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**(2010) 03 MP CK 0097**

**In the Madhya Pradesh High Court**

**Case No :** Writ Petition No's. 1632, 1636, 2080, 2110, 2145, 2181, 2281 and 2284 of 2010

Chingalal Yadav

APPELLANT

Vs

State of M.P. and others

RESPONDENT

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**Date of Decision :** 26-03-2010

**Acts Referred:**

Madhya Pradesh Foreign Liquor Rules, 1996 — Rule 8(1)(a)

**Citation :** (2010) 2 MPLJ 443

**Hon'ble Judges :** S.R. Alam, C.J.;Arun Mishra, J;Alok Aradhe, J

**Bench :** Full Bench

**Advocate :** Brian Da "Silva, Vijay Sharma, J.K. Mehta, Narendra Singh Kirar, Ashok Agrawal, Manish Datt, Rajesh Maindiretta, Abhijeet A. Awasthi, D.S. Raghuvanshi, Rahul Sethi and Prashant Sharma, Rajendra Tiwari, Nikhil Tiwari, N.S. Ruprah and Sanjay Patel, for the Appellant; Naman Nagrath, Additional Advocate General, for the Respondent

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## **Judgement**

S. R. Alam, C. J.

The Division Bench having found difficulty in agreeing with the view taken by another Division Bench of this Court in Madan Mohan Chaturvedi vs. State of M. P., 2008(3) MPU 487 : ILR 2008 MP 2778 has referred the following questions for the opinion of the Larger Bench:-

(1) Whether in the language of Rule 8(1) (a) of the M. P. Foreign Liquor Rules, 1996 and Rule 9 of the M. P. Country Spirit Rules the

Government has power to renew the licence or it has to invite applications for each and every shop, every year?

(2) Whether the judgment in the matter of Madan Mohan (supra) decides the law correctly when it reads "or in any such other manner as the State Government may direct from time to time" will qualify the powers of the Government in granting the licence or the above referred phrase has to be read in relation to

disposing of the applications which cannot be disposed of by draw of lottery?

(3) Whether 2010-2011 Liquor Policy which relates to renewal is a valid policy and whether such policy is likely to create monopoly in favour of all such persons who are ready and willing to give 20% extra on the existing basic licence fee and licence fee and such persons are providing 80% of the revenue?

(4) Whether the policy is a valid policy when it says that the applications for grant of the licence shall not be invited but an application for renewal shall only be entertained while Rule 8(l)(a) provides that the licence in Form FL1 shall be granted individually on fixed basic licence fee and licence fee, by inviting applications for each shop?

(5) Whether the judgment in the matter of Madan Mohan Chaturvedi referred to above decides the question of vires of the policy and if no, whether this Court has jurisdiction to consider the constitutional validity/statutory validity of the policy?

In order to appreciate the questions referred and to resolve the controversy, it would be appropriate to state few necessary facts which briefly stated, are that the Excise Commissioner announced Excise Policy for grant of licence in respect of country/foreign liquor retail shops for the year 2010-2011 (hereinafter referred to as the "New Policy"). The New Policy was published in Madhya Pradesh Gazette dated 28-1-2010. It provides that the applications are to be invited at the first instance from the existing licensees for allotment of shops of country/foreign liquor by way of renewal provided they offer 20% extra licence fees on the reserved price of previous year, i.e., 2009-10. Clause 5 of the policy provides that reserved bid approved for 2010-2011 would be 20% over and above, the reserved bid approved for 2009-2010. Thus, if the existing licence holder applies for renewal of his licence stating that he is ready and willing to pay 20% extra, on the reserved bid approved for the 2009-2010, his licence shall be renewed. Clause 9 provides that renewal will take place only when the said renewal will generate more than 80% of the estimated revenue for the year 2010-2011 at the district level. Under the New Policy left over shops are to be allotted by way of tender.

Salient feature of new policy is that renewal of licence is dependent on fulfilment of twin conditions, namely, an existing licensee applies for renewal with the offer that he is ready and willing to pay 20% over and above on the reserved bid approved for previous year and the renewal shall take place only when the said renewal will generate more than 80% of the estimated revenue at the district level.

In the present bunch of cases, there are two sets of petitions. Petitioners of Writ Petition No. 1632/2010 are aggrieved with the New Policy to the extent it prevents them from making an offer at par with the existing licensees of 2009-2010, even if, they are ready and willing to submit a higher offer and, therefore, they have sought a writ of mandamus commanding the respondents to

issue the application forms and consider their applications which may be submitted by them.

In second set of writ petitions, namely, W.P. No. 1636/2010, Writ Petition No. 2080/2010, W.P. No. 2110/2010, W.P. No. 2145/2010, W.P. No. 2181/2010, W.P. No. 2281/2010, W.P. No. 2915/2010, W.P. No. 2284/2010, the petitioners are existing licensees and are aggrieved with the condition of renewal in Clause 9 of the policy which creates a rider on the right of renewal to the effect that unless it generates more than 80% of the estimated revenue for the year 2010-2011 at the district level, renewal shall not be granted.

The Division Bench was of the view that only when disposal of applications is not possible by draw of lottery, then the expression "or in such other manner as the State Government may direct from time to time" comes into play and permits the State Government to direct such other manner of disposal of applications, and therefore, proper appreciation and interpretation of Rule 8(I)(a) of M. P. Foreign Liquor Rules, 1996 does not authorise the State Government to adopt a policy of renewal. Division Bench while making reference further opined that the New Policy is patently illegal and runs contrary to Rule 8(I)(a) and 9 of Rules, and it creates monopoly in perpetuity in favour of existing licence fees only by offering enhancement of existing licence fee by 20%, which would close the doors for those who are willing to offer more than 20%.

However, before advertng to the questions referred to us, we may record the submissions made at the bar on behalf of the parties.

