

(1975) 10 PAT CK 0004

In the Patna High Court

Case No : C.W.J.C. No's. 1034 and 1058 of 1975

Lallu Prasad and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-10-1975

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 35, 8, 8(2)

Citation : AIR 1976 Patna 137

Hon'ble Judges : Uday Sinha, J;K.B.N. Singh, J

Bench : Division Bench

Advocate : Rajeshwari Pd. and Ganga Pd. Bimal, in C.W.J.C. No. 1034 of 1975 and K.D. Chatterjee and Ganga Pd. Bimal, in C.W.J.C. No. 1058 of 1975, for the Appellant; B.P. Singh, General, S.B.N. Singh, Govt. Pleader No. 2, Basant Kumar Singh, J.C. to G.P. 2 for Nos. 1, 3 and 4, Md. Khaleel, Govt. Pleader No. 3 (for No. 3) and Md. Iqbal, J.C. to G.P. 3 (for No. 2) and Basudev Pd., Shivanand Pd. Sinha, Jawahardhari Singh, T.N. Pandey, Radha Mohan Pd. and Renuka Sharma, (for Nos. 5 to 7) in C.W.J.C. No. 1034 of 1975 and B.P. Singh, General, B.S. Sinha, Govt. Pleader No. 1 and Shashank Kumar Singh, J.C. to G.P. 1 (for Nos. 1, 3 and 4), Md. Khaleel, Govt. Pleader No. 3 and Md. Iqbal, J.C. to G.P. 3 (for No. 2) and Shreenath Singh and Shivanand Pd. Sinha, (for Nos. 5 to 7), for the Respondent

Final Decision : Allowed

Judgement

Uday Sinha, J.—These are two writ applications under Articles 226 and 227 of the Constitution for quashing Annexure 8 in both the applications which is order of the Member Board of Revenue dated the 10th of April, 1975 setting aside the order of the Commissioner of Excise, Bihar, Patna of the 21st of January, 1975. Both the applications have been filed by the same set of petitioners and relate to a country spirit shop at Diliya within the Municipality of Dehri-on-Sone. Respondents 5, 6 and 7 in both the applications had objected to the opening of the shop at village Diliva. They are, therefore, being disposed, of by this common judgment.

2. The petitioners were joint licensees of a country spirit shop at village Basa in the district of Rohatas within Dehari-on-Sone Police Station. It appears that the contribution to the State revenue from this shop was considered inadequate and, therefore, the Collector of Rohtas while drawing up a list of country spirit shops in the district for the financial year 1975-76 showed a new country spirit shop at Diliya and deleted the one at village Basa, the petitioners remaining the licensees for the shop at Diliya. This list was drawn up in terms of Section 30 of the Bihar and Orissa Excise Act (hereinafter to be called as "the Act"). After completing the formalities in terms of Sections 30 to 33 of the Act, the Collector submitted his proposal to the Commissioner of Excise in terms of Section 34 (2) of the Act and the latter in turn accorded approval to the said proposal in terms of Section 35 of the Act. His approval was conveyed to the Collector of Rohtas by letter dated 21-1-1975 (Annexure 11). It appears, that the Excise Commissioner having approved the proposal, the Collector ordered for grant of licence in village Diliya to the petitioners by order dated the 14th of February, 1975. Steps were taken for selection of actual site of the country spirit shop for which the petitioners had been granted licence. It appears that the actual location of the new shop was either within New Diliya or too near to it. Objections were, therefore raised against locating a country spirit shop in a residential area comprising of girls school and a Church. In view of the objections the Collector ordered on the 20th of February, 1975 that no country spirit shop should be opened in village New Diliya and he approved a place 1000 yards south of the Grand Trunk Road which was far removed from habitation in village, Diliya. This did not seem to have satisfied A. C. Sao, Lakshmi Singh and Mandal Raj, respondents 5, 6 and 7 (in C. W. J. C. No. 1058 of 1975) and, therefore, they filed an application before the Board of Revenue which was numbered as Board Case No. 117 of 1975. This application before the Board was against locating the country spirit shop at New Diliya. The Member Board of Revenue on the same day admitted the application and called for record of the case and report of the Excise Commissioner on the points raised by the petitioners to the application fixing 10-5-1975 as the date for hearing of the application. The grant of licence for the shop at New Diliya was also stayed pending disposal of the application before the Board. Having come to know of the order of stay passed by the Board, the petitioners filed an application on the 21st of March, 1975 for vacating the order of stay on the ground that no order had been passed by any authority for opening of a country spirit shop at New Diliya and, therefore, the application by the respondents before the Board was misconceived. Since a confusion was created about Diliya and New Diliya, the member Board of Revenue by his order dated 21-3-1975 in modification of his order passed on the 20th of March, 1975 ordered as follows :--

"Heard parties.

From 1-4-1975 till this case is disposed of, the provisional licence for New Diliya may be given. This will not confer any right to the party."

