made by the

Government-Industries as well as Salestax Departments in G.O. Ms. No. 500, dated 14.5.1990 in the taluks mentioned in the Annexure where an

industry is established the entrepreneurs should be entitled interest free sales tax de-ferral, state capital subsidy, etc. On the basis of the said

Government Order, many persons have established their industries/trade in the backward areas mentioned in the said Government Order. When

the trade claims such benefits after establishment, the same was rejected by the Authorities, after considering the entire Government Order, Their

Lordships in the Bench have held in the following manner:

... G.O. Ms. No. 500 dated, May 14, 1990, has been issued in the name of, and under the order of, the Governor. Therefore it is clear that it is

issued in exercise of the executive power under Article 162 and what it is so, is not disputed before us. As long as it is permissible in law and there

is no prohibition contained either under any Act or under the constitution or under any other law prohibiting the State Government to offer such an

incentive as the one under consideration, the representation made by the State Government through G.O. Ms. No. 500 dated May 14, 1990 to

the industrialists to take advantage of those concessions and establish industries can in unequivocal terms be construed as a lawful promise made

by the State Government to the industrialists. It is also not in dispute that the industrialists acting upon such promise, established new industries and

also commenced production before April 24, 1991. There is no illegality, no lack of bona fides on the part of industries. Everything has been fair

and proper. If that be so, the State Government cannot turn back and cannot withdraw the concession or restrict it. In view of the fact that the

State Government is entitled to exercise the power u/s 17-A of the Act which even if construed as an act of the delegate, in other words, exercise

of the legislative power, the State Government cannot escape from the promise made by it. What applies to the Legislature, does not apply to the

State Government, in other words, there is no estoppel against law, but there is estoppel against the State Government.

A reading of the above decision makes the position clear that since the Government have made a categorical statement in the above referred

Government order, a number of persons have established their industries/trade in the backward taluks as stated in the said Government Order.

Certainly it is not open to the Government to refuse to avail the said concession thereafter. The very same view has been reiterated by the Apex

Court in a decision reported in *Pournami Oil Mills v. State of Kerala* 1986 S.C.C. 728 (Supp.).

18. Now I shall consider the contentions of the learned Government Pleader, As per Section 25 of the Industrial Development Act, 1961, it is

open to the State Government to grant permission to establish an industry if the work force is going to be less than 50/100. He brought to my

notice that as in the decisions referred above by the petitioner there was no specific prom-ise by the Government in the present case in the form of

a Government Order (G. O). In this case, after placing the File before this Court, the learned Government Pleader contended that the initial order

granting Provisional Registration Certificate in favour of the petitioner as a small-scale unit was not granted by the Government. In this regard, he

very much re-lied on Section 2(14) of the Pondicherry Excise Act, Section 2(14) of the said Act defines the word "Government" as follows:

"Government" means the Administrator of the Union Territory appointed by the President of India under Article 239 of the Constitution.

Likewise, the word "Government" is defined in Rule 2(e) of The Pondicherry Excise Rules, 1970 which reads thus:

Government means the Administrator appointed by the President of India under Article 239 of the Constitution.

Relying on Section 2(14) of the Pondicherry Excise Act, 1970 and Rule 2(e) of the Pondicherry Excise Rules, 1970; the learned Government

Pleader contended that unless the Provisional Certificate that unless the Provisional certificate is issued by the Government in terms of the above

referred provisions, the petitioner has no statutory right to compel the Government to issue pucca licence. A careful reading of the above

provisions clearly shows that as far as Pondicherry Excise Act and Rules are concerned,-if any order is passed by the Government means, the

order must be approved or signed by the Administrator of Union Territory of Pondicherry (Lt. Governor). There is no material in our case that the

Provisional Registration Certificate issued earlier in favour of the petitioner has been approved or ordered in terms of the above provisions. In this

regard, the decision of the Apex Court reported in *Devji Vallabhbhai Tandel Ors. Vs. Administrator of Goa, Daman and Diu and Another*, is very

relevant for consideration. Their Lordships of the Supreme Court, while interpreting Article 239 of the Constitution of India and with reference to

power and functions of the Administrators of the Union Territories have observed thus:

The Administrator of the Union Territory appointed under Article 239 is not purely a constitutional functionary and is not bound to act on the

advice of the Council of Ministers. He is not in the same position as the Governor of a State or the President of India in the matter of discharge of

executive functions conferred upon him. Therefore, it cannot be said that the order of detention has to be made only by the Chief Minister and in

the name of the Administrator and not by the Administrator, though it can be made in the name of the Administrator. The Administrator is

Competent to pass an order of detention and to dispose of the representation of the detenu. "" In the light of the provisions referred to in the

Pondicherry Excise Act and Rules as well as the interpretation given by the Supreme Court with reference to Article 239 of the Constitution of

India with regard to power of Administrators of Union Territories in the absence of any specific order by the Administrator, the contention of the

learned senior counsel for the petitioner that on the basis of the Provisional Registration Certificate Government is bound to issue licence cannot be

countenanced.

18. Relying on a decision of the Apex Court reported in *Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI)*, the learned Government

Pleader contended that for the purpose of finding whether an estoppel arises in favour of the person acting on the representation, it is necessary to

look into the whole of the representation made and that the representation must be clear and unambiguous and not tentative or uncertain. I have

already observed that the Director of Industries has merely registered the petitioner's unit as a small-scale unit and issued a Provisional Registration

Certificate in this regard and on that basis, it is not possible for the petitioner to compel the Government to issue licence.

19. As observed by Their Lordships in *Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others*, a citizen has no fundamental right

to trade or business in liquor as a beverage. Activities which are *res extra commercium* cannot be carried on by any citizen. State can prohibit

completely trade or business in potable liquor since trade or business in liquor as a beverage is *res extra commercium*. In view of the law made

by the constitution Bench in the said decision relating to right to carry on trade or business in potable liquor, it is not open to the petitioner to

compel the Government to grant licence unless the Government itself takes a policy decision.

20. Even though some of the decisions cited by the learned senior counsel for the petitioner show that when a State has made a policy statement or

announcement in the form of Government Order (G. O) the same has to be respected and implemented by the Government, such situation did not

arise in our case. In other words, there was no proper order by the Government in terms of the provisions to The Pondicherry Excise Act and

Rules mentioned above inviting the petitioner to establish an IMFL unit at Pondicherry. In such a situation, I am of the view that the decisions cited

by the learned senior counsel for the petitioner are either distinguishable or not applicable to the peculiar facts of this case.

21. Finally in a matter like this, viz., establishment of blending and bottling unit of IMFL there must be a policy decision at the Government level

about the desirability or otherwise of starting additional units in keeping with the directive principle of State policy. Unless and until the policy of the

Government is spelt out regarding the issuance of licence to liquor industry, it is not possible for this Court to issue mandamus to the respondents

to grant necessary clearance/licence to enable the petitioner to commence production of the Indian made foreign liquor in its factory premises as

claimed by them. It is true that respondents 2 to 4 as per the respective provisions applicable to them, have one way or other ought to have

disposed of the applications forwarded to them. In as much as granting permission to IMFL unit has to be considered at the level of the

Government by taking a policy decision, those respondents cannot be blamed for their inability to comply with the request of the petitioner.

22. Under these circumstances, I am unable to accept the petitioner's case and no order or direction can be issued to the respondents to grant

necessary clearance or licence to the petitioner to commence production of IMFL in its factory as claimed by it. Accordingly, the writ petition fails

and the same is dismissed. No costs. I make it clear that the dismissal of the writ petition would not prevent the Government of Pondicherry from

considering the case of the petitioner in the light of industrial policy and also considering the fact that the petitioner had spent considerable amount

towards establishment of IMFL unit on the hope that he would get proper licence from the Government in accordance with law. I also make it

clear that ultimately it is for the Government to take a policy decision if they so desire.