

(2001) 12 MAD CK 0007
In the Madras High Court
Case No : Writ Appeal No. 2740 of 2001

R. Selvaraj

APPELLANT

Vs

Government of Tamil Nadu

RESPONDENT

Date of Decision : 21-12-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1), 19(6), 226
Madras Prohibition Act, 1937 — Section 17C, 17D, 21, 54
Tamil Nadu Liquor (Retail Vending) Rules, 1989 — Rule 34, 4, 4(3)

Citation : (2001) 12 MAD CK 0007

Hon'ble Judges : B. Subhashan Ready, C.J.; K.P. Sivasubramaniam, J

Bench : Division Bench

Advocate : Arunagirinathan, for V. Sanjeevi, R. Gandhi, S.C. for R.G. Narendhran, R. Gandhi, S.C. for M. Baskar and D. Selvaraju, R. Krishnamoorthi, S.C. for V. Ayyadurai, P. Chandrasekaran and M. Ravindran, for V. Viswanathan, A.R.L. Sundaresan, R. Subramanian, T.V. Krishnamachari, K. Ravi Anantha Padmanabhan, N. Damodaran, R.G. Narendhiran, K.V. Sundararajan, D. Selvaraju, A. Jinasenan, V. Raghavachari, G.K.R. Pandian, K. Thennan and S.M. Edward Stanely, for Muthumani Doraisamy, for the Appellant; R. Muthukumaraswamy, A.A.G., assisted by, K. Mahendran, Spl. G.P., for the Respondent

Final Decision : Dismissed

Judgement

B. Subhashan Ready, C.J.—In this batch of cases, the validity of G.O. Ms. No. 23 8, Prohibition and Excise Department, dated 9.11.2001

is questioned. The impugned G.O. has been issued in exercise of the powers conferred under Rule 34 of Tamil Nadu Liquor (Retail Vending)

Rules, 1989.

2. The excise year in this State had commenced on 1.8.2001 and expires on 31.7.2002. G.O. Ms. No. 1 15, Prohibition and Excise Department,

dated 22.6.2001 was issued on the eve of this excise year. For granting the

rights of privilege for retail vending Indian Made Foreign Liquor

(1MFL), applications were invited. Privilege is granted in lieu of the amount paid, which is called "privilege amount", which means the amount

determined by the Commissioner for a shop for the grant of privilege based on the guidelines issued by the Government. The privilege amount is

fixed on the basis of the local authority like, village panchayat, Panchayat Union, Municipalities and Municipal Corporations. In 30 districts of

Tamil Nadu, a specified number of shops i.e., 6,000 were indicated and by adopting the drawal method, the privilege rights were given. But all of

such shops were not sold out. Out of 6,000 shops notified, 5,377 shops were sold out leaving a balance of 353 shops. To make up the deficiency,

the impugned G.O. has been issued. The question which is raised is whether the number of shops can be increased after grant of privilege rights to

the Appellants and the like.

3. The writ petitions have been filed questioning the action of the Respondents in notifying some shops which were not earmarked earlier. Even,

out of the shops which have been ear-marked and notified earlier and have not been sold out, some of them have been notified for granting

privilege to vend liquor in retail. The contention raised by the writ Petitioners was that once the shops have been earmarked they cannot be altered

later on, and that the shops having been sold out and the licences having been issued consequent there to, the power to either sell out the unsold

shops or to notify the new shops has been exhausted. The Respondents countered the said contention on the ground that trade in liquor cannot be

construed as a fundamental right and the State in its economic policy and to improve on finances, can always make new strategies, and that the

power which is vested in the rules has been properly exercised. The Appellants who were the writ Petitioners have also raised further contention

that even if there was a power to notify and grant privilege after the first notification, the same has not been exercised by the District Collectors

independently and the Government was not entitled to impose on the District Collectors, that by amendment in G.O. Ms. No. 119, the proviso to

Sub-Rule - (3) of Rule 4 extinguished and that in any event the doctrine of legitimate expectation or the doctrine of promissory estoppel would

come in aid of them. The Respondents have also countered the said contention.

