
(2006) 05 P&H CK 0088
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5911 of 2006

Ram Chander

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 11-05-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 301, 304, 32
Haryana Liquor Licence Rules, 1970 — Rule 6, 8
Punjab Excise Act, 1914 — Section 35, 59, 8

Citation : (2006) 144 PLR 392 : (2006) 3 RCR(Civil) 692

Hon'ble Judges : Rajesh Bindal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : Mohan Jain, for the Appellant; H.S. Hooda, A.G., Ritu Bahri, D.A.G., H.S. Mattewa and R.S. Virk, for the Respondent

Judgement

Adarsh Kumar Goel, J.—This judgment will dispose of a bunch of 77 writ petitions, mainly raising the issue of validity of allotments of liquor vends for the year 2006-07, in the State of Haryana. 63 writ petitions (category I) being C.W.P. Nos.5939, 7198, 5679, 5692, 5709, 5717, 5911, 5912, 6007, 6008, 6009, 6010, 6027, 6029, 6030, 6210, 6211, 6212, 6213, 6339, 6538, 6601, 6711, 6727, 6733, 6737, 6742, 6743, 6746, 6753, 6757, 6760, 6761, 6783, 6940, 6951, 6952, 6953, 6954, 6961, 6964, 6984, 7182, 6214, 6215, 6216, 6217, 6218, 6219, 6220, 6221, 6236, 6237, 6249, 6253, 6254, 6264, 6265, 6267, 6276, 6277, 6305 and 5550 of 2006 challenge allotments of liquor vends on 31.3.2006; 11 writ petitions (category II) being C.W.P. Nos.5660, 5784, 5661, 5662, 5663, 5698, 5700, 5707, 5767, 6041, 6088 of 2006 challenge notice dated 11.4.2006 in respect of liquor vends allotted on 31.3.2006 and three writ petitions (category III) being C.W.P. Nos.4853, 6266 and 6284 of 2006 are in the nature of public interest litigation, wherein apart from challenging allotments of liquor vends, an action is sought for not prescribing maximum retail price for sale of liquor in accordance with the provisions of the Standards of Weights and Measures Act, 1976. Since common questions are involved, all the petitions are

disposed of by a common order.

2. Facts brought on record are that the State of Haryana announced its excise policy for the year 2006-07 for allotment of licenses, inter alia, for retail outlets of country liquor (L-14-A) and Indian Made Foreign Liquor (IMFL) - (L-2). The set of conditions and procedure have been annexed as Annexure P.I. The outer number of vends to be allotted was fixed for L-2 and L-14A at 1600 and 2800 respectively.

3. The Excise and Taxation Commissioner issued public notice dated 1.3.2006 inviting applications for allotment of country liquor, IMFL and other licenses. Number of vends offered for allotments were 974 and 2603 for L-2, L-14A, respectively. Relevant extracts from the said policy are as under:

1. All licenses, whether for wholesale or for retail sale, shall be granted subject to the provisions of the Punjab Excise Act, 1914 and the rules/Regulations/Instructions/Policies framed thereunder from time to time as applicable to the State of Haryana. The annual license fee and annual quota, for each category, of retail outlets within the districts shall be fixed before receiving applications.

16. The area of retail outlet shall be specified. The licensee shall make his own arrangements for opening of the retail outlet.

The villages in respect of which a panchayat resolution has been passed regarding closure of a retail outlet and has been accepted by the Excise and Taxation Commissioner, Haryana and conveyed separately shall not be included.

18. In case no application is received for any retail outlet/outlets of Country Liquor and or IMFL, the names and locations of such retail outlets, their annual license fee and annual quota shall be displayed prominently in the office of the DETC (Excise).