In terms of the above order a provisional licence was granted for opening a

country spirit shop at village Diliya without conferring any substantive right upon the petitioners. On the 22nd of March, 1975 respondents 5, 6 and 7 of C. W. J. C. No. 1034 of 1975 filed an application before the Board of Revenue u/s 8 of the Act against opening of a country spirit shop at Diliya, also known in common parlance as New Diliya which was numbered as Board Case No. 127 of 1975. It appears that the Member, Board of Revenue had called for a report from the Collector, Rohtas regarding the site of the proposed country spirit shop. Since the Collector was required to report whether the shop was to be located at Diliya or at New Diliya, Surendra Raj, Krishna Prasad and Kadar Singh, respondents 5, 6 and 7 (C. W. J. C. 1034/75) filed an objection before him to send information to the Member Board of Revenue regarding the opening of the aforesaid country spirit shop. The Collector also received some objections from K. Prasad and U. Prasad, Advocates and Gita Devi, Municipal Commissioner. Having considered the objections and in compliance of the Board's order, the Collector passed an order on the 24th of March, 1975 after holding a local inspection of the proposed site. The substance of the report or order which has been annexed and marked as Annexure 5 was to the effect that (a) the Commissioner of Excise had approved the proposal for opening a new country liquor shop at Diliya; (b) Diliya was quite different from New Diliya separated by Grand Trunk Road; (c) in the matter of selection of site envisaged by Rule 47 under the Bihar and Orissa Excise Act there was no infirmity in locating the proposed shop at Diliya; and (d) there was no habitation around the place where the shop was to be actually located. The application before the Board of Revenue was put up for orders on 25-3-1975 and the respondents appear to have succeeded in confusing the Member Board of Revenue in regard to Diliya and New Diliya and thus the latter staved the opening of the shop either at Diliya or at New Diliya pending the disposal of the main application before him. The member, Board of Revenue heard the parties and by order dated 10-4-1975 allowed the objections of respondents 5, 6 and 7 and the order of the Excise Commissioner for opening a country spirit shop at Diliya was set aside. The petitioners have, therefore, come to this Court for quashing the aforesaid order of the Member, Board of Revenue (Annexure 8). As stated earlier, the impugned order is Annexure 8 in both the applications.

3. Mr. Rajeshwari Prasad appearing for the petitioners in C W. J. C. No. 1034 of 1975 has urged that the revision before the Board of Revenue was not maintainable and that the order of the Board of Revenue dated 10-4-1975 (Annexure 8) was without jurisdiction, as the order of the Excise Commissioner u/s 35 of the Act affirming the orders of the Collector was final. Since a lot of argument has been addressed by the counsel for the parties in this behalf, I should proceed to consider the effect of the order passed by the Excise Commissioner u/s 35 of the Act. The provisions regarding grant of licenses, permits and passes are contained in Chapter VI of the Act. The duration of every license granted under the Excise Act is one financial year. Before the expiration of the year in question the Collector is required to prepare a list in regard to the licensees for the subsequent year. Section 30, therefore, enjoins that the

Collector shall prepare a list in a form (Form 124) showing what licenses were proposed to be granted for the retail sale of spirit for consumption on the vendors' premises for the next period of settlement. Section 31 enjoins upon the Collector to publish the list in regard to old shops a notice to the effect that licenses were proposed to be granted for the next period of settlement. In regard to new shops, he was required to get it proclaimed by beat of drum in the locality that it was proposed to grant a license for the retail-sale of spirit. Clauses (c) and (d) of Sub-section (1) of Section 31 of the Act required the Collector to send a copy of that list to the Chairman of the District Board and the Municipality with the slight difference that in regard to the former the entire list had to be sent, but in regard to the latter only an extract of the said list as related to the shops in the Municipality was to be sent. In addition to the provisions mentioned above, the said list has to be published in such other mode as prescribed by rules made u/s 89 (j) of the Act. Sub-sections (2) and (3) of Section 31 of the Act are not relevant, and, therefore, they need not be referred to. Section 32 of the Act deals with time for preparation and publication of such list. Section 33 provides for objections to be filed before the Collector in regard to the list prepared and published by the Collector in terms of Sections 30, 31 and 32 of the Act. After objections have been received, the Collector is required to apply his mind to the objections and if necessary to revise the list prepared by him. Since the entire controversy between the parties centres round the scope of Sections 34 and 35 of the Act, I consider it proper to quote them here in extenso which read as follows :--

"34. Grant of licences by Collector and submission of list, objections and opinions to Excise Commissioner--(1) After the date prescribed for the receipt of objections and opinions submitted u/s 33, the Collector shall consider the same, and shall, if necessary, revise the said list, and shall decide for what places licenses for the retail sale of spirit shall be granted, and may, in his discretion grant licences accordingly.

(2) The Collector shall then forthwith submit the said list, as so revised, and the said objections and opinion, and his own opinion to the Excise Commissioner.

35. Finality of decision of Excise Commissioner or Board--The Excise Commissioner shall consider the list, objections and opinions so sent to him, and may modify or annul any order passed or license granted by the Collector, and, notwithstanding anything contained in Section 8, his orders shall be final."

It will be seen that after considering the objections in regard to the locality of the shops, the Collector has to submit the list with or without revision with his own opinion to the Excise Commissioner. The Excise Commissioner in turn is required to apply his mind to the list drawn up by the Collector, the objections and opinions sent to him and he may either modify or annul any order passed by the Collector and that the said order of the Excise Commissioner shall be final "notwithstanding anything contained in Section 8". Section 8 lays down the powers of supervision, appeal and revision in excise matters which reads as

follows:--

"8 Control appeal and revision--(1) the Collector shall in all proceedings under this Act, be subject to the control of the Excise Commissioner, and shall, in such matters as the State Government may direct, be subject also to the control of the commissioner of the Division.

(2) Orders passed under this Act or under any rule made hereunder shall be applicable in such cases, to such authorities and under such procedure as may be prescribed by rule made u/s 89, Clause (c),

(3) The Board may revise any order passed by a Collector, the Excise Commissioner or the Commissioner of a Division."

4. Giving ordinary and full effect to the provisions contained in Section 35, it is obvious that the order of the Excise Commissioner in terms of Section 35 of the Act is final. The section clearly excludes the effect of Section 8 thereby excluding the power of the Commissioner of the Division and of the Board of Revenue as an appellate or revisional authority. Section 35 lays down the range of the duties of the Excise Commissioner and the orders that he may pass in exercise of his powers. The operative effect of the order is that such an order is beyond the ambit of Section 8. The non-obstante clause must be given its natural and ordinary meaning. The word "notwithstanding" occurring in Section 35 must be given its full effect. It is not a sound principle of construction to brush aside words in a statute as being inapposite or surplusage if they can have an appropriate application. Learned Advocate General appearing on behalf of the respondents 1, 3 and 4 contended that the expression "notwithstanding" cannot be given a restricted meaning. The very purpose of non-obstante clause is that that provision shall prevail over any other provision and that other provision shall not be of any consequence. In case there is any inconsistency or a departure between a non- obstante clause and other provisions, one of the objects of such a clause is to indicate that it is the non-obstante clause which would prevail over the other clauses. Even if we go by a dictionary sense, the expression "notwithstanding" implies that other provisions shall not prevail over the main provision. In my view, there is good reason for making such a provision. This grant and renewal of license is an annual feature and if the order of the Excise Commissioner passed u/s 35 had not been made final, the year would be out before it could be disposed of in appeal and revision. The submission of learned Advocate General has forced and must be accepted.