The learned single Judge after hearing all the parties and even while holding that the impugned notification cannot be traced to the power conferred on the Government under Rule 34 of the Rules mentioned above, held that Government is entitled to frame its economic policy and the same cannot be interfered with by the Courts, that the issuance of G.O. Ms. No. 119 dated 30.6.2001 does not have the effect of extinction of the proviso which was added by G.O. Ms. No. 115 dated 22.6.2001, and what has been substituted is only the main part of Sub Rule (3), and that with the substitution of the same, the proviso would be operative. The learned single Judge has also repelled the contentions based on the doctrines of either legitimate expectation or promissory estoppel. The learned single Judge has also held that the Government having issued the G.O. has always got power to amend the same in view of the provision contained in the General Clauses Act. Hence, these writ appeals.

4. The learned Counsel for the Appellants reiterated the same submissions made before the learned single Judge, and it is needless to mention that the learned Additional Advocate General has struck to the same stand of the Respondent-Government and its authorities, as was pleaded before the learned single Judge. Mr. R. Krishnamoorthy, learned Senior Counsel has stressed on the rule position stating that when Rule 34 is not applicable even as held by the learned single Judge, the G.O. has become non-est under law, and that the proviso which has been added by G.O. Ms. No. 115 automatically got extinguished with the substitution of the entire Sub-Rule-(3) of Rule-4 of the Rules by subsequent G.O. Ms. No. 119, and that there was no power vested to notify the same shops again whether new or old. Mr. AR.L. Sundaresim, learned Counsel has stressed much on the obligations of the Appellants and other licensees to lift a particular quota and that when such is the obligation, new shops cannot be introduced, causing detriment to the interest of the licensees. Mr. R. Gandhi, learned Senior Counsel has stressed much on the doctrines of legitimate expectation and promissory estoppel on the ground that the licensees made bid making calculations of the number of shops for which bids have been made, altering the said number would hardly hit the financial interest of the licensees. Having regard to the respective contentions, the following are the points which emerge for consideration.

- (1) Whether liquor trade is a fundamental right?
- (2) Whether the action of the Respondents in notifying some more shops for grant of privilege after the spell of first drawal of lots is arbitrary and unreasonable?
- (3) Whether proviso to Sub Rule - (3) of the Rule-4 still survives after the issuance of G.O. Ms. No. 119 dated 30.6.2001?
- (4) Has General Clauses Act got any application?
- (5) Whether doctrine of either legitimate expectation or promissory estoppel can be invoked?

5. Point No: 1:

Article 19 (1) (g) of Indian Constitution confers a fundamental right to trade subject to reasonable restrictions. But so far as liquor trade is

concerned, it is viewed differently on the premise that there is no fundamental right to trade in intoxicants. There are plethora of precedents on this

point starting from Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others, . In the said case,

speaking through a Constitution Bench, the Supreme Court held that elimination and exclusion from business is inherent in the nature of liquor

business and it will hardly be proper to apply to such a business, the principles applicable to trades which all can carry. In a later decision in

Krishna Kumar Narula etc. Vs. The State of Jammu and Kashmir and Others, it was held that the right to trade in intoxicating drugs is also a right

to carry on any trade or business within the meaning of Article 19(1)(g). But the said view was not accepted by the Supreme Court in its later

judgment in State of Orissa and Others Vs. Harinarayan Jaiswal and Others, . Thereafter, the propositions laid down by the Supreme Court in

several cases were in tune with Harinarayan 's case (supra). A mention can be made to the judgments in Nashirwar and Others Vs. State of

Madhya Pradesh and Others, Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, and Lakhn Lal and Others Vs. The