A report of such retail outlets shall be made separately to the Excise and Taxation Commissioner on the next day of allotment. Applications for such retail outlets shall then be invited again at the time/date to be fixed by the DETC (Excise) of the district with the prior approval of Excise and Taxation Commissioner (FC) and the procedure detailed above shall be followed afresh.

xx xx xx xx xx xx xx 55. Licensees may be allowed to draw additional quota of either variety (i.e. Country Liquor or IMFL) up to 50% of the annual quota without payment of additional license fee, but only after the lifting of the basic annual quota and total payment of the annual license fee of the respective retail licensed outlet, at the same rate of duty of basic quota. The additional quota of more than 50% but up to 75% of the annual quota may be allowed to be lifted on payment of additional license fee of Rs. Ten per proof litre.

The relevant extracts from the public notice dated 1.3.2006 are as under:

It is notified for the information of general public that the applications for a maximum of 2800 retail sale licensed outlets of country liquor (L-14A) and 1600

retail sale licensed outlets of Indian Made Foreign Liquor (L-2) are invited in the State of Haryana for the year 2006-07 on the following terms and conditions.

xx xx xx xx xx xx xx 5. The allotment or the draw of lots in case of more than one eligible applicant applying for the same retail licensed outlets, the license will be granted by a draw of lots to be conducted by the committee consisting of the Deputy Commissioner (Excise), Deputy Excise and Taxation Commissioner (Sales Tax) and the Excise and Taxation Officer (Excise) of the respective district in the presence of the applicants who wish to be present on 17.3.2006.

xx xx xx xx xx xx xx 16. The applications in the prescribed proforma alongwith the fee of Rs. One lakh only, in cash or by bank draft, against proper receipt, per application, per licensed outlet, adjustable/refundable, and the supporting documents, as required, must reach the office of the Deputy Excise and Taxation Commissioners (Excise) of the respective districts, by 3.00 P.M. upto 11.3.2006.

xx xx xx xx xx xx xx Detailed information regarding categorization of the licensed outlets, license fee, various levies on liquor, conditions of the licenses and number of retail sale licensed outlets locality-wise etc. can be obtained from the offices of Deputy Excise and Taxation Commissioners (Excise) of the district concerned on any working day between 9 AM to 5 PM.

4. As per procedure of allotment, applications were to be received up to 11.3.2006. List of valid applications was to be displayed three days before the date of allotment, which was scheduled for 17.3.2006.

5. On 17.3.2006, 1260 retail outlets of country liquor and 915 retail outlets of IMFL were allotted by/draw of lots.

6. After notifying the list of valid applications, received in response to public notice dated 1.3.2006, on 14.3.2006 and finding that the offer were not received for some of the vends, vide public notice dated 15.3.2006 (Annexure R-2), fresh applications were invited for the remaining vends, to be received on or before 22.3.2006 for another draw of lots to be held on 24.3.2006 on the same conditions. 222 country liquor vends and 26 IMFL vends were allotted in pursuance of this public notice. However, the vends still remained unallotted for want of offers for all the vends.

7. When inspite of two efforts, allotment of all liquor vends could not be made, on 25.3.2006, the matter was reconsidered and it was found 97% of retail outlets of IMFL, stood allotted, while country liquor outlets were less in demand. Decisions was taken to convert 20% of quota of remaining country liquor into IMFL to protect the government revenue. A fresh advertisement, Annexure P3 was issued inviting applications on or before 28.3.2006 for a fresh draw of lots to be held on 29.3.2006 as per original terms and conditions.

8. On 29.3.2006, on account of death of Mr. Bansi Lal, former Chief Minister of Haryana, the process of allotment was deferred to 30.3.2006 and allotments were made. However, even after allotments on 29/30.3.2006, certain outlets

remained unallotted and a public notice dated 30.3.2006, Annexure R-4 was issued for remaining allotment "by private contract" on 31.3.2006. The said notice is as under:

In case any retail outlet/outlets of country liquor (L-14A) and Indian Made Foreign Liquor" (L-2) remain(s) pending after the draw of lots, the same shall be allotted by private contract at 11.00 a.m. on 31st March, 2006 at the address given above.