5. This submission of learned Advocate General was sought to be countered by Mr. Basudev Prasad appearing for respondents 5, 6 and 7 by submitting that the Board of Revenue is at the apex of the entire excise machinery in the State. He drew our attention to Chapter II of the Act and dwelt on the scope of Sections 7 and 8 of the Act. Section 7 makes the Collector of the district the sole guardian of the administration of the Excise Department and the Collection of the Excise revenue. He drew our attention to Section 7 (2) (e) by which the State

Government has been empowered to delegate to the Board and the Commissioner of a Division or the Excise Commissioner all or any of the powers conferred upon the State Government under the Act, except those conferred by Section 89. to make rules. Section 90 empowers the Board of Revenue to make rules in regard to certain matters specified therein. It was, therefore, submitted that the Board of Revenue being at the apex of the Excise administration it would be not consistent with reasoning that the Board of Revenue should be shut out from exercising its supervisory jurisdiction and looking into any. matter relating to grant of licenses covered by Section 35 of the Act. According to learned counsel for the respondents, the provisions contained in Sections 30 to 34 are vital for the collection of Excise Revenue and the administration of the Department He contended, therefore, that Section 35 should not be read as cutting down the powers of the Board of Revenue (hereinafter referred to as the "Board") to judge the correctness or otherwise of any order passed by the Excise Commissioner u/s 35 of the Act. He, therefore, contended that the finality attaching to an order u/s 35 must be limited only in regard to hearing of appeal provided in Section 8 (2) of the Act, but not to the hearing of revisions in terms of Section 8 (3), According to the respondents the regulation of grant of licence being the Central theme of the Bihar and Orissa Excise Act, the law makers could not have thought of excluding the Board, being at the apex of the entire machinery, from applying its mind to matters covered by Section 35 of the Act. In short, the submission of Mr. Basudev Prasad is that the finality of the order u/s 35 must be limited to a Section 8 (2) and not to Section 8 (1) and (3) of the Act

6. I regret, I am unable to accede to the submission of learned counsel for the respondents for the reason that the legislators must be credited with knowledge of requirement for a particular enactment and, therefore, no provision should be presumed to be redundant. A Court of law would be reluctant to attribute to a legislature the intent to make superfluous and redundant provisions in any statute. It is well settled that a Court cannot reduce statutory words to nothing or redundant. The expressions, therefore, "notwithstanding" and "final" occurring in Section 35 of the Act must be given their full effect. I am at a loss to find any earthly reason for denying finality to any order passed by the Excise Commissioner. The Act contemplates several categories of functions to be discharged by the Board. The duties enjoined upon the authorities by Sections 30 to 34 are only some of the functions which the Excise authorities are called upon to discharge. Apart from them, there is the function of administration of the Department itself. The limit for retail sale of intoxicants in terms of Section 5 of the Act, the application of Sections 30 to 35 in regard to retail sale of Pachwai, the fixing of fees to be paid for parcel relating to import, export and transport of excisable articles, matters relating to reduction of licence fee for unexpired portion of the licence are some of the matters which fall within the ken of the Board's jurisdiction and functions. By Section 90 of the Act, the Board has been empowered to make rules in regard to various matters and the list of matters enumerated therein is an impressive one. It is, therefore, not proper to suggest

that the provisions as contained in Sections 30 to 34 are the most important or the only functions contemplated under the Act. The word "final" occurring in Section 35 has been provided with a purpose is further reinforced by the fact that in exercise of powers conferred by Section 89 of the Act the State Government has made certain rules regarding filing of appeals. The rules are contained in Notification No. 471-F dated the 15th January, 1919 and published in the Bihar and Orissa Excise Manual, Vol. II (3rd reprint) at page 121. clause 4 specifically excludes the jurisdiction of the Board to hear appeals against orders referred in Section 35 of the Act. There can, therefore, be no doubt that so far as the Board is concerned, orders passed by the Excise Commissioner u/s 35 of the Act are final.

7. To set round this difficulty in his way learned counsel for the respondents contend that the finality could be attached only so far as appeals to the Board were concerned and not by way of revision. That is to say, the appellate authority of the Board had been barred but not the revisional authority. I regret, I am unable to appreciate this submission. If Section 35 shuts out Section 8 (2), I fail to see how the provisions contained in Section 8 (1) and (3) could still come into play when Section 35 places an embargo upon the application of entire Section 8. It would be doing violence to the provisions of Section 35 if they were to be confined only to appeals and not to revision, prescribed in Section 8 (3). It is difficult to appreciate how a distinction could be made between the provisions contained in Section 8 (1) and (3) on the one hand and Section 8 (2) on the other, I am fortified in the view that I have taken by the case of *M.R. Patel Vs. State of Bihar and Others*, . In that case the Board of Revenue had raised the security deposit of an Excise shop. According to that principle the security deposit payable by the licensee would increase six times. The Commissioner of Excise, in pursuance of the direction of the Board, directed the Deputy Commissioner. Singhbhum to realise the deficit in security deposit of the licensee's shop. The licensee, therefore, moved the Board of Revenue for revision of the order of the Excise Commissioner demanding higher security. The Board rejected the application with the observation that the Excise Commissioner would reconsider his order calling for realisation of higher deposit. On an application filed by the licensee the Excise Commissioner directed that in special circumstances of the case, the security deposit need not increase. The Deputy Commissioner, Singhbhum then referred the matter to the Board of Revenue and the Board after hearing both the sides set aside the order of the Commissioner. Against that order of the Board the licensee filed an appeal to the Supreme Court where the submission was advanced that the order of the Excise Commissioner in regard to the security deposit was final and that the Board of Revenue had no jurisdiction to revise it. The Supreme Court rejected the contention on the ground that the order of the Commissioner had not been passed in terms of Section 35 of the Act, but it is obvious that in the view of the Supreme Court orders passed squarely within the ambit of Section 35 are final, the Supreme Court observed that neither the original order dated November 14, 1956 nor the

