

---

**(1999) 07 MP CK 0062**

**In the Madhya Pradesh High Court**

**Case No : L.P.A. No's. 262 and 313 of 1997**

State of M.P. and others

APPELLANT

Vs

Swami Traders

RESPONDENT

---

**Date of Decision : 23-07-1999**

**Acts Referred:**

Madhya Pradesh Excise Act, 1915 — Section 62

Madhya Pradesh Foreign Liquor Rules, 1996 — Rule 8

**Citation :** (2001) ILR (MP) 1495 : (2001) 1 MPJR 15 : (2001) 1 MPLJ 69

**Hon'ble Judges :** A.K. Mathur, C.J.;Shahi Kant Kulshreshtha, J

**Bench :** Division Bench

**Advocate :** R.S. Jha, Dy. A.G, for the Appellant; Abhay Sapre with Ashok Agarwal, for the Respondent

**Final Decision :** Allowed

---

## **Judgement**

A.K. Mathur, C.J.

Both these appeals arise out of order dated 9-5-1997 passed by the learned single Judge who disposed of a batch of writ petitions by this common order. However, learned single Judge, for disposal of all the writ petitions took the facts given in W.P. No. 1687 of 1996 (M/s Swami Traders vs. State of M.P. and others. into consideration.

Common question involved in the batch of writ petitions was that the petitioners had taken contract for retail sale of country liquor and/or Indian Made Foreign Liquor (IMFL) for various shops of the township. As per condition of Sale Memo, incoming licensee has to compulsorily purchase all the balance stock of liquor of outgoing licensee. The stock left by the outgoing licensee on 31st March has to be purchased by the incoming licensee which includes the cost of the liquor, excise duty and permit fee. Hence, the incoming licensees claimed that they should be given rebate/adjustment of excise duty and permit fee in their new licences.

Petitioner/respondent M/s Swami Traders by filing a writ petition prayed that Annexure.P3 order of Excise Commissioner dated 30th March 1996 may be quashed and a mandamus be issued directing the respondents (appellants herein) to adhere to the conditions of the new excise policy and directing them to give adjustment of the duty and permit fee paid towards the monthly licence fees payable by them of the stock purchased from the outgoing licensee. The Petitioner/respondent also prayed for grant of adjustment of Rs. 3,60,538.00 relating to T.T. Nagar Foreign Liquor Shop in the monthly licence fee and that amount should not be recovered from them.

The petitioner being a registered partnership firm took a contract for retail sale of country liquor for the Bhopal City group of shops by virtue of being the highest bidder in an open auction held in the first week of March 1996 at Bhopal. Before auction could be held, the State Government published terms and conditions of auction and also the system to be adopted for the year 1996-97. It is alleged that as per Condition No. 56 of the sale memo and Condition No. XXV of the General Licence Conditions, new contractor was to compulsorily purchase the balance stock of the outgoing licensee on 31st March 1996. The incoming licensee had no choice but to purchase the balance stock of outgoing licensee and he had to pay excise duty plus permit fee and the cost of the liquor to the outgoing licensee. The same was done by the petitioner and the sale memo for 1996-97 has been placed on record as Exh. P1.

It is alleged that the State of M.P for the year 1996-97 decided to frame a new Excise Policy and a proposal was put before the Cabinet Sub-Committee and after approval of the Cabinet Sub-Committee in February 1996, the new Excise Policy was issued which has been placed on record as Exh. P2. It is alleged that Condition No. 8 was incorporated in the Policy decision issued by the State Government. It was contended that this was a specific policy approved by the Cabinet Sub-Committee. Thereafter, the Excise Commissioner (Madhya Pradesh) issued a circular dated 30th March 1996 (Exh. P3) de hors the new policy issued by the State and by this order/circular, the Excise Commissioner directed all the Collectors of the districts of Madhya Pradesh that no adjustment in the licence fee has to be given to the new licensees on the balance stock of liquor purchased by them from the outgoing licensees and the monthly licence fees has to be calculated only on the stock purchased after 1-4-1996. The petitioner could not get adjustment of the licence fee and the excise duty and permit fee paid on the old stock purchased by them from the outgoing licensees and they were driven to file this petition praying that the communication/order issued by the Excise Commissioner dated 31-3-1996 should be quashed and the petitioner may be given adjustment of the amount of excise duty and fee paid on the balance liquor purchased by them from the outgoing licensees in the monthly licence fee. In short, the contention of the petitioner was that the State government should be estopped from going back from their policy and a mandamus should be issued to the State to give rebate of excise duty and the licence fee on the stock purchased by them from the outgoing licensee as per their policy statement.