9. In pursuance of the public notice issued on 30.3.2006, a total of 993 outlets comprising of 172 of IMFL (L-2) and 821 country liquor (L-14A) were allotted by way of contract as is evident from affidavit of the Excise and Taxation Commissioner, Haryana dated 9.5.2006. The contracts were signed on 31.3.2006 itself and vends started functioning w.e.f. 1.4.2006. The State claims to have got a revenue of Rs. 152 crores with allotments on 31.3.2006. Allotments on 31.3.2006 were made on reduced quota by reducing the fee.

10. After allotments were made on 31.3.2006, the State received complaints that people with higher offer were available and there was lack of transparency in allotments made on 31.3.2006. A public notice dated 11.4.2006 was issued stating that if any person had any objection and wanted to give application for original quota/license fee advertised or quota/license fee subsequently fixed for any of the outlets, he could apply by 15.4.2006 and could be considered for allotment if found eligible. It was further stated that the said notice shall be deemed to be notice to the allottees to whom retail liquor outlets were granted by contract on 31.3.2006. Writ petitions against proposed action as per the said notice are in Category II and while issuing notice of motion on 25.4.2006, the respondents were restrained from taking any final decision or interfering with the working of the said allottees.

11. Grievance of the petitioners in category I cases is that creation of more L-2 vends and allotment of vends by private contracts by reducing the quota and fee without giving notice of the changed terms were illegal and arbitrary. It is also mentioned that large number of vends were allotted to a single person. L-2 vend allotted on 31.3.2006 were for Rs. 10 lacs in C.W.P. No. 5911 of 2006 while allotment to the petitioners on 17.3.2006 was for Rs. 35 lacs each which resulted in unhealthy competition. Allotments were made by private contracts contrary to the declared policy of allotment by draw of lots. In para 18 of the policy, it was clearly mentioned that the vends remaining unallotted will be allotted again by following the same procedure. It is also pointed out that no change was effected in the policy by any competent authority. Allotments at much reduced price was discriminatory and caused great financial loss to the petitions. The plea of mere reduction in quota could be no justification, as any allottee could lift 50% additional quota without any extra fee and further 25% on payment of nominal fee. Once L-2 vends were allotted, any fresh allotment in the same district/town was in violation of rights of the petitioners. There was no transparency in such allotments and, therefore, the same were vitiated.

12. Stand of the State is that after 24.3.2006, the policy was reviewed and 20% of remaining country liquor quota was converted to IMFL and outlets were rearranged as a result of the said conversion. The following table has been relied upon in the written statement filed by the State:

No. of outlets for converted by the 17.3.2006	No. of outlets allotted upto converted 30.3.2006	No. of outlets approved allotment on 31.3.2006	No. of outlets converted finally Govt. (first draw) For 2006-07	outlets proposed (including converted)
2800	2603	1641	821	2462
IMFL	1600	974	1041	172
1213				
Total: 4400 3577 2682 993 3675				C.L.

13. It has been further stated that since vends remained unallotted at the original fee and quota, a decision was taken to allot the same by way of private contracts in pursuance of public notice dated 30.3.2006. Vends allotted on 31.3.2006 were 993 (821 country liquor and 172 IMFL) which fetched Rs. 152 crores. It is stated that proceedings on 31.3.2006 were transparent and impartial but after receiving complaints, a fresh public notice dated 11.4.2006 has been published to take corrective steps.

14. It may be mentioned that public notice dated 11.4.2006 has been challenged by the persons, to whom allotments were made on 31.3.2006 i.e. category II cases, inter alia, on the ground made investments in pursuance of allotments and if the same are to be cancelled, they were entitled to compensation. It has also been submitted that verbal complaints were without any basis and contracts have already been signed by which the State is bound.

15. The only additional point raised in category III cases is that a direction ought to be issued to respondent No. 3 to fix maximum retail price of liquor as per provisions of the Standards of Weights and Measures Act, 1976.

16. We have heard the matter at length.

The questions which arise for consideration are:

- i) Whether conversion of country liquor quota into IMFL and consequential creation/rearrangement of more vends and allotments thereof at reduced price was permissible?
- ii) Whether allotments made on 31.3.2006 without change of policy about the mode of allotment and giving notice of changed conditions of allotments are arbitrary and illegal?