subsequent order dated March 5, 1958 was passed by the Excise Commissioner u/s 35. The Supreme Court further observed that the finality of Section 35 did not attach to these orders and the Board of Revenue had ample power to revise them u/s 8. There can be no doubt that orders passed by the Excise Commissioner beyond the purview of Section 35 will be appealable or revisable by the Board of Revenue but there is no question of orders passed in terms of Section 35 not being final. Reference may also be made to an unreported decision of this Court in Nawal Kishore Trigunath v. The State of Bihar, (C. W. J. C. No. 525 of 1970) disposed of on the 20-1-1973 (Pat) which related to a shifting of the shop from one locality to another. The Deputy Commissioner had made the proposal for shifting after following the procedure regarding calling for and considering objections and the recommendation of the Deputy Commissioner had been approved by the Excise Commissioner u/s 35 by order dated 9-2-1967. Thereafter, a representation was filed by the Mukhiya of the concerned Gram Panchayat to the Minister of Excise as well as an appeal to the Excise Commissioner. The Excise Commissioner dismissed the appeal. The petitioners of that case then moved the Board of Revenue and the Board also dismissed the revision on the ground that the order of the Commissioner was final. The petitioners then moved this Court and while dismissing the writ application his Lordship Untwalia, C. J. (as he then was) observed as follows:--

"The appeal has rightly failed on the ground of limitation before the Excise Commissioner in his order dated 1-3-1969 (Annexure 6) and the Board seems to have put a correct interpretation to Section 35 of the Act because that makes the order of the Commissioner of Excise final notwithstanding anything contained in Section 8 of the Act, which gives the power of revision to the Board."

I am in respectful agreement with the views of Untwalia, C. J. in regard to the effect of an order passed by the Commissioner u/s 35 of the Act.

8. The reliance placed on the case of Regina v. Medical Appeal Tribunal (1957) 1 QB 574 by Mr. Basudev Prasad for the respondents is entirely misplaced, since in that case the word "final" used in statute had been interpreted in relation to the writ jurisdiction for issuance of a writ of certiorari. There was no question of exercise of revisional powers in that case. It is well known that the powers of a Court to issue high prerogative writs are not circumscribed by the use of the expression "final" in any statute and, therefore, in those circumstances, it was observed that the word "final" meant "not open to appeal." AIR 1956 Mad 79 (A. C. Arumugham v. Manager, Jawahar Mills Ltd. Salem Junction) was another case on which Mr. Basudev Prasad pinned his faith in support of his proposition that use of expression like "final" in any statute debarred only appeals and not the exercise of revisional jurisdiction. Besides being a single Judge decision of the Madras High Court, the case in question is distinguishable from the present case, inasmuch as, that case arose out of Payment of Wages Act, 1936 in which orders passed u/s 15(2) or 15(3) or (4) are final. There is no provision for exercising revisional powers under that Act. In cases of penalty imposed u/s

15(4) an appeal has been provided to a court of small causes in a presidency town and to the District court in other places. The High Court observed that since an appeal was provided to the District Court or Court of small causes, it would be deciding a case within the meaning of Section 115 of the CPC when it decided the appeal. It was therefore, held that the expression "final" in Section 17 did not debar any revision to the High Court in exercise of its revisional jurisdiction u/s 115 of the Code of Civil Procedure. There can be no doubt that this Court in exercise of its writ jurisdiction is competent to scrutinize the orders passed by the Excise Commissioner u/s 35 of the Act, but that is quite different from saying that the expression "final" places no embargo on the Board of Revenue in the matter of hearing revision against an order passed in terms of Section 35 of the Act. In my view the non obstante clause in Section 35 must be given full effect I cannot do better than quoting what was observed in A.V. Fernandez Vs. The State of Kerala, at page 662 in paragraphs 36-37 in regard to the effect of non obstante clauses, which is as follows :

"36. What then is the effect of this non obstante provision ? This Court in Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, , made the following observations in connection with the non obstante clause:

"It should first be ascertained what the enacting part of the section provides on a fair construction of the words used according to their natural and ordinary meaning, and the non obstante clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment."

The same ratio applies to the construction of the non-obstante provision contained in Section 26 of the Act with reference to all the other provisions of the Act that preceded the same.

37. In our opinion, Section 26 of the Act, in cases falling within the categories specified under Article 286 of the Constitution has the effect of setting at naught and of obliterating in regard thereto the provisions contained in the act relating to the imposition of tax on the sale or purchase of such goods and in particular the provisions contained in the charging section and the provisions contained in Rule 20 (2) and other provisions which are incidental to the process of levying such tax....."

In my view, therefore, Section 35 completely rules out the efficacy of Section 8. It must, therefore, be held that the Board of Revenue had no jurisdiction to revise the order passed by the Excise Commissioner u/s 35 of the Act.

