

(2018) 01 BOM CK 0004

In the Bombay High Court

Case No : 5938, 5945, 4675, 5946, 5947, 5949 of 2017

M/s. Dewaki Traders & Ors.

APPELLANT

Vs

State of Maharashtra & Ors.

RESPONDENT

Date of Decision : 10-01-2018

Acts Referred:

[Constitution of India](#), [Article 14](#), [Article 21](#), [Article 19\[1\]\[G\]](#) -
Appointment of Commission to inquire into and report on the administration of
autonomous districts and autonomous regions - Amendment of the Schedule
[Bombay General Clauses Act, 1904](#), [Section 24](#) -
Maharashtra Country Liquor Rules, 1973, — Rule 24, Rule 23, Rule 23A, Rule 23B,
Rule 24[4] -
Maharashtra Prohibition Act, 1949, Section 143, Section 143[3], Section 143[1]

Citation : (2018) 01 BOM CK 0004

Hon'ble Judges : B. P. Dharmadhikari, Swapna Joshi

Advocate : S.P. Dharmadhikari, D.V. Chauhan, M.G. Bhangde, N.P. Mehta, H.D. Dangre, M.I. Dhattrak

Final Decision : Allowed

Judgement

1. All these petitions question the notification dated 01.09.2017, issued by the State Government amending Rule 24[4] of the Maharashtra Country Liquor Rules, 1973 as unconstitutional and violative of Articles 14, 19[1][G] and 21 of the Constitution of India, as also contrary to Section 143 of the Maharashtra Prohibition Act, 1949. The Rules are hereinafter referred to as "the 1973 Rules", while the Act is referred to as "the Prohibition Act", for short. As these matters raise same challenge, in view of the joint request made by the learned counsel appearing for the parties, all have been heard together. Shri S.P. Dharmadhikari, learned Senior Counsel with Shri D.V. Chauhan, learned Counsel argued Writ Petition No.5938/2017 and Shri M.G. Bhangde, learned Senior Counsel with Ms. N.P. Mehta, learned Assistant Government Pleader opposed the petitions on behalf of the State Government. Respective other Counsel have also adopted

their arguments only. By their consent and considering the nature of controversy, Petitions are heard finally by issuing Rule in all the petitions, making the same returnable forthwith.

2. On 12.09.2017, when this Court issued notice in Writ Petitions, following order came to be passed : " Heard for some time.

2. Submission in short is, those whose licences were already renewed from 1.4.2017 to 31.3.2018 have been permitted to function as per orders dated 31.8.2017 in Writ Petition No. 3250/2017.

3. Others whose licences normally should have been renewed but for no fault on their part, were not renewed have been subjected to amendment published on 1.9.2017. Thus, there is discrimination between the licensees.

4. It is pointed out that in any case amendment to Rule 24 of the Maharashtra Country Liquor Rules, 1973 cannot apply retrospectively and language of amendment does not imply so. It is submitted that thus licences which are not renewed can also not be subjected to this new norm.

5. The petitioners insist for grant of interim order in terms of prayer clause ? (iv).

6. Learned acting Government Pleader is seeking time. He points out that he has received petitions yesterday only.

7. Learned Senior Counsel for the petitioners points out that as there was caveat filed, the respondents should have been ready.

8. It is not in dispute that caveat has been filed on 4.9.2017.

9. In this situation, in the backdrop of order dated 31.8.2017 in Writ Petition No.3250/2017 and arguments noted (supra), we grant adinterim relief in terms of prayer clause (iv) until further orders. Stand over to 26.09.2017. Steno copy of the order is granted."

3. By Subrule [4] as amended, the petitioners who already have licences to run country liquor shop (CLIII Licences), are expected to possess minimum 25 square meters of area, and there are certain other conditions added as eligibility conditions in this respect. The basic contention of petitioners is, these modified contentions cannot be applied to their licences and at the most can regulate the licences to be issued in future. Requirement of satisfying the new conditions/ amendment is, therefore, bad. The State Government has submitted that the amended contentions are prescribed in public interest and have been brought into force at once. They also apply to the licences to be renewed and unless and until the petitioners comply therewith, their licences cannot be renewed.

