

(1993) 07 KAR CK 0021

In the Karnataka High Court

Case No : Writ Petition No's. 22634 to 22660 etc.

B.N. Raghuram

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 08-07-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 19 (1) (g)
Karnataka Excise Act, 1965 — Section 71 (1), 71 (2), 71 (2) (e)
Karnataka Excise Licences (General Conditions) Rules, 1967 — Rule 5

Citation : (1993) ILR (Kar) 2332 : (1993) 3 KarLJ 235

Hon'ble Judges : Shivaraj Patil, J

Bench : Single Bench

Advocate : H.B. Datar, P.V. Shetty, B. Veerabhadrappe, G.K. Bhat and O.S. Bhat, for the Appellant; B.V. Acharya, General, for the Respondent

Judgement

Shivaraj Patil, J.—All these Writ Petitions are taken up for final hearing with the consent of the learned Counsel appearing for the parties and the learned Advocate General for the State. They are heard accordingly.

2. Since common questions of law based on similar facts arise for consideration in all these Writ Petitions, they are disposed of by this Common Order.

3. The petitioners in these Writ Petitions have questioned the Constitutional validity of amendment issued to Rule-5 of the Karnataka Excise Licences (General Conditions) Rules, 1967 (for short the Rules 1967) vide impugned Notification dated 21st June, 1993 in No.FD 20 PES 92 (Annexure-D in W.P.Nos. 22634 to 22660 of 1993) and have sought for a Writ of Mandamus directing the respondents to renew the licences of the petitioners for the excise year 1993-94 without reference to the amended Rule-5.

4. There is no dispute on facts and briefly stated, they are:

The petitioners are engaged in the business of liquor either as retailers or running bar and restaurant possessing licences granted in their favour either in

Form No. CL-2 or CL-9. These licences are granted under Rule 3 of the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968. The Rules 1967 also apply to all licences issued under the Karnataka Excise Act, 1965.

For the purpose of these cases, Rule-5 of the Rules 1967, so far it is relevant, reads:

"Restrictions regarding location of shops: (1) The licensee shall except in Towns and Cities and other places where more than one shop is sanctioned, select a suitable site outside but adjacent to a village for locating his shop:

Provided that no such site shall be selected to locate a shop within a distance of one hundred metres from any religious or educational institution or residential locality inhabited predominantly by Scheduled Castes and Scheduled Tribes."

The petitioners have been carrying on business for the last several years in accordance with the licences granted in their favour and such licences were renewed from year to year by the respondents on being satisfied as to the location of the said shops and also other requirements of law. The licences granted to the petitioners for the excise year 1992-93 were valid upto 30th June, 1993. The petitioners applied for the renewal of the licences for the excise year 1993-94 commencing from 1st July, 1993. It appears during the currency of the licences of the petitioners for the excise year 1992-93 the State Government proposed to amend the existing Rule-5 of the Rules, 1967 imposing certain restrictions in respect of location of shops. Even on the basis of the draft proposing to amend the Rule, the authorities issued notices to some licencees directing them to shift their existing place of business to any other unobjectionable place in view of the restrictions contained in the Draft Rules. Since the notices were issued on the basis of the Draft Rules some of the petitioners challenged the action of issuing notices as premature and this Court was pleased to issue interim order staying the impugned notices and directed the respondents to consider the applications of the petitioners therein for renewal of licences for the excise year 1993-94.

When the matter stood thus, the petitioners made all the preparations to continue their business by securing the licences for the excise year 1993-94, after remitting necessary licence fees and complying with other legal requirements, the State Government issued the said Notification dated 21st June 1993 amending the existing Rule-5 by substituting new Rule-5, thereby imposing certain restrictions regarding the location of the liquor shops.

The amended Rule-5 reads thus:

"Restriction in respect of Location of shops : No licence for sale of liquor shall be granted to a liquor shop or premises selected within a distance of 100 Metres from any religious and educational institution or hospital or any office of the State Government, or Central Government or local authorities or in a residential locality, where the inhabitants are predominantly belonging to Scheduled Castes

or Scheduled Tribes or within a distance of 220 metres from the middle of the State Highway or National Highway.

