
(1986) 01 KAR CK 0048

In the Karnataka High Court

Case No : Writ Petition No's. 19851 of 1985 etc.

Rudraiah Raju

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 31-01-1986

Acts Referred:

Citation : (1986) ILR (Kar) 587

Hon'ble Judges : Venkatesh, J; Rama Jois, J

Bench : Division Bench

Advocate : G.V. Shantaraju and S.R. Nayak, for the Appellant; Shantibhushan, M.R. Achar, Government Advocate, K.K. Venugopal, Javaji Srinivasalu, S.G. Sundaraswamy, Y.S. Chitale and H. Rangavittalachar, for the Respondent

Judgement

Rama Jois, J.—The first two Writ Petitions are public interest petitions, in which the petitioners have challenged the legality of an order of the State Government under which contract for bottling Arrack was granted to respondents 3 to 10 on the ground that a largess involving a total turnover of Rs. 50 crores had been granted to them, in flagrant violation of law and on collateral consideration. In the other petitions the petitioners therein have questioned the legality of the same Government order.

2. The background and history of the cases are as follows : (i) Pursuant to the decision of the Government that arrack should be supplied to the consumers in sealed bottles or sachets, to avoid the possibility of adulteration, on 11th April, 1984, the Excise Commissioner invited applications from persons interested in undertaking the bottling of arrack at 18 places in the State most of which are District head quarters. The applicants were required to furnish their names and addresses and the previous experience and were required to send a Demand Draft of Rs. 10,000/- in favour of the Excise Commissioner. The successful applicants were required to deposit a sum of Rs. 50,000/-including Rs. 10,000/-already sent along with the application. According to the notification, the successful applicant would be issued bottling licence as per rules on payment of

the prescribed licence fee. The last date for receipt of the application was 21st April, 1984. Pursuant to the said notification, as many as 131 persons submitted their applications. By order dated 29th September, 1984 the State Government selected respondents 3 to 10 for entrustment of bottling contract. The name, place of bottling and areas to be covered by respondents 3 to 10 are set out in the following statement :

1

2

3

4

Res Respondent No.

Name of the person/ firm and address

Places of Bottling

Areas to be Covered

3.

Sea Shell Bottling Co., Dakshina Kannada District.

Bangalore

Bangalore District.

4.

T. V. Sarangadharan, Excise Contractor, Ashoknagar, Mandya.

Mandya

Maddur and Mandya Taluks only in Mandya District.

5.

H. S. Somashekar, B.V.K. Iyengar Road, Bangalore.

Mandya

All the Taluks of Maadya except Maddur and Mandya Taluks.

5.

H. S. Somashekar, B.V.K. Iyengar Road, Bangalore.

Mysore

Mysore District.

5.

H. S. Somashekar, B.V.K. Iyengar Road, Bangalore.

Madikeri

Kodagu District.

5.

H. S. Somashekar, B.V.K. Iyengar Road, Bangalore.

Hassan

Hassan District.

5.

H. S. Somashekar, B.V.K. Iyengar Road, Bangalore.

Hubli (Dharwar District)

Supa, Sirsi, Yellapur and Haliyal Taluks of Uttara Kannada District except Byadagi, Haveri Hirekerur, Ranibennur Taluks, Parasa-gad, Ramadurga Taluks of Belgaum District.

5.

H. S. Somashekar, B.V.K. Iyengar Road, Bangalore.

Belgaum

All the Taluks of Belgaum District except Parasagad and Ramadurga Taluks.

5.

H. S. Somashekar, B.V.K. Iyengar Road, Bangalore.

Bijapur

Bijapur District.

6.

K.M. Srinivasamurthy, III Block, Jayanagar Bangalore.

Dakshina Kannada District

Mangalore, Puttur, Sullia and Bantwala Taluks.

6.

K. M. Srinivasamurthy, III Block, Jayanagar, Bangalore.

Udupi

Koppa, Sringeri, N.R. Pura Taluks of Chick magalur District, Belthangadi, Karkala Udupi and Kundapur Taluks of Dakshina Kannada District. All the Taluks of Uttara Kannada District except Supa, Siral, Yellapura and Haliyal-

7.

Kolar Winery and Distillery (P) Ltd., Jayanagar, Bangalore.

Kolar

Kolar District.

8.

E. S. Ranganna, Durgigudi, Shimoga.

Shimoga District

Shimoga District, Chi-ckmagalur, Mudigere, Kadur and Tarikere of Chickmagalur District-

9.

Chaitanya Kumar 3/1, Berlie Street Cross, Langford Town, Bangalore.

Tumkur

Tumkur District.

9.

Chaitanya Kumar, 3/1, Berlie Street Cross, Langford town, Bangalore.

Hiriyur (Chitra-durga District)

Chitradurga District.

9.

Chaitanya Kumar, 3/1, Berlie Street Cross, Langford Town, Bangalore.

Raniben-nur, (Dharwar Dist)

Byadagi, Haveri, Hirekerur and Ranibennur Taluks.

10.

Canara Bottling Co., Race Course Road, Bangalore.

Hospet (Bellary District)

Bellary and Raichur Districts.

10.

Canara Bottling Co., Race Course Road, Bangalore.

Gulbarga

Gulbarga District

10.

Canara Bottling Co., Race Course Road, Bangalore.

Bidar

Bidar District.

II. Questioning the legality of the above order, Prameela Plastics Private Limited, which had submitted its application in response to the notification dated 11th April, 1984, presented Writ Petition No. 17011 of 1984 before this Court on 26-10-1984.

III. Thereafter, Writ Petition Nos. 17983 of 1984 and 19106 to 19119 of 1984 were presented by persons who had undertaken contract for vend of arrack during the concerned excise year, questioning the legality of the impugned order. Having regard to the importance of the questions involved the Petition were referred to Division Bench. The petitioners in those Petitions inter alia challenged the legality of the impugned order on the ground that it was contrary to the provisions of Karnataka Excise Act and the Rules framed thereunder.

IV. Writ Petition Nos. 19208 and 19851 of 1984 were presented thereafter by the two petitioners. In these two Petitions, the petitioners stated that they were challenging the legality of the impugned order of the Government on the ground that the impugned order was made in flagrant violation of law and on collateral consideration and by the said order a largess involving a total turnover of Rs. 50 Crores, which would enable respondents 3 to 10 to make huge profits, had been granted and that the manner and magnitude of the violation of law was such as would affect purity in administration and undermine the faith of the people in the Rule of law. These Petitions have also been referred to Division Bench.

V. Writ Petition No. 18 of 1985 was presented by Ugar Sugar Works Limited, Ugar-Khurd, Belgaum District. The petitioner in this Writ Petition is a limited company engaged in the manufacture of sugar at its factory situate at Ugar-Khurd in Belgaum District. It is stated to be one of the oldest sugar factories in the State having crushing capacity of 3500 M. Tonnes of sugarcane per day This company also established distillery in the year 1962. The company had established bottling plants investing a sum of Rs. 50 lakhs and according to the petitioner the cost of the distillery and the bottling plants was in the order of 3 to 4 crores. It had also submitted its application pursuant to the advertisement issued by the Excise Commissioner dated 11th March, 1984. This petitioner challenged the legality of the impugned order on the ground that the exclusion from consideration of the applications of the petitioner and other distillery units and in particular the Mysore Sugar Company Limited, Mandya, which is a Government undertaking and who were eligible to undertake boiling work, according to Rule 3 of the Karnataka Excise Bottling of Liquors Rules, 1967, and that selection of persons who were ineligible for securing licence under the Rules, was capricious, arbitrary and based on collateral consideration. The petitioner also challenged the validity of the Karnataka Excise (Bottling of Liquor) (Amendment) Rules, 1984. framed after the impugned Government Order with

the object of conferring eligibility on persons selected by the Government contrary to the rules.

VI. Writ Petition No. 6316 of 1985 is presented by Pampasar Distillery Limited, Hospet, which is a public limited company. This company was established for use of Molasses as a by product in the manufacture of sugar, by the management of India Sugars and Refineries Limited, which had established its distillery in the year 1946. The petitioner-company was incorporated in the year 1978 as a separate company only for the purpose of doing the business of distillery. It secures Molasses from India Sugars and Refineries Limited and from other sugar factories in the State. It has been the major supplier of Arrack to the State Government. This petitioner had also submitted its application pursuant to the notification issued by the Excise Commissioner on 11-5-1984. The pleadings and the challenge to the impugned order and the amendment of the Rules in this Petition are similar to those in Writ Petition No. 18 of 1985.

VII (a). Writ Petition Nos. 17983 of 1984 and 19106 to 19119 of 1984 were posted for hearing before a Division Bench. Before the Division Bench, as submitted by the Learned Counsel for the petitioners, after arguments were heard for some time the matter was compromised between the petitioners and the grantees, to which the State Government also agreed. The Writ Petitions were disposed of in view of the compromise entered into among all the parties to the petitions.

In Writ Petition No. 19851, of 1984 at paragraph 11 of the Petition, the petitioner has stated that decision on merits was prevented by showing certain concession to the petitioners in Writ Petition Nos. 17983 of 1984 and 19106 to 19119 of 1984 and persuading them to agree for a compromise.

(b) Hearing of this batch of Writ petitions commenced on 9th December, 1985. At the commencement of the hearing, a memo was filed by the petitioners in Writ Petition No. 6316 of 1985 and Writ Petition No. 18 of 1985 seeking permission to withdraw the Writ Petition. On the second date of hearing, that is, on 16th December 1985, a memo was filed in Writ Petition No. 17011 of 1984 seeking permission to withdraw the Petition. Learned Counsel for the petitioners submitted that filing of memos seeking permission to withdraw these Petitions was also on account of pressure brought to bear upon these petitioners by the respondents. In the circumstances, we considered it appropriate to consider the memos after hearing the other two Petitions presented in public interest and to dispose of all the petitions by a common order.

3. (i) The petitioner in Writ Petition No. 19851 of 1984 is a Civil Contractor. He has presented the petition in public interest. In paragraph 1 of the petition, he has stated thus :

"1 The petitioner in the above mentioned Writ Petition is seeking for issue of a writ of certiorari for quashing the order of the 1st respondent Government dated 29th September 1984 on the ground that, the arbitrary action of the Government

in the matter of granting largess in the form of "Contract to bottle Arrack" for the Government is against the public interest and is in gross transgression of public law resulting in great injustice and injury to the public. Petitioner humbly submits that he is presenting this Writ Petition as a member of the public and as a rate-payer and he has no personal interest in the subject matter of this Writ Petition apart from one as a member of the public and a subject of this State. Petitioner's conscience has been stirred by the wholly illegal action of the first respondent Government in bartering away the interest of the general public in the form of grant of contract to bottle arrack to the "chosen eight", the respondents 3 to 10 herein".

(ii) The summary of the rest of the pleas of the petitioners regarding selection of respondents 3 to 10 for entrustment of bottling contracts is as follows : The Government of Karnataka decided to supply arrack to the consumers in sealed bottles having due regard to the report of Justice Desai's Commission set up by the State Government to inquire into the tragedy at which more than hundred people died by consuming illicit liquor. As far as this decision is concerned, there could hardly be any objection. Pursuant to the policy decision, the Excise Commissioner issued an advertisement inviting applications in the matter of entrustment of contract of bottling of arrack. The Government instead of calling for competitive rates from the applicants, itself fixed the rate of bottling. At the highest the cost of bottling would be Re. 1/- for 750 ml. of arrack, whereas the Government fixed an exorbitant rate of Rs. 3/- per bottle. The Excise Commissioner at the instance of the Government has arbitrarily selected respondents 3 to 10 "the chosen 8" for the grant of contract in violation of law. The average consumption of arrack in the State of Karnataka is 30 lakhs of litres per month. In view of this a total wealth of over fifty five crores spread over a period of four years has been conferred on the chosen eight persons. A person connected with respondents 3 and 10 was also a partner in a firm to which the son-in-law of the Chief Minister was a partner and that the said person has negotiated in the matter of disposal of bottling contract. Respondent No. 9 Chaitanya Kumar was a benamidar of Sri. Jeevaraj Alva - the Minister for Information in the State of Karnataka. Respondents 3 and 5 to 10 who had no eligibility or previous experience have been selected only with the object of favouring them.

The allegations made in Writ Petition No. 19208 of 1984 are similar to those made in Writ Petition No. 19851 of 1984.