9. To set over this difficulty in his way Mr. Basudev Prasad contended that the Collector had not transmitted any proposal to the Excise Commissioner in terms of Section 34 and that the Excise Commissioner in his turn had not approved the proposal in terms of Section 35 of the Act. but that it had been done by the Collector and the Excise Commissioner in exercise of their administrative departmental capacities. It is difficult to accept the submission of learned counsel

in this behalf in face of the documents brought on record in this application. The first link in the chain of documents which completely nullifies the submission of Mr. Prasad is the letter of the Collector, Rohtas dated 7-1-1975 (Annexure 9). This letter shows that he was forwarding the list of Excise shops for the year 1975-76 within his district. It has been clearly stated in the letter that after complying with the provisions of Sections 30 to 34 the shop at Basa should be shifted to Diliya from 1-4-1975. The reason given for shifting the shop was that excess revenue to the tune of a lac of rupees per year was expected by this shifting. It has been mentioned in paragraph 3 that action in terms of Sections 30 to 34 of the Act had started. It has also been mentioned in that letter that the licensee of the Basa shop will remain the licensee for the Diliya shop. Annexure 10 is the letter of the Collector dated 18-1-1975 to the Excise Commissioner, Bihar, Patna. It has been stated in this letter that all formalities in the terms of Sections 30 to 34 of the Act had been completed in regard to the shifting of the shop from Basa to Diliya and that the entire records were being transmitted to the Excise Commissioner. This letter also states that all objections, in response to the notice calling for objections, had been considered by the Collector and that all the objections were without any substance. The Collector, therefore, prayed to the Excise Commissioner for approval in terms of Section 35 of the Act in regard to the shifting of the shop from Basa to Diliya and that implementation of this proposal was expedient in the interest of revenue of the State. The letters of the Collector dated 7-1-1975 and 18-1-1975 (Annexures 9 and 10) must be together read as constituting the proposal of the Collector in terms of Section 34 of the Act. The letter of the Commissioner dated 21-1-1975 (Annexure 11) is obviously communication of an order passed in terms of Section 35 of the Act. Annexure 11 refers to the two letters mentioned earlier in regard to settlement proposals for the year 1975-76. By this letter the Excise Commissioner approved the proposal that there would be 57 country spirit shops in the district as in the earlier years. The letter states explicitly that approval had been accorded to the proposal of shifting the shop from Basa to Diliya subject to course to complying with the provisions of Rule 47 of the Bihar and Orissa Excise Rules. In that view of the matter, it is futile to suggest that Annexures 9 and 10 did not represent the proposal of the Collector in terms of Section 34 nor can it be held that Annexure 11 did not represent the approval of the Excise Commissioner in terms of Section 35 of the Act. The submission of Mr. Basudev Prasad in this behalf is absolutely devoid of any substance and must be rejected.

10. Mr. Basudev Prasad and Mr. Shreenath Singh for the respondents in both the writ petitions contended that Section 35 of the Act contemplated only modification or annulment of the Collector's proposals and that it was only the order evidencing any modification or annulment of the list u/s 35 of the Act which was final and that the approval of the Collector's list by the Excise Commissioner was not an approval contemplated by Section 35 and, therefore, no finality could attach to the order of the Excise Commissioner approving the Collector's proposal u/s 34 of the Act. He contended that the approval by the

Excise Commissioner must be taken to be a departmental order or administrative approval in terms of Section 7 read with Rule II under the Act in Notification No. 470-F dated the 15th January, 1919 and printed in the Excise Manual at page 105. Rule II reads as follows:--

"No. 470-F. -- In exercise of the powers conferred by the provisions specified below of the Bihar and Orissa Excise Act, 1915 (Act II of 1915), hereinafter designated "the Act" the Lieutenant-Governor in Council is pleased--

XX XX XX

II. to make the following orders under Sub-section (2) of Section 7:--

(1) (Under Clause (a))-- There shall be an Excise Commissioner who shall, subject to the general control of the Board, have throughout the province of Bihar and Orissa the control of the administration of the Excise Department and the collection of excise revenue."

It is true that the Excise Commissioner has dual functions. He is the supervisory authority in regard to the acts of the Collector of the District and he is also a quasi judicial authority in terms of Section 34 of the Act, but it is incomprehensible to me that an order of modification or annulment, of a proposal by the Excise Commissioner must be treated to be one u/s 35 of the Act, but if the same Excise Commissioner performing the same function approves the proposal, it must be considered an administrative act. There can be no doubt that the sending of proposals after complying with the requirements of Sections 30 to 33 of the Act is an act covered by the provisions of Section 34 and, therefore, I cannot conceive of any rationale for coming to the conclusion that if the proposal of the Collector is approved, it must be taken to be a departmental administrative Act. In applying his mind whether the proposal of the Collector should be modified or annulled or approved the Excise Commissioner is applying the same thought process and, therefore, no distinction can be made on the footing suggested by the respondents. Any order by the Excise Commissioner in regard to the proposal of a Collector in terms of Section 34 must be deemed to be final. I regret, I have not been able to appreciate how the case reported in M.R. Patel Vs. State of Bihar and Others, supports the contesting respondents in this behalf.

11. It was contended by Mr. Shreenath Singh (counsel for respondents 5, 6 and 7 in C. W. J. C. No. 1058 of 1975) that the Collector of the District abdicated his function laid down in Section 34 of the Act because he never passed any order in terms of Section 34. It was suggested that objections were invited to the shifting of the shop from Basa to Diliya and he merely transmitted his proposal as well as objections. This was sought to be explained by Mr. Shreenath Singh as being departmental act as contemplated by Rule II u/s 7 of the Act. I regret. I am unable to appreciate this submission. Annexures 9 and 10 clearly show that objections had been invited and they had been considered by the Collector and that he had found the objections without any merit. Annexure 9 read with

Annexure 10 must be held to be full compliance of Section 34 of the Act. The attempt of learned counsel for the respondents to get round the difficulty created by Section 35 and to clothe the Board of Revenue with the power to exercise its revisional jurisdiction in regard to matters covered by Section 35 of the Act is untenable.