The Deputy Commissioner of Excise shall after making such enquiry as he deems fit approve the premises or liquor shops so selected and thereafter the description of the premises or liquor shop shall be entered in the licence to be issued.

Provided that the Deputy Commissioner of Excise, may, with the prior approval of the Excise Commissioner and for reasons to be recorded in writing, permit the location of any shop within a distance of 100 metres but not less than 50 metres from the institutions, hospital, office or locality specified in Sub-rule (1) within the City Municipality or City Corporation Limits."

The petitioners submit that they have been carrying on business in premises for the last several years without any complaints from any quarter and without giving room for affecting the peace and tranquillity of the area where the shops are located. In view of the amended Rule-5 several of these shops do not satisfy the requirements. According to the petitioners the amendment made to Rule-5 is unjust and unwarranted and that it is very difficult for them to get shops or premises so as to satisfy the requirements of the amended Rule-5. According to the petitioners non-renewal of their licences for the excise year 1993-94 in view of the amended Rule-5 their right to carry on businesses guaranteed under Article 19(1)(g) of the Constitution of India is taken away; the Rule-5 as amended is unreasonable; arbitrary and whimsical in imposing such restrictions, which offends Article 14 of the Constitution of India; impugned Rule is made beyond the Rule making powers given u/s 71 of the Karnataka Excise Act, 1965 (for short the Act); it is made in gross violation of justice and fair play; it is not intended to carry out the purpose of the Act and the amended Rule has not been placed on the floor of the State Legislature, which is a mandatory requirement. It is also contended that the amended Rule in certain cases gives discretion to the licensing authority to relax restrictions as to location with the approval of the Excise Commissioner and it defeats the purpose of the very amended Rule, as it will give scope for selecting the people on hostile discrimination.

5. On the basis of the facts pleaded and the submissions made the following Points do arise for Consideration:

(1) Whether the petitioners have fundamental right under Article 19(1)(g) of the Constitution to trade and do business in liquor and if so, whether their right is adversely affected by the impugned Rule-5?

(2) Whether the impugned Rule-5 is arbitrary and unreasonable and thereby offends Article 14 of the Constitution of India?

(3) Whether the impugned Rule is ultra vires of Section 71 of the Act; in that:

(a) The amended Rule is not intended to carry out the purpose of the Act?

(b) The amended Rule has not been placed on the floor of the State Legislature?

(c) Regulation can be only in regard to a locality of a shop and not with regard to location?

(4) Whether the legitimate expectation of the petitioners that their licences would be renewed in the ordinary course, as is done for the last several years is frustrated offending Article 14 that too when the applications for renewal of licences for the excise year 1993-94 were pending and the amended Rule was made operative with effect from 21.6.1993 when hardly 9 days were left for the commencement of the excise year 1993-94?

(5) Whether the amended Rule-5 covers CL-9 licences also?

Re:Point No. 1:

6. Sri H.B. Datar, learned Senior Counsel, submitted that whether right to carry on trade in liquor is fundamental right under Article 19(1)(g) is yet to be decided by the Supreme Court. That the Supreme Court in Civil Appeal Nos. 4708 to 4712 of 1989 after hearing the arguments at length observed:

"We have heard arguments on this issue for a long time. Since a number of decisions had to be cited before us, we are of the opinion that having regard to the various decisions that were cited before us it will be more appropriate to have the issue resolved by listing these appeals before a Bench of 5 Judges so that the matter could be authoritatively decided for once and all."