4. Shri Dharmadhikari, learned Senior Counsel in this background has submitted that the petitioners have sought renewal for period from 01.04.2017 to 31.03.2018. Because of the issues which arose out of judgment of Hon''ble Supreme Court in case of State of Tamil Nadu vs. K. Balu & another (2017) 2

SCC 281), prohibiting liquor shops on Highways, their applications for renewal were kept pending and on 01.09.2017, Rules have been amended. The amended Rules therefore, cannot govern their applications which are moved before 01.04.2017. It is further pointed out that as petitioners have got their shops in structures/localities which are duly approved by respondents as per law, if modified conditions are extended, petitioners will be required to find out other accommodation and can be thrown out of the business, either temporarily or permanently; thereby affecting their means of livelihood and prospects of family. Such new conditions therefore, must apply only to new licences and cannot be used to uproot existing businesses. Inviting attention to the provisions of Section 143[3] of the Prohibition Act, he points out that Rules can be amended only after satisfying the conditions of previous publication as understood in Section 24 of the Bombay General Clauses Act, 1904. S. 143 no doubt permits State Government to dispense with this condition of previous publication, but, then that decision must be taken before hand and must be reflected in the notification notifying the amendment. Here such conscious decision is not at all appearing anywhere on record. A communication by the Desk Officer issued two weeks after such modification cannot satisfy the mandatory requirements of Section 143[3]. To explain the scope of application of mind in this respect, he places emphasis on word "considers" in proviso to Subsection [3] and also 4 SCC 14 (Bhikubhai Vithalbhai Patel and others .vrs. State of Gujarat and another). He has taken us through the relevant pleadings of parties to submit that the State Government does not anywhere plead that it applied mind to material made available to it and consciously dispensed with the requirement of previous publication.

5. Retrospective operation from 01.04.2017 in case of petitioners is also not supported by any explanation. According to him, measures introduced by amendment are not so urgent as to dispense with the requirement of previous publication or then procedures to be followed thereafter. In any case, according to him, such measures should have been made applicable prospectively by sparing the licences which are already in operation. Section 143[4] laying down the requirement of placing such Rules before both the Houses of State Legislature is also pressed into service for this purpose.

6. In an effort to demonstrate how the amended provisions cannot apply to existing licences, he invites attention to provisions of Rule 23 of 1973 Rules, and further mechanism as prescribed in Rule 23A, Rule 23B and Rule 24. Rule 24 distinguishes treatment to be given to initial licence and to its renewal thereafter. He submits that licence already granted needs to be renewed as a matter of course. Collector can refuse renewal only if there is breach of any of the terms and conditions of licence or then facts reveal that retail licensee has not been working/operating the licence properly. As these two contingencies are lacking, request for renewal cannot be refused.

7. To further the line of his argument, he also relies upon Section 24[4] and

points out that new stipulations therein were not extended to existing shops holding valid licence in Form CLIII immediately before coming into force of the Maharashtra Country Liquor (Amendment) Rules, 1981. Similar treatment and similar interpretation therefore can be adopted here. To buttress his submissions that there can be no retrospective effect to such provisions, he draws support from judgments reported at (2006) 3 SCC 620 (Mahabir Vegetable Oils (P) Ltd. And another .vrs. State of Haryana and others) and (2013) 15 SCC 1 (State of Rajasthan and others .vrs. Basant Agrotech (India) Limited).

8. According to the Petitioners, clauses added as (ai) to (aiii) added are beyond Rule making powers. Section 143 empowers the State Government to make Rules for the purposes of Bombay Prohibition Act or then any other law, if it is relating to excise revenue. Thus, provisions of other laws having no bearing on excise revenue cannot be looked into for the purpose of Section 143[1]. Amended provisions which envisage adequate parking facility or then nonagricultural permission or completion certificate, therefore attempt to incorporate the provisions of Bombay Police Act, or Maharashtra Land Revenue Code or Maharashtra Regional and Town Planning Act or other Municipal laws. Compliance with none of these laws can be turned into rules to be framed in exercise of powers under Section 143[1].