4(i). Statement of objection has been filed on behalf of respondents 1 and 2, the Excise Commissioner and the Government, refuting all the allegations levelled against the Government. The plea of the State is as follows : In the light of the past experience and having due regard to the report of Justice Desai Commission, the State Government took a policy decision to supply arrack to the consumers in sealed bottles with the object of ensuring supply of pure arrack to the consumers. In view of this policy decision, the Government directed the

Excise Commissioner to issue an advertisement, which he did as per Notification dated 11th April, 1984. Pursuant to the advertisement as many as 131 applications were received. As a matter of policy, it was decided that bottling of arrack should not be entrusted to the distillers as well as arrack contractors as there was possibility of adulteration of arrack in their hands and it should be entrusted to independent persons who are not connected either with, the distillation or distribution of arrack. The Excise Commissioner also made confidential inquiries through Police about the genuineness of the applicants as there were complaints that some of them were benamidars for arrack contractors in Tamilnadu. The Excise Commissioner interviewed all the 131 applicants and made his recommendation for grant of bottling contract to respondents 3 to 10. His recommendation was accepted by the Government in the bonafide exercise of the powers under the Act and the Rules. The allegation made that the decision to give contract to respondents 3 to 10 was taken arbitrarily or capriciously or mala fide was baseless and motivated. The Chief Minister has filed an affidavit refuting the allegation that any person connected with respondents 3 or 10 was a partner in the firm of which his son-in-law was a partner and such person had negotiated in the matter of selection of persons for undertaking bottling work. Sri Jivaraj Alva - Minister for Information, has also filed an affidavit. In the said affidavit, he has denied the allegation that respondent No. 9-Chaitanya Kumar, was his benamidar. He, however, has stated that Chaitanya Kumar was the brother of his sister's husband.

(ii) As regards the allegation that the rate fixed for bottling was exorbitant, the same has been refuted on the ground that it was based upon a report of a Committee appointed by the State Government in the year 1982 and though 17 1/2 per cent profit was allowed by the said Committee in fixing the rate, the Government allowed only 10 per cent profit margin and therefore the rate fixed was reasonable. As regards the allegation that the Government should have invited tenders in the matter of rate, the stand of the Government has been that it was open for the State to adopt any of the methods and in the present case it considered that fixing of rate was better as otherwise it might lead to unhealthy competition. The respondents also pleaded that the petitions must be dismissed for having made reckless and false allegations to the effect that a partner of a firm of which son-in-law of the Chief Minister was a partner, was connected with respondents 3 and 10 and that such person was instrumental in the selection of persons for bottling contract.

(iii) As regards the allegation that selection of respondents 3 to 10 was contrary to law, the same has been denied and that it is further stated that Bottling Rules were duly amended under which respondents 3 to 10 became eligible for undertaking bottling of arrack.

(iv) In the statement of objection, the State has also asserted that the petitioners have no locus standi to present the petitions and no public interest was involved in the case as it was only a case of selecting some out of many

applicants for bottling contract. The State has further pleaded that in the matter of disposal of privilege in respect of any matter connected with the trade of liquor the power of the Government was absolute and its decision to confer privilege on some out of several applicants was not justiciable.

4A. Separate statements of objection have been filed by respondents 3 to 10. In the statements they have pleaded that the selection was made after due consideration and comparative merit of the applicants. They have also pleaded that the rate fixed was reasonable. Along with the statement of objection they have also filed a calculation statement to show that the rates fixed by the Government was reasonable and proper. They have refuted the allegations of the petitioners that the decision was arbitrary, capricious and mala fide. On the other hand, they have attacked that the petitions themselves are not bonafide and they have been filed on account of inspiration by arrack contractors who were interested in upsetting the scheme of bottling of arrack. They have also pleaded that the petitions are liable to be dismissed for having made reckless and baseless allegations against the Chief Minister. They have further pleaded that there was no locus standi for the petitioners to present the petitions.

5. In view of the pleas of the parties, the following questions arise for consideration :-

- I. Whether the petitioners have locus standi to present the Petitions ?
- II. Whether the decision of the Government to grant the contract is justiciable,
- III. If the decision is justiciable,
 - (A) Whether the decision is in violation of law, arbitrary and capricious, and
 - (B) Whether the decision is mala fide?

Learned Counsel, Sri G. V. Shantaraju for the Petitioners and Sri Shantibhushan, for the State, Sri Venugopal, Sri Chitale and Sri Sundaraswamy for the other contesting parties argued for the respective parties for whom they are appearing, forcefully to impress upon us as to the correctness of the pleas and points put forward by the concerned parties. We proceed to consider the three questions set-out above one by one.

I. REGARDING LOCUS STANDI:

6. On this point, the learned Counsel for the respondents submitted as follows :-

- (i) Selection of persons among large number of applicants seeking contract for bottling arrack who had submitted their applications pursuant to the advertisement, is purely an administrative function. According to the decisions of the Supreme Court, (to which we shall refer to, a little later) there is no right in any competing applicant to get any contract concerning liquor as it is regarded as extra-commercium. No one can claim the fundamental right under Article 19(1)(g) in respect of liquor business. Every aspect relating to trade in liquor is the

privilege of the State. The State has the absolute discretion to part with any part of its privilege for consideration in favour of any individual, as file sole object in doing so was the earning of Revenue or the State. That being the position, even a competing applicant has no right either under Article 19(1)(g) or even Article 14 to challenge the legality of the decision. No public interest at all is involved in these cases.

(ii) In any event, when many of the competing applicants have themselves made no grievance and have not come forward to challenge the decision and those who filed writ petitions have tiled memos seeking permission to withdraw the petitions, relief cannot be thrust upon them through a public interest petition.

(iii) Further, the petitioners who are just two persons among the 660 million citizens of the Country, have no sufficient interest at all in the matter. They have been set-up by those who are aggrieved by the decision.

7. In support of these submissions, the learned Counsel relied on the relevant portions of the Judgment of the Supreme Court in the following cases :-

(1) FERTILIZER CORPORATION KAMAGAR UNION (REGD) SINDRI AND ORS. v. UNION OF INDIA AND ORS. AIR 1981 SC 344 @ 356.

"47. In the present case a worker, who clearly, has an interest in the industry brings this action regarding an alleged wrong doing by the Board of Management. Article 43A of the Constitution confers, in principle, partnership status to workers in industry and we cannot, therefore, be deterred by technical considerations of corporate personality to keep out those who seek to remedy wrongs committed in the management of public sector. Locus standi and justiciability are different issues, as I have earlier pointed out. This takes us to the question of justiciability of questions like sale of public property by public bodies. Certainly, it is riot part of the judicial process to examine entrepreneurial activities to ferret out flaws. The Court is least equipped for such oversights. Nor, indeed, is it a function of the Judges in our constitutional scheme. We do not think that the internal management, business activity or institutional operation of public bodies can be subjected to inspection by the Court. To do so, is incompetent and improper and, therefore, out of bounds. Nevertheless, the broad parameters of fairness in administration, bona fides in action, and the fundamental rules of reasonable management of public business, if breached will become justiciable.

48. If a citizen is no more than a way-farer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the Court will not be ajar for him. But he belongs to an organisation which has special interest in the subject matter, if he has some concern deeper than that of a busybody, he cannot be told off at the gates, although whether the issue raised by him is justiciable may still remain to be considered. I, therefore, take the view that the present Petition would clearly have been permissible under Article 226. (See Judgments of Krishna Iyer, J. in

Bar Council of Maharashtra Vs. M.V. Dabholkar and Others, and The Bar Council of Maharashtra Vs. M.V. Dabholkar and Others,

(2) S.P. Gupta Vs. President of India and Others,

"23. But we must be careful to see that the member of the public, who approaches the Court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective. Andre Rabie has warned that "political pressure groups who could not achieve their aims through the administrative process" and we might add, through the political process, "may try to use the Courts to further their aims". These are some of the dangers in public interest litigation which the Court has to be careful to avoid. It is also necessary for the Court to bear in mind that there is a vital distinction between locus standi and justiciability and it is not every default on the part of the State or a public authority that is justiciable. The Court must take care to see that it does not overstep the limits of its judicial function and trespass into areas which are reserved to the Executive and the Legislature by the Constitution.

xxx xxx xxx 24. Before we part with this general discussion in regard to locus standi, there is one point we would like to emphasise and it is that cases may arise where there is undoubtedly public injury by the act or omission of the State or a public authority but such act or omission also causes a specific legal injury to an individual or to a specific class or group of individuals. In such cases, a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act or omission, but if the person or specific class or group of persons who are primarily injured as a result of such act or omission do not wish to claim any relief and accept such act or omission willingly and without protest, the member of the public who complains of a secondary public injury cannot maintain the action, for the effect of entertaining the action at the instance of such member of the public would be to foist a relief on the person or specific class or group of persons primarily injured, which they do not want."

In view of these decisions, the petitions are liable to be dismissed in limine for want of locus standi.

8. Sri G. V. Shantaraju, learned Counsel for the petitioner strongly rebutted the submissions made for the contesting respondents. Elaborating his submission, he said, the question raised by the petitioners are of great public importance going to the root of Rule of law and reasonable and honest use of Government power and purity of administration. The petitioners are least bothered as to who gets the privilege of bottling contract, but their concern has been about the manner, and magnitude of violation of Rule of Law, which if allowed to stand, was such as would undermine the faith of the people in Rule of Law and would develop positive disrespect for Rule of Law. The petitioners, being citizens of India and

residents and rate payers of this State, have sufficient interest to challenge the legality of the action. This position in law is no longer in doubt, in view of the ratio of the decisions in Fertilizer Corporation Kamagar Union AIR 1981 SC 344 @ 356 and S.P. Gupta Vs. President of India and Others,

(i) The relevant portions of the Judgment in Fertilizer Corporation Kamagar Union AIR 1981 SC 344 @ 356 on which the learned Counsel relied are :-

"37. Assuming that the Government company has acted mala fide, or has dissipated public funds, can a common man call into question in a Court the validity of the action by invocation of Article 42 or 226 of the Constitution? Here, we come up on the crucial issue of access to justice and the special limitations of Article 42 which is the passport to this Court.

38. We have no doubt that in competition between Courts and streets as dispenser of justice, the rule of law must win the aggrieved person for the law Court and wean him from the lawless street. In simple terms, locus standi must be liberalised to meet the challenges of the times. Ubi jus ibi remedium must be enlarged to embrace all interests of public-minded citizens or organisations with serious concern for conservation of public resources and the direction and correction of public power so as to promote justice in its triune facets...."

41. Law, as I conceive it, is a social auditor and this audit function can be put into action only when someone with real public interest ignites the jurisdiction. We cannot be scared by the fear that all the sundry will be litigation-happy and waste their time and money and the time of the Court through false and frivolous cases. In a society where freedoms suffer from atrophy and activism is essential for participative public justice, some risks have to be taken and more opportunities opened for the public-minded citizen to rely on the legal process and not be repelled from it by narrow pedantry now surrounding locus standi."

(underlined by us)

as also paragraphs 47 and 48 on which the learned Counsel for the respondents relied.

(ii) The relevant portions of the Judgment in S.P. Gupta Vs. President of India and Others, on which the learned Counsel relied are found in paragraphs 18 and 19. They read:

"18. The types of cases which we have dealt with so far for the purpose of considering the question of locus standi are those where there is a specific legal injury either to the applicant or to some other person or persons for whose benefit the action is brought, arising from violation of some constitutional or legal right or legally protected interest. What is complained of in these cases is a specific legal injury suffered by a person or a determinate class or group of persons. But there may be cases where the State or a public authority may act in violation of a constitutional or statutory obligation or fail to carry out such obligation, resulting in injury to public interest or what may conveniently be

termed as public injury as distinguished from private injury. Who would have standing to complain against such act or omission of the State or public authority? Can any member of the public sue for judicial redress? Or is the standing limited only to a certain class of persons ? Or there is no one who can complain and the public injury must go unredressed.

xxx xxx xxx xxx If no one can maintain an action for redress of such public wrong or public injury, it would be disastrous, for the rule of law for it would be open to the State or a public authority to act with impunity beyond the scope of its power or in breach of a public duty owed by it. The Courts cannot countenance such a situation where the observance of the law is left to the sweet will of the authority bound by it, without any redress if the law is contravened. The view has therefore been taken by the Courts in many decisions that whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bonafide and having sufficient interest can maintain an action for redressal of such public wrong or public injury. The strict rule of standing which insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule is evolved which gives standing to any member of the public who is not a mere busy-body or a meddlesome interloper but who has sufficient interest in the proceeding. There can be no doubt that the risk of legal action against the State or a public authority by any citizen will induce the State or such public authority to act with greater responsibility and care thereby improving the administration of justice.

xxx xxx xxx This broadening of the rule of locus standi has been largely responsible for the development of public law, because it is only the availability of judicial remedy for enforcement which invests law with meaning and purpose or else the law would remain merely a paper parchment, a teasing illusion and a promise of unreality. It is only by liberalising the rule of locus standi that it is possible to effectively police the corridors of powers and prevent violations of law. It was pointed out by Schwartz and H.W.R. Wade in their book on "Legal Control of Government" at page 354:

"Restrictive rules about standing are in general inimical to a healthy system of administrative law. If a plaintiff with a good case is turned away, merely because he is not sufficiently affected personally, that means that some government agency is left free to violate the law, and that is contrary to the public interest. Litigants are unlikely to expend their time and money unless they have some real interest at stake. In the rare cases where they wish to sue merely out of public spirit, why should they be discouraged?"