Learned counsel Shri Mehta and Mr. N. S. Kirar appearing for petitioner of Writ Petition No. 1636/2010, submitted that the New Policy is not in tune with the provisions of Rule 8 contained in M. P. Foreign Liquor Rules, 1996 and Rule 9 of the M P. Country Spirit Rules, 1995, because it defeats the very purpose and object of the Rules, which contemplate a participatory, fair and transparent process for grant of licence. The contention is that Rule 8 of M. P. Liquor Rules, 1996, prescribes a non-discriminatory process and it provides grant of licence by inviting of applications, whereas provisions of the New Policy exclude the petitioners from making an offer at par with existing licensees and are thus, discriminatory, unfair, unintelligible and anti-competitive.

Learned counsel further drew our attention to Rule 8(1) (a) of M. P. Foreign Liquor Rules, 1996 and Rule 9 of the M. P. Country Spirit Rules, 1995, and stressed on the expression "inviting application for each/every shop" and sought to argue that allotment of liquor shops can only be proceeded after giving general invitation calling applications from all eligible and willing persons. He further argued that phrase occurring in Rule 8 "in such other manner as the State Government may direct from time to time" and in Rule 9 "or by any such procedure as may be prescribed by the State Government from time to time" has to be read in conjunction with the disposal of application and not with grant of licences. The contention is that aforesaid two phrases permit the State to adopt

such other manner for the disposal of the applications only and it does not empower the State Government to evolve any other mode which may frustrate the very spirit and object of the Rules. He, however, qualified his aforesaid contention by submitting that only when draw of lottery becomes impossible, then it would be open to the Government to provide such other manner for the disposal of the applications for grant of licence. In support of the contentions, learned counsel has placed reliance on the following authorities, namely, Daljit Singh Ahluwalia Vs. Chandigarh Housing Board, Chandigarh and others, , Parakh Foods Ltd. Vs. State of A.P. and Another, and Collector of Central Excise, Hyderabad etc. etc. Vs. M/s. Vazir Sultan Tobacco Company Limited, Hyderabad Etc. Etc., .

Learned counsel while assailing the New Policy further submitted that it creates a monopoly in favour of the existing licensees because all other persons are totally excluded even from submitting application for consideration of grant of licence and, thus, it is discriminatory. In support of this submission, reliance has been placed on a decision rendered by the Constitution Bench of Apex Court in Rashbihari Panda etc. Vs. State of Orissa, . The next limb of his submission is that when the State decides to part with the privilege to carry on the business of trade in intoxicants, it's action has to be in consonance with the principles of Article 14. He placed reliance on the judgment of Apex Court in Doongaji and Co. Vs. State of Madhya Pradesh and others, in support of aforesaid proposition. Relying on the decision of the Apex Court in Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others, , it is argued that State can adopt any mode for grant of licence for trade or business with a view to maximize its revenue, but the method adopted should not be discriminatory otherwise it would be hit by Article 14 of the Constitution of India. During the course of submission, he also sought to argue that by formulating the New Policy, the State Government has adopted the policy of "take it or leave it" which has been held to be violative of Article 14 of the Constitution. Learned counsel referred to decisions of Supreme Court in Kerala Samsthana Chethu Thozhilali Union vs. State of Kerala, AIR 2006 SCW 1869. And Reliance Energy Limited and another vs. Maharashtra State Road Development Corporation Ltd. and others, AIR SCW 6416 to contend that Article 14 of Constitution of India embodies the principle of non-discrimination.

Learned counsel further submitted that the interpretation to Rule 8 of M. P. Liquor Rules, 1996 given by Division Bench of this Court in Madan Mohan Chaturvedi vs. State of M. P. and others, 2008(3) MPU 487 : ILR (2008) MP 2776 is not correct as the same is opposed to the object and spirit of Rule 8 of M P. Foreign Liquor Rules, 1996. It is further submitted that the interpretation given by the Division Bench, if accepted, it would tantamount to giving an uncanalised and arbitrary power to State Government to issue licences at its whim and caprice, which would be against the mandate of Article 14- The argument is that Rule 8 of M. P. Foreign Liquor Rules, 1996 has to be construed in such a manner so as to subserve the mandate of Article 14.

Mr. Brian D'Silva, learned Sr. counsel appearing for the existing licensees in Writ Petition No. 2181/2010, though supported the New Policy, so far as it provides for renewal of the existing licensees, but assailed Clause-9, which provides that the renewal will be allowed only when it would generate more than 80% of the estimated revenue for the year 2010-2011 at the district level on the ground inter alia that the same is arbitrary. He referred to the previous policy and pointed out that change in policy should not be made in such a way so as to wipe out the right of renewal. It is submitted that the condition that the renewal would be allowed provided 80% of the revenue of the district is generated or collected under the renewal applications is violative of doctrine of legitimate expectation. He placed reliance on the judgment of the Apex Court in *State of M.P. and Others Vs. Lalit Jaggi*, . Mr. Manish Dart, learned counsel appearing in Writ Petition No. 2110/2010, while adopting the contentions made by Mr. Brian Da. Silva, further added that prescription of criteria of generation of 80% revenue of the preceding year at the district level will give rise to formation of cartel. In Writ Petition No. 2281/2010, Mr. Siddharth Gupta, learned counsel appearing for the petitioner also adopted the submission of Mr. Brian Da. Silva, but challenged the fixation of 80% ceiling for renewal of licence on the ground that it is arbitrary. Mr. Ashok Agrawal, learned counsel for the petitioner in Writ Petition No. 2080/2010, submitted that prescription of condition of 80% for renewal of licence is unworkable and the existing licensee in a district where 80% of the revenue has not been generated would be deprived of his right of renewal. He placed reliance on a decision of Division Bench in *State of M. P. and others vs. M/s Swami Traders*, 2001(4) MPU 69.