9. Lastly, he adds that such compliances have not been added for other licences like FLII Licence or then Permit Rooms. He therefore, prays for allowing the petitions by quashing and setting aside the notification dated 01.09.2017.

10. Shri M.G. Bhangde, learned Senior Counsel appearing for respondent State Government submits that amendment to Rules applies to fresh grants as also to renewals. He has drawn our attention to paragraph no.3 of the notification dated 01.09.2017, to show that expressly measures added have been excluded from concession or exemption given to old licensees by Rule 24[4] (proviso). Hence, retrospective operation or compliance is felt necessary by the rule making authority such an intention of the legislature can not be avoided.

11. He points out that the requirement of having 25 square meters area for shop is made applicable on uniform basis and as licence granted is only for a period of one year, at the time of renewal, the new provisions has been made applicable. Inviting attention to Form of licence, particular Clauses 15 to 17 therein, he submits that renewal is not an extension and renewal is at the discretion of the Collector. He has relied upon judgments reported at 2011 (5) Mh.L.J. 412 (Jitendra Manindranath Bose .vrs. State of Maharashtra and another) and (1981) 2 SCC 205 (State of Tamil Nadu .vrs. M/s. Hind Stone and others), to submit that there is no vested right in any of the petitioners to do business in country liquor and, further that the 1973 Rules need to be construed as part of Act. Rules therefore, apply even to existing licences. Judgment reported at (2010) 5 SCC 186 (State of Kerala and another .vrs. B. Six Holiday Resorts Private Limited and others), is pressed into service by him to submit that Rules prevailing on the date of application for licence do not apply when its renewal is sought. Rules as

modified, and in operation at the time when its renewal is sought, apply. He also invites attention to difference in concept of "renewal" and "extension". Relying upon judgment reported at (2016) 9 SCC 240 (State of Gujarat and others .vrs. Nirmalaben S. Mehta and others), he urges that renewal is not different than fresh grant of licence.

12. According to him, notification issued on 01.09.2017, specifically brings on record desire of State Government to bring into force the amendment at once without previous publication and hence, the use of its power by the State Government cannot be said to be arbitrary. In any case burden to show that there was no such satisfaction recorded while dispensing with the previous publication is on petitioners. This Court has to draw presumption that all condition precedents have been fulfilled here.

13. As Rules form part of the Act, he submits that it is use of its legislative power by the State Government and it can not be assailed except in very narrow field. Judgment of Hon''ble Supreme Court reported at (1976) 4 SCC 709 (Mayongbam Radhamohan Singh .vrs. The Chief Commissioner (Administrator), Manipur and others), is relied upon to urge that reasons disclosed by the State Government on affidavit must be accepted. Judgment reported at (2011) 9 SCC 1 (K.T. Plantation Private Limited and another .vrs. State of Karnataka), particularly paragraph no. 85 is pressed into service to demonstrate limited scope open even while challenging delegated legislation and he submits that the State Government is therefore, not bound to give any reasons. However, he draws support from letter dated 19.09.2017 sent by Shri S.S. Yadav, Desk Officer to Commissioner, State Excise to demonstrate satisfaction reached by the State Government for dispensing with previous publication. He states that there is no challenge to the contents of this letter and again invites attention to paragraph no.19 of the judgment in case of Mayondgbam Radhamohan Singh .vrs. The Chief Commissioner (Administrator), Manipur (supra).

14. Without prejudice to above arguments and in the alternate, he reads out Section 139 to submit that the powers given therein to State Government are general, very wide in nature and also overriding, therefore, the impugned exercise of State Government can also be sustained under said provision. Judgment reported at (2016) 8 SCC 743 (Gujarat Urja Vikas Nigam Ltd. vrs. Tarini Infrastructure Ltd.), particularly its paragraph no.17 is read out to show how the word "regulate" has been understood in wide manner. In absence of any allegations of malafides, such an amending measure, therefore, must be treated as legal and valid.

15. As law prevailing on the date of consideration of application for renewal is being applied, there is no retrospective application. He further submits that licencees under Prohibition Act are not allowed to violate other provisions of Municipal Laws and only to regulate licensed business, the State Government has mandated compliance with N.A. permission, sanction etc. These conditions cannot be seen as outside the scope of Section 143[2][b], which allows State

Government to regulate sale. Premises to be used for such sale are to be approved by the State Government and hence, above stipulations relating to such premises need to be adhered to.

