STATE OF KARNATAKA AND ANR. A

v.

K.K. MOHANDAS AND ETC.

AUGUST 1, 2007

[P.K. BALASUBRAMANYAN AND A.K. MATHUR, JJ.] B

Specific Relief Act, 1963:

s.26—Party cannot ask for rectification of an agreement entered into with open eyes and without any mutual mistake—At best it can ask for damages if it suffers any loss due to some default of opportunity—When no loss was shown, plaintiff could not even ask for damages nor make their claim on the basis that Government failed to prevent illegal sale of toddy—Plaintiffs who are experienced contractors must have known factum of illegal sale and cannot claim ignorance—Estoppel against Government cannot be pleaded due to policy statement of Government in Assembly as plaintiffs were never mislead by same. C D

The State of Karnataka had been auctioning the right to vend liquor in various taluks of the State including trade in arrack. The plaintiffs in the suits, the Excise Contractors on their own showing, had bid the right to vend liquor from the concerned taluks earlier and even for the Excise Year 1989-90. On 16.3.1990, the Minister of Finance, Government of Karnataka, during his Budget Speech in the Assembly, made the statement, for adopting the policy of banning the sale of toddy in the entire State with effect from 1.7.1990. E

On 28.5.1990, auction for right to vend arrack in the concerned taluks was held for the Excise Year 1990-91. The plaintiffs were the highest bidders in the respective auctions and the contract were held in their favour. Meanwhile, the toddy tappers resisted to the attempted ban. This resistance had started even before the plaintiffs entered their highest bids. F

In view of the agitation, the Government considered the relevant aspects and issued an order to arrange for sale of toddy tapped by the toddy tappers of Dakshina Kannada District, through a centralised society to the fenny units and permitting the fenny units of Dakshina Kannada to buy the toddy from tappers of allotted trees at the price to be fixed by the Excise Commissioner G

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A till finalising the purchase by a centralised society as envisaged.

Some of the plaintiffs approached the High Court with a prayer to issue a writ of mandamus directing the State Government to take effective and appropriate steps for prohibiting the tapping or sale of toddy in certain taluks of Dakshina Kannada District during the Excise Year 1990-91. An interim B order was sought and obtained restraining the State from terminating the contracts of the writ petitioners. The writ petitioners relied upon the policy statement and contended that they had bid the right to vend arrack for the Excise Year 1990-91 on the basis of that assurance. They also sought a direction to the State not to collect the Kist amount at the rate of rentals bid C for the year 1990-91, but to collect it only at the rates of the bid amount for the Excise Year 1989-90.

The High Court dismissed the writ petitions holding that promissory estoppel cannot arise where it is a matter of policy, and that the Government by filing statement of objections has stated that it has been doing whatever is D possible within its means to stop the illegal trade.

However, the attempted termination of the contract by the State was restrained until 30.9.1990. The matter was brought up to this Court by way of SLPs. This Court dismissed the same giving right to the plaintiffs to approach the appropriate Civil Court. Thereafter plaintiffs filed these suits.

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The trial Court held that since the State had failed to implement successfully the policy of banning tapping and selling of toddy to the public, the State was estopped from claiming the Kist amount in terms of the contract entered into between the State and the contractor. The lower appellate court also proceeded on the same lines and dismissed the appeals. High Court merely F ended up by dismissing the second appeals upholding the plea of promissory estoppel. Hence these appeals.

Allowing the appeals, the Court

G HELD: 1. Under s.26 of the Specific Relief Act, an instrument or contract may be rectified when through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not express their real intention. However, if the parties had deliberately left out something from the written instrument, that cannot be put in by resort to the remedy of rectification. Here, the parties have entered into written contracts and admittedly no term is H incorporated therein regarding enforcement of the ban on trade of toddy to

the public in the District of Dakshina Kannada. Nor is there any case pleaded in the plaint of any mutual mistake in the matter of setting down the terms of the contract. There is also no plea of fraud on the part of the State in entering into the contract. On the terms of the contract, the plaintiffs had obtained the right to vend arrack for the Excise Year 1990-91 on their obligation to pay the bid amount in monthly instalments. In the absence of any foundation in the pleadings being laid by the plaintiffs establishing a ground for the grant of the relief of rectification, the mere adding of a prayer by way of an amendment could not be considered sufficient to grant them the relief of rectification. [Para 9] [708, B, C, D, E]

Hunt v. *Rousmanier's Administrators* 8 Wheaton 174, referred to.