On the other hand, Mr. Naman Nagrath, learned Additional Advocate General, appearing for the respondents while combating the submissions made by learned counsel for petitioners, has referred to various provisions of the Act as well as Rules, particularly Rule XXII notified vide Notification dated 4-7-1959. He also drew our attention to Rule 2 of Rules of General Applications. He has referred to section 18(1) of the M. P. Excise Act, 1915 (hereinafter referred to as "the Act") to contend that aforesaid provision empowers the State Government to grant lease to any person on such condition and for such period as it may think fit, the right to sell by wholesale or retail any liquor or intoxicating drugs. He has also drawn our attention to section 28(1) of the Act which provides that every licence granted under the Act shall be issued or granted on payment of such fees for such period, subject to such conditions and restrictions and shall be in such form as may be prescribed. Vide notification dated 4-7-1959, the State Government has framed the Rules which have statutory force Rule XXII of the aforesaid Rules deals with disposal of licences. Rule XXII (1) provides that licence for manufacture and sale of intoxicants shall be disposed of by tender, auction, fixed licence fee or in such other manner as the State Government may by general or special order direct. While referring to Rule II of the Rules of General Application it has been contended that Rule II provides for retail or wholesale licences of intoxicants for a period not exceeding five years as the State Government may in

each case or class of cases decide. Learned counsel has also drawn our attention to Rule 8(2) of the M. P. Foreign Liquor Rules, 1996 to contend that licences in form FL 1 can be granted for a period of one year or shorter period unless directed otherwise by the State Government.

Relying on the aforesaid provisions of the Act and Rules, it was contended that the State Government has ample power of renewal of licence. It is submitted that Rule 8 of the M. P. Foreign Liquor Rules, 1996, has to be read in conjunction with Rule XXII of the Rules referred to above notified vide Notification dated 4-7-1959. He further submitted that renewal of licence was provided in the policy of 2009-2010 itself and the existing licensees having accepted the aforesaid Policy with open eyes cannot now be permitted to turn around and challenge the same. While referring to Rule 8 of M. P. Foreign Liquor Rules, 1996 and Rule 9 of M. P. Country Spirit Rules, 1995, it is submitted that if the interpretation put forth by the petitioners is accepted, then it would mean that the State Government can grant licence only by inviting applications and all other modes stands excluded. The submission, therefore, is that the phrase "or in such other manner as the State Government may direct from time to time" has to be interpreted in such a manner which makes the provision workable and permits the Government to determine any other mode to grant the licence. He placed reliance on the judgment of the Apex Court in State of M.P. and Others Vs. Nandlal Jaiswal and Others, and contended that expression "in such other manner as the State Government may by general or special order direct" in Rule XXII of the Rules notified vide notification dated 4-7-1959 was interpreted by the Supreme Court and it was held that the aforesaid Rule provides for four different modes i.e. tender, auction, fixed licence fee or such other method as the State Government may by general or special order direct. These four modes are alternative to one and another and any one of them may be resorted to for the purpose of disposing of a licence. There is nothing in the language of Rule XXII to justify the interpretation that an earlier mode of disposal set out in the rule excludes a latter mode. In view of exposition of law by the Supreme Court, Rule 8(1) (a) of M. P. Foreign Liquor Rules, 1996 has to be interpreted, accordingly.

Learned counsel has contended that logic behind incorporation of clause 9 in the policy is that if the applications are not received for 80 % of the value at the district level then tenders will be invited, thus, extra amount may be offered in case of profitable shops and left over shops where there is likelihood of getting less amount in such a case loss of revenue will be compensated. In order to substantiate this fact, he has drawn our attention to the following figures, mentioned in para 5 of the return.

Year

No. of left over shops

Reserve price of left over shops

Maximum offer price Accepted in tender

Decrease in percentage

06-07

324

Rs. 371.39 crores

Rs. 350.47 crores

(-) 5.63%

07-08

299

Rs. 285. 06 crores

Rs. 267.52 crores

(-) 6.15%

08-09

183

Rs. 275.57 crores

Rs. 247.68 crores

(-) 10.12%

It is also argued on behalf of the State that the policy of renewal is in practice since 2006-2007. Clause 9 has been incorporated in the policy of the year 2010-2011 which provides for application for renewal for district would be considered only when such minimum number of applications are received from a district which constitute and make up at least 80% increased revenue expected by the State by that district. Clause 9 is intended only to maximize and augment State revenue by ensuring that more and more licensees opt for renewal with 20% increase so as to ensure at least receipt of 80% of the revenue. By incorporation of such provision in the policy the State has ensured that applications for renewal were received even in case of those shops which were not profitable and the contractors were prompted to apply for renewal for even such shops in order to secure their profit making shops. It is submitted that by adopting this policy of renewal of existing licensees, there has been increase to the extent of 100% in cumulative growth of revenue. To substantiate this, he drew our attention to the table mentioned in further submissions filed on behalf of the State Government, which is extracted hereinafter :-

Year

Amount received from auction of liquor shops (in crore)

Year

Amount received by inviting applications and tender for left over shops

96-97

464.93

2004-05

866.00

97-98

495.44

2005-06

1015.69

98-99

558.13

2006-67

1152.69

99-2666

670.47

2007-08

1366.18

2000-01

720.13

2008-09

1612.92

2001-02

574.54

2009-10

2.27.49

2002-03

774.71

2010-11

2437 43

2003-04

864.46

Expiated

2437.43

CAGR

less than 9.3%

CAGR - above

18.6%

Learned Additional Advocate General further submitted that this Court would be slow to interfere with the New Policy laid down by the State Government pertaining to grant of licences for manufacture and sale of liquor as the same being a matter of economic policy as has been held in para 33 of the judgment of the Apex Court in *Nandlal Jaiswal (supra)*. He further submitted that permissive privilege to deal in liquor is not a right at all, as has been held by the Apex Court in para 113 of the judgment in *State of Punjab and Another Vs. Devans Modern Brewaries Ltd. and Another*, .

The argument is that while exercising the power of judicial review, this Court cannot be oblivious to the practical needs of the Government and the door should be left open for trial and error. In support of this proposition, he placed reliance on Apex Court judgment in *Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi*, . Learned Additional Advocate General, argued that this Court would not interfere in the policy decision of the State Government unless it is found to be mala fide, unreasonable, arbitrary or unfair. He further submitted that in the matter of economic policy, more judicial restraint is required.

Whether any particular policy should be adopted or not, should be left to the discretion of the State. Reference has been made to decision of Supreme Court in *M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others*, . Learned counsel has also placed reliance on decisions in *Ramchandra Murarilal Bhattad and Others Vs. State of Maharashtra and Others*, and *Secretary to Govt., Tamil Nadu and Another Vs. K. Vinayagamurthy*, . He has further submitted that the policy formulated by the State Government is aimed at generating the revenue in respect of non-revenue earning shops.