17. Before proceedings further, we may notice the law on the subject. It is well settled that there is no fundamental right to do business or trade in intoxicants. However, if the State decides to grant such right or privilege, it cannot escape rigour of Article 14 of the Constitution and act arbitrary or at will. While applying

Article 14 of the Constitution in such a case, the court will be slow to interfere with the policy for grant of liquor or award of contracts unless the same was arbitrary, illegal or mala fide. In a given case, the State could review its policy in public interest. It is well settled that if decision making process is vitiated by arbitrariness, unfairness, illegality or irrationality, this Court could strike down the same as well as consequential actions, in exercise of its power of judicial review.

18. In *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, , it was observed:

53. In our opinion, the true position governing dealings in intoxicants is as stated and reflected in the Constitution bench decisions of this Court in *The State of Bombay and Another Vs. F.N. Balsara*, ; *The State of Assam Vs. A.N. Kidwai, Commissioner of Hills Division and Appeals, Shillong*, ; *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, ; *Amar Chandra Chakraborty Vs. The Collector of Excise, Government of Tripura and Others*, and *The State of Bombay Vs. R.M.D. Chamarbaugwala*, as interpreted in *State of Orissa and Others Vs. Harinarayan Jaiswal and Others*, and *Nashirwar and Others Vs. State of Madhya Pradesh and Others*, . There is no fundamental right to do trade or business in intoxicants. The State, under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants - its manufacture, storage, export, import, sale and possession. In all their manifestations, these rights are vested in the state and indeed without such vesting these can be no effective regulation of various forms of activities in relation to intoxicants....

19. In *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, , it was observed:

32 ...Now, it is true and it is well settled by several decisions of this Court including the decision in *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, that 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 manufacturer, storage, export, import, sale and possession. No one can claim as against the State the right to carry on trade or business in liquor and the state cannot be compelled to part with its exclusive right or privilege of manufacturing 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. It cannot act arbitrarily or at its sweet will. It must comply with the equality clause while granting the exclusive right or privilege of manufacturing or selling liquor. It is, therefore, not possible to uphold the contention of the State Government and respondents Nos. 5-11 that Article 14 can have no application in a case where the licence to manufacture or sell liquor is being granted by the State Government. The State cannot ride roughshod over the requirement of that Article.

33. But, while considering the applicability of Article 14 in such a case, we 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. 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. Moreover, the grant of licenses 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 had done, unless it appears to be plainly arbitrary, irrational or mala fide. We had occasion to consider the scope of interference by the Court under Article 14 while dealing with laws relating to economic activities in *R.K. Garg v. Union of India* (1982) 1 S.C.R. 947 : AIR 1981 S.C. 2138. We pointed out in that case that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. We observed that the legislature should be allowed some play in the joints because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints had to be allowed to the legislature. We quoted with approval the following admonition given by Frankfurter, J. in *Morey v. Doud* (1957) 354 U.S. 457:

In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events - self limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.

What we said in that case in regard to legislation relating to economic matters must apply equally in regard to executive action in the field of economic activities, though the executive decision may not be placed on as high a pedestal as legislative judgment in so far as judicial deference is concerned. We must not forget that in complex economic matters every decision is necessarily empiric and it is based on experimentation or what one may call trial and error method" and, therefore, its validity cannot be tested on any rigid "a prior" considerations or on the application of any strait jacket formula. The court must while adjudging the constitutional validity of an executive decision relating to economic matters grant a certain measure of freedom or "play" in the "joints" to the executive. "The problem of Government" as pointed out by the Supreme Court of the United States in *Metropolis Theatre Co. v. State of Chicago* (1912) 57 L.Ed. 730 "are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not discernible, the wisdom of any choice may be

disputed or condemned. Mere errors of Government are not subject to our judicial review. It is only its palpably arbitrary exercise which can be declared void". The Government, as was said in Permian Basin Area Rate cases (1968) 20 L.ED 312 is entitled to make pragmatic adjustments which may be called for by particular circumstances. The Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The Court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide. It is against the background of these observations and keeping them in mind that we must now proceed to deal with the contention of the petitioners based on Article 14 of the Constitution.