It is also necessary to point out that if no one can have standing to maintain an action for judicial redress in respect of a public wrong or public injury, not only will the cause of legality suffer but the people not having any judicial remedy to redress such public wrong or public injury may turn to the street and in that

process, the rule of law will be seriously impaired. It is absolutely essential that the rule of law must wean the people away from the lawless street and win them for the Court of Law.

19. There is also another reason why the rule of locus standi needs to be liberalised. Today we find that law is being increasingly used as a device of organised social action for the purpose of bringing about socio-economic change. The task of national re-construction upon which we are engaged has brought about enormous increase in developmental activities and law is being utilised for the purpose of development, social and economic. It is creating more and more a new category of rights in favour of large sections of people and imposing a new category of duties on the State and the public officials with a view to reaching social justice to the common man. Individuals rights and duties are giving place to meta-individual, collective, social rights and duties of classes or groups of persons. This is not to say that individual rights have ceased to have a vital place in our society but it is recognised that these rights are practicably meaningless in to-day's setting unless accompanied by the social rights necessary to make them effective and really accessible to all. The new social and economic rights which are sought to be created in pursuance of the Directive Principles of State Policy essentially require active intervention of the State and other public authorities. Amongst these social and economic rights are freedom from indigency, ignorance and discrimination as well as the right to a healthy environment, to social security and to protection from financial commercial, corporate or even governmental oppression. More and more frequently the conferment of these socio-economic rights and imposition of public duties on the State and other authorities for taking positive action generates situations in which single human action can be beneficial or prejudicial to a large number of people, thus making entirely inadequate the traditional scheme of litigation, as merely a two-party affair. For example, the discharge of effluent in a lake or river may harm all who want to enjoy its clean water ; emission of noxious gas may cause injury to large number of people who inhale it along with the air, defective or unhealthy packaging may cause damage to all consumers of goods and so also illegal raising of railway or bus fares may affect the entire public which wants to use the railway or bus as a means of transport. In cases of this kind it would not be possible to say that any specific legal injury is caused to an individual or to a determinate class or group of individuals. What results in such cases is public injury and it is one of the characteristics of public injury that the act or acts complained of cannot necessarily be shown to affect the rights of determinate or identifiable class or group of persons ; public injury is an injury to an indeterminate class of persons. In these cases the duty which is breached giving rise to the injury is owed by the State or a public authority not to any specific or determinate class or group of persons, but to the general public. In other words, the duty is one which is not correlative to any individual rights. Now if breach of such public duty were allowed to go unredressed because there is no one who has received a specific legal injury or who was entitled to participate in

the proceedings pertaining to the decision relating to such public duty, the failure to perform such public duty would go unchecked and it would promote disrespect for the rule of law. It would also open the door for corruption and inefficiency because there would be no check on exercise of public power except what may be provided by the political machinery, which at best would be able to exercise only a limited control and at worst, might become a participant in misuse or abuse of power. It would also make the new social collective rights and interests created for the benefit of the deprived sections of the community meaningless and ineffectual.

19A.If public duties are to be enforced and social collective "diffused" rights and interests are to be protected, we have to utilise the initiative and zeal of public-minded persons and organisations by allowing them to move the Court and act for a general or group interest even though, they may not be directly injured in their own rights. It is for this reason that in public interest litigation-- litigation undertaken for the purpose of redressing public injury, enforcing public duty, protecting social, collective, "diffused" rights and interests or vindicating public interest, any citizen who is acting bona fide and who has sufficient interest has to be accorded standing. What is sufficient interest to give standing to a member of the public would have to be determined by the Court in each individual case. It is not possible for the Court to lay down any hard and fast rule or any strait-jacket formula for the purpose of defining or delimiting. "sufficient interest". It has necessarily to be left to the discretion of the Court. The reason is that in a modern complex society which is seeking to bring about transformation of its social and economic structure and trying to reach social justice to the vulnerable sections of the people by creating new social, collective "diffuse" rights and interest and imposing new public duties on the State and other public authorities, infinite number of situations are bound to arise which cannot be imprisoned in a rigid mould or a procrustean formula. The Judge who has the correct social perspective and who is on the same wave-length as the Constitution will be able to decide, without any difficulty and in consonance with the constitutional objectives, whether a member of the public moving the Court in a particular case has sufficient interest to initiate the action.

XXX XXX XXX XXX 23.....It is a fascinating exercise for the Court to deal with public interest litigation because it is a new jurisprudence which the Court is evolving, a jurisprudence which demands judicial statesmanship and high creative ability. The frontiers of public law are expanding far and wide and new concepts and doctrines which will change the complexion of the law and which were so far as embedded in the womb of the future, are beginning to be born."

(Underlining by us)

He further submitted that the decisions in which the Supreme Court had held that the citizens have no fundamental right under Article 19(1)(g) in respect of liquor business and that selection of one among a few, for granting privilege in the matter of trade in liquor were not apposite to this case, as the crucial

question which arises for consideration is not the right to do business or equality of the petitioners in the matter of securing contract for bottling of liquor, but the challenge is to the arbitrary / capricious and / or mala fide exercise of the power given to the Government under the Karnataka Excise Act, 1965 (hereinafter referred to as "the Act") and the Karnataka Excise (Bottling of Liquor) Rules 1967 (hereinafter referred to as "the Bottling Rules"), in a manner and magnitude which tends to undermine the faith of the people in the Rule of Law, which can be a subject matter of Public Interest Petitions.

9. The ratio of the decisions on which the Learned Counsel for the petitioners relied, is that when there has been injury to the general public by violation of Rule of Law by arbitrary or capricious or malafide exercise of the Governmental power and not to any determinate class or group of persons or individual, a member of the public having sufficient interest in the subject matter is entitled to challenge the decision before the Court.

10. Learned Counsel for the respondents placed strong reliance on Paragraph 48 of the Judgment in the case of Fertilizer Corporation kamagar union AIR 1981 SC 344 @ 356, extracted earlier. They said that petitioners are just two among the 660 million people of the Country and had not an iota of interest to have the locus standi.

11. The submission made for the respondents is misconceived. It is not correct to State that the petitioners are just two persons among the citizens of India and not more. A citizen and a voter has sufficient interest to claim that the ejected representatives and officers entrusted with the Governmental power under the Constitution and the Laws should carry on the administration fairly and according to law and bona fide. In other words, Rule of Law being one of the basic structures of the Constitution, if it is breached, a citizen can seek redress in the Courts. The violation of rule of law is per se injurious to public interest. It may be, if the decision of the type concerned in these cases of the Government of Karnataka were to be challenged before this Court by a citizen and resident of any other State in India, he may be described as just a person among 660 million who has no sufficient interest. Similarly, if a licence for construction of a high rise building in the City of Bangalore is given by the Corporation of the City of Bangalore in violation of Town Planning Act, a resident and voter of any other City or Town could not be regarded as a person having sufficient interest to maintain a Petition. But in such a case as held by a Division Bench of this Court in M. D. Narayan v. State of Karnataka 1982 (2) KLJ.35 a resident of the City of Bangalore is a person having sufficient interest. Therefore, we are unable to agree that the petitioners who are voters and rate payers in the State have no sufficient interest to maintain the Petitions.

12. One other limb of the submission of the respondents was that as there was no loss to the exchequer as bottling rate would be paid by the Arrack Contractors and that additional burden might or would be passed on to the consumers, public interest had not suffered. Assuming that as a consequence of the impugned

order there has been no loss to the exchequer, without expressing any opinion on the point, we are unable to agree that a mere financial loss to the exchequer alone constitutes the basis to give a locus standi for a Public Interest Petition. For instance, in the case of *Transfer of Judges* also no loss to exchequer was involved but the question raised was the alleged loss to the independence of the Judiciary, a value much more valuable than any amount of money, by alleged arbitrary executive action. Similarly, in the case of *M. D. Narayan* 1982 (2) KLJ. 35, decided by a Division Bench of this Court, the challenge was that the licence granted for the construction of a high rise building in the City by the Corporation was in violation of Zonal Regulations made under the Country and Town Planning Act. By the grant of licence Corporation had not suffered any financial loss. On the other hand, it would get more property tax. But this Court upheld the locus standi of the petitioners who were residents of the City and quashed the licence issued in contravention of the law following the ratio of the Judgment of the Supreme Court in the case of *Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others*, in which the Supreme Court has upheld the locus standi of the appellant-a rate payer of Udipi Town Municipal Council, to challenge the grant of a licence for construction of a cinema theatre in violation of the Scheme framed under the Town Planning Act.

13. Counsel for the petitioners also pointed out that financially also the impugned decision was detrimental to the interests of the State as application for bottling arrack at Mandya made by the Mysore Sugar Company Limited - a State Government undertaking which had already installed a bottling unit and was eligible under Rule 3 of the Bottling Rules, was rejected and two private individuals, namely, respondents 4 and 5 were preferred. He submitted, by the decision, the State Government undertaking was denied the opportunity of earning profit and moreover the investment made by it on bottling unit was allowed to go to waste and the benefit was conferred on private individuals, which on the face of it was arbitrary, capricious and unreasonable.

14. Much stronger objection raised by the Learned Counsel for the respondents was that when the unsuccessful applicants have not approached this Court and those who have approached this Court have either compromised or withdrawn the Petitions, they being persons primarily injured even if their case were to be true, no Public Interest Petition was maintainable and no relief which they themselves did not want could be thrust upon them in view of the enunciation of law on this point by the Supreme Court in *S.P. Gupta Vs. President of India and Others*, extracted earlier.

15. The above submissions made, at first sight, appears to be attractive. But a closer scrutiny, however, shows that they do not merit acceptance. The observations, in para 24 applies to cases where the injury caused as a result of Governmental decision is primarily to an individual and incidentally to public interest as had happened in the case of *Justice Vohra* an Additional Judge of the Delhi High Court. The view taken by the Supreme Court was that the case of an

additional Judge appointed to a High Court has to be considered for permanent appointment. Failure to consider his case primarily affects the right of the Additional Judge concerned and incidentally the public interest. Therefore, when Justice Vohra did not desire to be considered for a permanent appointment (see paragraph 56 of the Judgment), no public interest petitioner could seek a direction to the Government for considering the case of Sri Vohra for such appointment. It would be a purposeless and fruitless Petition. It is also well settled that Courts would not issue futile writs.

16. A few illustrations would make the point more clear :

(i) Take a case in which more than one qualified persons have applied before the Government seeking a job or contract or privilege or licence. If out of them a qualified but less merited person is selected, the primary injury is to the competing applicants. If they do not come forward to challenge the decision before the Court or if already challenged withdraw their cases, no other person might have the locus standi to challenge, as the person selected has the qualification and the more merited does not want the relief.

(ii) But, take a case in which several persons have applied to a Governmental Authority for a job, contract or privilege or licence of considerable importance to public interest, some of whom possess the prescribed qualification and other do not have it and the authority concerned selects persons without qualification for such job or contract or licence or privilege, the primary injury is to public interest, for, entrustment of any such job or contract or licence to an unqualified person and in violation of law would primarily be injurious to public interest and incidentally it would also be an injury to the unsuccessful applicants. In such a case any citizen having sufficient interest can challenge the selection of an unqualified or disqualified person on the ground that it was injurious to public interest. The unsuccessful applicants also could challenge the decision. If the latter are persuaded or pressurised not to challenge or to withdraw the challenge the Public Interest Petition cannot be thrown out for want of locus standi on the ground rival applicants are not interested in challenging the decision.

(iii) Similarly take a case in which felling of trees in a State forest is prohibited by law except under specified circumstances and subject to specified conditions and under the permission granted by the Government and more than one person applies for permission to the Government and the Government accords permission to one and rejects the application of another. If the permission granted is in violation of the conditions and restrictions imposed by law, primary injury is to public interest and incidentally to the competing applicant. In such a case also it cannot be said that only unsuccessful applicant has the locus standi to present the petition. In such cases both a public interest petitioner as also the unsuccessful applicant would have the locus standi.

To put in a nutshell, if the injury to public interest caused by a Governmental decision is primary and/or independent and separable from the injury caused to

individual, a public interest petition is maintainable whether or not the concerned individual chooses to challenge the decision. If on the other hand injury suffered is primarily by an individual and without him no relief can be granted, as was the position in Sri Vohra's case, a Public Interest Petition is purposeless and not maintainable.

17. A contrary view in our considered opinion would be disastrous to public interest, for, if the Government confers a largess or privilege to certain individuals in preference to others seeking the same largess or privilege, flouting the law which undermines the faith of the people in Rule of Law and the unsuccessful applicants are won over or run over and the doors of the Courts are closed to Public Interest Petitions on the ground that unsuccessful applicants have backed out, it would pave the way for destruction of Rule of Law which is one of the basic structures of the Constitution. To close the doors in such a case is itself injurious to public interest, for, the very existence of the possibility of challenge (sic) such Governmental action by a member of the public before the Courts appointed as the sentinels of Rule of Law under the Constitution, would act as a check for the exercise of power in such manner and its absence, an encouragement to do so.