16. He submits that there is no discrimination qua FLII licencees, as FLII licencees are also required to comply with these provisions and requirements of possessing 25 square meters minimum, is applicable in their case since long. He relies upon reply filed on record for this purpose. Communication dated 09.11.2016, sent by the Deputy Commissioner to Superintendent of State Excise is also read out to show that how the traffic department of police is required to consider various aspects including provision for parking. The opposition of women residing in the area is also communicated by that Officer to the State Excise Department. Shri Bhangde, learned Senior Counsel submits that in this situation, the State has acted in larger public interest and no other inference can be drawn against it. Trade in liquor is not a fundamental right and steps taken to regulate it, therefore, must be honoured by the Petitioners.

17. In his brief reply, Shri S.P. Dharmadhikari, learned Senior Counsel has insisted upon need of previous publication and process to be followed thereafter. According to him, had petitioners been given opportunity to object, the irrelevance of conditions sought to be imposed would have surfaced and considered by the State Government. Section 139[1] is not a substitute for rule making powers and it cannot be used to supplement Section 143. Efforts made to save offending circular by pointing out Section 139, therefore, has to fall. He has relied upon judgment of Privy Council reported at AIR 1946 PC 156 (Kind Emperor .vrs. Sibnath Banerji and others), for said purpose. He further submits that clause 8 in CLIII licence given to petitioners does not permit consumption outside the licensed premises& hence, said excuse for forcing larger shop area is not available. The provision in Clause 17 conferring discretion upon Collector is subject to Rule 24[3] and hence, new conditions as sought to be added cannot be resorted to deny renewal. Only in contingencies stipulated under Rule 24[2] [A] and [3], the renewal can be refused and not otherwise. He therefore, prays for allowing the Writ Petitions.

18. Both the learned Senior Counsel have taken us through relevant part of their pleadings. Other learned counsel have also taken us through pleadings in their matters, but, then basic contentions of both the sides are same.

19. Because of orders passed by this court on 12.09.2017 [supra], the licences of petitioners are already in force. In our order dated 12.09.2017, we have taken note of the fact that there are other licensees who have secured renewal for a period from 01.04.2017 to 31.03.2018 and their business is going on, as it is not affected by the amendment effected on 01.09.2017. The persons whose licences were already renewed have been permitted to continue as per orders dated 31.08.2017 in Writ Petition No.3250/2017.

20. We therefore, have one set of licensees whose licences have been renewed

before 01.09.2017 and therefore not affected by the amendment, and permit them to do their business as before, till 31.03.2018. Precisely this reason prompted us on 12.09.2017 to permit present petitioners also to continue their business. Thus, during pendency of the petitions, we have restrained respondents from subjecting the renewal applications of petitioners to amended provisions and to consider renewal in terms of Rules prevailing as on 01.04.2017. Respondents have not pointed out that as per Rules in force on 01.04.2017, Petitioners did not apply within time for such renewal or then that the licence of petitioners could not have been renewed. On the contrary, after interim directions of this Court, their licenses have been renewed thereby implying that renewal could not have been otherwise refused to them.

21. Rule 24[2A] of 1973 Rules contemplate an application for renewal 30 days before 31.03.2017. Petitioners accordingly have moved that application. Subrule [3] of Rule 24 empowers the Collector to refuse renewal, if petitioner has violated any term or condition of licence or has improperly used his licence. There is no such report by the respondents. We therefore, cannot make any discrimination amongst licensees whose licences have been renewed before 01.09.2017 and present petitioners whose licence could not be so renewed.