Learned single Judge, after examining various provisions of the M.P. Excise Act 1915 (for short the Act) and the Rules framed thereunder, came to the conclusion that in view of Clause 8 of the policy statement issued by the State and the Condition No. 56 of the sale memo, the State is bound by the principle of promissory estoppel. Learned single Judge further held that by virtue of Clause XXV of the General Licence Conditions framed in exercise of powers conferred Section 62 of the Act, the State was under obligation to give adjustment of the excise duty on the stock purchased by the incoming licensee and quashed the order dated 30th March 1996 passed by the Excise Commissioner. Hence, the present appeals have been filed by the State Government.

In order to appreciate the controversy involved in the matter, it may be relevant to refer to certain provisions of the Act. The M.P. Excise Act 1915 (for short the Act) regulates the excise in the State of M.P. Section 62 of the Act confers powers on the State Government to make rules for purposes of carrying out the provisions of the Act. In exercise of this power, the State Government has framed Rules known as M.P. Foreign Liquor Rules 1996 (hereinafter referred to as the Rules of 1996) and General Licence Conditions. We are concerned with General Licence Conditions which are relevant for disposal of the present Letters Patent Appeals. Condition No. II of the General Licence Conditions relates to Payment of fees. Condition No. II reads as under:

II. Payment of fees. - (1) The licence fees for all intoxicant shall be payable at the treasury or, in outlying tahsils, at the sub-treasury, on or before the first working day of each month.

(2) The licence fees for intoxicating drugs and country liquor shall be paid in twelve equal monthly instalments. If a licence fee be not exactly divisible by 12, the remainder left over after division by 12 shall be paid with the first instalment.

(3) No remission or abatement shall be claimable except in accordance with the provisions of Section 32 of the Act, or of rule VII below. An advance deposited as security shall be credited to fees due in the closing months of the year.

(4) If the licence fee of any shop not paid on or before the 7th working day of the month, the Collector shall either prohibit the supply of intoxicant to that shop or order the supply to the defaulter at the selling price.

Condition No. IIA relates to adjustment of excise duty and permit fee against auction amount. Condition No. IIA reads as under:

IIA. Adjustment of Excise Duty and permit fee against Auction Amount. - (1) The auction amount shall be payable in twelve equal monthly instalments. If the auction amount is not exactly divisible in equal monthly instalments the remainder should be adjusted in the first instalment.

(2) The monthly instalment of the auction amount calculated in the manner prescribed in sub-rule (1) for Country spirit and Foreign Liquor Shops shall be deposited in full by challan in the Treasury or in the Sub-Treasury of the Tahsil by

the end of each month in the prescribed budgetary head after adjusting the amount of duty of Country Spirit and the amount of duty and Bottle of Foreign Liquor paid at the prevailing rates against the quantity of country Spirit/Foreign Liquor drawn by the Licensee from the respective Country Spirit Warehouse and the Bonded Foreign Liquor Warehouse (F.L.X.), as the case may be.

(3) In case the duty and/or Bottle fee paid by the Licensee in a month falls short of the monthly instalment as aforesaid, he shall be bound to deposit the balance amount in cash, by the end of the month. The assessment of the payment of monthly instalment of auction amount will be done by 10th of the succeeding month. If auction amount will be done by 10th of the succeeding month. If the balance is not so paid Country Spirit and Foreign Liquor shall be issued to the licensee at such market price as may be determined by the Collector and not at the prevailing rate of duty and bottle fee. The total amount thus recovered by issue of Country Spirit and Foreign Liquor at market price from the licensee, shall be adjusted towards the balance of the monthly instalment payable by the licensee for the preceding month(s). The amount paid by the Licensee towards duty and bottle fee between the period starting from 1st day of the succeeding month and the date of such assessment shall also be adjusted against the arrears of the instalment of Auction amount of the preceding months if any. The issue at market price shall continue as long as it is necessary to recover the balance in the above manner.

(4) No adjustment will be allowed on the amount of duty and/or Bottle fee paid in excess of monthly instalment of auction amount in a month, against the instalment of the next month(s). But this excess amount shall be adjustable against the total Auction amount of that particular financial year. When the cumulative total of the amount of duty and/or Bottle fee paid/deposited and difference of Excise Duty/Bottle fee and monthly instalment of auction amount if any, paid in cash by the licensee together with the advance amount deposited by him at the time of auction/tender becomes equal to the yearly auction amount, the licensee's liability to pay monthly instalment of auction amount shall cease and thereafter the licensee will be allowed rebate on excise duty and bottle fee on the quantity of country spirit and Foreign Liquor drawn by him at the following rates:

(a) When total duty and bottle fee

deposited does not exceed 25%

of the yearly Auction amount.