State of Orissa and Others, in which it was held that the State has the right or privilege to manufacture, store and sell liquor and to grant that right

to its license holders on payment of consideration with such conditions and restrictions for its regulation as may be necessary in the public interest

and the argument to the contrary was rejected. We feel it not necessary to refer

to all other decisions, which will only add to repetition. But a mention has to be made with regard to the judgment of the Supreme Court in State of M.P. and Others Vs. Nandlal Jaiswal and Others, in which it was held that the Article 19(1)(g) of the Constitution is not applicable to the liquor trade but Article 14 is applicable in certain circumstances. It was held that while there is no fundamental right in a citizen to carry on trade or business in liquor, the State, under its regulatory power, has the power to prohibit absolutely every form of activity in relation to intoxicants, its manufacture, storage, export, import, sale and possession. It was further held that no one can claim as against the State the right to carry on business in liquor and the State cannot be compelled to part with its exclusive right or privilege to manufacture and selling liquor, but when the State decides to grant such right or privilege to others, the State cannot escape the rigour of Article 14 and it cannot act arbitrarily or on its sweet will and it must comply with the equality clause while granting exclusive right or privilege of manufacturing or selling liquor. But the Supreme Court also cautioned, "while considering the applicability of Article 14 to liquor trade, the Court must bear in mind that having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor and the Court would, in view of the inherently pernicious nature of the commodity, allow a large measure of latitude to the State Government in determining its policy of regulating, manufacture and trade in liquor. The grant of licence for manufacture and sale of liquor would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the State Government has done unless it appears to be plainly arbitrary, irrational or mala fide. The Supreme Court also held that what can be said in regard to legislation relating to economic matters must apply equally in regard to executive action in the field of economic activities". In a later case in Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others, the Constitutional Bench of the Supreme Court held that Article 19(1) (g) of the Constitution confers only a qualified but not absolute right and that a citizen has no fundamental right to trade or business in liquor as a beverage and that State can create a monopoly either in itself or in the agency created by it for

the manufacture, possession, sale and distribution of the liquor as a beverage and also sell the licence to the citizens for the said purpose by

charging fees and this can be done under Article 19(6) or even otherwise. It was held for the same reason that the State can impose limitations and

restrictions on the trade or business in potable liquor as a beverage which restrictions are in nature different from those imposed on the trade or

business in legitimate activities and goods and articles which are *res commercium*. It was held that when the State permits trade or business in the

potable liquor with or without limitation, the citizen has the right to carry on trade or business subject to the limitations, if any, and the State cannot

make discrimination between the citizens, who are qualified to carry on the trade or business and that the State can adopt any mode of selling the

licences, for trade or business with a view to maximise its revenue so long as the method adopted is not discriminatory.

Surveying all the decisions on the subject, the Supreme Court has culled out following legal principles:

(a) The rights protected by Article 19(1) are not absolute but qualified. The qualifications are stated in Clauses (2) to (6) of Article 19. The

fundamental rights guaranteed in Article 19(1) (a) to (g) are, therefore, to be read along with the said qualifications. Even the rights guaranteed

under the Constitutions of the other civilized countries are not absolute but are read subject to the implied limitations on them. Those implied

limitations are made explicit by Clauses (2) to (6) of Article 19 of our Constitution.

(b) The right to practise any profession or to carry on any occupation, trade or business does not extend to practising a profession or carrying on

an occupation, trade or business, which is inherently vicious and pernicious and is condemned by all civilised societies. It does not entitle citizens to

carry on trade or business in activities which are immoral and criminal and in articles or goods which are obnoxious and injurious to health, safety

and welfare of the general public, i.e. *res extra commercium* (outside commerce). There cannot be business in crime.

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

is *res extra commercium* being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor. Hence the trade

or business in liquor can be completely prohibited.

(d) Article 47 of the Constitution considers intoxicating drinks and drugs as injurious to health and impeding the raising of level of nutrition and the

standard of living of the people and improvement of the public health. It therefore, ordains the State to bring about prohibition of the consumption

of intoxicating drinks which obviously include liquor, except for medicinal purposes. Article 47 is one of the directive principles which is

fundamental in the governance of the country. The State has, therefore, the power to completely prohibit the manufacture, sale, possession,

distribution and consumption of potable liquor as a beverage, both because it is inherently a dangerous article of consumption and also because of

the directive principle contained in Article 47, except when it is used and consumed for medicinal purposes.

(e) For the same reason, State can create a monopoly either in itself or in the agency created by it for the manufacture, possession, sale and

distribution of the liquor as a beverage and also sell the licence to the citizens for the said purpose by charging fees. This can be done under Article

19 (6) or even otherwise.