He also referred to D.K. Trivedi & Sons v. State of Gujarat, AIR 1986 SC 1323 and invited my attention to para-83 in the said Judgment to contend that hearing of these Writ Petitions on hand be stayed until the disposal of the similar matters pending before the Supreme Court. I am unable to accept this argument of the learned Counsel for more than one reason. The Constitutional validity of the impugned Rule-5 is not pending before the Supreme Court; in view of the Decisions of the Constitution Bench of the Supreme Court that right to carry on business in liquor is not a fundamental right guaranteed under Article 19(1)(g) of the Constitution and the Division Bench Decision of this Court in M/s. Jagadale and Sons, Bangalore and Vs. State of Karnataka and Others, etc., there is no need to stay the hearing of these Writ Petitions on the question that whether right to carry on trade in liquor is a fundamental right under Article 19(1)(g) of the Constitution or not and the Supreme Court in Civil Appeal Nos. 4708 to 4712 of 1989 has opined having regard to the various Decisions that it was appropriate to have the issue resolved by listing those Appeals before the Bench of 5 Judges on the facts of those cases. Further, even otherwise in the view I am taking on Point No. 2 that the impugned Rule-5 is neither arbitrary nor unreasonable and it is not violative of Article 14 of the Constitution, there is no need to stay the hearing of these Petitions.

The Decision in the case of D.K. Trivedi and Sons, also does not help the contention of the learned Counsel. That was a case where the High Court

directed the appellants to approach the Supreme Court as similar matters were pending there. On the facts of that case the Supreme Court observed that if the High Court thought that the point raised by the appellants was the same as was pending in the Supreme Court, it ought to have stayed the hearing of the Writ Petitions until the Supreme Court disposed of the other matters. In that case the Constitutional validity of Section 15 of the Mines and Minerals (Regulation and Development) Act (67 of 1957) was questioned and the appeals in respect of the same subject matter were pending before the Supreme Court. That is not the situation in the cases on hand.

The Division Bench of this Court in the case of Messrs Jagdale & Sons v. State of Karnataka in the light of the several Decisions of the Supreme Court, in particular referring to the two Decisions (1) Sat Pal and Co. and Others Vs. Lt. Governor of Delhi and Others, State of M.P. and Others Vs. Nandlal Jaiswal and Others, in para-14 of the Judgment, at page 123, has concluded thus;

"Therefore, a licence to deal in liquor cannot result in the creation of a fundamental right to trade under Article 19(1)(g) of the Constitution, nor, the said licence result in elevating the activity of dealing in liquor to the status of constitutionally recognised trade or business."

The Decision of the Constitution Bench of 5 Judges of the Supreme Court in the case of Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, having referred to the various Constitution Bench Decisions in definite terms has stated thus in para-53:

"There is no fundamental right to do trade or business in intoxicants. The State, under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants - its manufacture storage, export, import, sale and possession. In all their manifestations, these rights are vested in the State and indeed without such vesting there can be no effective regulation of various forms of activities in relation to intoxicants. In "American Jurisprudence", Volume 30 it is stated that while engaging in liquor traffic is not inherently unlawful, nevertheless it is a privilege and not a right, subject to governmental control (page 538). This power of control is an incident of the society's right to self-protection and it rests upon the right of the State to care for the health, morals and welfare of the people. Liquor traffic is a source of pauperism and crime."

(underlining is mine)

In view of this clear existing legal position, I have no hesitation to hold that the petitioners being licensees to trade in liquor do not have any fundamental right to carry on business in liquor under Article 19(1)(g) of the Constitution of India.

Re:Point No.2:

7. It was contended by the learned Counsel for the petitioners that the impugned Rule-5 is unreasonable and arbitrary and it neither advances the object of the Act nor is intended to achieve any purpose of the Act.

Rule-5 of the Rules 1967 prior to its amendment did place restrictions regarding location of shops stating that no such site shall be selected to locate a shop within a distance of 100 metres from any religious or educational institution or residential locality inhabited predominantly by Scheduled Castes and Scheduled Tribes. The amended Rule-5 includes hospitals, any office of the State Government or of the Central Government or local authorities and State and National Highways, Distance of 100 metres remains the same except in regard to Highways. As far as State Highway and National Highway are concerned, distance prescribed for location of a shop is 220 metres from the middle of the State Highway or National Highway. It appears and it stands to reason as well, that the impugned Rule is intended to secure the convenience, morality, tranquillity, decency or safety of the public.