25% of the prevailing rate of

duty and bottle fee.

(b) When total duty and bottle fee deposited exceeds 25% of the

yearly auction amount.

50% of the prevailing rate of  
duty and bottle fee.

Provided that the licensee will be eligible to avail of the above rebate in the month of February and March only on such quantity of Country Spirit and Foreign Liquor drawn by him which does not exceed double the average monthly drawal from April to January. If the licensee draws more than double the quantity of such monthly average as aforesaid in the month of February and March he shall not be allowed any rebate on Duty/Kbottle fee for country spirit and Foreign Liquor exceeding such double quantity.

Explanation I. "Auction Amount" for the purposes of this rule shall mean the bid received for a shop or group of shops put to auction whether by open Auction or tender system for any period and accepted and confirmed by the Collector or the Excise Commissioner as the case may be.

Explanation II. "Duty" in case of country spirit for the purposes of Clause (a) and (b) under sub-rule (4) relating to rebate shall mean the duty less the cost price of the Country spirit payable to the C.S.-I licensee."

Condition No. XXV deals with Disposal of balances. Condition No. XXV reads as under:

XXV. Disposal of balances. - The following conditions shall apply to the disposal of balances of intoxicants left with a retail vendor after the expiration, suspension or cancellation of his licence:

(a) If the retail vendor has obtained a new licence for the same intoxicant which is to come into force immediately on the expiry of the old licence and is granted for the same premises, he may retain his balance of stock for the purposes of the new licence.

(b) If the retail vendor's new licence is for different premises he must on the expiry of the old licence forthwith deposit his stock with such person as the District Excise Officer may by general or special order appoint for the purpose and shall not remove it thence to the new shop except under a permit granted by an Excise Officer of rank not below that of Sub-Inspector.

(c) If the retail vendor has been granted no other licence, he shall deposit his balance as provided in Clause (b) and, with the previous sanction of the District Excise Officer, may dispose of it wholesale to any other licensed vendor of the same class of intoxicant. The stock shall then be transported to the premises of such retail vendor under permit granted by an excise Officer of rank not below that of Sub- Inspector. If the former licence holder is unable to dispose of his balance within thirty days of the date of expiry of his licence the person to whom the new licence has been granted in his stead or, if no such new licence has been granted, any licensed vendor of the intoxicant may be required under penalty of forfeiting his licence to purchase the intoxicant at such price as the District

Excise Officer may fix and in any quantity not exceeding that which the District Excise Officer may determine to be ordinarily saleable by him in two months:

Provided that if the intoxicant be unfit for use, the whole of it or, if the quantity be unreasonably large, the excess may be destroyed under the orders of the Collector or the District Excise Officer. The vendor shall not be entitled to any compensation for any loss suffered in consequence of action taken under this rule.

It may also be relevant to mention here that the petitioner had submitted that the Cabinet Sub-Committee was appointed and the said Cabinet Sub-Committee made its recommendations. Clause (9) of the recommendations of the Cabinet Sub-Committee which is relevant for our purpose reads thus:

"(9)

"

It is alleged that on the recommendations of Cabinet Sub-Committee, State Government issued a new liquor policy. Condition No. 8 thereof which is relevant reads as under:

"8.

In the aforesaid background, the contention of the learned counsel for the petitioner/respondent was that as per the recommendations of the Cabinet Sub-Committee which came to be issued as a Policy Statement by the State Government, before introducing the new excise policy for 1996-97, it was given to understand that the new licencees/contractors will have to purchase the old stock of liquor of the outgoing licensee and they will be given adjustment of excise duty and permit fee in their monthly instalments of licence fees. On the above promise and representation, the petitioner/licensee gave a bid and thereafter their bid being highest was accepted and they were given licences and accordingly, they started business of sale of liquor in group of shops in Bhopal township. When the rebate/adjustment as professed in the policy of the Government was not given and a clarification was issued by the Excise Commissioner by an order dated 30-3-1996 contrary to the policy, the petitioner approached this Court and pressed into service the principle of promissory estoppel, fairness and reasonableness. Learned Single Judge allowed the contention of the petitioner/respondent and hence the present appeals have been filed by the State.