2. The plaintiffs had not established that they had suffered any losses in view of the inability of the State Government to put down what the plaintiffs called the illegal tapping and sale of toddy in public as opposed to the fenny units as indicated in the Government order. There is also no evidence adduced to show that the sale of toddy has any direct connection with the sale of arrack or has any influence on the quantum of the sale of arrack. The State has clearly pleaded that the tapping and sale of toddy has nothing to do with the sale of arrack and that arrack drinkers do not generally take to toddy. There is no material on the basis of which the stand adopted by the State can be found to be wrong or unsustainable. Thus, on facts, no case has been made out for rectification of the instrument only as regards the obligation of the plaintiffs to pay the Kist. At best, the plaintiffs may have a right to sue for damages against the State on establishing that they had suffered losses in view of the alleged failure of the Government to impose its policy of prohibition and sale of toddy to the public and by establishing the quantum of such losses. Even if any loss has been suffered, it does not grant the plaintiffs a right to have the instrument rectified and that too, to the effect that their obligation to pay the Kist should be based on their bids for the previous Excise Year 1989-90. There is no case for the plaintiffs that the State Government at any time held out to them that in case of its failure to enforce the ban on sale of toddy to the public, the plaintiffs need pay only the Kist amounts of the year 1989-90. There was no such agreement or contract during any negotiation preceding the bids by the plaintiffs. In fact, it was a case of open auction on set down terms in the light of a statute and the plaintiffs entered their bids. There was therefore no occasion for mutual mistake as to terms or fraud in execution of the contracts. Thus, a grant of relief in the manner done by the courts below purporting to rectify a part of the contracts is totally unwarranted

A and clearly unsustainable in law. That part of the decree has necessarily to be set aside. [Paras 10, 12 and 13] [708-G; 709-E, F, G; 710-A, B, C]

3. What is left is the case of promissory estoppel. Here, the promise is said to be the budgetary speech of the Minister concerned that he proposes to ban the sale of toddy to the public in the District of Dakshina Kannada. Firstly, B the High Court in the Writ Petitions filed by some of the plaintiffs, while dismissing them, clearly held that no question of promissory estoppel would arise in these cases. The Petition for Special Leave to Appeal challenging the said decision was dismissed by this Court reserving liberty in the plaintiffs to approach the Civil Court. The right reserved for approaching the Civil C Court does not clothe the plaintiffs with a right to approach the Civil Court with a plea of promissory estoppel already negatived in the writ petitions filed by some of the plaintiffs. Nor does it enable the court to go behind what has been held by the High Court and proceed to accept a case of promissory estoppel. The approach to the Civil Court was for the purpose of suing for damages on establishing that they had suffered loss because of the expectations D raised by the speech in the Assembly and the failure of the State to enforce the prohibition it had envisaged as a policy. [Para 14] [710-C, D, E, F]

Express Newspapers Pvt. Ltd. & Ors. v. *Union of India & Ors.*, [1986] 1 S.C.C. 133; *Union of India & Ors.* v. *Ganesh Rice Mills & Anr.*, JT (1998) 9 SC 51 and *M/s Pine Chemicals Ltd. & Ors.* v. *Assessing Authority & Ors.*, E [1992] 2 S.C.C. 683, referred to.

4. It is not the case of the plaintiffs that the sale of toddy to the public was permitted. Their case is that a subsequent notification was issued proposing to have the purchase of toddy through Cooperatives and for being F supplied to fenny units. It is not seen that the Government had resiled even from its policy objective. But the case of the plaintiffs appears to be that the Government could not fully implement the policy it had evolved of preventing sale of toddy by toddy tappers to the public. This, at best would only give a right to the plaintiffs to claim damages from the State on establishing that they had suffered damages by virtue of such failure of the Government.