The learned Counsel for the petitioners although stated that the impugned Rule imposes arbitrary and unreasonable restrictions, but they were not in a position to convince as to how the said Rule was either arbitrary or unreasonable.

Sri P. Vishwanath Shetty, learned Counsel, submitted that if a person is habituated to drink, even if a shop is located at a distance of 220 metres from the middle of the Highways, he would go and drink or consume liquor and that there is no rational basis in fixing the distance.

The learned Advocate General submitted that the impugned Rule-5 is regulatory in nature imposing restrictions with regard to location of shops with reference to various public places and highways. If a shop is located close by to the highway it would have greater attraction and temptation for those who intended to drink or consume liquor. Restricting location of a shop at a distance from highways minimises the chances of drinking and reduces the number of road accidents as well. I am of the opinion that the restriction as to location of shops with reference to places mentioned in the Rule are in the interest of morality, tranquillity, decency or safety of the public. In short, the impugned Rule serves the public interest and as such it is neither unreasonable nor arbitrary.

I must refer here to the argument of the learned Counsel for the petitioners that the Proviso to the impugned Rule-5 may defeat the very Rule itself, as it gives power to the Deputy Commissioner of Excise to permit the location of any shop within a distance of 100 metres, but not less than 50 metres from the places mentioned in Sub-rule (1) of the impugned Rule-5 within the City Municipality or City Corporation Limits. According to them this gives room for hostile discrimination. I am unable to accept this argument as well. The Deputy Commissioner of Excise has to Act within the limitations laid down in the Proviso itself. He can relax the distance for location of shop with the previous approval of the Excise Commissioner and that too for the reasons to be recorded in writing. He cannot permit location of a shop within 50 metres from the places mentioned in Sub-rule (1) of Rule-5. The argument that Proviso is confined to City Municipality or City Corporation Limits is bad in law being discriminatory also cannot be accepted because the classification stands to reasons.

Hence, I unhesitatingly conclude that the impugned Rule-5 is neither unreasonable nor arbitrary.

Re:Point No.3:

8. Section 71(1) confers powers on the State Government to make Rules by issuing notification and after previous publication to carryout the purposes of the Act.

Section 71(2) so far as it is relevant for the purpose reads thus:

71(2) In particular and without prejudice to the generality of the foregoing provision, the State Government may make rules:

(a) to (d) xxx xxx xxx (e) regulating the periods and localities in which, and the persons or classes or persons to whom, licences for the wholesale or retail sale of any intoxicant may be granted and regulating the number of such licences which may be granted in any local area."

The State Government in its Rule making power has amended Rule-5 pertaining to the location of shops. It is one of the items regarding which State Government could make Rules as can be seen from Section 71(2)(e) extracted above. Even Rule-5 prior to its amendment also placed restriction regarding location of shops. This being the position, it cannot be said that the impugned Rule-5 is not made to carry out the purposes of the Act.

Para-27 in the aforementioned case of M/s Jagdale and Sons, reads thus:

"The various incidents, or activities pertaining to the manufacture and sale of liquor, are matters of privilege to be granted, by the State. The Act, provides for the grant of such privileges, but nowhere, it has barred the State from exercising its own inherent privilege either to manufacture or sell the intoxicant liquors. The purpose of the Act, has to be read as inclusive of making a regulation, governing the sale of liquor. The object flows out of the very nature of the liquor and the exclusive privileges vesting in the State in this regard. Therefore, Section 71(1), which empowers the making of the rule to carry out the purposes of the Act, cannot be read narrowly, so as to exclude a power in the State, to make a rule to channelise the marketing of the liquor in the State in a particular manner. Section 71(2) cannot, and, in fact, does not in any manner cut down the scope of Section 71(1). The enumerations under Sub-section (2) is "without prejudice to the generality" of Section 71(1), as expressly stated. This apart, if rule of interpretation, derived from the provisions of Karnataka General Clauses Act is imported, it can safely be said that plurality means singular also and therefore Section 71(2)(d) and (e) can be read as empowering the framing of a rule to create a single licence for the distributor of or wholesale dealing in the intoxicants in the State."