20. The above principles were reiterated in Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others, , wherein para 62, it was observed:

62. We, therefore, hold that a citizen has no fundamental right to trade or business in liquor as beverage. The State can prohibit completely the trade or business in potable liquor since liquor as beverage is *res extra commercium*. The State may also create a monopoly in itself for trade or business in such liquor. The State can further place restrictions and limitations on such trade or business which may be in nature different from those on trade or business in articles *res commercium*. The view taken by this Court in K.K. Narula case as well as in the second Synthetics and Chemicals Ltd. Case is not contrary to the aforesaid view which has been consistently taken by this Court so far.

21. This was also reiterated by majority of Judges in State of Punjab and Another Vs. Devans Modern Brewaries Ltd. and Another, . It was observed in para 113:

In my opinion, Article 301 and 304(a) of the Constitution are not attracted to the present case as the imposition of import fee does not, in any way, restrict trade, commerce and intercourse among the States. In my opinion, the permissive privilege to deal in liquor is not a "right" at all. The levy charged for parting with that privilege is neither a tax nor a fee. It is simply a levy for the act of granting permission or for the exercise of power to part with the privilege. In this context, we can usefully refer to Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, and Panna Lal v. State of Rajasthan : [1976]1SCR219 . As noticed earlier, dealing in liquor is neither a right nor is the levy a tax or a fee. Articles 301-304 will be rendered inapplicable at the threshold to the activity in question. Further, there is not even a single judgment which upholds the applicability of Articles 301-304 to the liquor trade. On the contrary, numerous judgments expressly hold these articles to be inapplicable to trade, commerce and intercourse in liquor. We can beneficially refer to the judgments in The State of Bombay Vs. R.M.D. Chamarbaugwala, , Sat Pal and Co. and Others Vs. Lt. Governor of Delhi and Others, . The learned Counsel for the respondent submitted that Articles 301-304 are violated or transgressed. In view of discussions in the paragraphs above, it is clearly demonstrated as to how and why Articles 301-304 are inapplicable to liquor trade in any form.

22. In *P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others*, , it was observed in para 5 by the Hon''ble Supreme Court that in a given set of facts, it may be open to the Government to evolve a new scheme and the court will not bind the Government to the policy which existed on the date of the application if the change in policy was necessary in public interest, which is as under:

5. It would, therefore, be clear that grant of licence depends upon the policy prevailing as on the date of the grant of the licence. The court, therefore, would not bind the Government with a policy which was existing on the date of application as per previous policy. A prior decision would not bind the Government for all times to come. When the Government is satisfied that change in the policy was necessary in the public interest, it would be entitled to revise the policy and lay down new policy. The court, therefore, would prefer to allow free play to be Government to evolve fiscal policy in the public interest and to act upon the same. Equally, the Government is left free to determine priorities in the matters of allocations or allotments or utilisation of its finances in the public interest. It is equally entitled, therefore, to issue or withdraw or modify the export or import policy in accordance with the scheme evolved. We, therefore, hold that the petitioners have no vested or accrued right for the issuance of permits on the MEE or NQE, nor is the Government bound by its previous policy. It would be open to the Government to evolve the new schemes and the petitioners would get their legitimate expectations accomplished in accordance with either of the two schemes subject to their satisfying the conditions required in the scheme. The High Court, therefore, was right in its conclusion that the Government is not barred by the promises of legitimate expectations from evolving new policy in the impugned notification.