G [Para 17] [711-C, D, E]

5. The plaintiffs are all experienced Excise contractors who are bidding for the right to vend liquor at open auctions. It is notorious that these auctions are highly competitive and every attempt is made by an existing contractor to preserve his bastion. It is also notorious that the prices fetched in these

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auctions show a tendency to go up because of competition. The State has pointed out that the increase in the figures for various other centres even exceeded by 300% the amounts for the year 1989-90. There is nothing to show that the bids by the plaintiffs were not based on their calculations and with a view to ward off competition to preserve their right to vend arrack in their respective areas. [Para 18] [711-E, F, G]

6. What the plaintiffs have gone for was a commercial venture with attendant risks. If they felt that the risk could not be taken, it was for *him to* repudiate the contract as a whole. In fact, when the Government apparently tried to terminate the contracts because of the failure of the plaintiffs to remit the Kist amounts as agreed to for the months of July and August 1990, the plaintiffs obtained interim orders from the High Court interdicting such termination and went ahead with vending arrack in exercise of their right under the agreements. Having insisted on performance of the contract and having exercised their rights under it, the plaintiffs are not entitled to repudiate their obligations under the contract. No case of estoppel, conventional or promissory, would arise here. The finding on estoppel is based merely on the promise made or the proposal made by the Minister concerned in his speech in the Assembly and the failure of the Government to implement the policy of prohibition of sale of toddy in public. The plea raised by the plaintiffs does not lay an adequate foundation for accepting the plea of estoppel justifying their being relieved of the obligation undertaken by them based on their bids and as contained in the written contracts entered into by them with the Government. There is no case that the contract contains any term which is a mistake or that it contains any term that casts an obligation on the State which obligation the State had failed to fulfil.

[Paras 19 and 20] [711-G, H; 712-A, B, C, D]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7102-7105 of 2002.

From Judgment & Order 23.02.2001 of the High Court of Karnataka at Bangalore in R.S.A. Nos. 892-895 of 1998.

Sanjay R.Hegde, Anil K.Mishra, Vikrant Yadav and Sashidhar for the Appellants.

S.N. Bhat, D.P.Chaturvedi, N.P.S. Panwar, Krishnendu Datta, Rohit Priya Ranjan, Dr. S.K.Verma and Tanya Sharma for the Respondents.

A The Judgment of the Court was delivered by

P.K. BALASUBRAMANYAN, J. 1. In all these appeals, the defendants, the State of Karnataka and the Deputy Commissioner (Excise) are the appellants. The four appeals arise from four suits being O.S. No. 1261, 1262, 1263 and 1264 of 1990 on the file of the court of the First Additional Munsif, Mangalore. B The suits were decreed in favour of the plaintiffs who were excise contractors and bidders of the right to vend arrack in various taluks of Dakshina Kannada District of the State of Karnataka for the Excise Year 1990-91 covering the period 1.7.1990 to 30.6.1991. Aggrieved by the decrees, the appellants filed four appeals in the court of the Additional Civil Judge Senior Division, C Mangalore. The appeals were dismissed affirming the decrees of the trial court. Four Second Appeals filed by the appellants in the High Court of Karnataka met with the same fate. These Appeals by Special Leave thus challenge the decrees granted in the four suits.

2. The State of Karnataka every year auctions the right to vend liquor D in various taluks of the State. Among them is included trade in arrack. The plaintiffs in the suits, Excise Contractors on their own showing, had bid the right to vend liquor from the concerned taluks earlier and even for the Excise Year 1989-90. On 16.3.1990, the Minister of Finance, Government of Karnataka, during his Budget Speech in the Assembly, made the following statement.

E "The State has been following a policy of banning the sale of toddy in a phased manner. At present, the sale of toddy has been banned in seven districts. I propose to extend the ban to the entire State with effect from 1.7.1990. The expected loss in revenue is Rs. 60 crores. It is hoped that a portion of this loss would be made good by higher F arrack rentals and better enforcement of rules and regulations."