(f) For the same reason, the State can impose limitations and restrictions on the trade or business in potable liquor as a beverage which restrictions

are in nature different from those imposed on the trade or business in legitimate activities and goods and articles which are res commercium. The

restrictions and limitations on the trade or business in potable liquor can again be both under Article 19 (6) or otherwise. The restrictions and

limitations can extend to the State carrying on the trade or business itself to the exclusion of and elimination of others and/or to preserving to itself

the right to sell licences to do trade or business in the same, to others.

(g) When the State permits trade or business in the potable liquor with or without limitation, the citizen has the right to carry on trade or business

subject to the limitations, if any, and the State cannot make discrimination between the citizens, who are qualified to carry on the trade or business.

(h) The State can adopt any mode of selling the licences for trade or business with a view to maximise its revenue so long as the method adopted is

not discriminatory.

(i) The State can carry on trade or business in potable liquor notwithstanding

that it is an intoxicating drink and Article 47 enjoins it to prohibit its consumption. When the State carries on such business, it does so to restrict and regulate production, supply and consumption of liquor, which is also an aspect of reasonable restriction in the interest of general public. The state cannot on that account be said to be carrying on an illegitimate business. It carries on business in products which are not declared illegal by completely prohibiting their production but in products the manufacture, possession and supply of which is regulated in the interests of the health, morals and welfare of the people. It does so also in the interests of the general public under Article 19 (6).

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

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

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

(6) of the Constitution.

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

As seen from the abovestated legal principles, there is no fundamental right to

trade in intoxicants and the State, in its wisdom, can do the business

itself or grant privilege to others and can even impose a complete prohibition and it is only when it grants the privilege to others that the State

cannot make discrimination between the citizens, who are qualified to carry on the trade or business.

6. Point Nos. 2 and 5:

In view of the authoritative pronouncement of the Supreme Court in Khoday's case (supra), the question of invocation of Article 19(1) (g) of the

Supreme Court of the Constitution does not arise in these cases. We have to view the facts in the light of the legal principles stated in Clauses (g)

and (h) in Khoday 's case (supra).

7. Hitherto, the State was parting with the privilege to trade in intoxicants by open auction system. The same was modified by granting the privilege

of retail vending of IMFL for the block year 2001 - 2004 by setting up 6000 shops in the whole of the State. Under the new licensing system for

the above block year, the privilege fee for IMFL retail shop is fixed at a uniform rate for all the shops having regard to the location in respect to

local authority and classifying as Municipal Corporation, Selection Grade and Special Grade Municipalities, other Municipalities, Selection Grade

and Special Grade Town Panchayats, other Grades of Town Panchayats and lastly, Village Panchayats. The price ranee is as follows:

Municipal Rs. 14 Lakhs

Corporations

Selection Grade andRs. 12 Lakhs

Special Grade

Municipalities

Other MunicipalitiesRs. 11 Lakhs

Selection Grade and

Special

Grade Town Rs. 9 Lakhs

Panchayats

Other Town Rs. 8 Lakhs

Panchayats

Village Panchayats Rs. 5 Lakhs

While the total number of shops are fixed by the Government, the Commissioner is invested with the power of allocation of the shops out of the number fixed by the Government, to all the districts and lastly, it is the District Collector, who determines the number of shops in each area in the district taking into account the need of that area. For this year, the number of shops of 6000 in the entire State is not increased. In fact, 353 shops are left unsold and this, the authorities, after making their assessment, came to the conclusion that some of the liquor vendors had formed into a cartel leading to financial loss to the Government and to plug the same, the Government has evolved a strategy of selling some of the shops in the notified area wherever it is possible and then make up the deficiency by notifying new areas but over all maintaining the outer limit of 6000. In no event can the liquor vendors object to selling of some of the unsold shops earmarked in the notified areas. Even with regard to the new shops in notifying the new areas, there is no discrimination shown by the State as the existing licensees are not being deprived of their rights to vend the liquor in retail. Indisputably, the Government is the best Judge to formulate its strategies for increasing the public revenue and it is not for the Courts to tinker with the said economic policy of the Government. The only thing the Courts are empowered to examine by way of judicial review is as to whether the strategy evolved by the Government to maximise its revenue is discriminatory. It is un-understandable as to how in the instant case, the action of the Government can be termed discriminatory as it is trying hard to sell the remaining shops to augment the financial resources and in fact, there is no increase in the shops and it is only in the nature of re-arrangement and re-allocation of shops within the maximum of 6000 shops. What would be the legal position vis-a-vis Article 14 of Indian Constitution if the maximum number of shops exceeds 6000, need not decided as it does not occur in the instant case and it is not desirable to dwell on the said aspect on hypothetical basis. But so far as the current facts are concerned, the maximum figure is not exceeding 6000 in the whole of the State and the State can always re-arrange and re-locate the shops by formulating its economic policy for augmenting the public revenue so long as the existing licensees are not deprived of doing their business. While licensees say

that their sales will be minimised if the new shops are sold out, the same is denied by the Government but we need not dwell on the same as in no event, there is a deprivation of the right of the licensees to carry on the trade in intoxicants for the duration of the licence period and this right to trade during the period of excise year should not be confused with the right to make profits. Even assuming that by reason of the new shops, the licensees may suffer in the sales, it can never be a ground to say that they are being discriminated against. The Government has never promised the minimum guarantee of profits to the licensees and the licensees were very well aware that there may be increase or decrease of shops and with the decrease, they may get more profits by way of more sales and with increase, their sales may get reduced. This contingency arises in the trade and more so in liquor trade and the viability of liquor trade is not the concern for the State. State only confers the privilege of vending on such terms fixed for such fixed tenure and beyond that, there is no obligation for the State to look into other aspects. The profit of the liquor vendor is not the consideration for the State at all. It is for the liquor vendor to plan out his strategy and participate in the purchase of the privilege by any mode specified by the State and the matters are left at that and the State is only concerned about collecting the privilege amount so long as the licence subsists. This view of ours is amply fortified by the judgment of the Supreme Court in Assistant Excise Commissioner and Others Vs. Issac Peter and Others, In the said case also, the facts were same. There was scarcity of arrack and auctions notified had to be adjourned twice for want of bidders. Thereafter, some announcement was made by the Minister concerned that in addition to the minimum guaranteed quota, additional quotas of arrack would also be supplied. After that statement and in the auction held after two postponements, there were bids by the existing contractors and the same were accepted and licenses were issued. The additional quotas of arrack, which the licensees wanted for running their business more profitably, could not later be complied with in full by the Government. When the demand was raised for payment of licence fee prescribed, there was a spate of litigations resisting the same on the ground that unless the additional quota, as sought for by the licensees, were released, the latter were not obligated to pay the rentals and that the rentals fixed were liable to be reduced in proportion to the short supply made out of the

additional quantities indented. Even though the said plea found favour with the learned single Judge of the Kerala High Court, on appeal, the said view was turned down and ultimately, the matter reached the Supreme Court. The Supreme Court upheld the view of the Division Bench and held that the State was under no obligation to look into the profit making aspect of the licensees. In yet another judgment of the Supreme Court in *Madras City Wine Merchants' Association and Another Vs. State of T.N. and Another*, interpreting the provisions of the Tamil Nadu Excise Act and the Rules framed thereunder, it was held that the State can formulate its excise policy and the Rule enacted in exercise of the rule making power conferred under Sections 17-C, 17-D, 21 and 54 of the Tamil Nadu Prohibition Act can always be amended having regard to the exigencies. In the said case, the bar licence was granted on the payment of the licence fee and the same was to be clubbed with the licence in retail vending. Because of the policy of the Government, the Bar Rules, under which the licence was hitherto granted, were repealed later by reason of which, the bar licence could not be renewed. The contention raised that the State Government was not entitled to amend the Rules, thus causing disruption to the bar business, was negatived. Coming to these cases, as the State Government possesses the power of amending the Rules to suit the exigencies and to augment resources and as there is no discrimination shown by the State either in framing its economic policy to augment more revenue or in the running of business by the licensees, the action of the State is wholly within the legal principles enunciated by the Supreme Court in *Khoday's case (supra)*.