While concluding his submission, he argued that the policy being aimed at generating the revenue in respect of non-earning revenue shops is rational and has been formulated with the object to obtain maximum revenue, there seems to be no reason to interfere with the same. Lastly, he submitted that in the absence of any ingredients in Rule 8 of the M. P. Foreign Liquor Rules, 1996 for applicability of principle of *reddendo singula singulis* it has no application.

We have also heard learned counsel for interveners who have supported the case of the State Government. Mr. Rajendra Tiwari, learned senior counsel has

submitted that provision of renewal was made in last years" policy. Provision of renewal of existing licence has been made in the policy based on past experience of the State Government that policy of renewal would fetch more revenue as compared to mode of individual allotment. It has further been contended that expression "in such other manner as the State Government may direct from time to time" is preceded by the word "or" which is disjunctive. Therefore, the aforesaid expression has to be interpreted to mean that the State Government has the authority to grant the licence in any other mode as well which may be prescribed. Mr. N. S. Ruprah, learned counsel appearing for interveners in WP No. 1632/2010 has adopted the submissions made on behalf of the State Government and has relied on decisions in Nandlal Jaiswal (supra) and a decision of Supreme Court in 5 M and T Consultants, Secunderabad Vs. S.Y. Nawab and Another, in support of his contentions.

Mr. Sanjay Agrawal, learned counsel for interveners in WP No. 2080/2010 and WP No. 2110/2010 while supporting the stand taken by the State Government has drawn our attention to provisions of Foreign Liquor Rules as originally enacted. It has been argued that under Rule II (iia) of the Rules, licence in Form FL-1 could be granted by the State Government by auction or under the fee per bottle system or by combination of both or in such other manner as the State Government may from time to time, by general or special order directs. He has also drawn our attention to Rule 8 of M. P. Foreign Liquor Rules as originally enacted which provide for grant of licence in Form FL 1 either by auction/tender or under the "fee per bottle system" or a combination of both the systems or in such other manner as the State Government may from time to time by general or special order direct. Learned counsel has further contended that first and second part of Rule 8 of M. P. Foreign Liquor Rules cannot be read in conjunction with each other and are independent provisions. It has been submitted that earlier also expression "in such other manner as the State Government may direct from time to time" has been used by legislature therefore, it gives rise to presumption that legislature intended to convey the same meaning as in earlier statute. It has further been argued that the policy is still at experimental stage and therefore, it cannot be said that it is contrary to public interest. Learned counsel for existing licensee, Mr. Sanjay Patel has also supported the stand taken by the State Government and has adopted the arguments.

Looking to the pleadings of the parties and the submissions referred to above, following issues are required to be addressed by this Court to answer the reference, viz. (i) nature of right to deal in business of liquor; (ii) interpretation of Rule 8(I)(a) of M. P. Foreign Liquor Rules, 1996 and Rule 9 of M. P. Country Spirit Rules, 1995; (iii) whether the excise policy for the year 2010-2011 is violative of Rule 8 of M. P. Foreign Liquor Rules, 1996 and Rule 9 of M. P. Country Spirit Rules, 1995; (iv) scope of interference in policy matters in exercise of power of judicial review and whether new policy is violative of Article 14 of the Constitution of India; (v) whether the Division Bench of this Court in Madan Mohan Chaturvedi vs. State of M. P., 2008(3) MPU 487 : ILR 2008 MP 2776 has

correctly interpreted Rule 8(1) (a) of MP Foreign Liquor Rules, 1996 (vi) whether principle *reddendo singula singulis* can be applied while interpreting Rule 8(1) (a) of M. P. Foreign Liquor Rules.

Having formulated the issues which arise for consideration we proceed to deal with them in *seriatim*.

(i) Nature of right to deal in business of liquor:

The Constitution Bench of the Supreme Court in *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, while dealing with right to deal in the business of intoxicants approved the ratio of earlier decisions, namely, decision of the Constitution Bench in the *State of Bombay vs. F. N. Balsara*, AIR 1951 SC 318 and *Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others*, , *The State of Assam Vs. A.N. Kidwai, Commissioner of Hills Division and Appeals, Shillong*, , *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, , *Amar Chandra Chakraborty Vs. The Collector of Excise, Government of Tripura and Others*, , *The State of Bombay Vs. R.M.D. Chamarbaugwala*, , *State of Orissa and Others Vs. Harinarayan Jaiswal and Others*, and *Nashirwar and Others Vs. State of Madhya Pradesh and Others*, and has held that there is no fundamental right to do the business or deal in intoxicants.

Another Constitution Bench of the Supreme Court in *Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others*, after taking note of all previous decisions on the nature of right to deal in business of liquor summarized the law on the subject as follows :

We may now summarise the law on the subject as culled from the aforesaid decisions.

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

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

(c) Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is *res extra*

commercium being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor. Hence, the trade or business in liquor can be completely prohibited.

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

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

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

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

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

(i) The State can carry on trade or business in potable liquor notwithstanding that it is an intoxicating drink and Article 47 enjoins it to prohibit its consumption. When the State carries on such business, it does so to restrict and regulate production, supply and consumption of liquor which is also an aspect of reasonable restriction in the interest of general public. The State cannot on that account be said to be carrying on an illegitimate business,

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

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

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

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

Similarly another Constitution Bench of the Supreme Court in *Devans Modern Breweries Ltd. and another (supra)* held that trade in liquor is not a fundamental right. It is a privilege of the State. The State parts with this privilege for revenue consideration. It was further held that permissive privilege to deal in liquor is not a right at all. The levy charged for parting with that privilege is neither a tax nor a fee. It is simply a levy for the act of granting permission of for exercise of power to part with privilege. Similar view was taken by a two-Judge Bench of the Supreme Court in a recent decision reported in *Mohan Meakin Ltd. Vs. State of H.P. and Others*, wherein once again it was reiterated that no person has any fundamental right to carry on business in liquor it being *res extra commercium*.