12. It was also contended by learned counsel for the respondents that even if the order passed by the Excise Commissioner was final and even if the Member Board of Revenue acted without jurisdiction in entertaining the appeal and setting aside the approval accorded by the Excise Commissioner, this Court in its writ jurisdiction should not interfere with the order of the Board if it is found that it had set right an apparent illegality or injustice. As an abstract proposition of law it is unexceptionable. It is therefore, necessary to see if the factual foundation has been well laid to come to the conclusion that the Collector or the Commissioner had committed any illegality or injustice which was or could have been set right by the Board. I may here dispose of the question of injustice by observing that all that the contesting respondents were interested in, was that the country spirit shop should not be located at New Diliya. If Diliya and New Diliya are one and the same as asserted by the respondents 5 and 6 of C. W. J. C. No. 1034 of 1975 in paragraph 22 of their counter-affidavit, they can have no objection because the actual site chosen for the shop is a long way off from their surroundings. According to the Collector, it would be about more than half a mile away from the residents of New Diliya where there is no habitation. If the respondents were genuine objectors, no stooges of some other agency, their interest was fully served when it was decided that the shop in question would be located at a very remote part of village Diliya and surely too far from New Diliya. Nor, could they have any interest in the question as to who should get the licence. In that view of the matter, there can be no question of any injustice having been caused to the respondents by the order of the Collector or the Excise Commissioner.

13. So far as the question of illegality of acts of the Collector of Rohtas and the Excise Commissioner. I have been at pains to find if there has been any illegality. The contention of learned counsel for the respondents must be tested on the touchstone of the provisions contained in Sections 30 to 33 of the Act. Annexure 14 is a letter from the Excise Superintendent Rohtas to the Sub-Inspector of Excise whereby he was informed that there was a proposal to shift the country liquor shop from Basa to village Diliya from 1-4-1975. He was directed that in terms of Sections 30 to 33 of the Act he should proceed to the proposed locality and get it announced by beat of drum to the public at large and that anybody objecting to the proposal should do so within 15 days from the date of the beat of drum. The Sub-Inspector was directed to send compliance of these instructions after strict compliance with the provisions of Sections 30 to 33 of the Act. Annexure 1 is a letter of the 27th December, 1974 from the Excise Sub-Inspector to the Excise Superintendent reporting compliance of the directions of the latter in terms of Section 31 (1) (b) of the Act on the 26th December, 1974

in his presence. The receipts of the drum beaters with the signatures of the witnesses to the drum beating were enclosed with this letter. Sections 30 and 31 of the Act must, therefore, be deemed to have been complied.

14. Mr. Shreenath Singh for contesting respondents in C. W. J. C. No. 1058 of 1975 contended that there is a large mass of documentary evidence to show that the proposal to open a new shop and the formalities required by Section 31 of the Act must have been done in relation to New Diliya and not Diliya and, therefore, it must be held that in regard to Diliya the provisions in regard to Sections 30 to 33 had not been complied. He referred to the letter of K. Prasad, Advocate and others dated 22-2-1975 to the Collector, the letter of the Superintendent of Excise, Rohtas dated 26-2-1975, the letter of the Assistant Project Executive Officer to the Personal Assistant to the Collector, Rohtas dated 20-2-1975 and a report of the Inspector of Police addressed to the Superintendent of Police dated 13-3-1975 which have been filed as enclosures to Annexure B in the counter-affidavit of Krishna Prasad, respondent No. 6. If I may state with respect, the submission of Mr. Singh stems from the failure on his part to realise the difference between the locality of a shop and the actual site thereof with reference to plot numbers and boundaries. The two are entirely different matters. The procedure covered by Sections 30 to 33 has reference only to the locality of a shop. This may mean just specifying the name of the village or if it is an urban area by just stating the mohalla in which a shop was to be set up or shifted and that would be full compliance of the provisions of Sections 31 and 32 of the Act although the exact geographical location with reference to plot number, holding number and boundaries have not been specified. The state for specifying the actual site of the shop comes when the proposal of the Collector to set up or shift a shop has been approved by the Excise Commissioner. The documents relied upon by Shri Shreenath Singh have a bearing only on the question of actual site of the country spirit shop and not the locality of the shop in terms of Sections 30 and 31 of the Act. As I have stated earlier either the petitioners offered a site in village New Diliya or a hullabaloo without any foundation was raised in regard to setting up the shop in New Diliya or vested interest took it up as an opportunity to prevent any extra country spirit shop being opened within Dehri Municipality, but those are matters to be considered in terms of Rule 47 of the Bihar and Orissa Excise Rules. So far as the residents of New Diliya were concerned, their objection to setting up a country spirit shop at New Diliya was quite justified and the Collector had taken that into account and, therefore, directed that no shop should be opened at New Diliya. The various petitions and reports must be read as being objections in regard to the site of the shop in terms of Rule 47 and not to the locality of the shop as laid down in Section 30 of the Act. I am, therefore, of the view that there is no substance in the contention of Mr. Shreenath Singh that the entire actions alleged to have been taken under Sections 30 to 33 of the Act must be deemed to have taken in regard to village New Diliya and not in regard to Diliya. In the face of Annexures 1 and 14 it is well nigh impossible to come to the conclusion that the fixation of

notices and beating of drum took place at New Diliya and not at village Diliya. I shall like to observe here that the stand taken by Mr. Basudev Prasad branding Annexures 1 and 14 as rank forgeries is too purile to receive any consideration. The presumption attaching to Government works having been carried out regularly must set at rest any comment by Mr. Basudev Prasad.

15. If Annexures 1 and 14 are genuine and correct documents, as they must be held to be, the conclusion is irresistible that notices were hung and drum was beaten at village Diliya. Section 31 (1) (b) and (e) must, therefore, be held to have been fully complied. There is nothing to show that the Collector did not send to the Chairman of the District Board a copy of the list drawn up by the Collector. Apart from the bare assertion of respondents 5 and 6 that the provisions of law were not complied, there is nothing to show that the Chairman of the District Board had not been noticed in terms of Section 31 (1) (c).