Sri B. Veerabhadrappe, learned Counsel submitted that Rule-5 deals with regard to restriction of location of shops and not the localities. But, Section 71(2)(e)

gives power to the State Government to make Rules regulating the periods and localities. In other words, according to him the State Government had no power to frame Rules restricting location of shops being not authorised by Section 71(2) (e). This argument is based on the title portion of Rule-5. I reject this argument for two reasons : (1) Interpretation sought to be placed is out of context. (2) Reading of amended Rule-5 itself makes it clear that it deals with the location of shops with reference to localities in which religious or educational institution or hospital or any office of the State Government or Central Government or local authorities are situated or in a residential locality where the inhabitants are predominantly belonging to Scheduled Castes or Scheduled Tribes.

The contention that the impugned Rule-5 being the subordinate legislation is not a law made by the Legislature of the State and that too when it is not placed on the floor of the Legislature, restrictions imposed by the impugned Rule are bad in law, does not merit acceptance.

Section 71(3) of the Act reads:

"A rule under this Act may be made with retrospective effect and when such a rule is made the reasons for making the rule shall be specified in a statement laid before both Houses of the State Legislature. Subject to any modification made under Sub-section (4), every rule made under this Act shall have effect as if enacted in this Act."

Having regard to the language of Section 71(3) of the Act a valid Rule made under the Act has to be taken as a law made by the State Legislature. This was also the view taken by the Division Bench of this Court in M/s Jagadale and Sons case (as can be seen from para-18 of the said Judgment).

Further, the Division Bench of this Court in State of Karnataka Vs. Anjanappa and Co., has stated thus in paragraphs 13, 14 and 18:

"Further if the Legislature had intended that the rules should not take effect till they had the sanction of the two Houses, it would have expressly said so by employing negative language. The Section does not say that the rule would not be effective till it is laid before the two Houses. What really it provides is that in the event of the two Houses modifying the rule, it is the modified rule which would be effective and in the event of the two Houses annulling the rules, the rules would be ineffective. In this view of the matter the only irresistible conclusion that can be arrived at is that it is from the date on which the Government decides to make the rules effective, that they come into force, and not after the expiry of 30 days after they are placed before both the Houses of the Legislature."

The view which we are taking finds full support from the two judgments on which reliance was placed by Mr. M.R. Achar, learned State Counsel and the unreported judgment of this Court in W.P.Nos. 39763 to 39766 of 1982 decided on 20.8.1987. In Avala Reddy Ramappa's case wherein a similar question arose for

consideration, a Division Bench of the High Court of Mysore has observed thus:

"We next proceed to consider the argument resting on the provisions of Section 246 of the Act.

Now, that Section provides:-

"246. Certain rules and orders to be laid before the Houses of the State Legislature:

Every rule made u/s 210 and every order made u/s 245 shall be made, as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two or of more sessions, and if before the expiry of the said period, either House of the State Legislature makes any modification in any rule or order or directs that any rule or order shall not have effect, and if the modification or direction is agreed to by the other House, such rule or order shall thereafter have effect only in such modified form or be of no effect, as the case may be."

It is an undisputed fact that the Rules with which we are concerned in this case were in fact laid before the two Houses of the State Legislature although they were not before those Houses for the full period of thirty days referred to in this Section. The petitioner, therefore, contends that the result was that the Rules never came into force. According to the argument, it is only after the expiry of that period of thirty days that the Rules would come into operation and not otherwise.