Thus, from the aforesaid authoritative pronouncement of law by the Supreme Court it is graphically clear that no citizen has any fundamental right to trade or carry on business in liquor and all forms of dealing in liquor have from their inherent nature, been treated as class by themselves by all civilized societies. In view of injurious effect of excessive consumption of liquor on health the trade or business of liquor must be treated as a class by itself and cannot be treated on the same basis while considering the challenge on the touchstone of Article 14 of the Constitution of India.

(ii) Interpretation of Rule 8 (I) (a) of M. P. Foreign Liquor Rules, 1996 and Rule 9 of M. P. Country Spirit Rules, 1995 ;

Before dealing with this issue, it is relevant to trace legislative history of the rules. From perusal of Rule II (iii-a) of the Foreign Liquor Rules as originally enacted, it is apparent that licence in Form FL 1 could be granted by the State Government by auction or by fee per bottle system or by combination of both or in such other manner as the State Government may from time to time by general or special order directs. Rule 8 of the M. P. Foreign Liquor Rules, 1996 as originally enacted provided for grant of licence in Form FL-1 either by auction/tender or under "fee per bottle system" or by combination of both the system or in such other manner as the State Government may from time to time by general or special order may directs. Similarly, Rule XXII of rules framed by the State Government which were notified vide notification dated 4-7-1959 provide that licence for manufacture or sale of intoxicants shall be disposed of by tender, auction, fixed licence fee or in such other manner as the State Government may by general or special order directs.

Relevant portion of Rule 8 (1) (a) of M. P. Foreign Liquor Rules, 1996 and Rule 9 of M. P. Country Spirit Rules, 1995 reads as under :

8 (1) Categories of licences. Licenses for the sale of foreign liquor shall be of the following categories and the mode of grant of these licenses shall be as indicated hereunder:-

(a) F.L-1- (License for retail sale of foreign liquor in sealed bottles, not to be consumed on the premises) - The licence in Form FL, 1 shall be granted individually on fixed basic licence fee and licence fee, by inviting applications for each shop, and if the number of applications are more than one then by disposing of applications by draw of lottery or in such other manner as the State Government may direct from time to time. The FLA licensee shall sell foreign liquor in sealed bottles to consumers and to FL.3, FL.4-A and FL.5 licences:

Provided that if no application is received, then the State Government may grant licence in such other manner as directed by general or special order.

Sale of country spirit. - (I) Categories of licences - Licences for the retail sale of country spirit shall be of the following categories, and the mode of grant of these licences shall be as indicated hereunder;-

(a) CS 2 (On licence for retail sale of country spirit in sealed bottles to be consumed on the licensed premises)

The licence shall be granted individually on fixed basic licence fees and annual licence fees by inviting application for every shop and in case of more than one application, disposing them by draw of lottery or by any such procedure as may be prescribed by the State Government from time to time. The licensee shall sell country spirit in sealed bottles to consumers. CS 2BB licensee and CS2CC permit holder.

From careful scrutiny of the language employed in rules, it is apparent that licence has to be granted individually by inviting application for every shop and

where more than one applications are received, they are to be disposed by draw of lottery or by any such procedure/manner as the State Government may direct from time to time. However, the rule does not provide for contingency when the recourse can be taken for disposal of application by draw of lottery.

A careful reading of Rule 8 of the M. P. Foreign Liquor Rules, 1996 and Rule 9 of the M. P. Country Spirit Rules reveals that it does not provide for a contingency when resort to drawing of lots has to be taken, therefore, the Rule is ambiguous to the extent. It is well settled rule of statutory interpretation that if the statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature. [see R. Venkataswami Naidu and Another Vs. Narasram Naraindas, , Bhatia International Vs. Bulk Trading S.A. and Another, ]. Therefore, the expression "or in such procedure which may be prescribed by the State Government from time to time" has to be interpreted in such a manner so as to reflect the intention of the Legislature. From perusal of Rule II (iii-a) of the M. P. Foreign Liquor Rules, 1996 as originally enacted and Rule 8 of the M. P. Foreign Liquor Rules, 1996 originally enacted as well as Rule XXII of the Rules framed by the State Government which were notified by Notification dated 4-7-1959 the Legislature has consistently used the expression "in such other manner as the State Government may in general or special order directs." The aforesaid expression has been interpreted by the Supreme Court in Nandlal Jaiswal and others (supra) and their Lordships held that it empowers the State Government to prescribe a mode of disposal of applications for grant of licence. At this juncture it is appropriate to reproduce the relevant portion of para 4 of Nandlal Jaiswal's case, which is as under :

On a plain grammatical construction of Rule XXII, it is obvious that the Collector or an officer authorised by him in that behalf can choose any one of the four modes set out in that rule. There is nothing in the language of Rule XXII to justify the interpretation that an earlier mode of disposal set out in the rule excludes a latter mode or that reasons must be specified where a latter mode is adopted in preference to an earlier one. The language of Rule XXII in fact militates against such construction. It is impossible to subscribe to the proposition that it is only when an earlier mode is not possible to be adopted for reasons to be specified, that a latter one can be followed. The Collector or an officer authorised by him can adopt any one of the four modes of disposal of licence set out in Rule XXII, but, of course, whichever mode be adopted, the equality clause of the Constitution should not be violated in its application.

Therefore, the expression "or in such procedure which may be prescribed by the State Government from time to time" has to be read in such manner which represents the true intention of the Legislature, as stated above.

We have, therefore, no hesitation in holding that the expression "or in such procedure which may be prescribed by the State Government from time to time" means that it empowers the Government to prescribe the mode of disposal of

applications for grant of licence by renewal of applications submitted by existing licensees.

There is yet another aspect of the matter. The principle of executive construction is relevant as admissible aid for construction of a statutory provision which suffers from ambiguity. Reference in this connection may be made to the decision of the Supreme Court in *Hindustan Lever Ltd. Vs. Ashok Vishnu Kate and others*, . At this stage, it would be useful to reproduce the relevant extract with regard to principles of "executive construction" from *Principles of Statutory Interpretation* by Justice G.P. Singh (12th Edition, page 344):

But a uniform and consistent departmental practice arising out of construction placed upon an ambiguous statute by the highest executive officers at or near the time of its enactment and continuing for a long period of time is an admissible aid to the proper construction of the statute by the Court and would not be disregarded except for cogent reasons. The controlling effect of this aid which is known as "executive construction" would depend upon various factors such as the length of time for which it is followed, the nature of rights and property affected by it, the injustice resulting from its departure and the approval that it has received in judicial decisions or in legislation.