The Budget Speech was marked Exhibit P-1 in the suits which were jointly tried. According to the plaintiffs, a decision was also taken by the Government in a meeting of the Cabinet on 2.5.1990 to implement the policy thus announced. But, illegal tapping and sale of toddy was not put down. On 28.5.1990, the G right to vend arrack in the taluks of Kundapur, Udupi, Bantawal, Sullia, Puttur and Belthangadi was held for the Excise Year 1990-91. The plaintiffs were the highest bidders in the respective auctions and the respective bids were knocked down in their favour. On 29.6.1990, formal contracts were entered into by the plaintiffs with the defendants. The formal contracts were marked in the suits as defence Exhibits D-6 etc.. Meanwhile, the toddy tappers took up H cudgels and even defied the attempted ban. This resistance had started even

before the plaintiffs entered their highest bids. A

3. In view of the agitation, the Government considered the relevant aspects and issued an order dated 29.6.1990. While the ban on sale of toddy to the public was continued, it was decided to arrange for sale of toddy tapped by the toddy tappers of Dakshina Kannada District, through a centralised society to the fenny units and permitting the fenny units of B Dakshina Kannada to buy the toddy from tappers of allotted trees at the price to be fixed by the Excise Commissioner till finalising the purchase by a centralised society as envisaged.

4. It is the case of the plaintiffs that the above order was violated by the toddy tappers with impunity by selling toddy openly in the District. The C State did not take steps to check this. So, some of the plaintiffs approached the High Court of Karnataka with Writ Petitions, Writ Petition Nos. 16317 to 16319 of 1990. The main prayer in the Writ Petitions was to issue a writ of mandamus directing the State Government to take effective and appropriate steps for prohibiting the tapping or sale of toddy in Udupi, Kundapur and D Belthangadi taluks of Dakshina Kannada District during the Excise Year 1990-91. An interim order was sought and obtained restraining the State from terminating the contracts of the writ petitioners. The writ petitioners relied upon the policy statement above quoted and contended that they had bid the right to vend arrack for the Excise Year 1990-91 on the basis of that assurance and it was the duty of the Government to enforce that policy. They also E sought a direction to the State not to collect the Kist amount at the rate of rentals bid for the year 1990-91, but to collect it only at the rates of the bid amount for the Excise Year 1989-90. A learned single judge of the High Court dismissed the Writ Petitions. An appeal was filed by the plaintiffs before a Division Bench. A case of promissory estoppel was also put forward against F the Government in support of the prayers in the Writ Petitions. The Division Bench noticed that what was complained of was nothing more than hazardness of any business. On the plea of promissory estoppel put forward, the Division Bench stated :

> "The promissory estoppel cannot arise because where it is a matter G of policy, and Government of Karnataka by filing statement of objections has stated that it has been doing whatever is possible within its means to stop the illegal trade."

At the prayers of the plaintiffs, the attempted termination of the contract by the State was restrained for a specific period by the court directing the State H

A not to give effect to the proposed termination of the contract until 30.9.1990. The matter was brought up to this Court by way of Petitions for Special Leave to Appeal. This Court by Exhibit P-29 Order dismissed the petitions thus:

> "Without prejudice to the petitioner's right to approach the appropriate Civil Court for relief and subject to the interim stay granted by the
B High Court staying the operation till 15.10.1990, these petitions are dismissed."

It is thereafter that these suits have been filed in the trial court. Since the averments in the various plaints are more or less identical and the factual situation is also the same, it is sufficient if the pleadings in one of the suits
C are referred to.

5. In the plaints, after setting out the factum of the concerned plaintiff being the successful bidder in respect of the auction for the Excise Year 1990-91 and setting out the extract of the Budget's Speech already adverted to and
D pleading that in spite of repeated representations, the defendants had failed to take action to curb illegal tapping and sale of toddy and after referring to the order of the Government dated 29.6.1990 authorising the tapping of toddy and its sale in the concerned district, it was pleaded that the State had committed breach of the promise earlier held out and as a consequence, the State was estopped from collecting higher Kist amount. After admitting that
E the Kist amount for the month of July 1990 as per the bid for the previous year 1989-90 had been paid and after pleading that the Kist amount for the month of August 1990 has also been paid on the same basis, it was further pleaded that the plaintiff was willing to remit even future Kist amounts at the same rate as he has no other alternative. We think it appropriate to set out
F paragraph 10 of the plaint in O.S. No. 1261 of 1990:

> "When the Excise Commissioner demanded the Kist amount from the plaintiff for the month of July 1990, the plaintiff remitted the Kist for July 1990 at the rate for which he had bid during the previous year in the said Taluks, namely at Rs.31.00 lakhs for Karkala Taluk and at
G Rs. 35.00 lakhs for Bantwal Taluk. This shows the bonafides of the plaintiff in the contentions advanced by him. The plaintiff has also remitted the kist amount for August 1990. The plaintiff is willing to remit even future kist amount at the same rate, as he has no other alternative. The plaintiff has no intention whatsoever to deprive what is legitimately payable but the plaintiff cannot be compelled to pay
H higher amount for which the plaintiff had offered the bid, based

entirely on Government's announcement to ban toddy. Under the circumstances already explained above and as the said circumstances have been totally changed, it is unfair to claim the said amount from the plaintiff by the defendants who are the defaulting parties." A

Then follows the plea that in view of the developments, performance could not be insisted upon. This is what is pleaded in paragraph 11 of the plaint: B

"In any view of the case and irrespective of the aforesaid aspects of fundamental breach, the plaintiff submits that the purpose of the obligation to sell liquor has been rendered impossible to the extent expected consequent upon the illegal tapping and sale of toddy which the plaintiff could not prevent and which the defendants did not C prevent though they were obliged to do so. Therefore, there is supervening impossibility of performance of contract to sell liquor and to pay higher kist amount, realisation of which is rendered impossible by the breach of promise held out by the defendants as well as their failure and negligence to maintain law and order. Therefore, D the plaintiff is excused from the obligation to perform as per contract for sale of liquor in the taluks for which the plaintiff is the successful bidder. The plaintiff is entitled to claim injunction as plaintiff has no other remedy. In view of the urgency involved this suit may be revived without previous Section 80 Notice."

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6. As we understand the plaint, what appears to be pleaded is the failure of the Government to impose the ban on sale of toddy and the contract being rendered impossible of performance in the matter of payment of Kist by the plaintiff. The plea of estoppel is based on the budgetary speech of the Minister already quoted. After quoting it, it is pleaded:

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"The Government thus made a promise to the public that the vending of toddy will be banned thereby enabling higher sales of liquor. The plaintiff, having been aware of the said promise, assumed it as a fundamental obligation of the defendants and as an essential term of offer while auctioning right to vend liquor in the district of Dakshina G Kannada. On 28.5.1990, when the Excise auction took place at Mangalore, the plaintiff was having foremost in its mind the aforesaid fundamental representation of the defendants"

This is followed by a plea that it was based on this that a sum higher than that for the previous year was offered by the concerned plaintiff - bidder. The H

A defendants filed a written statement raising various objections. The bona fides of the suits were questioned. It was pointed out that the attempt to get an injunction was an attempt to obtain something that was denied by the High Court and the Supreme Court. It was pleaded that on the bid of the plaintiff being accepted, a formal contract had been entered into termed 'Guttige Patra' and the plaintiff was bound to perform the contract as thus B entered into and the plaintiff was bound by the terms of the contract. The written contract did not contain any term regarding ban on sale of toddy or cast an obligation on the State to effectively bring about such a ban. The plea that a prohibition in the tapping and sale of toddy would increase the sale in arrack was also denied. It was denied that the Government had made any C promise to the public that the vending of toddy will be banned. It was denied that the plaintiffs had bid the right to vend arrack for the Excise Year 1990-91 based on that promise. It was also denied that the plaintiff's offer for vending of arrack was solely on the assurance that there will be a ban on tapping and sale of toddy. The facts which compelled the Government not to ban altogether the sale of toddy and making the new arrangement, were all D set out. The plaintiffs were aware of the fact of attempts to defy the ban by toddy tappers and they had entered into the contract thereafter with eyes open. Even at the time the plaintiffs' bid, the agitation by toddy tappers was going on. The plaintiffs were bound by the terms of the contract and to perform their obligations. It was further submitted that, as a matter of fact, the E tapping of toddy for sale to the public was banned, but illegal tapping was going on and the Excise Department was trying its best to prevent illegal tapping. The plaintiffs were bound to pay the amount which was the consideration for the right to vend arrack obtained by them from the Government which had the exclusive privilege of selling liquor. The dismissal of the Writ Petition, the appeal therefrom and of the Petitions for Special Leave to Appeal F were pleaded. It was pleaded that the sale of arrack was not dependent on the tapping of toddy or sale of toddy. It was pleaded that the Government has the right to change its policy with regard to the banning of tapping of toddy and the banning of sale of toddy was not a condition precedent for the sale of arrack. It was submitted that the plaintiffs could not avoid payment G of the agreed Kist, after they had entered into formal contracts with the State, had carried on the sale of arrack in terms of the right given to them for the concerned Excise Year and they were not entitled to any relief. It was also pleaded that the increase in the bid amount for the Excise Year 1990-91 was normal and the percentages of increase in other places, 13 in number, were set out. In some of those centres, the increase was above 300 per cent from H that of the previous year. The suits were liable to be dismissed. The plaints

