A MOHD. FIDA KARIM AND ANR.

v.

STATE OF BIHAR AND ORS.

MARCH 31, 1992

B [N.M. KASLIWAL, K. JAYACHANDRA REDDY AND G.N. RAY, JJ.]

Bihar Excise Act, 1915 : Sections 42 and 43.

C *Liquor shops—Right of vend—Mode of settlement—Government policy—Grant of licence for five years—Licence subject to change in policy of Government—Change of policy to auction-cum-tender method—Change in policy held valid and not violative of Article 14—Sections 42 and 43 held inapplicable to change of policy by Government—Principle of promissory estoppel held inapplicable.*

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The State of Bihar took a policy decision to make settlement of liquor shops for five years subject to yearly renewal on fulfilling certain conditions in terms of change in policy. The said policy was approved by Cabinet on 25th January, 1990. Rules were amended accordingly and published in the official gazette. In pursuance to the said policy the appellants deposited six months licence fee for the first year of settlement on 7th March, 1990. The said policy was challenged and the High Court granted interim stay of the policy directing the Government to grant licence on yearly basis through public auction. In the meanwhile the State Government changed the policy under which the settlement of liquor shops was to be made by auction-cum-tender method for the next year and the new policy was approved by the Cabinet on 16th August, 1990. The appellants field writ petitions in the Patna High Court challenging the new policy of auction-cum-tender for the year 1991-92 which were dismissed.

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In appeal to this Court, it was contended on behalf of the appellants that (i) the period of licence already granted cannot be curtailed without compliance of sections 42 and 43 of the Bihar Excise Act; (ii) Government's action was arbitrary and violative of Article 14 and the Govt. was estopped from adopting the new policy on the principle of promissory estoppel; and (iii) the impugned order was not a change of policy but was merely an executive order passed on the wrong assumption as if the High Court had

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directed the Government to review its policy. A

Dismissing the appeal, this Court,

HELD : 1. The Government was fully competent to change its policy under the terms of the grant of licence itself. The Memorandum and the sale Notification on the basis of which the appellants claimed the right to B **continue the licence for a period of five years, clearly mentioned that the grant of licence was on annual basis and such renewal after every year was subject to the conditions mentioned therein and also subject to any change in policy. Sections 42 and 43 of the Bihar Excise Act have no application in the case of change of policy by the Government. [412E-G, 413E]** C

2. It is also well settled that the right of vend of excisable articles is exclusively and absolutely owned by the State Government. [412G]

3. The new policy of adopting the method of auction-cum-tender is certainly a change of policy. The reason for change of policy is that the D **Government realised that making settlement for five years would give rise to monopolistic tendency and the interest of revenue was not fully protected in the former policy. There is nothing wrong in taking such a view by the State Government and to change its policy in public interest. The appellants as such have no right to challenge the new policy. [413A-D]** E

4. There was neither any promise nor there is any justification to hold that the appellants altered their position on the basis of promise. The contention based on the ground of promissory estoppel or under Article 14 cannot be accepted. [413D-E]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1205 of 1992.

From the Judgment and order dated 6.9.91 of the Patna High Court in C.W.J.C. No. 2102 of 1991.

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Kapil Sibal, Harish N. Salve, Ranjit Kumar, G.D. Bhandari and S.C. Patel for the Appellants.

M.L. Varma, B.B. Singh, Vikash Singh and L.R. Singh for the Respondents. H

A The Judgment of this Court was delivered by

KASLIWAL, J. Special leave granted.

This appeal is directed against the judgment of the Patna High Court dated 6th September, 1991. Initially Mohd. Fida Karim and Dasrath Das had filed special leave petition challenging the dismissal of their writ petition, C.W.J.C. No. 2102 of 1991 by a Division Bench of the Patna High Court by order dated 6th September, 1991. In view of the fact that by a common decision, the Patna High Court had dismissed many other identical writ petitions, the petitioners in those other writ petitions also submitted intervention applications before this Court and such intervention applications have been allowed. 35 applicants/interveners are also supporting the present appeal filed by Mohd. Fida Karim and Dasrath Das.

The controversy in this case relates to the mode of settlement of the right of vend of country liquor, Indian made foreign liquor and spiced country liquor under the provisions of the Bihar Excise Act, 1915 (hereinafter referred to as the 'Excise Act') and Rules framed thereunder. The Government changed its policy from time to time. Prior to 1984, settlement of country liquor shops was done by renewing the licence according to the sliding scale of system. In 1984, the State Government decided to make settlement of country liquor shops by public auction. This was done on annual basis for a period commencing from 1st of April to 31st March of the next following year. This practice continued upto 1989-90. During the currency of the above licensing period 1989-90, the State Government appointed a high power committee and according to its recommendations made a policy to make settlement of liquor shops for five years by renewing the existing licences, subject to fulfilling certain conditions like, satisfactory record of performance and enhancement of licence fee at the rate of 10 per cent every year and also enhancement of the minimum guaranteed quota at the rate of 5 per cent every year. The above policy decision was taken by a Cabinet Memorandum dated 25th January, 1990. In pursuance to the above policy decision, the Excise Commissioner by communication dated 8th February, 1990 informed the licensing authorities to take steps for settlement of excise shops as per the amended policy of the Government. On 17th February, 1990, necessary amendments were also made in the Rules framed under Section 89 of the Excise Act

inconsonance with the new policy of the Government. The amendments were duly published in the official Gazette on 7th March, 1990, to come into force with effect from 1st April, 1990. The case of the appellants is that in pursuance to the aforesaid policy, the appellants agreed to the new terms and conditions and necessary agreements were also executed. The appellants also deposited six months' licence fee for the first year of settlement, on 7th March, 1990. According to the appellants a concluded contract came into effect on 7th March, 1990 itself, which was to come into force with effect from 1st April, 1990.