Contention of the State appellant is that the so called recommendations of the Cabinet Sub-Committee or the so called State Policy issued by the Government can not operate as a promissory estoppel against the State as they are only policy statements and they can not be enforced unless they are incorporated in the Rules. It was submitted that the Rules do not contemplate giving of any rebate or adjustment of the stock purchased by the incoming licensee. Learned counsel for the State submitted that though the liquor contracts are statutory but

only the general licence conditions or the rules can alone be enforced by a writ of mandamus and the policy statement or so called oral assurances given by some of the officials of the State can not bind the State Government and the same can not be enforced in face of the statutory rules or the provisions of law. It is not disputed that the incoming contractors did purchase the stock of the outgoing contractors; but the question is, can the incoming liquor licensee be given adjustment or rebate in excise duty and the licence fee on the stock purchased by him from the outgoing licensee? So far as the statement contained in the recommendations of the Cabinet Sub-Committee and the policy statement issued by the State is concerned, it is not disputed. However, the question is whether such a policy statement can be enforced by virtue of promissory estoppel and whether those Rules or General Licence Conditions contemplate such rebate or adjustment.

Let us first examine General Licence Conditions. The licence F.L.1A is granted under Rule 8 of the Rules of 1996. The clause 12 of the licence says that licensee shall be bound by the General Conditions of Licence. Clause 12 of the licence reads as under:

12. The licensee shall be bound by General Licence Conditions except conditions XIII, XXVII and XXX.

Therefore, the general conditions of licence are applicable to the petitioner and he is bound by those conditions.

As per Condition No. II (1) of the General Licence Conditions, a licence fees for all intoxicant shall be payable at the Treasury or, in outlying tahsils, at the sub-treasury, on or before the first working day of each month. Clause (2) of Condition No. II contemplates that licence fees for intoxicating drugs and country liquor shall be payable in twelve equal monthly instalments and if a licence fee is not exactly divisible by 12, the remainder left over after division by 12 shall be payable with the first instalment. Clause (3) of Condition No. II further lays down that no remission or abatement shall be claimable except in accordance with the provisions of Section 32 of the Act or of Condition VIII of the General Licence Conditions. Clause (3) of Condition No. II further lays down that advance deposited as security shall be credited to fees due in the closing months of the year. Clause (4) of the Condition No. II of General Licence Conditions says that if the licence fee of any shop is not paid on or before the 7th working day of the month, the Collector shall either prohibit the supply of intoxicant to that shop or order the supply to the faultier at the selling price.

Clause (1) of Condition No. IIA of the General Licence Conditions says that auction amount shall be paid in 12 equal monthly instalments and remainder shall be adjusted in first instalment. Clause (2) thereof says that the monthly instalment of the auction amount calculated in the manner prescribed in sub-rule (1) for Country Spirit and Foreign Liquor Shops shall be deposited in full by challan in the Treasury or in the Sub-Treasury of the Tahsil by the end of each month in the

prescribed budgetary head after adjusting the amount of duty of Country Spirit and the amount of duty and Bottle fee of Foreign Liquor paid at the prevailing rates against the quantity of Country Spirit/Foreign Liquor drawn by the Licensee from the respective Country Spirit warehouse and the Bonded Foreign Liquor warehouse (F.L.-X), as the case may be. Clause (2) of Condition No. IIA only lays down that as and when the retail licensee draws liquor from the warehouse, then whatever duty and fee he has paid will be adjusted only from the monthly instalment.

Clause (3) of Condition No. IIA of the General Licence Conditions deals with duty and/or bottle fee paid by the licensee in a month. It says that in case the duty and/or bottle fee paid by the licensee in a month falls short of the monthly instalment as aforesaid, he shall be bound to deposit the balance amount in cash by the end of the month. It further lays down that the assessment of the payment of monthly instalment of auction amount will be done by 10th of the succeeding month and if the balance is not paid, then supply of liquor shall be issued to the licensee at such market price as may be determined by the Collector and not at the prevailing rate of duty and bottle fee. The total amount so recovered at the market price from the licensee shall be adjusted against the balance of the monthly instalment payable by the licensee for the preceding month. This clause further lays down that excess amount shall be adjusted against the total auction amount of that particular financial year. It also permits certain adjustments in the instalments of the auction amount but it certainly does not lay down that against duty or licence fee paid on the stock purchased by him from the outgoing licensee, any adjustment is permissible.