This contention, in our opinion, is groundless. The Section does not provide that the Rules made u/s 210 do not come into force until after the expiry of the period of thirty days referred to in that Section. What it only provides is that if during the period of those thirty days, either House of the State Legislature makes any modification to any Rule or directs that any Rule shall not have effect and if such modification or direction is consented to by the other House, the Rule shall thereafter have effect only in such modified form or be ineffective, as the case may be. In other words, it is only on a direction by the Houses in the manner specified in that Section that the Rule shall be of no effect, and that it is only in the event of the Houses modifying the Rule in that way that the modified Rule shall have operation. The words "thereafter" and "be of no effect" occurring in that Section permit no other construction.

The submission made to us that since there is no provision in the Rules that they shall forthwith come into effect, they could not come into effect until after the expiry of the thirty days referred to in Section 246 is similarly insubstantial. Sections 22 and 23 of the Mysore General Clauses Act constitute a complete answer to that argument. It is a firmly established rule that statutory instruments, like the Rules made in this case, validly made under the Act, and which are intra vires of the rule making authority, should be regarded as though they were themselves an enactment, and as part of the principal Act, under

which they are made. The Rules in this case became such law soon after they were made and published, as required. It was thus scarcely necessary for the Rules themselves to provide that they shall come into operation or force on any particular date."

In the Judgment of the Supreme Court in JAN MOHAMMED NOOR MOHAMMAD's case, Section 26 of the Bombay Agricultural Produce Market Act, which is in pari materia with Section 71(4) of the Act, came up for interpretation. The Supreme Court, while considering the question as to whether the rules would be effective from the date of their making or not, observed as under:

".... Section 26(5) of Bombay Act 22 of 1939 does not prescribe that the rules acquired validity only from the date on which they were placed before the Houses of Legislature. The rules are valid from the date on which they are made u/s 26(1). It is true that the Legislature has prescribed that the rules shall be placed before the Houses of Legislature, but failure to place the rules before the Houses of Legislature does not affect the validity of the rules, merely because they have not been placed before the Houses of the Legislature. Granting that the provisions of Sub-section (5) of Section 26 by reason of the failure to place the rules before the Houses of Legislature were violated, we are of the view that Sub-section (5) of Section 26 having regard to the purposes for which it is made, and in the context in which it occurs, cannot be regarded as mandatory. The rules have been in operation since the year 1941 and by virtue of Section 64 of the Gujarat Act 20 of 1964 they continue to remain in operation".

As has already been observed, a learned Single Judge of this Court on the basis of the aforesaid judgment has already taken similar view."

On giving our thoughtful consideration again we find ourselves unable to agree with the contentions of the learned Counsel. It is correct that the Rules have to be laid before the two Houses as soon as may be. But this requirement is not mandatory and any infraction in this respect by itself would not invalidate the Rules. However, it is not necessary to dilate on this aspect in depth as the Rules have been laid before the two Houses and have also been approved without any modification. Further, the judgment relied upon by Mr. Hanumanthappa in Avala Reddy Ramappa's case has no bearing on the facts of the case in hand especially when we have the authoritative pronouncements of the Supreme Court on the point which falls for our consideration in these cases."

Thus, I do not find any force in the submission of the learned Counsel for the petitioners relating to the attack that the Rules are not effective without laying them before the State Legislature.

The Decision in I.E. Newspapers (Bombay) Private Ltd. v. Union of India (1), (1986) 159 ITR 856 (SC) cited by Sri M.R. Naik, learned Counsel, does not advance the case of the petitioners any further. This Decision was cited in support of the submission that a piece of subordinate legislation does not carry the same degree of immunity which a statute made by the competent Legislature

enjoys and that a subordinate legislation may also be questioned on the ground that it is unreasonable.

In view of the clear language and the content of Section 71(3) of the Act that a Rule made under the Act shall have the effect as if enacted in this Act and in the view I have taken that the impugned Rule is neither unreasonable nor arbitrary the aforementioned Supreme Court Judgment does not help the petitioners as already stated above.