23. In *Common Cause, A Registered Society Vs. Union of India and Others*, , it was observed:

43. Government decisions regarding award of contracts are also open to judicial review and if the decision-making process is shown to be vitiated by arbitrariness, unfairness, illegality and irrationality, then the Court can strike down the decision-making process as also the award of contract based on such decision. This was so laid down by this Court in *Tata Cellular Vs. Union of India*, . Initially the Supreme Court was of the opinion that while the decision-making process for award of a contract would be amenable to judicial review under Articles 226 or 32 of the Constitution, a breach of a contractual obligation arising out of a contract already executed would not be so enforceable under such jurisdiction and the remedy in such cases would lie by way of a civil suit for damages. See: *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, . But the Court changed its opinion in subsequent decisions and held that even arbitrary and unreasonable decisions of the government authorities while acting in pursuance of a contract would also be amenable to writ jurisdiction. This principle was laid down in *Gujarat State Financial Corporation Vs. Lotus*

Hotels Pvt. Ltd., . This Court even went to the extent of saying that the terms of contract cannot be altered in the garb of the duty to act fairly. See: Assistant Excise Commissioner and Others Vs. Issac Peter and Others, . Duty to act fairly in respect of contracts was also the core question in Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, in which this Court relied upon its earlier decisions in E.P. Royappa Vs. State of Tamil Nadu and Another, ; Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, ; Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, , Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, as also Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, .

24. u/s 8 of the Punjab Excise Act, 1914, superintendence and control of excise administration is vested in Financial Commissioner, subject to the control of the State Government. There are provisions for control and regulation of import, export and transport, manufacture, possession and sale of intoxicants. Section 35 of the Act provides for grant of licence for sale of intoxicants, which is as under:

35(1) Grant of licence for sale.- Subject to the rules made by the Financial Commissioner under the power conferred by this Act, the Collector may grant licenses for the sake of any intoxicant within his District.

(2) Ascertainment of public opinion.- Before any licence is granted in any year for the retail sale of liquor for consumption on any premises which have not been so licensed in the preceding year, the Collector shall take such measure in accordance with rules to be made by the State Government in this behalf, as may best enable him to ascertain local public opinion in regard to the licensing of such premises.

(3) A licence for sale in more than one district of the Punjab/Haryana shall be granted by the Financial Commissioner only.

25. u/s 59 of the Act, Financial Commissioner is empowered to frame rules. Haryana Liquor Licence Rules, 1970 provide for classification, grant and renewal of licenses. Punjab Intoxicants Licenses and Sales Orders, 1956 (as applicable to Haryana) provides for period of licenses, number of licenses, locality for which licence may be granted.

Rules 6 and 8 of the Punjab Intoxicants Licence and sales Orders, 1965 (Haryana) are as under:

6. The number of liquor and drug shops, which may be licensed in any local area, shall be the number which the Financial Commissioner, subject to the control of the State Government considers necessary to meet the reasonable requirements of the population. Shops will neither be so sparse to give the licensee any one shop a practical monopoly in a particular area, nor so numerous as to provoke excessive competition.

8. When it is proposed to grant a licence for the retail vend of liquor for

consumption on any premises which were not licensed in the preceding year, the Collector shall take all reasonable steps to ascertain the opinion of person, who reside or have property in the neighborhood and are likely to be affected by the proposal.

26. Coming to the question No. (i) posed earlier, we are of the view that mere conversion of part of country liquor quota into 1MFL or additions/rearrangement of vends as a consequence thereof are not liable to be interfered with. Mere loss to the petitioners thereof are not liable to be interfered with. Mere loss to the petitioners on account of such acts cannot be a ground for interference by this Court. It has not been shown that such a decision was mala fide, arbitrary or inherently without jurisdiction. In exercise of its statutory powers to frame a policy, the change in policy will not be without jurisdiction and if situation so justifies in a given case, addition of vends may be justified for special reasons on record. It has been explained on behalf of the State that in this year, for the first time, instead of auction, mode of allotment by draw of lots was adopted to check monopoly of liquor barons. At the same time, since the revenue was to be safeguarded, as a result of feed back during implementation of the policy, a conscious decision to convert a part of country liquor quota into IMFL was taken by competent authority. As a result of this decision, vends were rearranged. As held by the Hon'ble Supreme Court in Nandlal Jaiswal's case (supra), "trial and error method" is not ruled out in the field of economic matters and the court has to grant a certain measure of freedom or "play" in the "joints" to the executive. In PTR Export's case (supra), it was again held that if change of policy was necessary in public interest, the court will not interfere with such a decision particularly in relation to fiscal policies.