In the instant case, from perusal of rules enacted from time to time which have been referred to in preceding paragraphs, it is apparent that legislature has consistently used the expression "such other manner as the State Government may by general or special order direct". The aforesaid expression appearing in Rule XXII of the Rules framed by the State Government which were notified vide notification dated 4-7-1959 was interpreted by the Supreme Court in AIR 1986 SC 566 and it was held that expression "such other manner as the State Government may by general or special order direct" empowers the State Government to prescribe the mode of disposal of application for grant of licence. The aforesaid expression has been construed by highest executive officers of the State Government as empowering the State Government to prescribe an independent mode of disposal of the application for grant of licence, i.e. by renewal of existing licence. Policy of renewal of existing licence has been in vogue since 2006-07. Thus, construction placed on ambiguous rule by the State Government and continuing for a long period of time is an admissible aid to its interpretation and cannot be disregarded except for cogent reasons especially in view of the fact that the expression "such other manner as the State Government may by general or special order direct" has received approval of the Apex Court in *Nandlal Jaiswal's* case. We, therefore, hold that expression "or in such procedure which may be prescribed by the State Government from time to time" means that it empowers the State Government to prescribe the mode of disposal of application for grant of licence by renewal of application submitted by existing licensees by applying the principle of "executive construction." (Hi) Whether the excise policy for the year 2010-2011 is violative of Rule 8 of M. P. Foreign Liquor Rules, 1996 and Rule 9 of M. P. Country Spirit Rules, 1995 and is

violative of Article 14 of the Constitution of India;

It has already been held by us in the preceding paragraphs that language of Rule 8(1)(a) of the M. P. Foreign Liquor Rules, 1996 and Rule 9 of the M. P. Country Spirit Rules, 1995 permits grant of licence by way of renewal. It is noteworthy that even under the new policy, the application is being invited at the first instance from existing licence holder for grant of licence by way of renewal and the licence shall be granted in respect of leftover shops by way of tender. Thus, requirement of inviting applications has not been dispensed with. Licence in respect of each shop is being granted by inviting application. In our considered view renewal of licence is a mode of allotment which is permissible under Rule 8 (1) (a) of the M. P. Foreign Liquor Rules, 1996 and Rule 9 of the M. P. Country Spirit Rules, 1995. Therefore, the provisions of new policy are not violative of the rules.

(iv) Scope of interference in policy matters in exercise of power of judicial review and whether new policy is violative of Article 14 of the Constitution of India;

Scope of interference in policy matters in exercise of powers of judicial review is well settled by a catena of decisions. In Tamil Nadu Education Department Ministerial and General Subordinate Services Association and Others Vs. State of Tamil Nadu and Others, the Supreme Court while noticing the jurisdictional limitation to analyse and to find fault with the policy held that the Court in exercise of its power of judicial review cannot sit in judgment over the policy matters except on limited grounds., namely, whether the policy is arbitrary, mala fide, unreasonable or irrational. Each State is empowered to formulate its own liquor policy.

In Nandlal Jaiswal and others (supra) the Supreme Court held that while considering the applicability of Article 14 of the Constitution in case pertaining to trade or business in liquor, the Court would be slow to interfere with the policy laid down by the State Government for grant of licence for manufacture and sale of liquor. Moreover, grant of licence for manufacture and sale of liquor would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the Government has done unless it appears to be plainly arbitrary, irrational or mala fide. It was further observed that the Court must while adjudging the Constitutional validity of an executive decision relating to economic matter grant a certain measure of freedom or "play in the joint" to the executive. The Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The Court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide. In Delhi Science Forum and others Vs. Union of India and another, Supreme Court while dealing with a challenge to action of grant of licences by the State Government to nongovernment companies including foreign collaborated companies for establishing, maintaining and working of telecommunication system of the country pursuant to Government policy of privatization and telecommunication,

observed that since parting of privilege exclusively vested with the Government it can be questioned only on the ground of bad faith, based on irrelevant or irrational consideration, non-compliance with prescribed procedure or violation of any constitutional or statutory provisions.

In *State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc.*, , it was held by Supreme Court that it is not normally within the domain of any Court to weigh pros and cons of the policy except where it is arbitrary or violative of any constitutional, statutory or any other provisions of law. The Court would dissuade itself from entering into the realm of policy which belongs to executive. In *BALCO Employees Union (Regd.) Vs. Union of India and Others*, , while dealing with the question of disinvestment of public sector undertaking, it was held that in a case of policy decision pertaining to economic matters, the Court should be very circumspect in conducting any enquiry and investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion. In *Federation of the Railway Officers' Association and Others vs. Union of India*, (2003) 4 SCC 298, it was once again reiterated by the Supreme Court that unless policy or action is inconsistent with the Constitution and the laws, or arbitrary or irrational the Court will not interfere with such matter.

In a recent decision of Supreme Court rendered in case of *Villianur Iyarkkai Padukappu Maiyam Vs. Union of India (UOI) and Others*, , the Supreme Court once again reiterated that in the matters of economic policy the scope of judicial review is very limited and the Court will not interfere with economic policy of the State unless the same is shown to be contrary to any statutory provision of the Constitution. The Court cannot examine the relative merits of different economic policies and cannot strike down a policy merely on the ground that another policy would have been fairer and better. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review. It was further held that in matters relating to economic issues, the Government while taking the decision has right to "trial and error" so long it is bona fide and within the limits of the authority. For testing the correctness of a policy the appropriate forum is Parliament and not the Courts. It was further held that there is always a presumption that Governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it lacks reasonableness and is not in public interest. The onus is heavy one and has to be discharged to the satisfaction of the Court by bringing proper and adequate material on record.

From the aforesaid decisions of the Supreme Court the principles of law which can be culled out can be summarized as follows :

- (i) Grant of licence for manufacture and sale of liquor is a matter of economic policy where the Court would be slow to interfere unless the policy is plainly arbitrary, irrational or mala fide.
- (ii) The Court must while adjudging the constitutional validity of an executive decision relating to economic matters grant certain measure of freedom or "play

in joint" to the executive.