D. Cawasji & Co. v. State of Mysore and Ors. 1968(2) M L.J was cited to state that the impugned Rule is bad, as it does not subserve the purpose of the Act. The facts of that case were entirely different. That was a case wherein the licensees questioned the levy of education cess on shop rent, tree tax and tree rent in spite of agreement to pay education cess on those items. It was held that a tax cannot be levied or collected by the State under a contract, if the statute did not authorise for collection of cess. But, in the cases on hand the impugned Rule-5 is aimed at and intended to achieve some social purpose and the Rule is made in the interest of safety, morality and convenience of the public and that the impugned Rule having been made by virtue of the powers conferred by Section 71 of the Act definitely serves the purpose of the Act. Thus, having considered all aspects I am of the opinion that the impugned Rule-5 is not ultravires of the Act.

Re:Point No.4:

9. On this point, the Division Bench of this Court in the order dated 30th June, 1993 passed in W.P.Nos. 16646 to 16652 of 1993 and connected Writ Petitions Karnataka Breweries and Distilleries Pvt. Ltd. Vs. State of Karnataka, having elaborately considered as to the scope and applicability of the doctrine of legitimate expectation in regard to the rights of licensees created for a duration of five years; renewal of licences as a matter of course and dealing with licences issued under Rule 6(1) of the Karnataka Excise (Manufacture and Bottling of Arrack) Rules 1987 has negatived the contentions of the petitioners. The Division Bench having regard to the various Decisions of the Supreme Court including the recent one in Union of India and others Vs. Hindustan Development Corpn. and others, has stated thus in concluding paragraphs on this point:

"Though of legitimate expectation was not specifically considered, the principle underlying the doctrine was implicit in the contentions of Indian Aluminium Company, which questioned the validity of amendment made to the Electricity Supply Act, 1948, because, said amendment nullified the agreements between the consumer and the State Government regarding the electricity tariffs. In Indian Aluminium Company Limited and another Vs. Karnataka Electricity Board and others, , the Supreme Court upheld the amendment to the Act which took away the contractual right of the consumer of the electricity. The same view had been taken earlier in Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd.,

Doctrine of promissory estoppel has created a more powerful and valuable right than that of the uncertain right flowing from the doctrine of legitimate expectation. If the former yields to the legislative power, the latter cannot claim a higher status as a relevant factor to be considered while testing a law under Article 14."

The petitioners in these writ petitions cannot put their claim higher than that of the petitioners in the aforementioned Decision of M/s. KARNATAKA BREWERIES, inasmuch as these petitioners were only licensees from year to year. It is to be stated that the protection of such legitimate expectation is not available where an over-riding public interest requires otherwise. In this view of the matter, the case pleaded by the petitioners on the basis of the doctrine of legitimate expectation is also of no avail to them.

Re:Point No.5:

10. Sri B.Veerabhadrapa and Sri M.R. Naik, learned Counsel argued that assuming Rule-5 is valid, it is not applicable to a business premises covered by CL-9 licence and that is applicable only to a shop. They drew my attention to Rules 6, 7, 9, 11, 12, 13, 14 and 18 of the Rules 1967. On the basis of these Rules they constructed an argument that the impugned Rule-5 is not applicable to CL-9 licence, as it is a licence for sale of Indian liquor (other than arrack) or foreign liquor or both to be drunk in the premises, combined with meals and in the Refresh Rooms/Bars. Thus, they contend that the impugned Rule-5 does not apply to a premises covered by CL-9 licence inasmuch as Rule-5 and other aforementioned Rules refer only to a shop and in the context of those Rules it should be held that restrictions placed in regard to location of shops do not apply to CL-9 licences.

On the other hand, the learned Advocate General pointed out to Rule 2 of the Rules, 1967, which reads:

"These rules shall apply to all licences issued under the Karnataka Excise Act, 1965 for sale of liquors and every such licence shall be deemed to include the conditions prescribed by these rules as general conditions".