8. Coming to the pleas of legitimate expectation or principles of promissory estoppel, it is ruled by the Supreme Court in *Madras City Wine Merchants Association v. State of Tamil Nadu (supra)* and *Assistant Excise Commissioner v. Issac Peter (supra)* that in legal trade, which is the State action, the said doctrines are inapplicable. In *Madras City Wine Merchants Association's Case (supra)*, a distinction was drawn by the Supreme Court between a hope and a legitimate expectation and held that the doctrine of legitimate expectation arises only in the field of administrative decisions. It was held that legitimate expectation arises (a) if there is an express promise given by a public authority; or (b) because

of the existence of a regular practice which the claimant can reasonably expect to continue and (c) such an expectation must be reasonable and if

there is a change in policy or in public interest, the position is altered by a rule or legislation, no question of legitimate expectation would arise. In

fact, on facts, the judgment in Isaac Peter's Case (supra) is more closer to the instant case. It is apt to extract what the Supreme Court said in

paragraphs 23 and 24, which cover not only the plea of legitimate expectation but also of promissory estoppel.

23. May be these are cases where the licensees took a calculated risk. May be they were not wise in offering their bids. But in law there is no

basis upon which they can be relieved of the obligations undertaken by them under the contract. It is well known that in such contracts - which may

be called executory contracts - there is always an element of risk. Many an unexpected development may occur which may either cause loss to the

contractor or result in large profit. Take the very case of arrack contractors. In one year, there may be abundance of supplies accompanied by

good crops induced by favourable weather conditions; the contractor will make substantial profits during the year. In another year, the conditions

may be unfavourable and supplies scarce. He may incur loss. Such contracts do not imply a warranty - or a guarantee - of profit to the

contractors. It is a business for him - profit and loss being normal incidents of a business. There is no room for invoking the doctrine of unjust

enrichment in such a situation. The said doctrine has never been invoked in such business transactions. The remedy provided by Article 226, or for

that matter, suits, cannot be resorted to wriggle out of the contractual obligations entered into by the licensees.

24. learned Counsel for the Respondents sought to invoke the rule of promissory estoppel and estoppel by conduct. The attempt is a weak one for

the said rules cannot be invoked to alter or amend specific terms of contract nor can they avail against statutory provisions. Here, all the terms and

conditions of contract, being contained in the statutory rules, prevail.

9. Distinguishing the exercise of the state power with that of statutory contracts entered into by the State, the Supreme Court, "in such cases, the

mutual rights and liabilities of the parties are governed by the terms of the contract (which may be statutory in some cases) and the laws relating to

contracts. It must be remembered that the contracts are entered into pursuant to public auction, floating of tenders or by negotiation. There is no compulsion on anyone to enter into these contracts. It is voluntary on both sides. There can be no question of the State power being involved in such cases. It bears repetition to say that the State does not guarantee profit to the licensees in such contracts. There is no warranty against incurring losses. It is a business for the licensees. Whether they make profit or incur loss is no concern of the State. In law, it is entitled to its money under the contract." In view of the above discussion, we hold that the doctrine of legitimate expectation or principle of promissory estoppel cannot be invoked in these cases.

10. Point No. 3:

Before dealing with the contention, it is apt to extract the Rules so as to know how it underwent changes.

Prior to As amended As amended

22.6.2001 by G.O. Ms. by G.O. Ms.

No. 115, No. 119,

dated dated

22.6.2001 30.6.2001

Rule 4: Rule 4: Rule 4:

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(2) Subject to the maximum number of shops fixed under sub-Rule (1), the Commissioner shall, in consultation with the Collector and after taking into account the needs of the district, fix the number of shops for each district.

3) The areas in which the Collector shall determine the number of shops to be opened shall be determined by the Collector, taking into account the need of that area. and shall, Provided that taking into account the

with the need of such
permission of area,
the determine the
Government, number of
increase or shops in such
reduce the area.
number of
shops in the
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into account
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need and the
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demand in the
area.