18. Now let us take the facts and circumstances of the case as alleged by the petitioners. A largess amounting to a business turnover of over 50 crores of Rupees in the form of bottling of arrack was granted to respondents 3 to 10 out of whom respondents 3 and 5 to 10 were ineligible under the Rules for securing the licence. Out of them respondent 9 -Chaitanya Kumar who is alleged to be a benamidar for the Minister for Information is admittedly closely related to him. He is selected though ineligible under the Rules. Application of those who held licences specified in Rule 3(2) of the Bottling Rules were rejected and those who did not possess such licences were selected. Thus the main ground of attack is arbitrary and capricious and mala fide selection of unqualified persons for conferment of largess in the form of entrusting bottling of arrack contract for a period of about four years comprised of an estimated turnover of not less than 50 crores. Another strong circumstance indicating capricious exercise of power is the preferring of private individuals to the Mysore Sugar Company - a State Government undertaking which held distillery licence, a condition of eligibility under Rule 3(2) of the Bottling Rules. Therefore, the injury complained of is primarily to public interest and incidentally to the other eligible applicants. The magnitude of the matter is such if the allegations are true, the injury to Rule of Law and public interest is writ large : The three eligible and unsuccessful applicants filed Petitions before this Court, but have filed memos withdrawing the petitions as stated earlier. As set out earlier, Learned Counsel for the petitioners submitted that the reason for filing such memos was the great pressure brought to bear upon them by the respondents as their locus standi was beyond question. Whatever be the reason, the fact remains that they have filed the memos seeking permission to withdraw the Writ Petitions, on which we decided to pass orders along with the first two Petitions- The two survivors are the two Public

Interest Petitions.

19. A similar situation had arisen in the case of A. Laxminagar and ors. v. State of Karnataka, W.P. No. 4952 of 1981 DD 7th July 1982. In the said case Legislators and residents of Bangalore challenged the legality of the order of the State Government in disposing of by lease a valuable piece of land in the heart of the City of Bangalore, after calling for tenders. On learning that the lease was disposed of in favour of a person on a monthly rental of Rs. 16,350/- though there were offers by others of monthly rental of 25,000/- to Rs. 40,000/- and the competing tenderers who had challenged the order, later entered into an unholy compromise with the grantee and withdrew their cases either at the stage of Writ Petition or Writ Appeals. Preliminary objection was raised to the maintainability of the Petition on the ground that when the competing tenderers withdrew their cases and did not want relief, Public Interest Petition was not maintainable. The objection was overruled by a Division Bench of this Court by order dated 20th April 1982. Relevant portions of the order reads :

"9. In the present case, undisputedly, the first petitioner is a Member of the Legislative Assembly representing the Chick-pet Constituency in which the school and the land is located. Petitioners 2 to 7 are Members of the State Legislature from other Constituencies of the City. The other petitioners are all residents of the locality. They cannot be characterised as way-farers or meddle-some interlopers or busybodies. Whether the pleas raised and the contentions urged by the petitioners as to the invalidity of the impugned Government Order are legally tenable and well-founded or not or whether the case as presented and the time at which it was presented, there is any ground or justification for interference, is a matter for consideration later and would have no bearing on the question of locus standi. At this stage, suffice it to say, that the petitioners cannot be said to have no locus-standi. They are not sponsoring the cause of the unsuccessful bidders who have abandoned the remedy for enforcement of their rights. If it was so, the petition would not be maintainable as the petitioners could not, in the guise of public interest petition seek relief for the benefit of the parties, who are themselves not interested in the matter. (See paragraph 24 of the Judgment in S. P. Gupta's case). The injury pleaded and the relief sought for by the petitioners are entirely different. In ground Nos. (12) and (27) the petitioners have stated as follows :

"(12) The petitioners further submit that during the pendency of the above writ appeals, the petitioners herein and others similarly situated like them desired to file impleading applications. At there was an injunction obtained by the other tenderers and the children were not prevented from playing in the play-ground, the petitioners have not approached earlier and now the Respondents 4 to 7 have colluded with the 3rd respondent and made applications for with-drawing the appeals, the petitioners herein are constrained to approach this Hon''ble Court with this Writ Petition under Article 226 of the Constitution of India, for reliefs, in view of the fact that the decision rendered earlier is not binding on

these petitioners as they were not parties in the said Writ Petitions and the relief claimed by these petitioners are entirely different from one sought for by the Respondents 4 to 7 in their petitions.

xxx xxx xxx xxx (27) Viewed from any angle, the lease in question is not in the interest of public apart from the entire procedure adopted leading to lease the land in question in favour of the 3rd Respondent being wholly illegal."

(underlined by us)

"10. The grounds urged and the reliefs sought prima facie show that the petitioners are sponsoring a public grievance and not of the unsuccessful bidders."

xxx xxx xxx xxx "12. In the light of the above discussion we over-rule the preliminary objection and hold that the petitioners have the locus standi to present the petition. The petition shall be listed for farther hearing."

(Underlining by us)

One of the petitioners therein had also filed a suit In respect of the same subject matter and had sought the permission of the City Civil Court under Order I, Rule 8 CPC to sue in a representative capacity. On the objection of the respondents that when the suit was pending against the same order, the Writ Petition was not maintainable, the Writ Petition was dismissed leaving all the contentions open by order dated 7th July 1982. After the Writ Petition was dismissed, strangely on 17th July 1982 the suit was withdrawn. Again the other petitioners presented a Public Interest Petition in W. P. No. 33040/1982 and the same is pending. (See paras 2 to 11 of the Order dated 20-10-1982 on I. A. No. 1 in W.P. 33040/1982). Thus it may be seen in cases involving heavy stakes and when powerful persons are at the back, it is the public interest petitioners alone who could be expected to prosecute the case to its culmination in the interest of the public.

20 (i) It is, however, necessary to observe that in order that petition in public interest is entertained against an alleged unlawful or mala fide Governmental action, the magnitude of the injury to public interest must be such as Would call for interference in a Public Interest Petition. It is not any and every illegal action which could be permitted to be challenged in a Public Interest Petition, For instance, if an appointment to a Class-IV post or Class-III post or a license to do some petty business is granted to one rejecting the claim of another in violation of law, certainly it would not be a fit matter for interference in Public Interest Petition. Such cases could be brought before the Court only by unsuccessful applicants. As observed by the Supreme Court in the cases cited supra, there would be infinite varieties of situations and it is for the Courts to decide in a given case as to whether it merits interference at the hands of the Court in a Public Interest Petition.

(ii) Similarly, as observed by the Supreme Court at para 23 of the Judgment in S.P. Gupta Vs. President of India and Others, of the Judgment in Fertilizer

Corporation Kamagar Union's case AIR 1981 SC 344 @ 356, the Courts cannot interfere in matters of internal management of Government and make a roving inquiry as to what the Government should or should not have done in respect of any matter. For instance, whether the Government adopts the policy of bottling liquor or scraps it, if it had already introduced it, is a matter of policy and the Court cannot inquire into the propriety of the decision. But if the Government takes a decision which is injurious to public health, as was contended before the Kerala High Court that sacheting of arrack was injurious to the health of consumers, a Public Interest Petition is maintainable. The decision of the Kerala High Court on a Public Interest Petition directing the Government to re-examine its decision regarding sacheting of arrack on which the Learned Counsel for the State relied to show that its decision to give up sacheting of arrack was good, itself goes to show that certain policy decisions, if injurious to the public interest can be a subject matter of Public Interest Petition.

However, if the Government takes a policy decision to fix the selling rate of arrack very high either to ensure a greater income to itself or to make it prohibitive for poorer section with the object of saving them from consuming arrack, it could not possibly be a matter for interference by the Courts. Similarly, as pointed out by one of the Learned Counsel for the respondents, a welfare measure like supply of free uniform and/or text books to school children at the cost of the exchequer is a matter of policy and the Court cannot inquire as to whether the decision is good or bad on the ground it was an unnecessary expenditure from exchequer. Such matters, as held by Krishna Iyer, J. at paragraph 47 of the Judgment in Fertilizer Corporation Kamagar Union's case AIR 1981 SC 344 @ 356 are out of bounds for the Courts. What is within the jurisdiction of the Courts is clearly enunciated at the end of paragraph 47. The relevant sentence reads :

"The broad parameters of fairness in administration, bona fides in action and the fundamental rules of reasonable management of public business if breached will become justiciable."

(underlining by us)

The enunciation of the point as above and the enunciation of this aspect in paragraphs 18, 19 and 19--A in S.P. Gupta Vs. President of India and Others, @ 195 gives clear guidelines to decide the question of locus standi of the petitioners in these Petitions.

21. After giving our careful thought and consideration to the points urged for both the parties in the light of the ratio of the Judgments of the Supreme Court, we are of the view the as the allegation in the Petition is that in conferring the largess or privilege consisting of a business turnover of over 50 crores of Rupees to respondents 3 to 10 which enable them to earn huge profits, the Government had acted in flagrant violation of law, arbitrarily, capriciously and mala fide every citizen resident of this State has sufficient interest to approach the High Court

seeking nullification of such decision.

22. The Supreme Court has, in clearest terms laid down that if a challenge to arbitrary or mala fide administrative action which seriously affects Rule of Law is disallowed, disrespect for law would be the consequence, which would strike a severe blow to Rule of Law and force the people to fight out the matter in the streets. Therefore, citizens must be allowed to resort to a legal remedy in the Courts and should not be forced to go to the streets to resort to unconstitutional methods to express their protest against such Governmental decisions. Any such situation created by taking a narrow, pedantic view about locus standi, even in situations in which arbitrary or capricious or mala fide exercise of power is alleged and the extent and gravity of such unlawful action is such as would make a mockery of Rule of Law, the consequence would be disastrous in that it might mark the beginning of the end of the faith of the people in the Rule of Law. These are the weighty reasons which have persuaded us to hold that the petitioners have the locus standi to prosecute the petitions and we hold accordingly.

II. JUSTICIABILITY:

23. On this question, Learned Counsel for the respondents submitted as follows :

As far as the liquor trade is concerned, the power and privilege of the State is absolute. No citizen can claim a fundamental right to do business in liquor. The Government has absolute discretion to select any individual for conferment of privilege in respect of any matter connected with liquor trade. It is extra commercium. Even a competitor for the grant of privilege in liquor trade has no right to secure relief from the Court. This being the settled position in law, the petitioners have no right to challenge the validity of the impugned order. In support of the submission, the Counsel has relied upon the following decisions of the Supreme Court :

(1) State of Orissa and Others Vs. Harinarayan Jaiswal and Others, Paragraph 18, on which the Learned Counsel relied reads :

"18. The High Court erroneously thought that the Government was bound to satisfy the Court that there was collusion between the bidden. The High Court was not sitting in appeal against the order made by the Government. The inference of the Government that there was a collusion among the bidders may be right or wrong. But that was not open to judicial review so long as it is not proved that it was a make-believe one. The real opinion formed by the Government was that the price fetched was not adequate. That conclusion is taken on the basis of Government's expectations. The conclusion reached by the Government does not affect any one's right....."

(2) Nashirwar and Others Vs. State of Madhya Pradesh and Others, The relevant portions of the Judgment read :-

"15. The observations in Crowley's case (1980) 34 L Ed 620 (supra) which were laid down as a ruling of this Court in Cooverjee B. Bharucha Vs. The Excise

Commissioner and the Chief Commissioner, Ajmer and Others, are these :

"There is no inherent right in a citizen to sell intoxicating liquors by retail ; it is not a privilege of a citizen of the State or of a citizen of the United States. As it is a business attended with danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evil. The manner and extent of regulation rest in the discretion of the governing authority".

Bharucha"s case negated the contention of inherent right of citizens to carry on trade in intoxicating liquors".

"22.This trade or business is treated as a class by itself and cannot be treated on the same basis as other trades while considering Article 14....."

"35. Trade in liquor has historically stood on a different footing from other trades. Restrictions which are not permissible in other trades are lawful and reasonable so far as the trade in liquor is concerned, That is why even prohibition of the trade in liquor is not only permissible but is also reasonable. The reasons are public-morality, public interest and harmful and dangerous character of the liquor. The State possesses the right of complete control over all aspects of intoxicants, viz., manufacture., collection, sale and consumption. The State has exclusive right to manufacture and sell liquor and to sell the said right in order to raise revenue. That is the view of this Court in Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others, ..and State of Orissa and Others Vs. Harinarayan Jaiswal and Others, The nature of the trade is such that the State confers the right to vend liquor by farming out either in auction or on private treaty. Rental is the consideration for the privilege granted by the Government for manufacturing or vending liquor. Rental is neither a tax nor an excise duty. Rental is the consideration for the agreement for grant of privilege by the Government".

3. Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others,
Paragraphs 47 and 55 of the Judgment which reads:--

"47. These unanimous decisions of five Constitution Benches uniformly emphasized after a careful consideration of the problem involved that the State has the power to prohibit trade which are injurious to the health and welfare of the public, that elimination and exclusion from business is inherent in the nature of liquor business, that no person has an absolute right to deal in liquor and that all forms of dealings in liquor have, from their inherent nature, been treated as a class by themselves by all civilised communities. The contention that the citizen had either a natural or a fundamental right to carry on trade or business in liquor thus stood rejected".

"55. Since rights in regard to intoxicants belong to the State, it is open to the Government to part with those rights for a consideration. By Article 298 of the Constitution, the executive power of the State extends to the carrying on of any

trade or business and to the making of contracts for any purpose. As observed in Harinarayan Jaiswal's case, "if the Government is the exclusive owner of those privileges, reliance on Article 19(1)(g) or Article 14 becomes irrelevant. Citizens cannot have any fundamental right to trade or carry on business in the properties or rights belonging to the Government, nor can there be any infringement of Article 14, if the Government tries to get the best available price for its valuable rights". Section 27 of the Act recognises the right of the Government to grant a lease of its right to manufacture, supply or sell intoxicants. Section 34 of the Act read with Section 59(d) empowers the Financial Commissioner to direct that a licence, permit or pass be granted under the Act on payment of such fees and subject to such restrictions and on such conditions as he may prescribe. In such a scheme, it is not of the essence whether the amount charged to the licensees is pre-determined as in the appeals of Northern India Caterers and of Green Hotel or whether it is left to be determined by bids offered in auctions held for granting those rights to licensees. The power of the Government to charge a price for parting with its rights and not the mode of fixing that price is what constitutes the essence of the matter. Nor indeed does the label affixed to the price determine either the true nature of the charge levied by the Government or its right to levy the same".

4. Chingleput Bottlers Vs. Majestic Bottling Company,

Paragraph 16 of the Judgment reads :-

"16. In our judgment, the High Court exceeded its jurisdiction in issuing a writ of mandamus directing the Commissioner to grant a licence to Messers Majestic Bottling Company without the prior approval of the State Government as enjoined by Rule 7 of the Rules. The High Court was unduly technical in applying the rules of pleadings. Absence of a specific plea in the nature of demurrer would not invest the High Court with jurisdiction to issue a writ of mandamus ordaining the commissioner to grant a licence to Messers Majestic Bottling Company under Rule 7 of the Rules without the prior approval of the State Government which was a condition pre-requisite for the grant of such privilege. It is regrettable that the High Court should have short circuited the whole procedure upon a wrongful assumption of its own powers. The view taken by the High Court is manifestly erroneous. Otherwise, the statutory requirement of such prior approval of the State Government under Rule 7 would be rendered wholly otiose."

24. It is now settled that in the matter of awarding contract or granting a largess the Government has no absolute discretion and it has no liberty to act like a private party in choosing the beneficiary. On this aspect, the Supreme Court in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, said thus :--

"11. Today the government, in a welfare State is the regulator and dispenser of special services and provider of a large number of benefits, including jobs, contracts, licences, quotas, mineral rights etc. The Government pours forth

wealth, money benefits, services, contracts, quotas and licenses. The valuable dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationships to Government are of many kinds. They comprise social security benefits, cash grants for political sufferers and the whole scheme of State and local welfare. Then again, thousands of people are employed in the State and the Central Government and local authorities. Licences are required before one can engage in many kinds of business or work. The power of giving licences means power to withhold them and this gives control to the Government on the lives of many people. Many individuals and many more businesses enjoy largess in the form of Government contracts. These contracts often resemble subsidies. It is virtually impossible to lose money on them and many enterprises are set up primarily to do business with Government. Government owns and controls hundreds of acres of public land valuable for mining and other purposes. These resources are available for utilisation by private corporations and individuals by way of lease or licence. All these mean growth in the Government largess and with the increasing magnitude and range of governmental functions as we move closer to a welfare State, more and more of our wealth, consists of these new forms. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. But on that account, can it be said that they do not enjoy any legal protection? Can they be regarded as gratuity furnished by the State so that the State may withhold, grant or revoke it as its pleasure? Is the position of the Government in this respect the same as that of a private giver? We do not think so. The law has not been slow to recognise the importance of this new kind of wealth and the need to protect individual interest in it and with that end in view it has developed new forms of protection. Some interests in Government largess, formerly regarded as privileges, have been recognised as rights while others have been given legal protection not only by forging procedural safeguards but also by confining/structuring and checking Government discretion in the matter of grant of such largess. The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largess in its arbitrary discretion or at its sweet will. It is insisted, as pointed out by Professor Reich in an especially stimulating article on "The New Property" in 73 Yale Law Journal 733, "that Government action be based on standards that are not arbitrary or unauthorised. The Government cannot be permitted to say that it will give jobs or enter into contracts or quotas or licences only in favour of those having grey hair or belonging to a particular political party or professing a particular religious faith. The Government is still the Government when it acts in the matter of granting largess and it cannot act arbitrarily. It does not stand in the same position as a private individual".

"12. We agree with the observations of Mathew, J., in *V. Punnenthomas Vs. State of Kerala*, that : "The Government, is not and should not be as free as an individual in selecting the recipients for its largess. Whatever its activity, the

Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal."The activities of the Government have a public element and, therefore there should be fairness and equality. The State need not enter into any contract with any one, but if it does so, it must do so fairly without discrimination and without unfair procedure". This propositions would hold good in all cases of dealing by the Government with the public, where the interest sought to be protected is a privilege. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any per son it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts, quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory".

Underliningby me)

25. In the case of Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, reiterating the ratio in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, the Supreme Court said :

"11.But the Government is not free to act as it likes in granting largess such as awarding a contract or selling or leasing out its property. Whatever be its activity, the Government is still the Government and is, subject to restraints inherent in its position in a democratic society. The constitutional power conferred on the Government cannot be exercised by it arbitrarily or capriciously or in an unprincipled manner ; it has to be exercised for the public good. Every activity of the Government has a public element in it and it must, therefore, be informed with reason and guided by public interest. Every action taken by the Government must be in public interest; the Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated. If the Government awards contract or leases out or otherwise deals with its property or grants any other largess, it would be liable to be tested for its validity on the touch-stone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid.Article 14 strikes at arbitrariness in State action and since the principle of reasonableness and rationality, which is legally as well as philosophically an essential element of

equality or non-arbitrariness, is projected by this Article, it must characterise every governmental action, whether it be under the authority of law or in exercise of executive power without making of law".

"14. Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some Directive Principle is sought to be advanced or implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property. We have referred to these considerations only illustratively, for there may be an infinite variety of considerations which may have to be taken into account by the Government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Government in taking a particular action, that the Court would have to decide whether the action of the Government is reasonable and in public interest. But one basic principle which must guide the Court arriving at its determination on this question is that there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the Court by proper and adequate material. The Court cannot lightly assume that the action taken by the Government is unreasonable or without public interest, because, as we said above, there are a large number of policy considerations which must necessarily weigh with the Government in taking action and therefore the Court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it would be the plainest duty of the Court under the Constitution to invalidate the governmental action. This is one of the most important functions of the Court and also one of the most essential for preservation of the rule of law. It is imperative in a democracy governed by the rule of law that governmental action must be kept within the limits of the law and if there is any transgression, the Court must be ready to condemn it. It is a matter of historical experience that there is a tendency in every government to assume more and more powers and since it is not uncommon phenomenon in some countries that the legislative check is

getting diluted, it is left to the Court as the only other reviewing authority under the Constitution to be increasingly vigilant to ensure observance with the rule of law and in this task, the Court must not flinch or falter. It may be pointed out that this ground of invalidity, namely, that the governmental action is unreasonable or lacking in the quality of public interest, is different from that of mala fides though it may, in a given case, furnish evidence of mala fides".

(underlining by us)

In the face of the ratio in the aforesaid two decisions, it can no longer be contended that the Government is free to do as it likes in the disposal of contracts or largess.

26. Counsel for the respondents however maintained that the ratio in the decisions concerning business other than liquor was inapplicable to these petitions, for, in the three decisions of the Supreme Court referred to earlier, the Supreme Court had held that the Government had absolute discretion in disposing of privileges in liquor trade.

27. In our view, the contention of the respondents that the Government has absolute right to dispose of privilege in matters connected with liquor is too wide for acceptance. The ratio of the decisions is that a citizen has no fundamental right to do business in liquor, in that, no such right can be claimed under Article 19(1)(g) and further selection of a person from among persons eligible under law to compete for securing the privilege in the best interest of the revenue of the State, is not a matter for interference by the Courts and that if the Government were to secure higher revenue by preferring one to the other, there would be no question of violation of Article 14. There are decisions of the Supreme Court which clearly lay down that if the decision in the matter of grant of privileges regarding liquor trade were to be in violation of law or mala fide, the Courts can interfere. The law repeatedly laid down by the Supreme Court is that in disposing of privilege of trading in liquor, which constitutes the major source of income to the exchequer, the Government cannot act in an arbitrary or capricious manner or mala fide.

(i) The earliest case is K.N. Guruswamy Vs. The State of Mysore and Others, . In that case, the Supreme Court said thus :-

"19. x x x x But that apart, this would, in our opinion, run counter to the policy of the legislature which is that matters of such consequence to the State revenue cannot be dealt with arbitrarily and in the secrecy of an office. Whatever is done must be done either under the Rules or under a Notification which would receive like publicity and have like force, and of which the people at large would have like notice. Arbitrary Improvisation of an "ad hoc" procedure to meet the exigencies of a particular case is ruled out.-- "

"20. The next question is whether the appellant can complain of this by way of a writ. In our opinion, he could have done so in an ordinary case. The appellant is

interested in these contracts and has a right under the laws of the State to receive the same treatment and be given the same chance as anybody else. Here we have Thimmappa, who was present at the auction and who did not bid-not that it would make any difference if he had, for the fact remains that he made no attempt to outbid the appellant. If he had done so it is evident that the appellant would have raised his own bid.

The procedure of tender was not open here because there was no notification and the furtive method adopted of settling a matter of this moment behind the backs of those interested and anxious to compete is unjustified. Apart from all else, that in itself would in this case have resulted in a loss to the State because, as we have said, the mere fact that the appellant has pursued this writ with such vigour shows that he would have bid higher. But deeper considerations are also at stake, namely the elimination of favouritism and nepotism and corruption ; not that we suggest that that occurred here, but to permit what has occurred in this case would leave the door wide open to the very evils which the legislature in its wisdom has endeavoured to avoid. All that is part and parcel of the policy of the legislature. None of it can be ignored."

(Underlining by us)

(ii) In the two recent decisions also the said law has been reiterated.

(a) In the case of State of Haryana and Others Vs. Jage Ram and Others, the Supreme Court, interfering with the decision of the Punjab Government to re-auction the sale of the right to vend liquor, said thus :-

"18.. If the re-auctions cannot be upheld since due publicity was not given to them, the grant of licences by private negotiations during the course of re-auctions would also have to be set aside. Assuming that there were valid reasons for revoking the decision to hold the re-auctions, like the paucity of adequate bids at the re-auctions, or rights in such property. The reductions should have been postponed and due publicity given to the decision to grant licences by private negotiations. By Rule 36(24), power has been conferred to resell a vend by public auction or by private contract. But this latter power has to be exercised with great care and circumspection. Public auction has to be the normal mode of selling public property. It is open to public gaze and eschews many temptations to which private contracts are subject. It is only when a public auction is not feasible or has failed to attract bidders after due publicity, that a private contract can be negotiated for disposing of public property, or rights in such property. Not only is no reason forthcoming why the intention to hold a public auction was abandoned after the auction had commenced but the proceedings were not adjourned even for a few days in order to publicise the intention to resell the vends by private contract. The Excise Authorities could not have abruptly decided to jettison the original intention of holding a public auction and grant licences by private negotiations on the spur of the moment, that very day and at that very hour. The decision smacks of arbitrariness, is unfair and unreasonable, and

cannot be allowed to stand."

(Underlining by us)

(b) In the case of *Bishnu Ram v. Parag Saikia* AIR 1984 SC 899 the Supreme Court held in the matter of grant of liquor licence that it is impermissible for the High Court to adjudge the suitability or otherwise of the competing applicants. Therefore, there can be no doubt if among eligible applicants one or more of them are selected by the competent authority for grant of any type of privilege in liquor, it is not open to this Court to make re-assessment of the suitability of the applicants and say the petitioner before this Court was more suitable than the one selected by the authorities. In such a case even the fact that the authority had not assigned as to why it selected one eligible applicant to another eligible applicant also does not constitute a ground for the High Court, as an administrative authority is not bound to record reasons for its decision as held by the Supreme Court in the case of *Mahabir Jute Mills Ltd., Gorakhpore Vs. Shibban Lal Saxena and Others*, . But it cannot be said that if the statute prescribes the qualification for grant of privilege/license and the authority proceeds to select persons who are not qualified under the provisions, even then it is not open to the High Court to set aside the grant, because no authority can claim a right to select persons for conferment of privilege/license contrary to law. In such a case question of examining as to whether the authority had recorded reasons also does not arise as no reasons can make a selection made in contravention of law valid.