(underlining is mine)

He also stated that Rule 3(4) defines "Shop" means the licenced premises where liquor is sold.

On the basis of Rule 2 and the definition of the "shop" he submitted that to a premises wherever liquor is sold amended Rule-5 gets attracted irrespective of kind of licences issued under the provisions of the Act and the Rules.

Rules 1967 extend to all the areas of the State of Karnataka where the Act is in force. Rule-2 of the Rules 1967 specifically states that it shall apply to all licences issued under the Act for sale of liquors and every such licence shall be deemed to include the conditions prescribed by these Rules as general conditions. The

learned Counsel for the petitioners were not in a position to point out any provision for exclusion of the applicability of these Rules either in respect of CL-9 licence or any other licence where the sale of liquor takes place.

The "shop" means the licensed premises where the liquor is sold. Merely because the liquor is sold in a refreshment room or in the premises covered by CL-9 licence, it cannot be said that amended Rule-5 is not applicable to CL-9 licences, in view of the express statement made in Rule-2 that these Rules are applicable to all licences issued under the Act and that every such licence shall be deemed to include the conditions prescribed by these Rules as general conditions. In addition to the Rules applicable to a particular kind of licence, the event of sale of liquor in whatever premises pertaining to a licence issued under the Act attracts the impugned Rule-5. Hence, I conclude that the amended Rule-5 is applicable to CL-9 licences also.

11. In that result, for the reasons stated, I am of the considered opinion that these Writ Petitions have no merits and they are liable to be dismissed. Accordingly, I proceed to pass the following order:

(1) Writ Petitions are dismissed,

(2) No costs.

12. At this stage the learned Counsel for the petitioners submitted that great hardship would be caused to the petitioners in case this amended Rule-5 is given effect to immediately even without providing a reasonable time to the petitioners to comply with the amended Rule-5. In regard to this submission, the learned Advocate General was asked as to whether some time could be granted to the petitioners to comply with Rule-5 so as to enable them to shift the places of business to satisfy the requirement of the amended Rule-5. The learned Advocate General submitted that taking into consideration the fact that the amended Rule-5 was brought into force with effect from 21.6.1993, hardly any time was left to the petitioners to comply with the said Rules, a reasonable time could be granted to the petitioners as requested by them. He further submitted that four months time could be granted to comply with the amended Rule-5, subject to the petitioners giving an undertaking that they shall comply with the amended Rule-5 and shift to the new place of business without seeking further extension of time to run the business in the same premises wherever they are now carrying on the business.

In some of the cases action is already taken by the authorities rejecting the applications made for renewal of licences based on the amended Rule-5. Since four months time is to be granted uniformly to all persons similarly placed, the authorities have to consider the application made for renewal by the licensees in the light of this concession afresh and then pass orders notwithstanding that endorsements are already issued rejecting the applications made for renewal of licences.

In the light of the submissions as to grant of time, I make the following order:

The petitioners and all licenses similarly placed shall be given time upto 31st October, 1993 to carry on the business in the present premises/shops subject to shifting of their places of business consistent with the amended Rule-5 of the Karnataka Excise Licences (General Conditions) (Amendment) Rules, 1993 within that period and they giving undertaking to that effect.

The applications made for renewal of licences for the excise year 1993-94 shall be considered on their merits and in accordance with law, subject to the undertaking to be filed as aforesaid.

If in some cases, the authorities, have already acted on the basis of said amended Rule-5 and rejected the applications for renewal of licence, the authorities shall consider their applications for renewal afresh in the light of this order without reference to the endorsements already issued.

It is made clear that the petitioners have to make necessary applications showing the new place of business so as to comply with the amended Rule-5 on or before 30th September, 1993.

All licensees may avail benefit of this order, if so desired, notwithstanding that they have not challenged the amended Rule-5.

As requested by the learned Counsel for the petitioners it is made clear that undertaking as aforesaid to be given by the petitioners shall not preclude them from challenging the order of this Court.