(iii) The Court cannot strike down a policy merely because it feels that another policy would have been fairer or wiser or more scientific or logical.

(iv) Parting of privilege exclusively vests with the Government and the same can be questioned only on the ground of bad faith, based on irrational or irrelevant consideration, violation of any constitutional or statutory provision.

(v) It is not normally within the domain of the Court to weigh the pros and cons of the policy. In case of policy decision on economic matters the Court should be very circumspect and must be most reluctant to impugn the judgment of experts who have arrived at a conclusion.

(vi) Court cannot examine relative merits of different economic policy. In a democracy it is a prerogative of each elected Government to formulate its policy. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review.

(vii) In matters relating to economic issues, the Government has while taking a decision right to "trial and error" as long as both trial and error are bona fide and within limits of the authority.

(viii) Normally there is a presumption that governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness and the burden is a heavy one which has to be discharged to the satisfaction of the Court by bringing proper and adequate material on record.

Let us now examine the challenge to the new policy on the ground that same is discriminatory or arbitrary and violative of Article 14 of the Constitution of India. In order to deal with question of infringement of constitutional guarantee contained in Article 14 it would be expedient to notice case law on the subject.

In *Cooverjee B. Bharucha* (supra) the Constitution Bench of the Supreme Court while dealing with the provisions of Ajmer Excise Regulations repelled the challenge on the ground of violation of Article 19(6) of the Constitution of India and held as under :

Elimination and exclusion from business is inherent in the nature of liquor business and it will hardly be proper to apply to such a business principles applicable to trades which all could carry. The provisions of the regulation cannot be attacked merely on the ground that they create a monopoly. Properly speaking, there can be a monopoly only when a trade which could be carried on by all persons is entrusted by law to one or more persons to the exclusion of the general public. Such, however, is not the case with the business of liquor.

Another Constitution Bench of the Supreme Court in *Amar Chandra Chakraborty* (supra) while considering the question whether section 43 of the Bengal Excise Act under which a licence of a liquor contractor was withdrawn violated Articles

14 and 19(I)(g) of the Constitution, repelled the contention with regard to violation of Article 14 with the following observations :

Trade or business in country liquor has from its inherent nature been treated by the State and the society as a special category requiring legislative control which has been in force in the whole of India since several decades. In view of the injurious effect of excessive consumption of liquor on health this trade or business must be treated as a class by itself and it cannot be treated on the same basis as other trades while considering Article 14.....Principle applicable to trades which all persons carry on free from regulatory controls do not apply to trade or business in country liquor; this is so because of the impact of this trade on society due to its inherent nature.

In Harinarayan Jaiswal (supra) the highest bidder in an auction held for granting the exclusive privilege for selling country liquor challenged the order rejecting its bid. It was argued that power retained by the Government to accept or reject any bid without assigning any reason was an arbitrary power and was violative of Articles 14 and 19(I)(g) of the Constitution. It was held as follows :

The fact that the Government was the seller does not change the legal position once its exclusive right to deal with those privileges is conceded. If the Government is the exclusive owner of those privileges, reliance on Article 19(I) (g) or Article 14 becomes irrelevant. Citizens cannot have any fundamental right to trade or carry on business in the properties or rights belonging to the Government nor can there be any infringement of Article 14, if the Government tries to get the best available price for its valuable rights.

In view of the Constitution Bench decision of Supreme Court in Cooverjee B. Bharucha (supra) and in Amar Chandra Chakraborty (supra) following principles emerge:

(i) In liquor business, elimination and exclusion from business is inherent, and the principles applicable to other business or trades cannot be applied to trade or business in liquor. Properly speaking there can be a monopoly only when a trade which could be carried on by all persons is entrusted by law to one or all persons to the exclusion of general public. Such however, is not the case with the business of liquor.

(ii) Trade or business in liquor has from its inherent nature been treated by State or society as a special category and must be treated a class by itself and cannot be placed on same pedestal as other trades while considering the applicability of Article 14.

(iii) Where the State Government frames a policy with the object to secure or ensure maximum revenue for parting with its privilege to deal in liquor, action of the State Government cannot be assailed on the ground that it infringes Article 14.

In the backdrop of aforesaid well settled legal position, question of challenge to

the new policy on the ground of Article 14 may be dealt with. The challenge to new policy is mainly based on the following grounds :

- (1) New policy excludes the petitioners from making an offer at par with existing licensees and therefore the policy is discriminatory, unfair and anticompetitive.
- (2) New policy insofar as it provides for renewal of existing licences creates a monopoly in favour of existing licensees.
- (3) Clause 9 of the policy which provides that renewal would be allowed when it will generate more than 80% of the estimated revenue for the year 2010-2011 at the district level is arbitrary and is violative of doctrine of legitimate expectation.

By adopting the policy of renewal of existing licence the State Government has been able to secure increase of 100% in cumulative growth of revenue which is evident from data supplied by the State Government in the form of table referred to para 16. We find considerable force in the submission of the learned Additional Advocate General that clause 9 has been inserted to yield maximum revenue to the State Government. By incorporation of such a provision the State Government has ensured that application for renewal are received even in respect of those shops which are not profitable and the contractors can be prompted to apply for renewal in respect of such shops in order to secure their profit making shops. From the return and the further submissions filed on behalf of the State Government, we find that for the year 2009-10 the State Government has received a sum of Rs. 2022.16 crores by way of licence fee. For this year\* i.e. 2010-11 by adopting the policy of renewal of licences, applications for renewal with 20% increase in licence fee have already been received in respect of 2236 shops and the State Government would get an amount of at least 450 crores over and above previous years amount received by way of licence fee.

Thus, the entire policy is aimed at generation of more revenue in lieu of parting with the privilege to deal in the business of liquor. Thus, the new policy in our considered opinion cannot be said to be arbitrary and irrational. The new policy also does not contravene either the provisions of the Constitution or any statutory provisions, since, elimination and exclusion from business is held to be inherent in the nature of liquor business therefore, the policy cannot be assailed on the ground that it is discriminatory. The argument that the policy creates a monopoly in favour of existing licensees cannot be accepted as the question of monopoly would arise only when a trade which could be carried on by all persons is entrusted by law to one or more person, to the exclusion of general public which is not the case in business of liquor.