Condition No. XXV, reproduced above, lays down conditions with regard to disposal of balances. It says that whenever a new. license is granted, then new licensee shall be under obligation to take stock of old licensee. Therefore, it is a condition of the licence of the incoming licensee and it is binding on him. It says that for disposal of balance of intoxicant left with the retail vendor after expiration, suspension or cancellation of his licence, if the retail vendor has obtained a new licence for the same intoxicant which is to come into force immediately on the expiry of the old licence and is granted for the same premises, he may retain his balance of stock for the purposes of the new licence. Secondly, if the retail vendor's new licence is for different premises, he must on the expiry of the old licence forthwith deposit his stock with such person as the District Excise Officer may by general or special order appoint for the purpose and shall not remove it for the new shop except under a permit granted by an Excise Officer of rank not below that of Sub-Inspector. Thirdly, if the retail vendor has been granted no other licence, he shall deposit his balance as provided in Clause (b) of Condition No. XXV, or with the previous sanction of the District Excise Officer, may dispose of it wholesale to any other licensed vendor of the same class of intoxicant. Then the stock shall be transposed to the premises of such retail vendor under permit granted by an Excise Officer of rank not below that of Sub-Inspector. If the former licence holder is unable to dispose of his balance

within thirty days of the date of expiry of his licence, the person to whom the new licence has been granted, any licensed vendor of the intoxicant may be required under penalty of forfeiting his licence to purchase the intoxicant at such price as the District Excise Officer may fix and in any quantity not exceeding that which the District Excise Officer may determine to be ordinarily saleable by him in two months. That shows that the new licence vendor is under obligation to purchase the stock of the left over of the intoxicant under the orders of the District Excise Officer and he shall fix the price for that. The Proviso further lays down that in case the liquor be unfit for use, part or whole of it, then that amount may be destroyed and the vendor will not be entitled to any compensation for the loss suffered in consequence thereof.

The General Licence Conditions were amended by notification dated 29-2-1996 prior to the auction for 1996-97 commencing from 1st April 1996. Therefore, statutory condition was that new licensee has to purchase left over stock of the old licensee as per orders given by the District Excise Officer and no rebate or adjustment was made admissible to the new licensee on purchase of this stock. General Conditions of licence framed u/s 62 of the Act are statutory conditions and the State Government and the licensee both are bound by the same. Therefore, as per statutory provision, there is no obligation on State to grant any rebate or adjustment on the stock purchased by new licensees from outgoing licensees.

Now next question is what is the effect of the so called statement of policy issued by the State or the so called recommendations of the Cabinet Sub-Committee. It may be mentioned at the outset that these are only general policy statements and the policy statements can not be enforced unless they form part of the statute or they are laid down in general conditions framed in exercise of powers u/s 62 of the Act. These policy statements might have been projected by the State but unless these policy statements or the so called representation made by the State are not formed part of the statute, they can not be enforced. Such kind of assurance of whatever worth they are, can not be enforced, it may also be relevant to mention here that the recommendations of the Cabinet Sub-Committee and the policy statements both were prior to the amendment in the Rules. The General Condition IIA was amended w.e.f. 29-2-1996. Before licence could be acted upon from 1st April 1996, a general letter was issued on 30th March 1996 by the Excise Commissioner to all the Collectors of the districts emphasising therein that they must see that existing licensees of 1995-96 should not retain with them any excess stock because that might lead to a problem of the disposal thereof. It was further emphasised that stock of all the retailers should be properly verified on 31st March 1996 and they must seek necessary guidance in respect of its disposal so that there may not be much of problems with regard to disposal of the said excess stock. It is however further emphasised that in case still the stock remains, then the same shall be disposed of as per Condition No. XXV of the General Licence Conditions. Therefore, it was clarified in terms of Condition No. XXV that against the stock left by old licensee

on 31st March 1996, excise duty and permit fee shall not be adjusted in respect of licence for 1996-97. This was made clear way back on 30th March 1996. Therefore, it does not lie in the mouth of the petitioner to say that this order dated 30th March 1996 was in any way contrary to the Rules.

The Excise Commissioner has categorically invited attention of all the Collectors to the condition No. XXV of the General licence Conditions and has made it clear beyond doubt that the excise duty and permit fee for the left over stock on 31st March 1996 shall not be adjusted against the licence for 1996-97. On 30th March 1996, when this letter/order was issued to all the District Excise Collectors, the petitioner knew very well the position of law. However, learned single Judge felt persuaded to take a contrary view on the basis of promissory estoppel, reasonableness and fairness in the public dealings by the State qua citizens. So far as the present controversy is concerned, significantly, a direct decision of the Apex Court arising out of this Court under the M.P. Excise Act 1915 reported in 1987 MPLJ 250 = AIR 1987 S.C. 251, State of M.P. vs. Nandlal having bearing on the subject was not brought to the notice of the learned Single Judge. In that case, similar question was agitated that the State can not go back on so called recommendations of the Cabinet Sub-Committee, or excise policy statement issued by the State. But their Lordships of the Apex Court negated that contention that the State is not bound by it and held that such oral assurance given by the State authorities can not bind the State in face of the statutory rules. In that case, question was that a recommendation was made by the Cabinet Sub-Committee which was accepted by the Cabinet in the policy decision dated 30th December, 1984 and provided that in beginning, D.2 licence shall be granted for a period of five years and thereafter there shall be a provision for its renewal and for this purpose necessary amendment in the M.P. Excise Act, 1915 or the Rules made under the Act shall be made. But no such amendment was brought about either in the Act or the Rules or the General Licence Conditions. Therefore, the petitioner filed petition before this Court seeking enforcement of those assurances and they invoked principle of promissory estoppel. Their Lordships negated the contention and it was observed thus:

It is undoubtedly true that recommendations of the Cabinet Sub-Committee which were accepted by the Cabinet in the policy decision dated 30th December 1984 provided that in the beginning, D.2 licence shall be granted for a period of 5 years and thereafter there shall be a provision for its renewal and for this purpose, necessary amendment in the M.P. Excise Act, 1915 or the Rules made under the Act shall be made. But, it is significant to note that no such amendment in the Act or the Rules was made by the State government and when the Letter of Intent was issued and the Deed of agreement was executed and even thereafter, the provisions of the Act remained unamended and R. II of the Rules of General Application also continued to stand in its unamended form. It is obvious that without an amendment of R. II of the Rules of General Application, the maximum period for which D.2 licence could be granted was only 5 years and there could be no provision for automatic renewal thereafter from

year to year. It is, therefore, clear that whatever might have been the original intention, it was not effectuated by carrying out necessary amendment in the provisions of the Act or in R. II of the Rules of General Application and the ultimate decision of the State Government was to grant D.2 licence for a limited period of 5 years. This would also seem to be clear beyond doubt if Cl.2 of the Deed of Agreement is closely examined. This clause provided in terms and explicit that the State Government shall be bound to grant D.2 licence to the licensee "for a period of 5 years subject to renewal every year on payment of licence fee of Rs. 5,000/- and on due fulfilment of the conditions of the licence and the provisions of the M.P. Excise Act, 1915 and the rules made thereunder." Obviously the provision of renewal every year was to operate within the span of 5 years itself and every year, the licence would be renewable on payment of licence fee of Rs. 5,000/- and due fulfilment of the conditions of the licence and the provisions of the Act and the Rules. It is not possible to spell out from this clause that the licence was to be granted for an initial period of 5 years and thereafter it was liable to be renewed from year to year. In the circumstances grant of D.2 licence to respondents was for a maximum period of 5 years and it did not operate to create monopoly in their favour for an indefinite period of time.

In face of a direct decision of the Apex Court where almost in identical situation, like the present one, mandamus was sought that the respondent State should be directed to comply with the assurance and the petitioner should be granted renewal after expiry of the period of 5 years, their Lordships had declined to grant this relief and held that the respondents are only entitled for licence for a period of 5 years and it will not operate to create monopoly in their favour for an indefinite period of time. Had this judgment been brought to the notice of the learned Single Judge, the whole complexion of the decision would have changed. Neither the principle of promissory estoppel nor reasonableness or fairness has any relevance in the present liquor contract. Therefore, the whole basis of decision of the learned single Judge is against the decision of the Apex Court. As pointed out above, all those so called recommendations of the Cabinet Sub-Committee or so called policy decision which are contrary to the provisions of the General Licence Conditions which are statutory and by which the petitioner is bound as per Licence Condition 12 (FL-1A) can not be enforced by the Court by a writ of mandamus. The view taken by the learned single Judge in these circumstances is not well founded.

In this connection, reference may also be made to a decision of Apex Court in the case of Shabi Construction Company vs. City & Industrial Development Corporation and another, (1995) 4 SCC 301. In this case also, their Lordships have emphasised that principle of promissory estoppel can not be invoked to compel public body to carry out any promise made by them which is contrary and beyond their statutory authority or power. This was a case against City & Industrial Development Corporation and another where certain assurances were sought to be enforced which were published in so called booklet form inviting offer for leasing of commercial plots and certain representations were made in

the booklet and when those representations were not fulfilled, parties resorted to litigation. In that context, their Lordships observed as under:

.....The doctrine of promissory estoppel can not be invoked to compel the public bodies or the Government to carry out the representation or promise which is contrary to law or which is outside their authority or power.