Under Sub-rule (1), the Government is the authority for fixing the maximum number of shops in the State. It remains without any change. Sub-rule (2) empowers the Commissioner of Excise to fix the number of shops for each district in consultation with the Collector and after taking into account the needs of the district. There is also no change in the phraseology of the said Sub-rule (2). One that underwent change is Sub-rule (3), which enables the respective Collectors to identify the area in which the shops are to be opened. The criteria for determination of number of shops is the need of that area. Controversy has arisen in view of the substitution of Sub-rule (3) by later G.O. Ms. No. 119, dated 30.6.2001. In construing the power of the State Government to fix the number of shops, Rule 4 cannot be dissected and read separately. The whole of the Rule has to be read and understood contextually. In the hierarchy of the authorities, the Government is on the top taking policy decision as to how many

number of shops could be established in the whole of the State and then for identifying districtwise the power delegated to the Commission and then identifying the shops in a district is entrusted to the Collector. The power of the Collector is to be exercised to realise the full effects of the policy enunciated by the Government. Otherwise, the policy of the Government cannot be given effect to. In fact, that is more pronounced while amending Sub-rule (3) of Rule 4 of the Rules as the amendment lays emphasis that the Collector, while determining the number of shops in each area in the district, shall take into account, not only the need of that area but also the interest of the revenue of the State. The substantive portion of Sub-rule (3) is not deleted as the words, which are used in G.O. Ms. No. 115, dated 22.6.2001, remain the same with further reinforcement of the necessity to take into account the interest of the revenue of the State also. By reason of addition of these words, relating to the State interest, it cannot be said that sub-Rule 3, enacted by G.O. Ms. No. 115, dated 22.6.2001, is deleted. On the other hand, as stated above, it is quite evident that the State Government did not want the District Collector to see only the need of the area but also in the perspective of increasing the revenue of the State. Therefore, the proviso, which was added by G.O. Ms. No. 115, dated 22.6.2001, remains intact even after the issuance of G.O. Ms. No. 119. As correctly held by the learned single Judge, Rule 34 of the Rules is not applicable. But on that count, we cannot strike down the impugned G.O. as that power is traceable to Rule 4 of the Rules, which empowers the Government to fix the number of shops and ultimately, it is the Collector who identifies the number of shops having regard to the intent and object of Sub-rule (3) thereof. In fact, there is a proper exercise of power with application of mind as, on survey, the Government found that in only 22 out of 30 districts, the re-arrangement and re-location of shops is necessary. The contention that the exercise for the increase of the shops cannot be made after the first spell of drawal of lots, cannot be countenanced and in fact, if the said argument is accepted, the entire Rule 4 and particularly Sub-rule (3) with proviso thereof, would become redundant and otiose. The said power under proviso is provided only to meet the exigencies for increase in the shops during the currency of the licence year. Hence, the impugned G.O. Ms. No. 238, dated 9.11.2001 is not liable to be interfered with. But a mention has to be made regarding

the liability of drawal of minimum quantity of liquor. The said quantum of drawal of minimum quantity of liquor has to be arrived at by equally

distributing to all the shops located within the notified area, be it in the first spell or the second spell under the G.O. Ms. No. 238, dated

9.11.2001.

11. Point No. 4:

In view of the finding on Point No. 3, there is no necessity to adjudicate on the applicability or otherwise of the General Clauses Act.

12. All the writ appeals, excepting W.A. No. 2754 of 2001, fail and are accordingly dismissed. Consequently, connected W.A.M. Ps. are closed.

13. In so far as W.A. No. 2754 of 2001 is concerned, Mr. M. Ravindran, learned senior counsel appearing for the Appellant, submitted that

Ammanampakkam is not the independent village panchayat but only a hamlet of Thamarapakkam Village Panchayat and as such, the notification is

illegal. The learned Additional Advocate General fairly conceded that it was a mistake and as such, the notification in so far as Ammanampakkam

is concerned, is fit to be set aside. Accordingly, W.A. No. 2754 of 2001 is allowed. Consequently, the connected W.A.M. Ps. are closed.