16. It only remains to consider whether the provisions of Section 31 (1) (d) of the Act had been complied or not. In this connection the position taken by respondents 1, 3 and 4 is that the provisions of Section 31 had been fully complied which would imply that notices had been sent in due time to the Chairman of the Dehri-on-Sone Municipality. On the other hand, the stand of the contesting respondents 5, 6 and 7 is that the provisions of the Act had not been complied. In this connection the respondents have relied upon a certificate issued by the Chairman of the Dehri Municipality (Annexure A) which is to the effect that no information had been sent to the Municipality about opening of a country spirit shop in New Diliya, Diliya, in Ward No. 15, I have no doubt that this certificate has been granted by the Chairman on ulterior considerations. It will be observed that this certificate bears a date 26-3-1975. But there is another letter of the 10th March, 1975 by the same Chairman to the Collector, Rohtas in regard, to opening of a country spirit shop at New Diliya annexed and marked as Annexure X/7. Curiously enough there is not a whisper in that letter to suggest that information of the proposal to open a shop at Diliya had not been sent to him. Annexure Y/8 is another letter dated 16-3-1975 from the same Chairman to the Excise Minister containing his objection to the location of a country spirit shop in New Diliya. But in that letter as well the allegation of want of notice to the Municipality in terms of Section 31 (1) (d) of the Act is conspicuous by its absence. These letters coming from unimpeachable custody of the Collector and the Excise Commissioner completely negative the value of the certificate (Annexure A) granted by the Chairman of the Municipality. They are of great value and must set at nought any speculation about non-compliance of the provisions contained in Section 31 (1) (d) of the Act. I have no doubt that Annexure A to the petition filed by A.C. Sao and others for vacating the stay order of this Court as well as Annexure 20 filed by the petitioners are got up documents and meant to oblige whosoever sought his favour. It will also be observed that the Member, Board of Revenue has not found as a fact that an extract of the Collector's list in regard to the shop in question was not sent to the Chairman, Dehri Municipality, I have no doubt in my mind, therefore, that the

provisions of Sections 31 and 32 had been fully complied.

17. Section 34 enjoins upon the Collector to consider all objections and opinions submitted u/s 33. It was contended by Mr. Prasad for the contesting respondents that this requirement of law has not been complied. He based his submission upon the fact that the notice inviting objections stated the 12th January, 1975 as the last date for filing objections, but Annexure 9 shows that the list had been sent by the Collector to the Excise Commissioner on the 7th itself. He, therefore, contended that the Collector never considered the objections. This submission is utterly devoid of any substance. I have already held that Annexure 9 must be read along with Annexure 10 as together forming the list forwarded by the Collector in terms of Section 34 (2) of the Act. In Annexure 9 itself it has been mentioned that the shop of Diliya would be opened after complying with the provisions contained in Sections 30 to 34 of the Act. Annexure 10 shows that the Collector had written in his letter that all original papers were being forwarded to Excise Commissioner after complying with the provisions of Sections 30 to 34 of the Act and that he had applied his mind to the objections received in response to his notice of the 25th December, 1974 and he considered them to be of no substance. He, therefore, prayed for approval being granted in terms of Section 35 of the Act. It is obvious, therefore, that the Collector did consider the objections raised by various persons. The report of the Excise Inspector to the Excise Superintendent (Annexure 12) is also relevant in this connection. Justification for opening of a country spirit shop in Diliya was clearly stated in that report and that the objections had been engineered by licensees, who had their country spirit shops within Dehri-on-Sone Municipality from before. It was clearly stated in that report that the objections against opening a shop at New Diliya was pointless when the proposal was to open the shop in Diliya which was separated by the Grand Trunk Road and were poles apart away from habitation. It was stated that there were rules laying down principles to be considered in choosing the site for a country spirit shop and that question would be considered at a later stage. The report, therefore, recommended rejection of the objections. I would not be surprised that the Collector upon those facts considered it fit to reject all the objections and approve the proposal. In that view of the matter, it must be held that the Collector had considered all the objections received u/s 33 of the Act

18. It was then contended by Mr. Basudev Prasad that the statement in Annexure 10 by the Collector that a perusal of the objections filed amounted to no consideration. He stated that if he had considered, he should have mentioned the nature of the objections and would have dealt with them pointwise. I regret, I am unable to accede to this submission. The sentence referred to in Annexure 10 shows clearly that the objections had received his consideration. There is no particular mode of writing an order specially when it is not an order of a judicial authority. The Collector had before him a detailed report on the objections from the Inspector of Excise. A long order, therefore, in my view, was not necessary requirement of law. I am, therefore, unable to hold that the objections filed u/s

31 of the Act did not receive the consideration of the Collector.

19. Lastly, it was contended that the Board of Revenue had heard the parties and had given its conclusion on questions of fact in regard to compliance of the provisions of Sections 30 to 33 of the Act and this Court in its writ jurisdiction should not substitute its own findings for that of the Collector or the Excise Commissioner. Academically speaking the proposition is sound and unexceptionable. The basic question, however, is whether the Board of Revenue has given its finding in regard to non-compliance of Sections 30 to 33 and whether they are based on any material. The finding of the Board is, therefore, quoted below for a proper appraisal thereof--

"On behalf of the Excise Department and opposite parties Lallu Prasad and Ratandip Kumar, it has been urged that in the instant case the procedure prescribed in Sections 30 to 33 of the Act has been complied with. From submissions made before the Board and from the files of the Excise Department, it appears that along with others the Chairman of the Dehri-on-Sone Municipality had objected to the shop being opened in ward No. 15. This goes to show that the provisions of Sections 30 to 33 have not been complied with properly."