were then amended by seeking the relief of declaration that the excise contract existing between the plaintiffs and the State is enforceable by rectification to the effect that the monthly kist payable shall be at the rate prevailing during Excise Year 1989-90. No further plea in support was added. An additional written statement was filed that the written contract concluded the parties and declaration as sought for to modify the obligation of the plaintiffs under the terms of the contract while retaining the right conferred thereby, was not permissible.

7. At the trial, various issues were raised. But the trial court ultimately held that the defendants were estopped from claiming the Kist amounts as per the bids of the plaintiffs by the doctrine of promissory estoppel. This was on the basis that the Budget Speech made by the Minister amounted to a promise to the intending bidders, that the bidders had acted on that promise and had offered higher amounts. Since the State had failed to implement successfully the policy of banning tapping and selling of toddy to the public, the State was estopped from claiming the Kist amount in terms of the contract entered into between the State and the contractor. The court did not ask itself whether the plaintiffs had proved any detriment because of the State not banning the trade in toddy. The court also did not ask itself the question whether a part of the contract containing the obligation of the plaintiffs alone could be rectified as claimed in the plaint, or whether at best the plaintiffs were in a position to repudiate the contract as a whole and whether the suit of this nature would be maintainable. On appeal by the defendants, the lower appellate court proceeded on the same lines and dismissed the appeals. It does not appear that the lower appellate court properly applied its mind to the pleadings and the principles of law governing the matter. On Second Appeals being filed by the defendants, the High Court, we must say with respect, did not properly apply its mind to the questions that arose for decision and merely ended up by dismissing the Second Appeals upholding what it called the plea of promissory estoppel. The decisions thus rendered in the four suits are challenged in these appeals.

8. The following decree has been granted.

> "It is hereby declared that the Excise contract existing between plaintiffs and first defendant is enforceable by rectification to the effect that monthly kist payable shall be at the rate prevailing during excise year 1989-90.
>
> Further the defendants are restrained from giving effect to or enforcing

A the terms of contract entered into between the plaintiffs and the defendants in relation to the retail vend of liquor in Karkala, Bantwal, Puttur, Sullia, Kundapura, Udupi and Belthangady Taluks of Dakshina Kannada District for the excise year 1990-91 with regard to the kist amount payable thereunder or alternatively, the defendants are restrained from claiming kist at the rates higher than what was B stipulated for 1989-90 in the said Taluks by way of perpetual injunction."

9. Under Section 26 of the Specific Relief Act, an instrument or contract may be rectified when through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not express their real intention. According to Dr. Banerjee in his Tagore Law Lectures on the 'Law of Specific C Relief', "if the parties had deliberately left out something from the written instrument, that cannot be put in." by resort to the remedy of rectification. Here, the parties have entered into written contracts and admittedly no term is incorporated therein regarding enforcement of the ban on trade of toddy to the public in the District of Dakshina Kannada. Nor is there any case D pleaded in the plaint of any mutual mistake in the matter of setting down the terms of the contract. There is also no plea of fraud on the part of the State in entering into the contract. On the terms of the contract, the plaintiffs had obtained the right to vend arrack for the Excise Year 1990-91 on their obligation to pay the bid amount in monthly instalments. In the absence of any foundation in the pleadings being laid by the plaintiffs establishing a ground for the grant E of the relief of rectification, the mere adding of a prayer by way of an amendment could not be considered sufficient to grant them the relief of rectification.