In this connection, it may also be relevant to mention that so far as the trade in liquor is concerned, the Apex Court has from beginning held that it is a privilege of the State and no person has a fundamental right in liquor trade. Their Lordships have summarised the law on the subject relating to right to carry on trade or business in potable liquor in the case of *Khoday Distilleries Ltd. vs. State of Karnataka*, (1995) 1 SCC 574 thus:

(a) The rights protected by Article 19(1) are not absolute but qualified. The qualifications are stated in Clauses (2) to (6) of Article 19. The fundamental rights guaranteed in Article 19(1)(a) to (g) are, therefore, to be read along with the said qualifications. Even the rights guaranteed under the Constitutions of the other civilized countries are not absolute but are read subject to the implied limitations on them. Those implied limitations are made explicit by clauses (2) to (6) of Article 19 of our Constitution.

(b) The right to practise any profession or to carry on any occupation, trade or business does not extend to practising a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious, and is condemned by all civilised societies. It does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are obnoxious and injurious to health, safety and welfare of the general public, i.e. *res extra commercium*, (outside commerce). There can not be business in crime.

(c) Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is *res extra commercium* being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor. Hence, the trade or business in liquor can be completely prohibited.

(d) Article 47 of the Constitution considers intoxicating drinks and drugs as injurious to health and impeding the raising of level of nutrition and the standard of living of the people and improvement of the public health. It, therefore, ordains the State to bring about prohibition of the consumption of intoxicating drinks which obviously include liquor, except for medicinal purposes. Article 47 is one of the directive principles which is fundamental in the governance of the country. The state has, therefore, the power to completely prohibit the manufacture, sale, possession distribution and consumption of potable liquor as a beverage, both because it is inherently a dangerous article of consumption and also because of the directive principle contained in Article 47, except when it is used and consumed for medicinal purposes.

(e) For the same reason, the State can create a monopoly either in itself or in the agency created by it for the manufacture, possession, sale and distribution of the liquor as a beverage and also sell the licences to the citizens for the said purpose by charging fees. This can be done under Article 19(6) or even otherwise.

(f) For the same reason, again, the State can impose limitations and restrictions on the trade or business in potable liquor as a beverage which restrictions are in nature different from those imposed on the trade or business in legitimate activities and goods and articles which are *res commercium*. The restrictions and limitations on the trade or business in potable liquor can again be both under Article 19(6) or otherwise. The restrictions and limitations can extend to the State carrying on the trade or business itself to the exclusion of and elimination of others and/or to preserving to itself the right to sell licences to do trade or business in the same, to others.

(g) When the State permits trade or business in the potable liquor with or without limitation, the citizen has the right to carry on trade or business subject to the limitations, if any, and the State can not make discrimination between the citizens who are qualified to carry on the trade or business.

(h) The State can adopt any mode of selling the licences for trade or business with a view to maximise its revenue so long as the method adopted is not discriminatory.

(i) The State can carry on trade or business in kpotable liquor notwithstanding that it kis an intoxicating drink and Article 47 enjoins it to prohibit its consumption. When the State carries on such business, it does so to restrict and regulate production, supply and consumption of liquor which is also an aspect of reasonable restriction in the interest of liquor which is also an aspect of reasonable restriction in the interest of general public. The State can not on that account be said to be carrying on an illegitimate business. It carries on business in products which are not declared illegal by completely prohibiting their production but in products the manufacture, possessing and supply of which is regulated in the interest of the health, morals and welfare of the people. It does so also in the interests of the general public under Article 19 (6).

(j) The mere fact that the State levies taxes or fees on the production, sale and income derived from potable liquor whether the production, sale or income is legitimate or illegitimate, does not make the State a party to the said activities. The power of the State to raise revenue by levying taxes and fees should not be confused with the power of the State to prohibit or regulate the trade or business in question. The State exercises its two different powers on such occasions. Hence, the mere fact that the State levies taxes and fees on trade or business in liquor or derives income from it, does not make the right to carry on trade or business in liquor a fundamental right, or even a legal right when such trade or business is completely prohibited.

(k) The State can not prohibit trade or business in medicinal and toilet preparations containing liquor or alcohol. The State can, however, under Article 19 (6) place reasonable restrictions on the right to trade or business in the same in the interest of general public.

(l) Likewise, the State can not prohibit trade or business in industrial alcohol which is not used as a beverage but used legitimately for industrial purposes. The State, however, can place reasonable restrictions on the said trade or business in the interests of the general public under Article 19 (6) of the Constitution.

(m) The restrictions placed on the trade or business in industrial alcohol or in medicinal and toilet preparations containing liquor or alcohol may also be for the purposes of preventing their abuse or diversion for use as or in beverage.

Therefore, the petitioner has no right in a business or trade of liquor. It is the exclusive privilege of the State. The principle of reasonableness or other principles which govern the trading activities of the State qua citizens are not applicable in the case of the liquor trade. It is entirely on different footing so far as liquor contract is concerned.