Considering the fact that while adjudging the validity of an economic policy certain measure of "play in joint" has to be given to the executive and in matters relating to economic issue the Government has right to "trial and error", we find that no case for interference with the new policy is made out. The wisdom and

advisability of economic policy are outside the purview of judicial review. More so in view of the fact that Government is guardian of finances of the State, it is expected to protect the financial interest of the State, as held by the Supreme Court in *Tata Cellular Vs. Union of India*, .

The reliance placed by the learned counsel for the petitioners on the decision of the Supreme Court in *Rashbihari Panda etc. Vs. State of Orissa*, is clearly distinguishable as the same was not the case of trade or business of liquor whereas the trade or business of liquor has to be treated as a class by itself and cannot be treated on the same basis as other trades while considering the challenge on the basis of Article 14. Similarly decision relied on by the learned counsel in the case of *Daljit Singh Ahluwalia (supra)* is of no help to the petitioner as it has dealt with the regulations framed for allotment of property under the provisions of Haryana Housing Board Act. The expression "in any other such manner" referred to in the aforesaid case has been interpreted in a different context which cannot be applied to the facts of the present case.

Similarly, the decision relied on by the learned counsel for the petitioner reported in *M/s Parakh Foods Ltd. vs. State of A. P.* and another, AIR 2008 SC 2012 deals with interpretation of expression "such other" used in Rule 37D of Prevention of Food Adulteration Act for which principle of *ejusdem generis* has been applied by the Supreme Court. We fail to appreciate as to how the aforesaid case is of any relevance in interpreting the Rule 8(I)(a) of the M. P. Foreign Liquor Rules, 1996 and Rule 9 of the M. P. Country Spirit Rules, 1995.

In view of the above discussion, it cannot be held that new policy is discriminatory, unfair and is unintelligible or that new policy creates a monopoly in favour of existing licensees. On the contrary new policy has been framed with the object to augment the revenue.

(v) Whether the Division Bench of this Court in *Madan Mohan Chaturvedi vs. State of M. P.*, 2008(3) MPU 487 : ILR 2008 MP 2776 has correctly interpreted Rule 8(1) (a) of MP Foreign Liquor Rules, 1996.

Though we agree with the conclusion recorded by the Division Bench with regard to interpretation of Rule 8 of the M. P. Foreign Liquor Rules, 1996 but for different reasons which have already been mentioned while dealing with the issue No. (ii) with regard to interpretation of the rules.

(vi) Whether principle *reddendo singula singulis* can be applied while interpreting Rule 8(1) (a) of M. P. Foreign Liquor Rules.

Before proceeding to deal with this issue, we may profitably quote the relevant extract with regard to aforesaid principle from page 515 of *Principles of Statutory Interpretation* by Justice G. P. Singh (12th Edition) :

The rule may be stated from an Irish case in the following words: "where there are general words of description, following an x enumeration of particular things such general words are to be construed distributively, *Reddendo sigula singulis*;

and if the general words will apply to some things and not to others, the general words are to be applied to those things to which they will, and not to those to which they will not apply; that rule is beyond all controversy. " Thus, "I devise and bequeath all my real and personal property to A" will be construed, reddendo singular singulis by applying "devise" to "real"property and "bequeath" to "personal"property, and in the sentence: "If any one shall draw or load any sword or gun" the word "draw" is applied to "sword" only and the word "load" to "gun" only, because it is impossible to load a sword or draw a gun.

Thus, the applicability of principle of Reddendo sigula singulis is well illustrated from the relevant extract quoted above. From the perusal of the language employed by the legislature in Rule 8(l)(a) and Rule 9 of the Rules it is apparent that ingredients of applying the aforesaid rules are not there. Therefore, principle of Reddendo sigula singulis has no application while interpreting Rule 8 of the M. P. Foreign Liquor Rules 1996 and Rule 9 of M. P. Country Spirit Rules, 1995.

In view of preceding analysis our answer to the questions referred for opinion are as follows :

(1) Under Rule 8(l)(a) of the M. P. Foreign Liquor Rules, 1996 and Rule 9 of the M. P. Country Spirit Rules, 1995, it is open to the State Government to renew the licence of existing licensee on such condition, which it may prescribe or invite applications for grant of licence, or deal with grant of licence in such other manner as it may determine.

(2) We agree with the conclusion recorded by the Division Bench of this Court in Madan Mohan Chaturvedi (supra) however, for different reasons which have already been referred to in preceding paragraphs. The expression "or in any such other manner as the State Government may direct from time to time" will qualify the powers of the Government in granting the licence, and is not required to be read in relation to disposal of applications which cannot be disposed of by draw of lottery.

(3) The new liquor policy which provides for renewal of existing licence with further condition that renewal will take place only when the said renewal will generate more than 80% of the estimated revenue for the year 2010-11 at the district level is a valid policy and does not create any monopoly.

(4) The new policy is a valid policy as the same is not in contravention with Rule 8(1) of M. P. Foreign Liquor Rules, 1996. Requirement of inviting the application has not been dispensed with under the new policy. Licence in respect of each shop is being granted by inviting the application. Renewal of licence is a mode of allotment which is permissible under Rule 8(1) (a) of M. P. Foreign Liquor Rules, 1996.

(5) The judgment rendered by the Division Bench in Madan Mohan Chaturvedi (supra) does not decide the question of vires of policy and this Court has jurisdiction to consider the constitutional validity/statutory validity of the policy.

In our view the New Policy is neither violative of Article 14 of the Constitution of India nor contrary to and ultra vires Rule 8(l)(a) of M. P. Foreign Liquor Rules, 1996 and Rule 9 of M. P. Country Spirit Rules, 1995 and section 62 of the Excise Act, 1915.

The reference is accordingly answered. Let the matters be now placed in terms of Rule 9 of Chapter 4 of the High Court of Madhya Pradesh Rules, 2008 for listing before appropriate Bench for disposal of writ petitions.