Some of the persons not satisfied with the aforesaid Government policy, challenged the same by filing four writ petitions in the High Court. The High Court passed interim orders on 9th March, 23rd March, and 13th April, 1990 in these writ petitions. The High Court in the interim orders granted stay on the new policy of the Government and in its place gave directions to grant the licence on yearly basis through public auction. Initially, it was directed that the period of such settlements shall not exceed four months, but subsequently it was made on monthly basis. It was also directed that the aforesaid orders will not stand in the way of the State Government in reviewing the policy decision. We have only mentioned the substance of such interim orders passed on 9.3.1990, 23.3.1990 and 13.4.1990, as the same have been quoted in extenso by the High Court in its impugned order dated 6th September, 1991. It appears that the aforesaid interim orders were passed by the High Court under the vain hope that the main writ petitions would be disposed of soon. However, before the writ petitions could be heard finally, the Government started the process of reviewing the policy decision dated 25th January, 1990/8th February, 1990. By Memorandum dated 7.7.1990 placed before the Council of Ministers, it was proposed that the settlement of the country liquor shops, spiced country liquor shops and foreign liquor shops should be made by auction-cum-tender method, according to which the persons interested were required to submit their sealed tender and also to participate in the public auction. The settlement was to be made finally in favour of the person making the highest offer whether by way of tender or at auction. The Cabinet approved the aforesaid policy on 16th August, 1990. The Excise Commissioner also sent necessary instructions to all licensing authorities by letter dated 25th February, 1991 in regard to the proposed mode of settlement by auction-cum-tender for the year 1991-92.

A The present appellants as well as the interveners filed writ petitions challenging the aforesaid new policy of auction-cum-tender for the year 1991-92.

Similar contentions have been raised before us on behalf of the appellants, which were made before the High Court. The challenge to the
B new policy has been made on the following three grounds. Firstly, it has been submitted that there is no provision in the Excise Act or the Rules to review or revoke the grant of licence or to curtail or reduce the period of licence except as provided under Sections 42 and 43 of the Excise Act. The licence already granted for a period of five years from 1990 to 1995
C cannot be made ineffective by the so-called new policy of auction-cum-tender. A further limb of this ground is that the period cannot be curtailed without compliance of the mandatory provisions of Sections 42 and 43 of the Excise Act. The second ground of challenge is that the Government is estopped from doing so on the principle of promissory estoppel. The third
D ground is that in any event, the exercise of power, in the facts of the case is arbitrary, irrational and patently unreasonable and as such is violative of Article 114 of the Constitution. The High Court has dealt with all these contentions in detail and has rejected the same by giving cogent reasons. We fully agree with the view taken by the High Court.

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It is important to note that the Memorandum dated 25th January, 1990 and the letter dated 8th February, 1990 and the sale Notification on the basis of which the appellants are claiming the right to continue the licence for a period of five years, clearly mentioned that the grant of licence was on annual basis and such renewal after every year was subject to the
F conditions mentioned therein and also subject to any change in policy. Thus, the Government was fully competent to change its policy under the terms of the grant of licence itself. It is also well settled that the right of vend of excisable articles is exclusively and absolutely owned by the State Government.

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Mr. Kapil Sibal, Learned Senior Counsel appearing on behalf of the appellants did not dispute the aforesaid legal position, but his contention was that the impugned order of the Government made in August, 1990 cannot be termed a change of policy, but in fact was merely an executive
H order passed on a wrong assumption as if the High Court in its interim

orders had given a direction to the Government to review its policy. We do not find any substance in this contention. The new policy of adopting the method of auction-cum-tender is certainly a change of policy. The reason for change of policy given by the Government is that it realised that making settlement for five years would give rise to monopolistic tendency, which will not be in public interest, at the same time the interest of revenue was not fully protected in the former policy. This clearly goes to show that the Government wanted to adopt a new policy in public interest to be made applicable from the year 1991-92. Learned Counsel appearing on behalf of the State of Bihar submitted in clear terms that the earlier policy was wrong and the Government realised its mistake and thus adopted a new policy to augment its revenue and to avoid monopolistic tendency. We do not find anything wrong in taking such view by the State Government and to change its policy considering the same to be in public interest. It is not disputed that the appellants have continued the business of sale of liquor for the whole year 1.4.1990 to 31.3.1991. The appellants as such have no right to challenge the new policy which has to apply for the year 1991-92, even under the terms of their agreement. We do not find any force in the contention raised on behalf of the appellants on the ground of promissory estoppel or under Article 14 of the Constitution. There is no basis at all made out in the pleadings in support of the above grounds and the High Court has rightly rejected the same. There was neither any promise nor there is any justification to hold that the appellants altered their position on the basis of promise. Sections 42 and 43 of the Excise Act have no application in the case of change of policy by the Government.

Lastly, it was contended on behalf of the appellants that the licensees who had taken the licence under the earlier policy of the Government of 25th January, 1990/8th February, 1990 had submitted National Saving Certificates by way of secruity and in case the Government had changed its policy, it was bound to return the National Saving Certificates to the respective licensees. We consider this submission to be just and proper. Learned Counsel for the State appearing before us also conceded that such National Saving Certificates would be returned to the licensees. We accordingly direct the State Government to return all the National Saving Certificates taken by way of secruity to all the licensees who had entered in agreements under the old policy of five years license, within two months

A from the date of the communication of this order. This direction will not apply in case of such licensees who have filed civil suits for the recovery of such amounts and their cases would be governed by the ultimate decision in those civil proceedings.

In the results, we dismiss this appeal with no order as to costs.

T.N.A. Appeal dismissed.