(c) In the case of *Chingleput Bottlers Vs. Majestic Bottling Company*, , while reversing the Judgment of the Madras High Court, which had issued a writ of mandamus to the Excise Commissioner to grant the licence to the petitioner before it, without the approval of the State Government, on the ground that the High Court had no power to issue a writ of mandamus to grant the licence for bottling liquor in violation of the Rules stated thus :-

"17. We should not be understood as laying down an inflexible rule that the High Courts cannot, under any circumstances, regulate or control the manner of grant of a liquor licence by the issue of a writ of mandamus. It would all depend upon the facts and circumstances as to whether the High Court should issue a writ of mandamus or not. The grant of a liquor licence is a matter of privilege. In the very nature of things, the grant or refusal of licence is in the discretion of the State Government. Normally, where the statute vests a discretionary power upon an administrative authority, the Court would not interfere with the exercise of such discretion unless it is made with oblique motives or extraneous purposes or upon extraneous considerations. The present case does not fall within the rule laid down in *K.N. Guruswamy Vs. The State of Mysore and Others*, and *P. Bhima Reddy Vs. State of Mysore and Others*, The decision in *Guruswamy's* and *Bhooma Reddy's* cases are both in consonance with the well-settled principle that the High Court can always issue a writ of mandamus under Article 226 of the Constitution against a public authority to compel the performance of a public

duty where such authority acts in violation of the law".

(Underlining by us)

In view of the ratio of the above decisions as also the ratio in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, we see no substance in the contention that a decision of the Government to confer any type of privilege in liquor trade on any individual in contravention of law or mala fide is not justiciable.

III. (A) LEGALITY OF THE DECISION :

28. Mounting the attack against the awarding of bottling contract to respondents 3 to 10, Learned Counsel for the petitioners described them as "chosen eight" and submitted that the Excise Commissioner and the Government had chosen respondents 3 to 10 for conferring a largess amounting to a turnover of 50 crores in a period of about four years. He pointed out that consumption of arrack per month in the State was of the order of 30 lakhs litres and that at the rate of Rs. 4/- for bottling a liters the turnover would be around Rs. 120 lakhs per month and per annum it would workout about Rs. 15 crores and that for a period of four years, it would be more than Rs. 50 crores, and that by granting the bottling contract to respondents 3 to 10 they were given opportunity to make huge profits running to several crores of Rupees and even if the profit margin was so less at 10 per cent; as stated by the Government, and Respondents 3 to 10, which was difficult to believe, Respondents 3 to 10 would be earning 5 crores and this had been done in gross violation of law, secretly and in an arbitrary and capricious manner. He stated that the following were the circumstances which substantiate his plea :

(1) The advertisement dated 11-4-1984 did not require furnishing of any particulars and production of certificates, which were usually required in respect of applications for awarding of contracts, one such being the Income Tax Clearance Certificate.

(2) Applicants eligible under Rule 3(2) of the Bottling Rules were excluded to get at the "chosen eight" out of whom seven were ineligible under that rule, for securing Bottling Licence.

(3) Application of an eligible applicant--The Mysore Sugar Company, a Government Company, for undertaking bottling at Mandya was excluded and an ineligible applicant--H. S. Somashekar, the fifth respondent and a private arrack contractor--the fourth respondent, were preferred to the detriment of the interest of the State owned undertaking.

(4) Privilege of bottling at seven centres was granted to Respondent No. 5--H.S. Somashekar of Bangalore and at three centres to the Canara Bottling Company - Respondent No. 10 and to Respondent No. 9 Chaitanya Kumar, who is admittedly

a close relative of the Minister for Information and at two centres to Respondent No. 6--K. M. Srinivasa Murthy, excluding all the eligible applicants, which clearly indicates an intention to confer a larger largess in favour of these Respondents though all of them were ineligible under the Bottling Rules for securing the bottling licence.

(5) As against the usual condition in all the relevant rules framed under the Act, according to which the various types of privileges are granted for only one excise year ending 30th June of a given year, the privilege of bottling was granted for an unusually long period of four years in favour of Respondents 3 to 10.

(6) Rule 3(2) of the Bottling Rules were amended hastily during the pendency of the Writ Petitions before this Court without giving any time to the public to file objections and suggestions, to make ineligible persons eligible.

(7) The amendment instead of prescribing an eligibility for securing license, made the selection already made in contravention of the Rules, an eligibility for securing license.

(8) Exorbitant rates for bottling were fixed without giving any scope for competitive offers, so as to enable the "chosen eight" to make huge profits.

(9) The proceedings of the Excise Commissioner to make the selection and his recommendation was farce as the eight persons were chosen by the Excise Commissioner as directed by the Government.

29. Regarding the number of applications received and the selections made, the petitioner in Writ Petition 19851/1984 has said thus :

"The petitioner learns, that as many as 131 persons sought for the grant of contract, the prospects being a windfall. Thereafter, the second respondent herein on the orders of the first respondent seems to have arbitrarily chosen 8 persons for the grant of contract and has by an order dated 29th September 1984 a copy of which is produced herewith and marked as Annexure "B" conferred on respondents 3 to 10 herein, the largess in the form of grant of contracts."

XXX XXX XXX XXX (13) That the entire process of granting contract was very secretive and in a manner not known to law. The largess of the State in the form of contracts have been given indiscriminately to the chosen eight for extraneous considerations thereby resulting in injustice to the general public."

30. The allegation that selection had been made arbitrarily is refuted in the statement of objection filed on behalf of the respondents I and 2 supported by an affidavit filed by a Special Officer for framing rules in the office of the Excise Commissioner stating that the statements made therein were based on information gathered from the records. In particular regarding the allegation that selection was arbitrary, it is stated as follows :

"4. It is submitted that while entrusting the work of bottling of arrack to

Respondents 3 to 10, relevant factors, such as, capability, suitability and creditworthiness have been considered including the intelligence reports, while deciding to whom the contracts of bottling of Arrack should be entrusted. The action taken by the 1st and the 2nd respondents cannot be termed as arbitrary because a bona fide reasonable decision on valid grounds has been taken in the matter of allotment of contract of bottling of arrack. It is emphatically, denied that the Respondents 3 to 10 are entrusted with the work of bottling of arrack because of ulterior motives. Intelligence reports from the Police have also been considered while allotting the contracts. It is felt that as far as possible, the work of bottling of arrack should be entrusted to an independent agency which is not connected with the manufacture of arrack or rectified spirit to avoid any possibility of adulteration and short measurement. It was thought that if the work of bottling of arrack is entrusted to a third person unconnected with the manufacture of arrack or sale of the same, it will be far easier to check short measurement, adulteration and also prevent evasion of excise duty. The Excise Commissioner after interviewing all the applicants and getting the necessary information from the applicants as well as from other sources, has honestly assessed their capacity and suitability. Thereafter, the Excise Commissioner made his recommendation and the State Government, after examining the matter carefully and applying its mind, has entrusted the work of bottling of Arrack to Respondents 3 to 10.

5. In view of the decision taken by the State Government to see that Arrack is sold only in sealed bottles and the work of bottling of Arrack should be entrusted to persons after calling for applications from the intending contractors, it was felt that the Rules, i.e., the Karnataka Excise(Bottling of Liquors) Rules, 1967, required to be amended enabling those contractors to apply for and obtain necessary licences of bottling of Arrack. Therefore the Karnataka Excise (Bottling of Liquors) Rules 1967 were amended by 1984 Amendment Rules. Amendment Rules 1984 amended Sub-rule (2) of Rule 3 enabling the persons entrusted with the work of bottling of arrack by the Government to apply for and obtain the bottling licences. The draft of the Amendment Rules was duly published and thereafter, the Rules were finalised. The Amendment of Rule 3 became necessary in view of the decision of the Government to see that bottling of Arrack should be entrusted to a separate set of contractors. It is denied that the Rules have been amended with an ulterior motive. The mala fides attributed by the petitioners in so far as Amendment Rules is concerned, are wholly baseless. The Rules will have to be amended from time to time depending upon the exigencies and the situations. To meet the present requirement, Rules had to be suitably amended. Hence it is submitted that the allegations made to the effect that the Rules are amended to accommodate certain persons, are baseless.

31. The legality of the decision of respondents 1 and 2 in selecting respondents 3 to 10 for entrustment of the privilege of bottling arrack is the crucial question which arises for consideration in the Petitions. In order to appreciate the contention that the impugned decision of the Government was illegal, capricious

and arbitrary, it is necessary to refer to the relevant provisions of the Act and the Rules framed thereunder. Section 13 of the Act prohibits manufacture etc., of excisable articles except under a licence. The Section reads :

"2 (18) "Liquor" includes --

(a) spirits of wine, denatured spirits, wine, beer, toddy, and all liquids consisting of or containing alcohol (or wash) ; and

(b) xxx xxx xxx "2(16) "Intoxicant" means any liquor as defined in Clause (18) or any intoxicating drug as defined in Clause (17)"

XX XX XX XX "2(26) "spirit" means any liquor containing alcohol and obtained by distillation whether it is denatured or not."

"13. Manufacture etc., of excisable article prohibited except under a licence:--

(1) No person shall-(a) manufacture or collect an intoxicant ;

xxx xxx xxx xxx (e) bottle liquor for sale

xxx xxx xxx xxx except under the authority and subject to the terms and conditions of a licence granted by the Deputy Commissioner in that behalf or under the provisions of Section 18 "

Section 26 of the Act which regulates the grant of licences and permits reads :

"26. Form and conditions of licence, etc.--

(1) Every licence or permit granted under this Act shall be granted on payment of such fees, for such period, and subject to such restrictions and on such conditions and shall be in such Form and shall contain such particulars, as may be prescribed.

(2) The conditions prescribed under Sub section (1) may include provision of accommodation by the licensee to Excise Officer at the licensed premises or the payment of rent or other charges for such accommodation at or near the licensed premises and the payment of the costs, charges and expenses (including the salaries and allowances of the Excise Officers) which the State Government may incur in connection with supervision to ensure compliance with the provisions of this Act the rules made thereunder and the licence."

(Underlining by us)

In exercise of the powers under the Act, the State Government has framed several rules, some of them are :

(i) The Karnataka Excise (Lease of the Right of Retail Vend of Liquors) Rules, 1969: Rule 3 of the said Rules provides that the right of retail vend of liquors may be disposed of by tender or by auction or by tender-cum-auction or in any other manner as the State Government may by order specify. Rule 7 of the said Rules disqualifies a person from submitting a tender if he has not produced a

valid Income Tax Clearance certificate. Rule 4 of the Rules inter alia provides that the Excise Commissioner while calling for applications to submit tenders should issue a notification containing the particulars such as the name or names of shops or groups of shops of liquors to be disposed of, the period of lease etc. Rule 15 of the Rules provide that the Deputy Commissioner on the Divisional Commissioner, as the case may be, might accept a tender provisionally. Sub-rule (2) of Rule 15 requires the State Government to pass final orders confirming the disposal of the right to retail vend of the liquor having due regard to the interest of revenue or refusing to confirm it. Rule 16 of the Rules provides that the person whose tender is confirmed under Rule 15 shall within 15 days from the date of communication of such confirmation order or before the 30th day of June, whichever is earlier, enter into an agreement of lease with the State Government incorporating the terms and conditions under which the right of retail vend of liquors is leased in his favour.

(ii) The Karnataka Excise (Arrack Vend Special Conditions of Licenses) Rules, 1967 regulating the grant of license to vend arrack in retail subject to the rules and other conditions imposed by law. Rules 6 to 9 thereof read :-

"6. Consignments to be under seal--All the consignments of arrack issued from the distillery, warehouse or depot shall be sealed by the Officer in charge of the depot, warehouse or distillery in such a manner that the letters of the seal are distinct. The licensee shall be responsible for the breakage of seal in transit. The licensee shall have to use receptacles and bottles for sample arrack that can be effectively closed and sealed for the transport of the arrack issued from the distillery, warehouse or depot. Receptacles which cannot be closed and sealed shall not be used.

7. Only jars to be used--No arrack shall be kept for sale except in Porcelain jars.

8. Sample bottle not to be opened--A sample bottle of arrack shall have a minimum capacity of 750 milli litres. The licensee shall not break the seal and sell the arrack contained in the sample bottle issued by the distillery, warehouse or depot, until the consignment of arrack to which it relates is completely sold.

9. Mixture not permitted The arrack kept in the shops and offered for sale and the arrack sold shall be unadulterated and undiluted and it shall be of the same quality and strength as issued from the Bonded Depots."