10. What is pleaded in this case at best is that in his Budget Speech F the Minister concerned had held out to the public at large that he was proposing to ban sale of toddy in the whole of the State and this had induced the plaintiffs to believe that the sales in arrack would go up resulting in their offering higher bid amounts for the right to sell arrack for the Excise Year 1990-91. On facts, the written statement of the State shows that in a number of centres, the prices have gone up by considerable sums and compared to G those increases in other places, the increase in the relevant taluks were only marginal. It may be noted that the plaintiffs had not established that they had suffered any losses in view of the inability of the State Government to put down what the plaintiffs called the illegal tapping and sale of toddy in public as opposed to the fenny units as indicated in the Government order. P.W. 1 H examined on behalf of the plaintiffs could not show with reference to any

accounts of any such loss having been incurred. We are not here considering the question of the plaintiffs having shown detriment in connection with their plea of estoppel which will be dealt with separately. What is intended to be conveyed here is that the plaintiffs have not shown that they had suffered any detriment by entering into the contracts in question based on the promise held out to them, though not reflected in the written instrument.

11. The American Supreme Court in *Hunt* v. *Rousmanier's Administrators,* [8 Wheaton 174) speaking through Chief Justice Marshall indicated the position in law thus:

> "It is a general rule, that an agreement in writing, or an instrument carrying an agreement into execution, shall not be varied by parol testimony, stating conversations or circumstances anterior to the written instrument.
>
> This rule is recognised in courts of equity as well as in courts of law; but courts of equity grant relief in cases of fraud and mistake, which cannot be obtained in courts of law. In such cases, a court of equity may carry the intention of the parties into execution, where the written agreement fails to express that intention."

12. As we have seen, the sum and sub-total of the case of the plaintiffs is that they entered into the written contracts on their belief that the policy of prohibition of sale of toddy to the public would be implemented and under the expectation that they would get more profit from the sale of arrack. We may notice that there is also no evidence adduced to show that the sale of toddy has any direct connection with the sale of arrack or has any influence on the quantum of the sale of arrack. The State has clearly pleaded that the tapping and sale of toddy has nothing to do with the sale of arrack and that arrack drinkers do not generally take to toddy. There is no material on the basis of which the stand adopted by the State can be found to be wrong or unsustainable. In any event, except suggesting that this will happen, the plaintiffs have not adduced any legal or acceptable evidence to establish this plea.

13. Thus, on facts, we find that no case has been made out for rectification of the instrument only as regards the obligation of the plaintiffs to pay the Kist. At best, the plaintiffs may have a right to sue for damages against the State on establishing that they had suffered losses in view of the alleged failure of the Government to impose its policy of prohibition and sale

A of toddy to the public and by establishing the quantum of such losses. Even if any loss has been suffered, it does not grant the plaintiffs a right to have the instrument rectified and that too, to the effect that their obligation to pay the Kist should be based on their bids for the previous Excise Year 1989-90. There is no case for the plaintiffs that the State Government at any time held out to them that in case of its failure to enforce the ban on sale of toddy to
B the public, the plaintiffs need pay only the Kist amounts of the year 1989-90. There was no such agreement or contract during any negotiation preceding the bids by the plaintiffs. In fact, it was a case of open auction on set down terms in the light of a statute and the plaintiffs entered their bids. There was therefore no occasion for mutual mistake as to terms or fraud in execution of
C the contracts. Thus, it appears to us that a grant of relief in the manner done by the courts below purporting to rectify a part of the contracts is totally unwarranted and clearly unsustainable in law. That part of the decree has necessarily to be set aside.

14. What is left is the case of promissory estoppel. Here, the promise
D is said to be the budgetary speech of the Minister concerned that he proposes to ban the sale of toddy to the public in the District of Dakshina Kannada. Firstly, the Division Bench in the Writ Petitions filed by some of the plaintiffs, while dismissing them, clearly held that no question of promissory estoppel would arise in these cases. The Petition for Special Leave to Appeal challenging
E the said decision was dismissed by this Court reserving liberty in the plaintiffs to approach the Civil Court. The question arises, to approach the Civil Court for what? According to us, the approach to the Civil Court is for the purpose of suing for damages on establishing that they had suffered loss because of the expectations raised by the speech in the Assembly and the failure of the State to enforce the prohibition it had envisaged as a policy. The right
F reserved for approaching the Civil Court even while dismissing the Petition for Special Leave to Appeal, does not clothe the plaintiffs with a right to approach the Civil Court with a plea of promissory estoppel already negatived in the writ petitions filed by some of the plaintiffs. Nor does it enable the court to go behind what has been held by the High Court in the Division Bench
G and proceed to accept a case of promissory estoppel.