It would be observed that all that the so called finding arrived at by the Board amounts to saying that the provisions of Sections 30 to 33 had not been complied. The only reason to suggest this conclusion of the Board is that the Chairman of the Dehri-on-Sone Municipality had objected to the shop being opened in Ward No. 15. I regret, this does not amount to any finding, as it is not based on any relevant material. The statement that the provisions of Sections 30 to 33 have not been complied with properly is absolutely a bald statement which cannot pass any judicial scrutiny. The Board has failed to record any finding as to whether the Municipality had received notice of the Collector or not. That was the basic question to be decided. If the Board had come to the conclusion that no notice had been sent to the Municipality its finding regarding non compliance of Sections 30 to 33 of the Act would have some meaning, but in the absence of any finding regarding want of notice to the Chairman of the Municipality, mention of filing of objection by the Chairman is pointless. It is pointless for the simple reason that the Collector or the Excise Commissioner could not have considered something which did not exist till 21-1-1975, but came to existence only on 10-3-1975 and 16-3-1975. I fail to appreciate by what process of reasoning the learned Member Board of Revenue came to the conclusion that before approving the list the collector and the Excise Commissioner should have considered the objection of the Chairman of the Municipality. But to be fair to the learned Board of Revenue, it must be recorded that he had not observed that the objection of the Chairman should have been considered, but has only said that the Chairman of the Dehri-on-Sone Municipality along with others had objected to the shop being opened in ward No. 15. In the absence of any finding showing want of consideration of the objections by the Collector there is no relevancy between the finding of objections and non-compliance with the provisions of Sections 30 to 33

of the Act. The learned Member, Board of Revenue has not said a word as to in what regard the Collector had failed in carrying out the duties enjoined upon him by Sections 30 to 34. The learned Member, Board of Revenue has not said that no list was prepared, that no drum was beaten, that no notice was sent to the District Board, that no notice was sent to the Municipality, and that the objections received had not been considered. In the absence of any finding by the Board on these relevant considerations, the conclusion that the provisions of Sections 30 to 33 had not been complied with properly is without any logical basis and must be held to be perverse on that score. Such a finding cannot be binding on this Court, as it does not show consideration of any of the materials on record nor does it show that the problem was broached in the manner required by law. The submission of Mr. Basudev Prasad and Mr. Shreenath Singh. therefore, in that behalf is devoid of any substance and must be rejected.

20. It was submitted by Mr. Shreenath Singh on behalf of respondents 5, 6 and 7 in C. W. J. C. No. 1058 of 1975 that the Collector or the Excise Commissioner had no power to shift the shop at Basa to village Diliya. He contended that it is not permissible under the Excise Act and that all that the Collector could do was to cancel the licence for the shop at Basa and to take steps for grant of a fresh licence at Diliva. I regret, I am unable to accede to his submission. A perusal of the Act and the Rules shows that there is no mode or procedure prescribed in regard to shifting of a licence but it was conceded that the only provisions in regard to grant of licence for a new shop are those contained in Sections 30 to 33 of the Act. Shifting of a license cannot be held to be different from grant of a new license. It was contended that there are instructions issued by the Board of Revenue in regard to grant of new licences. In my view, those instructions cannot prevail over the statutory provisions. If Sections 30 to 33 are the only provisions for grant of a licence and if those Provisions have been fully complied in the present case, there is no substance in this submission of Mr. Shreenath Singh. The other reason for rejecting the submission raised in regard to shifting is that this matter was never pleaded at any stage prior to the hearing before this Court. Further the power to issue licence is completely with the Collector subject to approval of the Excise Commissioner and, therefore, the argument against shifting has no substance. Shifting of licence is a common and known procedure in the Excise world and I dare say there is no legal bar to it. Further the respondents must be confined to the objections raised by them before the Board of Revenue. All that they had objected there, was that no licence should be granted in respect of New Diliva. In the absence of any question as to whether licence should be granted to the petitioners or not and as to whether the shop should be shifted to Diliva or not, the argument against shifting is not open to the respondents. Besides, what I have stated above para. 3 of the Judgment of Untwalia, C. J in C. W. J. C. No. 525 of 1970 (Nawal Kishore Trigunath v. The State of Bihar) decided on the 20-1-1973 (Pat) leaves no manner of doubt that shifting of licence for shop is not violative of any provision of the Bihar and Orissa. Excise Act, but all that it requires is that the provisions of Sections 30 to

34 must be complied. As I have held above, those provisions had been fully complied in the present case, the objection to shifting is absolutely untenable and the submission in that behalf must be rejected.

21. In the light of my observations, made above, I am led to the conclusion that the provisions contained in Sections 30 to 34 of the Act had been fully complied in so far as the Collector had drawn up a list showing (a) what licences were proposed to be granted, (b) the list so prepared was published to the people of Diliya by beat of drum, (c) a copy of the list had been sent to the Chairman of the District Board, (d) a copy of the list in regard to the shifting of the shop from village Basa to Village Diliya had been sent to the Chairman of the Dehri-on-Sone Municipality, (e) the list had been published as prescribed, (f) objections filed by various persons and authorities had been considered by the Collector and the Collector having found the objections without any substance rejected them (g) the Collector transmitted the list along with objections and opinion with his own opinion to the Excise Commissioner in terms of Section 34 of the Act and (h) in terms of Section 35 the Excise Commissioner had approved the list or proposal of the Collector so sent to him u/s 34 (2) of the Act I am also of the view that the approval of the Excise Commissioner as contained in Annexure 11 to the proposal of the Collector u/s 34 of the Act was final and that the learned Member Board of Revenue had no jurisdiction to sit in judgment over the approval accorded by the Excise. Commissioner in exercise of his revisional powers u/s 8 of the Bihar and Orissa Excise Act.

22. For the reasons stated above, and having given my most anxious consideration to the submission made on behalf of the various parties, I am of the view that Annexure 8 in both the writ applications is without jurisdiction and is hereby quashed. The applications are accordingly allowed with costs; hearing fee Rs. 250/- payable by respondents 5, 6 and 7 of each application to the petitioners of each writ application.

K.B.N. Singh, J.

I agree.