(iii) The Karnataka Excise (Distillery and Warehouse) Rules, 1967. Rule 3 of the said Rules provide that every person who wishes to obtain a licence to establish and work a Distillery shall make an application in Form 1 to the Commissioner through the Deputy Commissioner of District in which he wishes to establish a distillery furnishing in duplicate full description of the premises, plan of the building wherein he proposes to locate the distillery together with the description of the still and all other apparatus and a treasury challan for having created the fee prescribed in Rule 7. Rules 7 and 8 of the said Rules read :

7: Licence fee : -- (1) The fee for the grant of renewal of a licence under these rules shall be : --

(i) rupees seven thousand and five hundred in the case of distilleries which manufacture any spirit out of (toddy or) fruits like cashew, pineapple, apple and grapes.

(ii) (rupees one lakh) in the case of distilleries which manufacture any spirit out of materials other than fruits like cashew, pineapple, apple and grapes.

xxx xxx xxx xxx (Underlining by us)

8. Arrangements of stills, etc. - Every Distiller shall so arrange the still that the distillate shall discharge into closed and locked receivers provided by him and approved by the Commissioner. He shall provide at his cost suitable and secure lock to all stills, spirit receivers, fermentation rooms and doors. The keys of the locks shall be deposited with the Distillery officer. The Distiller may, if he so wishes, attach his own locks, but he shall remove them whenever requisitioned by the Distillery Officer or any other competent Officer authorised by the Commissioner in this behalf."

(Underlining by us)

It may be seen from the above rules that the distillate is required to be discharged into closed and locked receivers and the keys of the lock has to be deposited with the Distillery Officer. Rule 14 of the said Rules provides for appointment of Supervisory Staff. It reads :

"14. Supervisory Staff :- The Commissioner may employ at the distillery, such number of Excise Officers as may be necessary, for supervision and securing compliance with the provisions of the Act and these rules. The cost of establishment including pay, leave, salary, contributory Provident-cum-pension fund and pensionary contribution in respect of such officers shall be paid by the distiller in advance from time to time in annual half yearly or quarterly instalments,"

"15. Attendance of Officers : The Deputy Commissioner, with the previous sanction of the Commissioner, shall regulate the timings of the working of the distillery which the Distillery Officer and his staff are required to attend, which shall not exceed 8 hours a day and also the holidays exclusive of Sundays. The Excise Staff deputed at distillery shall not ordinarily attend the distiller on Sundays and other authorised holidays. If the distillery wants the said staff to work beyond the hours fixed on working days and on Sundays or authorised holidays he shall make a requisition to the Distillery Officer in advance and he shall also be liable to pay overtime fees. Every fraction of an hour not less than fifteen minutes shall be treated as one hour and the remuneration shall be double the usual emoluments. If the staff is required to work during the night hours the remuneration will be four times the usual emoluments".

"32. Spirits may be blended or reduced in the distillery:-For issue of spirits of prescribed strength, the distiller may blend or reduce the spirits to the strengths in such vats as may be approved by the Commissioner for this purpose. Blended or reduced spirits shall be kept in separate receptacles."

"33. Spirits to be gauged and proved before removal:- No spirit shall be removed from the distillery until it has been gauged and approved by the Distillery Officer. The gauging of the spirits may be made by either actual measurements or by weighments".

"34. Spirits not to be removed save under certain conditions :- No spirit shall be removed from the distillery except under a permit in Form 3 issued by the Distillery Officer."

Rule 17 requires the appointment of the Distillery Officer and providing of quarters and furniture to the Distillery Officer. It reads :

"17. Appointment of the Distillery Officer and provision of quarters and furniture :- The Commissioner shall post such staff at the Distillery as he deems fit The distiller has provide necessary office furniture for the use of the staff. The distiller shall also provide the staff so deputed with the quarters properly furnished and maintained without interference in their use or enjoyment thereof. If the distiller is unable to provide such quarters, the Commissioner may obtain through the Deputy Commissioner accommodation on rent and the distiller shall be liable to all the cost and expenses therefor".

Rule 20 of the Rules provides for Supervision of Distillery. It reads :

"20. Supervision of distillery : The distillery shall be under the direct supervision of the distillery officer who shall be subordinate to the Deputy Commissioner and carry out all the provisions of these rules either in person or through his subordinate as the Deputy Commissioner may from time to time direct."

Thus it may be seen that the Distillery Rules provides for distillation of spirit and manufacture of liquor under strict supervision of the Distillery Officer and other inspection staff and for checking the strength and purity of liquor manufactured and transported.

(iv) The Karnataka Excise (Bottling of liquor) Rules 1967 (for short "Bottling Rules"). Rules 3 and 4 of the said Rules read :

"3. Restrictions on the grant of licenses to bottle liquor :

(1) No liquor shall be bottled except at a warehouse. Provided that arrack may also be bottled in an arrack Depot licensed under the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968.

(2) No person shall be granted a licence to bottle liquor unless he is a lessee of the right of retail vend of arrack or he holds a licence for the distillation or manufacture of liquor or trade and import licence or a licence for compounding,

blending or reducing of liquors or any other licence which requires possession of bottling licence.

4. Application for licence :- A lessee of the right of retail vend of liquor or a person holding any of the licences specified in Rule 3 and desirous of obtaining a licence to bottle liquor may make an application specifying the warehouse in which the operation of bottling of liquors is to be carried on together with the detailed plan thereof."

(underlining by us)

Rule 5 provides for the grant of licence, and fixes the license fee at Rs. 1000/-. Rule 6 provides that duration of licence shall be until 30th June of the next year. Rule 7 provides for arrangement of warehouse and Rule 8 prescribes the conditions to be observed by the licensee and Rule 9 provides that the cost of Supervisory staff shall be borne by the licensee. Rules 7, 8, 9 reads :

"7. Arrangement of warehouse : (1) Separate rooms or compartments shall be provided for (a) Storage of liquor in bulk (b) bottling operation and (c) storage of liquor in sealed bottles.

(2) Every room or compartment in the warehouse shall be well ventilated and all the windows shall be well secured. Each room shall bear a sign board stating the purpose of the room or compartment. The warehouse and every room shall be locked the Warehouse Officer and by the licensee if he so desires.

(3) The licensee shall not make any alterations in the permanent structure without the previous approval of the Deputy Commisioner.

(4) The licensee shall make necessary arrangements and give all the facilities to the warehouse officer and his staff for the performance of official work.

(5) No smoking or any naked light or fire shall be allowed within the premises of the warehouse.

8. Conditions to be observed by the licensee : (1) The licensee shall give notice of his intention to the Warehouse Officer for bottling liquor at least six hours before.

(2) He shall not carry on the bottling operation except in the presence of the Warehouse Officer.

(3) He shall carry on the bottling operation during the hours prescribed in the licence.

Provided that the Excise Commissioner may, on an application made by the Licensee permit the bottling operations beyond the hours prescribed in the licence on payment of overtime allowance as may be specified by him in this behalf to the staff deputed for the said purpose.

9. Cost of the Supervisory Staff: The licensee shall pay in advance to the

Government at the beginning of each quarter the cost including the pension contribution, house rent allowance, conveyance allowance and other charges of the supervisory staff as may be fixed by the Excise Commissioner."

Rule 15 of the Rules provides for cleaning of bottles and bottling of liquor. Form No. M.B.E.I prescribes the conditions of the licence. Conditions 1, 2, 3 and 4 which are of considerable importance to this case reads :

"CONDITIONS

1. The licensee shall not bottle liquor except at the licensed premises and under the supervision of the Warehouse Officer.

2. The licensee shall not dilute or strengthen the liquor permitted to be bottled under the licence unless he holds a licence.

3. The licensee shall not on any day carry on operation of bottling after 5.30 p.m. (Indian Standard Time) or before 9 a.m. nor shall he carry on any day the said operations between 1 p.m. 2 p.m. nor on Sunday and Public Holidays sanctioned by Government.

4. The licensee shall provide suitable office accommodation with sanitary arrangements free of cost for the Warehouse Officer and his staff within the premises and shall also supply such furniture and other articles free of cost for the use of the Warehouse Officer and his staff as the Deputy Commissioner may consider necessary".

From the above conditions it is clear that the bottling operations can be carried on by a person only under a licence. In view of Rule 3 of the Bottling Rules no person other than a person who is a lessee of the right of retail vend of arrack or holds a licence for distillation or manufacture of liquor or any other licence referred to in Sub-rule (2) of Rule 3, is eligible to secure a licence for bottling of liquor.

32. Pursuant to the notification dated 11-4-1984 as many as 131 applications were received by the Excise Commissioner. All the applicants were called upon to appear before the Excise Commissioner on 2nd July 1984 for discussion to assess the financial stability and experience in the field of which bottling. The communication dated 27th July 1984 by which the applicants were called upon to appear before the Excise Commissioner reads :

"With reference to your offer for appointment as agent for bottling arrack, you are requested to meet the Excise Commissioner in his office at 11-00 a.m. on 2nd July 1984 for discussion to assess your financial stability and experience in the field of bottling. Kindly make it convenient to attend."

The proceedings of the interview of the applicants has been produced. It is sufficient to refer to the remarks made by the Excise Commissioner at the time of interview in respect of respondents 3 to 10, the other Writ Petitioners and in respect of Mysore Sugar Company. They read :

Sl. No.

Name of the Applicant

Remarks

1

2

3

5.

Sea Shell Bottling Co., D.K. District

The representative of this firm Shri Vadiraj Hegde is an young graduatee who has a multi crore business with Japanese collaboration. Financially he is quite sound. He has shown letters that he has acted as consultant for bottling units in Tamilnadu. He was prepared to take up bottling operations in any of the 18 units notified. He said that his first preference would be Bangalore, where he has already got a good plot of land. Without any delay the bottling unit can be established.

23.

Canara Bottling Co. Race Course Road, Bangalore-I.

The Managing Partner of this firm Sri. Prathap Chittiappa is an young graduatee who is a businessman and Estate Owner. His annual turnover from the estate is about 40 lakhs of rupees. He has association with a unit of bottling arrack in Jammu and Kashmir. He appears to be an young and energetic person who showed enthusiastic in making success of bottling of arrack in Karnataka State. At the time of interview he mentioned that he can do bottling of arrack in any of the 18 units notified.

58.

T.V. Sarangadharan & H.V. Puttaswamy No. 1196, Ashok nagar, Mandya.

The applicants are arrack contractors in Karnataka for the last several years. They have bottling unit in Mandya from there they are supplying bottled arrack to Mandya and Maddur taluks where they have taken up arrack contract. They have a bottling licence also. I found that they are financially sound and capable of handling the responsibility of bottling of arrack.

62.

Pramila Plastics (P) Ltd., Bangalore

The representative of this firm mentioned that he has a plastic industry in Bangalore which manufacture and supply of plastic sachets to Arrack Contractors like M/s. Durga & Co., Arrack Contractors of Bangalore and to the Arrack

Contractors of Davangere. They have no experience in bottling of arrack. They appears to be financially sound.

63.

Pampasar Distillery Ltd, Hospet

They are holding a Distillery licence and they have been given the responsibility of manufacture and supply of arrack to Bellary and Raichur District. They have also licence to manufacture IML.

78.

Ugar Sugar Works Ltd, Ugarkhurd, Belgaum

The applicants are holding a Distillery licence and have experience of manufacturing Arrack and also hold licence for manufacture of IML.

112.

Kolar Winery & Distillery, Jayanagar, Bangalore.

The applicant is an unemployed engineer from Kolar District. All the partners of the firm were also from Kolar District. He has some experience in running a fruit processing unit which have a bottling section. He has applied for Kolar District only. He has shown evidence of financially soundness to be able to take up responsibility of bottling of arrack.

121.

Sri Chaitanya Kumar 3/1, Bailey St. Cross Longford Town, Bangalore.

The applicant is an unemployed engineering graduate from Bangalore. He has experience as a consultant for distilleries and breweries. At the time of interview he showed me the certificate for having been consultant to the distilleries and breweries. He comes from a rich family of Bangalore and showed evidence of being financially sound. Capable of handling bottling units. Though he has applied only for Bangalore, at the time of personal interview he said that he is prepared to take up bottling of arrack any where in Karnataka State.

122.

Mysore Sugar Co. Ltd., J. C. Road, Bangalore.

They are holding distillery licence and a licence to manufacture IML. They are also been given the responsibility to manufacture and supply of arrack.

130.

K. M. Srinivasamurthy, Jayanagar III Block, Bangalore-11.

He is an young and energetic graduate from Bangalore. Coming from a rich business family with a turnover of nearly 1 crore of rupees. He is an individual

income tax and wealth tax assessee. He shown a certificate to show that he has trained by M/s. Mc. Dowell and Co , Hyderabad in bottling operation. He appears to be quite serious about the work for which he has given application and very enthusiastic with his financial background one could feel that he is capable of handling the responsibility of establishing bottling units. He said that he is prepared to take up the work of establishing and running bottling unit in all the 18 place notified.