15. That apart, this Court in *Express Newspapers Pvt. Ltd. & ors.* v. *Union of India & Ors.*, [1986] 1 S.C.C. 133 has held that the principle of estoppel does not operate at the level of Government policy. In *Union of India & Ors.* v. *Ganesh Rice Mills & Anr.*, JT (1998) 9 SC 51, this Court had
H categorically held that a speech made in Parliament by a Minister cannot be

treated as a promise or representation made to a person attracting the principle of promissory estoppel. In *M/s Pine Chemicals Ltd. & Ors.* v. *Assessing Authority & Ors.*, [1992] 2 S.C.C. 683, this Court held that a Finance Minister's statement referring to a proposal to continue the grant of exemption from payment of sales tax for a period of ten years is merely a budget proposal which could not give rise to any right to the parties and it did not amount to a decision, order or notification extending the period of exemption which was required to found a plea based on promissory estoppel. The manner in which the courts below including the High Court got over the principle enunciated by these decisions leaves much to be desired.

16. Thus, it would seen that the plaintiffs are not entitled to found any case of promissory estoppel merely on the basis of the speech made by the Minister in the Assembly of a proposal to ban sale of toddy in the State.

17. Moreover, it is to be seen that it is not the case of the plaintiffs that the sale of toddy to the public was permitted. Their case is that a subsequent notification was issued proposing to have the purchase of toddy through Cooperatives and for being supplied to fenny units. It is not seen that the Government had resiled even from its policy objective. But the case of the plaintiffs appears to be that the Government could not fully implement the policy it had evolved of preventing sale of toddy by toddy tappers to the public. This, according to us, at best would only give a right to the plaintiffs to claim damages from the State on establishing that they had suffered damages by virtue of such failure of the Government.

18. Here, we must remember that the plaintiffs are all experienced Excise contractors who are bidding for the right to vend liquor at open auctions. It is notorious that these auctions are highly competitive and every attempt is made by an existing contractor to preserve his bastion. It is also notorious that the prices fetched in these auctions show a tendency to go up because of competition. The State has pointed out that the increase in the figures for various other centres even exceeded by 300% the amounts for the year 1989-90. There is nothing to show that the bids by the plaintiffs were not based on their calculations and with a view to ward off competition to preserve their right to vend arrack in their respective areas.

19. What the plaintiffs have gone for was a commercial venture with attendant risks. If they felt that the risk could not be taken, it was for him to repudiate the contract as a whole. In fact, when the Government apparently tried to terminate the contracts because of the failure of the plaintiffs to remit

A the Kist amounts as agreed to for the months of July and August 1990, the plaintiffs obtained interim orders from the High Court interdicting such termination and went ahead with vending arrack in exercise of their right under the agreements. Having insisted on performance of the contract and having exercised their rights under it, the plaintiffs are not entitled to repudiate their obligations under the contract. No case of estoppel, conventional or
B promissory, would arise here.

20. The finding on estoppel is based merely on the promise made or the proposal made by the Minister concerned in his speech in the Assembly and the failure of the Government to implement the policy of prohibition of sale
C of toddy in public. We are of the view that the plea raised by the plaintiffs does not lay an adequate foundation for accepting the plea of estoppel justifying their being relieved of the obligation undertaken by them based on their bids and as contained in the written contracts entered into by them with the Government. There is no case that the contract contains any term which is a mistake or that it contains any term that casts an obligation on the State
D which obligation the State had failed to fulfil.

21. In this situation, we do not think that it is necessary to discuss all those decisions on promissory estoppel, its ambit and whether in a case like the ones before us, detriment need not be shown before the plea could be upheld to relieve one of the parties alone of its obligation. We are satisfied
E that no foundation for sustaining the prayers made in these cases has been laid and no case in support established. Hence, we refrain from further discussing the question of promissory estoppel and its availability in these cases. Suffice it to say that the finding that the appellants are estopped from claiming the Kist amounts in terms of the contracts between the parties is
F found to be wholly unsustainable.

22. For the reasons stated above, we allow the appeals, set aside the judgments and decrees of the courts below and dismiss the suits filed with costs throughout. The costs payable in each of these appeals by the respondents to the appellants is quantified at Rs. 50,000/-.

G

D.G. Appeals allowed.