22. The provision conferring the Rule making power is contained in Section 143. Subrule [3] also empowers to make rules by waiving or condoning previous publication. Proviso thereto permits making of Rules without such publication if the State Government considers that it should be brought into force at once. Subsection [4] thereof requires such Rules to be laid for not less than 30 days before each House of Legislature. No arguments are advanced before us on Section 143[4]. It is apparent that the proviso to Subsection [3] obliges the State Government to take necessary decision on waiving publication before Rules are actually published and brought into force at once. Decision therefore, in present matter ought to have been before 01.09.2017. Impugned notification dated 01.09.2017 makes mention of need of bringing into force Rules at once, and therefore, to make the same without previous publication. Petitioners have questioned this exercise by pointing out that the facet of urgency envisaged in subsection [3] & relevant aspects do not find any consideration. In paragraph no.15 of their Writ Petition, it is submitted that previous publication cannot be avoided and power cannot be exercised by the State Government in routine manner. Amendment of such a nature to Rules could not have been effected suddenly. They also point out in paragraph no.18 that exception is made in case of FLIII licence. Reply filed by respondents draws support from a communication dated 19.09.2017 to point out compliance with Section 143[3]. This communication dated 19.09.2017 is by the Desk officer Shri Yadav, and it is sent to Commissioner of State Excise. It is specifically in reference to present Writ petition. Writ Petition No. 5938/2017 finds mention as caption of subject in it.

23. In this letter there is reference to various complaints received by the State Government about CLIII shops, and peculiar problems arising because of class of

consumers. In this letter the Desk Officer mentions that as size of shop is only 16 square meters, the consumers drink on public road which affects general public, womenchildren and also creates other legal issues. It also mentions that for sale of Foreign Liquor, minimum area stipulated is 25 sq. mtrs. and hence, same area is being mandated even for CLIII shops. The letter also mentions that CLIII licenses are old and mostly in center of the cities, where legal/authorized construction (structure) is not available and NA permission therefor are also not obtained. Consumers and customers park their vehicles in congested narrow space and therefore, various amendment to Rule 24[4] were proposed. The compliance with the same is envisaged at the time of renewal. Because of this reason, previous publication has not been felt necessary. Again in paragraph of this letter, thereafter, number of Writ Petition 5938 of 2017 appears.

24. After this reply, petitioners have filed their rejoinder and reiterated that need of dispensing with previous publication has not been explained. They have also contended that there was no material with the State Government for taking such a decision before 1.9.2017. In paragraph no.15 of rejoinder they have pointed out that in Brihan Mumbai, for FLIII licence, the area requirement has been dispensed with. Respondents have filed their surrejoinder and in it in paragraph no.4 they have pointed out quasi legislative nature of rule making power and therefore, limited power available to Courts of law in judicial review. The State Government has in surrejoinder highlighted their reply filed before this Court, particularly paragraph no.4. The said highlighted portion in paragraph no.4 reads as under : " Further the amended provisions will be applicable to all CLIII licensees throughout the State as and when they approach for renewal. Some licences are due for renewal now, some will be due in March/2018 and some in March/2019 and so on. Thus, there is no discrimination as all the licensees are required to comply with the amended provisions. Just because some are required to comply with before others cannot be, in the humble submission of respondents, ground to allege discrimination."

After this surrejoinder, petitioners have filed sursurrejoinder.

Respondents thereafter have filed one more reply on affidavit.

25. Respective counsel have raised various contentions before us about subjective satisfaction and mode and manner in which it should be recorded while dispensing with the condition of previous publication. None had however disputed that same can be dispensed with in an emergent situation. Portion of paragraph no.4 of the reply submitted by the respondents reproduced supra reveals that all CLIII licences operating in State of Maharashtra are/were not due for renewal on 01.04.2017. Some such licences will become due for renewal in March, 2018, while others become fall due for renewal in March, 2019. Language employed in this paragraph shows that some CLIII licences are due for renewal even after March, 2019 obviously in March, 2020 or thereafter. Thus, these licences which are not due for renewal have been permitted to continue till they seek renewal again. If last of such licence has been permitted to complete the

period of renewal, and therefore, operate till 31.03.2020, we find that a reasonable time could have been given even to present petitioners to comply with the modified terms and conditions.