27. Coming now to the second question, we find that as per declared policy, the quota and license fee were duly notified and the allotment was to be done by draw of lots. On 31.3.2006, the allotments were made by private contracts instead of draw of lots and quota and price were substantially reduced without any change in policy and without notice thereof to concerned persons. No record of decision of any competent authority to change the policy to the above effect has been shown. This not only resulted in financial loss to the petitioners, but also deprived other similarly placed persons of an opportunity of participating in the process of allotment. There is nothing to show that any loss of revenue would have been caused if others had opportunity to participate on changed conditions. The Government itself received complaints and issued a public notice on 11.4.2006. Such action was far beyond fairness and transparency. The defence that by any delay, the State would have to suffer loss of revenue to the extent of about Rs. 50 lakhs per day and that reduced fee could be justified on account of reduced quota can hardly be accepted. These considerations can neither justify illegal actions nor caused any hindrance in decision being taken by appropriate authority and change in policy being notified to all concerned. No record of negotiation has been shown inspite of opportunity given. Learned Advocate General fairly stated that beyond record of contracts in respect of 993 vends, no

other record of decision of change in policy by competent authority, or negotiations was available. In such a situation, advantage to few at the cost of others is not ruled out. Decision making process of change in the policy and allotments made does not inspire confidence and has to be held to be violative of Article 14 of the Constitution. In exercise of our power of judicial review, the award of liquor vends by private contracts on 31.3.2006, have to be held to be void. Writ petitions in first category deserve to be allowed to this extent.

28. However, we are not unmindful of consideration of revenue of the State and also we can take judicial notice of the subsequent events. We, accordingly, mould the relief.

29. The State has to be given liberty to safeguard its revenue after taking corrective measures, namely, to take a decision about change of policy regarding mode of allotment, reduction in quota and licence fee and notifying the same to all concerned.

30. The writ petitions of second category have to be dismissed.

31. Writ petitions in third category seeking direction for fixing a maximum retail price have been filed by way of public interest litigation without showing any injury or violation of any right. We do not find any reason to go into the merits of the said writ petitions. The same are liable to be dismissed on this aspect.

32. Accordingly, we dispose of all the writ petitions with the following directions:

(i) We declare allotments of liquor vends made on 31.3.2006 by private contracts to be void.

(ii) The State is given liberty to make fresh allotments after taking corrective measures indicated above for the period from 1.6.2006 to 31.3.2007.

(iii) Persons to whom the allotments were made on 31.3.2006 will continue upto 31.5.2006.

(iv) If corrective measures are taken and fresh applications/offers are invited on same or similar conditions on which allotments were made by private contracts on 31.3.2006 and no fresh offer or application comes forth, the allotments will continue for the rest of the period.

(v) If fresh allotments are made to persons other than those to whom allotments were made on 31.3.2006, such allottees will be entitled to proportionate refund of licence fee.

Rajesh Bindal, J.

33. [Against the judgment of the High Court, petitioners filed Special Leave to Appeal (Civil) CC 4551 of 2006 before the Supreme Court of India which was decided with other SLP (C) No. 9907 of 2006 by Hon''ble Mr. Justice Arijit Pasayat and Mr. Justice C.K. Thakker on 7th June, 2006 and the orders of the High Court were modified and following orders were passed:

ORDER

Leave granted.

After hearing learned Counsel for the parties at length we feel equities can be best balanced and interest of justice best served if the following directions are given:

(1) The State is given liberty to make fresh allotment after taking corrective measures for the period from 1.8.2006 to 31.3.2007; instead of 1.6.2006 to 31.3.2007 as directed by the High Court.

(2) Persons to whom allotments were made on 31.3.2006 will continue upto 31.7.2006.

(3) If fresh allotments are made to persons other than those to whom allotments were made on 31.3.2003, such allottees will be entitled to proportionate refund of licence fee.

34. These directions are in substitution of five directions given by the High Court. The appeals are accordingly disposed of.

35. Editor]