Since the Excise Commissioner issued order dated 30th March 1996 which is in consonance with the Condition No. XXV of the General Licence Conditions, it can not be said that the direction of the Excise Commissioner is contrary to any statute. As already mentioned above, the policy statement can not be enforced against the statutory rules. Hence, the direction issued by the Excise Commissioner, (Gwalior) by his letter dated 30-3-1996 is not contrary to the rules and it can not be said to be illegal so as to be quashed. Thus, view taken by the learned single Judge in quashing the letter dated 30th March 1996 is also not correct.

Learned single Judge has also found that the order/letter dated 30th March 1996 is discriminatory between the retailers and wholesalers i.e. persons who are holding licences FL-1A and FL-11. It was held that since certain benefits have been given to the wholesalers i.e. holder of FL-11 licences which have not been given to retailers i.e. holder of FL-1A licences; therefore the letter/order dated 30-3-1996 is discriminatory. This view also is not well founded. The retailers stand on one footing and the wholesalers on a different footing. They are not a class similarly situated, therefore, there is no question of discrimination qua these persons. The State has in its return pointed out that firstly, there is no question of discrimination between persons dissimilarly placed. FL-11 licence deals with wholesale licences and FL-1 A deals with retail licences. Both are not similarly situated. Similarly, it was submitted that under the new policy, FL-11 was abolished and FL-10 licence which was earlier abolished was again introduced for the year 1996-97. Earlier in 1995-96 the retailer in foreign liquor trade, there was a provision that they shall lift the duty paid foreign liquor from FL-11 licensee. The FL-1 A licensee retailer used to pay only permit fees. FL-11

licencee was required to store duty paid foreign liquor. Now the FL-1 A licensee is required to pay duty and permit fees in advance and they shall be supplied the foreign liquor from warehouse of FL-10 which is a store house of non-duty paid foreign liquor. Therefore on account of change in policy, retailer can not be equated with the wholeseller as the whole concept has undergone a change. Hence, the view taken by the learned single Judge that the retailer has been discriminated qua wholeseller is also not well founded.

Shri Sapre, Adv. and Shri Agarwal, learned counsel for petitioners/respondents invited our attention to Condition No. 56 and submitted that if the Condition No. IIA and XXV are read together, then it transpires that goods which were purchased by the retailers are given rebate in duty and the goods which were purchased under the orders of the Excise Commissioner of the outgoing licensee, are not given rebate. That is not the correct construction of both the clauses. We are not impressed by this argument of the learned counsel for the petitioners/respondents, firstly because it was made clear to them on 30th March 1996 that for the stock purchased by them from the outgoing licensee, they will not be entitled for any rebate in excise duty or permit fee; secondly, because as per Condition No. XXV of the General Licence Conditions, they were under an obligation to purchase the old stock of the outgoing licensee and no rebate whatsoever was contemplated in Condition No. XXV. Condition No. IIA only contemplates that whenever liquor is lifted by the licensee from the wholeseller and if he pays duty, then that rebate of the duty will be given in monthly instalments of their licence fee. But it nowhere lays down that for the stock which they have purchased from the outgoing licensee, they will be entitled to rebate in excise duty or permit fee whatsoever. Therefore, when they have taken the licences with these conditions which were in force at the time when the auctions were held, they knew very well that there is no provision either in the General Licence Conditions or in the Rules making incumbent on the State to give them rebate or adjustment of the excise duty or fee of the stock purchased by them from the outgoing licensees. Since the petitioners entered into contracts with all eyes open, it is not open for them to seek enforcement of principle of promissory estoppel or on the ground of discrimination or any other ground of fairness or reasonableness in the liquor contracts.

Our attention was also invited to Condition No. 56 of the sale memo Ex. P4 which contemplates that the successful bidder will have to start shop from 1st April 1996 and he would be under an obligation to take the left over stock of the old licensee. Reference in this connection is made to Condition No. XXV of the General Licence Conditions. If Condition No. XXV is read with Condition No. 56 of the Sale Memo, then it only makes it clear that in the condition No. XXV of the General Licence Conditions there is no mention that any rebate or adjustment in respect of excise duty or permit fee will be given to the new licensee. Therefore, this condition No. 56 of the Sale Memo also does not in any way advance the case of the petitioners/respondents.

In the light of above discussion, we are of the opinion that the view taken by the learned single Judge is not correct and we set aside the judgment of the learned single Judge dated 9-5-1997 and dismiss both the petitions. Both the appeals are accordingly allowed. There shall be no order as to cost.

Appeals allowed.