26. The provisions of Section 143[3] of Prohibition Act speak of exercise of rule making power subject to condition of previous publication i.e. to provisions of Section 24 of Bombay General Clauses Act, 1904. Thus, it allows aggrieved party to raise objection and therefore, cast an obligation upon the rule making authority to consider said objection. Admittedly, this procedure has not been followed in the present matter. Importance of this procedure is seen in recent Division Bench judgment reported at 2015(5) Mh.L.J. 830 (Dr. Avinash Ramkrishna Kashiwar & ors. Vs. State of Maharashtra & ors).

27. The need, if any, to dispense with previous publication ought to have emerged in present facts before 01.09.2017. On the basis of alleged material like complaints received or data collected, there may be a conscious decision to dispense with such publication and that decision would be of a day prior to 01.09.2017. Resulting exigencies should have been on record with reference to some events and reflected in Government files. Mind application warranting prompt action or steps forthwith could have constituted relevant material for reaching the requisite subjective satisfaction. Power to bring into force Rules at once by dispensing with previous publication is an exceptional mode and definitely, such exceptional situation needed to be placed on record by the State Government. No such case has been pleaded & nowhere on record any such application of mind is proved by the respondents. State has nothing more but, the letter dated 19.09.2017, prepared later on to show in defence. It is not mentioned even in communication dated 19.09.2017 sent by the Desk Officer Shri Yadav. The communication dated 19.09.2017, is precisely on Writ Petition No. 5938/2019, and challenge arising out of absence of previous publication. Had there been such a conscious decision reached before 01.09.2017, it would have definitely found mention in the said communication issued by Shri Yadav. Had it existed, it would have also come before this Court.

28. Though both the learned senior counsel have commented on the pleadings by rival side in this respect and pressed into service various precedents showing how mind needs to be applied or then, how presumption needs to be drawn in favour of the State Government, in these facts we do not find it necessary to comment on their contentions. The communication dated 19.09.2017 by Shri Yadav, conspicuously brings on record absence of the satisfaction by the State Government to make rules without complying with the condition of previous publication. Shri Yadav, has at the end of his letter referred to its earlier paragraphs, to state that because of those paragraphs, previous publication was not felt necessary. However, date on which such decision was reached and material or facts then looked into, are not pointed out by him. Subsequent contention or stipulation that because of alleged material pointed out to this court, compliance with such procedural requirement was waived, cannot

substitute the need to demonstrate application of mind before hand i.e. before taking step to bring the amendment to 1973 Rules into force at once.

29. Though the Rules have been brought into force at once and there is an attempt to make distinction between "renewal" and "extension", again the fact that licences already renewed and therefore, permitted to continue/operate at least till March, 2020 or even thereafter are not being affected thereby, is not in dispute.

30. When CLIII licences are permitted to operate even in area of 16 sq. mtrs., after 01.09.2017 for period of about three years or more, and when other conditions added by notification dated 01.09.2017 are also not made applicable to them, till then, we find the insistence on bringing into force the amendment at once by deviating from the normal procedure, unwarranted and arbitrary. "Previous publication" is a measure prescribed in public interest so that all concerned can then place their grievances, either in favour of or against, for evaluation before the State Government. Here when the licences are to operate for period of about 2 or more years (from now), the State Government could have very well taken a conscious decision after inviting objections as envisaged in Section 24 of the Bombay General Clauses Act, 1904. In any case, if situation is so grave, it could have withdrawn the privileges extended to all without any exception instead of permitting few to continue for long periods in future.

31. Prohibition Act itself allows the State Government to part with its absolute privilege subject to strict riders. Its Section 143 only contemplates Rules to be made subject to previous publication. Hence, nature of such license or right of licensee thereto or pernicious nature of trade is not determinative here. If the State Government felt that situation is so urgent that Rules must be brought into force at once, then it could not have made any distinction between CLIII licences, contingent upon the period for which renewal is granted to them. It could have subjected all CLIII licences from a particular date to those terms and conditions. Trade in liquor is not a fundamental right and licence is a privilege parted by the State Government in his favour and it can be therefore subjected to suitable stringent controls. Under Bombay Prohibition Act, there are various provisions including Police power like under Section 142, where in grave cases, the Collector can order suspension and even close down the place of business.

32. As we find the condition of previous publication breached in present matter, we are not commenting upon the contention of petitioners that compliance with other Statutes or Municipal laws cannot be enforced through such amendment. If an objection on these lines is raised by the Petitioners before the State Government while opposing the proposed Rules, the State Government can appropriately evaluate it at that juncture.

33. Only other consideration which needs to be dealt with in present matter is about the scope of power available to the State Government under Section 139 of the Prohibition Act. Section 143 of the Prohibition Act is the power of the State

Government to make rules and it is for the purpose of carrying out provisions of such Act or any other law for time being in force relating to excise revenue. Subsection [2] then gives various heads under which the Rules can be framed by the State Government. As held by the Privy Council in case of *Kind Emperor .vrs. Sibnath Banerji and others* (supra), such provisions in subrule [2] is accordingly an illustrative one. Power under subrule [2] is, therefore, not restricted to general power conferred upon the State Government by subsection [1] of Section 143. Section 139 is a general power of State Government in respect of licences etc. This provision in its subsection [1] opens with a nonobstante clause.

It overrides the provisions of Prohibition Act itself or even Rules made thereunder. It therefore, contains an over riding power and gives it to State Government which has parted with its privilege in the shape of licence in favour of petitioners. Clause (N) therein contains a residuary power and enables the State Government to issue instructions in any matter pertaining to grant or otherwise of licence, permits etc. Its clause (A) prohibits grant of licence, while Clause (B) therein may not have any bearing on the present controversy. Word "regulate" as explained by the Hon"ble Supreme Court in case of *Gujarat Urja Vikas Nigam Ltd. vrs. Tarini Infrastructure Ltd.* (supra), shows that it implies wide powers in State, including Prohibition. Relevant discussion is contained in paragraph no.17.1 and 17.2 of this judgment. Here the question before us is, whether after giving licence to operate and sale, independent of terms and conditions of such licence, recourse to Section 139[1] is available and directions contrary to Rules framed statutorily in rule 143 can be issued only to few licensees excluding others? The impugned action dated 01.09.2017 amends 1973 Rules and does not rely upon Section 139 as source of power anywhere. Material on record also does not satisfy even such action against petitioners alone. Hence, we leave the question whether such an action is possible under Section 139[1] of the Prohibition Act, open for consideration in more appropriate facts. The State Government has various powers under Section 142, Section 139 and other provisions of the Prohibition Act where, if the situation be so grave, even forthwith closure or suspension of the shop may have been ordered. Here other CLIII licensees are permitted to operate and function without any hindrance for a period at least upto March, 2020 or thereafter. Respondents have not pointed out any material to enable us to hold that the petitioners are not similarly situated or could not have been given reasonable time to comply.

34. The measures sought to be accomplished by respondents do not appear to be of urgent nature and it allows them period of next 2/3 years to completely enforce it. If the situation is so urgent that CLIII shops cannot be permitted in existing structures, appropriate powers can be exercised by the State Government to put an end to the business being done therein. If others can continue their business for next 2/3 years, petitioners could have also been given reasonable time to make alterations or procure suitable alternate shop. In any case, State here does not present a situation so emergent as to sustain even a subjective satisfaction to dispense with normal rule of previous publication. As a

matter of fact, no such decision reached before 01.09.2017 is shown or substantiated before us by the State Government.

35. Applications for renewals were moved by the Petitioners well before 31.03.2017. Some of them have also paid to the State the fees for renewed license. Had their application been allowed before 01.09.2017, these Petitioners also could have continued at least till 31.03.2018 at their existing place of business. Admittedly few licenses are already renewed for period from 01.04.2017 to 31.03.2018. The facts or events and in any case the mindapplication if any, justifying such action therefore must be after grant of renewal to others but before the consideration of the renewal requests moved by these Petitioners. It has to be prior to 01.09.2017 in any case. Neither such event or incident is pleaded nor exercise of power proved before us by the State Government.

36. In view of this finding, it is not necessary for us to delve more into the controversy. Accordingly we quash and set aside the notification dated 01.09.2017, issued by the respondents.

37. Writ Petitions are thus, allowed. Rule is made absolute in the aforesaid terms with no order as to cost. All pending civil applications also stand disposed of accordingly.