131.

H. S. Somesekhar, B. V. K. Iyengar Road, Bangalore.

He is an young businessman from Bangalore. He mentioned that he has been trained in bottling of liquor in M/s. Moban Meakins, Gaziabad. He comes from a rich family with a large turnover in business. He appears to be financially sound and quite serious about taking up-bottling of Arrack in all the units notified.

At the end the Excise Commissioner stated as follows :

"131 applicants were examined with reference to the interview and other informations available and the details are as under :

Sl. No. 25, 35, 38, 39, 40, 41, 42, 43/44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 63, 64, 78, 85, 86, 89, 95 and 122 are Distilleries and hence they need not be considered.

Sl. Nos. 2,3,4, 6,7,8, 9, 10, 11, 12, 13, 14, 15, 16,17, 18, 19, 20, 21, 22, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 56, 57, 58, 59, 60, 61, 62, 65, 66, 67, 68, 69, 70, 71, 72, 73, 75, 76, 77, 79, 80, 81, 82, 83, 84, 87, 88, 90, 91, 92, 93, 94, 96, 97, 98, 99, 100, 101, 103, 104, 105, 106, 107, 108, 109, 110, 111, 113, 115, 116, 117, 118, 123, 124, 125, 126, 128, 129, are connected with the trade of arrack and among them Sl. No. 9 to 12, 13 to 20 have no base in Karnataka and they are said to be trading in bottling, blending etc., of arrack in Tamil Nadu and Kerala.

Similarly Sl. No. 1, 114, 119, 120 and 127 are outsiders who have not shown any proof of base in Karnataka. These also need not be considered.

In the result, others namely Sl. No. 5, 23, 74, 102, 112, 121, 130, 131 who have got background of trade in bottling and blending and also financially sound and are found to be capable of handling the work if entrusted to them may be considered for bottling work and their names may be recommended to Government for approval."

It may be seen from the above proceedings that after making the remarks on the basis of the information furnished by the applicants, the Commissioner proceeded to make his selection and recommendation. Five applicants at Sl. Nos. 1, 114, 119, 120, and 127 were excluded on the ground that they were outsiders and among the remaining 126 applicants, he said the application of 28 persons specified in the proceedings need not be considered as they were distillers and

that 90 applications specified therein has to be excluded as they were Vendors of arrack, though all these 118 applicants were eligible to secure bottling license under Rule 3(2) of the Bottling Rules. With the exclusion of 118 eligible applicants, only eight applicants, namely, respondents 3 to 10 remained. The Excise Commissioner opined that the work of bottling may be entrusted to the said eight persons.

33. Thereafter, the Excise Commissioner addressed letter dated 15th September 1984 to the Government. After setting out the decision of the Government to sell arrack in sealed bottles and other relevant matters, the Commissioner, as regards the selection of persons for entrustment of bottling contract, stated thus :

"Now coming to the point of taking decision with regard to the applications received for supply of arrack in bottles it may be pointed that the Hon"ble Chief Minister received some complaints that some of the applicants from other States are with unfavourable antecedents have given local addresses while applying and they may not be entrusted with such financial involvement. The Hon"ble Chief Minister conducted Confidential Enquiry through the Police Department about the applicants in question. After obtaining Confidential Report from the Police Department regarding antecedents of the applicants particularly of the applicants from the outside State who have given local address of Karnataka, it was considered advisable to entrust the work to the reliable and capable persons/firms of Karnataka State who could undertake the work of bottled arrack. Accordingly, the following names and firms are recommended for entrustment of the bottling work subject to conditions already stipulated in tender notification."

(Underlining by us)

The Excise Commissioner set out the names of 8 applicants and recommended to the Government that the contract may be entrusted to them on the basis of third reliability, financial soundness and experience.

34. In the statement of objections at para 3-A it is stated that for the purpose of making selection the Excise Commissioner made confidential inquiry. The relevant Portion of that paragraph reads :

"3A. It is submitted that the Excise Commissioner obtained confidential information about the antecedents of all the applicants before finalising the contracts. However, the Excise Commissioner has not disqualified any of the applicants on the ground that the confidential reports regarding his/its antecedents were adverse. He obtained the reports only to ascertain whether any of the applicants had any undesirable antecedents".

But as can be seen from the letter, the Excise Commissioner says that Hon"ble the Chief Minister made the confidential inquiry. The records of the said inquiry are not made available. We asked the Learned Counsel for the State as to where were those records and how the Excise Commissioner was made known of the contents of the report of inquiry. He was not in a position to give any definite

reply regarding the records; or as regards the mode of communication of the information to the Excise Commissioner. He only said that being an administrative matter, the matter might have been discussed in person or even on telephone.

35. After the receipt of the above matter, the Secretary to Government addressed letter dated 18-9-84 to the Excise Commissioner. In paragraph 6 of the said letter, the Secretary stated thus :

"6. The process of establishing bottling plants at different places would inevitably involve financial outlays and time. There are no details forthcoming regarding the credit worthiness of these individuals who are to be entrusted with the bottling work. No information is forthcoming regarding the infrastructure facilities available with them and the time frame within which they can set the bottling plants. The same may kindly be furnished.

(Underlining by us)

To the said letter, the Commissioner sent his reply on 19-9-1984. In the reply, the Commissioner stated thus :-

"The process of establishment of bottling plant in different places involve financial outlays towards the cost of land, buildings, machinery etc., Before finalising these proposals I called all the applicants for discussions in my office to find out their credit worthiness and capability for doing the work. The proposals sent by me to the Government are on the basis of my assessment of the credit worthiness and capacity of the individuals to provide the infrastructure facilities required for taking up bottling of arrack without undue delay."

In the above reply, to the query made by the Secretary that no material was forthcoming about the credit worthiness of the individuals and the infrastructure facilities available with them etc., the Commissioner asserted that he had sent the proposals on the basis of his assessment of credit worthiness and capacity of the individuals to provide the infrastructure facilities. Not being satisfied with the reply furnished by the Commissioner, the Secretary in his Note put up on 25-9-1984 to the Minister of Excise, stated thus :

"While the letter of the Excise Commissioner answers some of the issues, some others remain largely unanswered. Some of these issues have been discussed below."

xxx xxx xxx xxx "(e) Suitability of the bottling contractors proposed :

There is hardly any data on record either regarding the credit worthiness of the individuals/firms companies recommended by the Excise Commissioner or their capabilities to undertake a job of the magnitude and the proportions in question. No information is also forthcoming on the "infrastructural facilities at their disposal. As the entire arrack is to be sold in bottles, their operational efficiency would have a very significant bearing on the excise revenue of the State. In the

absence of data, it is difficult to come to any conclusion on this issue

XXX XXX XXX

The Minister for Excise passed an order on 26-9-1984. In so far it relates to the above objection of the Secretary, the order of the Minister reads :

"The recommendations of the Excise Commissioner regarding the individuals and firms to be appointed as the bottling agents are approved.

xxx xxx xxx I have already discussed these proposals with the Chief Minister and he has given his concurrence for these proposals and therefore orders may be issued immediately approving the proposals of the Commissioner, so that the introduction of bottling of arrack can be expedited."

Thereafter when the matter was referred to the Finance Department, before finalising the order, Deputy Secretary, Finance, as regards selection of bottling contractors, said thus :

"Home Department is also requested to take into consideration the following observations :

(a) It is not clear from the file as to how the Excise Commissioner has selected 19 bottling contractors out of 131 firms which have submitted their offers. This has to be brought on record clearly. Otherwise the selection is subject to challenge in the Court of law".

Finally, pursuant to the order of the Minister, as set out above, the impugned Government Order was issued.

36. From the proceedings of the Excise Commissioner, it is clear that he excluded all the applicants who held licence for distillation and manufacture of liquor and all the persons who were lessees of the retail vend of arrack on the ground that the applications of distillers and persons having contract for vend of arrack, need not be considered. In other words, his decision was not to consider the applicants who were eligible under Rule 3 of the Bottling Rules and by this process he recommended the cases of respondents 3 to 10. Further, it may be seen the proceedings of Excise Commissioner that applicant at Sl. Nos. 58, 59 and 69 to 76 is no other than Respondent-3 an arrack contractor whose case, according to the Excise Commissioner was not to be considered. But, strangely his application at Sl. No. 73 was granted. As far as respondents 3 and 5 to 10 are concerned, they did not come under any one of the categories of persons specified in Rule 3(2) of the Bottling Rules. In view of Rule 3(2) of the Bottling Rules, no person other than those referred to in the Rule was eligible to secure bottling licence. The persons referred to in the Rules are those holding distillery or other types of licenses referred to therein. The Rules governing the grant of these licenses prescribe various conditions to be fulfilled before securing the license concerned. For instance, as can be seen from the rules extracted earlier, the license fee for securing distillery license is Rs. 1 lakh. The eligibility under Rule 3(2) is such as

could be acquired only by securing one or the other license referred to therein by complying with all the requirements of the rules concerned. Rule 3(2) of the Bottling Rules were flouted, by rejecting eligible applicants, and selecting respondents 3 and 5 to 10, who undisputedly had no eligibility under that rule.

37. As regards the arbitrary exclusion of distillers eligible to secure the license, and in particular, The Mysore Sugar Company, a Government undertaking and a major supplier of arrack to the Government, Learned Council for the petitioners invited our attention to a specific plea raised in Writ Petition No. 18 of 1985. It reads :

"14. XXX XXX XXX XXX In particular the petitioner submits that the application made by the Mysore Sugar Company Ltd., which is a company owned by the State Government of Karnataka and which has bottling plant and one of the principal supplier of Arrack to the first respondent Government is also rejected inspite of the fact that the Company has lost huge sums of money in the business of manufacture of sugar for reasons already stated above. Similarly the claim of India Sugars and Refineries Ltd., Hospet, which also has a distillery and bottling plant also been rejected. As the action of the State Government in rejecting the claims of persons, who had acquired capacity to bottle liquor by investing huge sums of money in the form of plant and machinery and buildings and selecting the persons who are inexperienced and do not have the necessary bottling plant and machinery as the recipients of the largess of the State is wholly arbitrary and illegal.

(Underlining by us)

The relevant portion of the statement of objection reads :

"(22) Re. Paragraph 14 : The allegation that the action of the Government in awarding the contracts to respondents as per Notification dated 29-9-1984 is arbitrary and capricious, is baseless and false. All the respondents have established their bottling plants and are in fact carrying out the bottling work, in accordance with the instructions of the Government and the Excise Department. Particulars of the plants, have been set out earlier. The petitioners have alleged that not granting bottling work to Mysore Sugar Company Ltd., and Indian Sugar & Refineries Ltd, is evidence of arbitrariness. Neither Mysore Sugar Company nor India Sugars have made any grievance of it. They are not petitioners before Court. Petitioner has no authority to speak for them. Further sugar manufactures or distilleries have no claim to any preference. No point can, therefore, be made that bottling work is not given to Sugar companies or Distilleries."

38. The fact that Mysore Sugar Company has not challenged the action is stated as a ground to show that it had no grievance in the grant. The Government undertaking cannot be expected to challenge the decision of the Government. Its interest is public interest and that can be canvassed in a public interest petition. As far as India Sugars and Refineries Ltd., is concerned, their distillery unit Pampasara has filed W.P. No. 6316 of 1985. But as pointed out earlier, they have

filed a memo seeking to withdraw the petition. Learned Counsel for the petitioners-submitted that the memo was filed on account of the pressure brought to bear upon them by the respondents. What ever that may be, the fact remains that the averment the India Sugars have not challenged the order is not correct.

39. As far as the Statement, in the objection statement that distillers have no claim for any preference is concerned, it is not the case of the petitioners that the distillers had any preference. Their case is, though distillers were eligible to secure bottling license under Rule 3(2) of the Bottling Rules and respondents 3 and 5 to 10 were ineligible, the latter were selected excluding from consideration the applications of the former. At the tide of arguments, we invited the attention of the Learned Counsel for the respondents to the above averments and asked them to explain as to why a private ineligible person was preferred to an eligible State owned undertaking. The only reply was, that a policy decision was taken by respondents to exclude distillers/ manufacturers.

40. There can be no doubt that by the exclusion of the application of Mysore Sugar Company it was denied of the privilege of bottling through which it would have earned substantial profit, which would in turn have accrued to the benefit of the people of the State. In our view, acting reasonably, no one would have excluded the application of an eligible State owned undertaking which had all the facilities and prefer a private ineligible applicant.

41. Learned Counsel for respondents, however, contended that Section 13 of the Act and the Bottling Rules had no application for the present case. Their contention was that Section 13 of the Act applied only to persons who were desirous of bottling liquor for the purpose of sale by them and as in the present case respondents 3 to 10 had only undertaken bottling of liquor as agents of the State Government and were not by themselves sellers of arrack, they were not required to take licence u/s 13 of the Act.

42. Obviously, this contention is taken as an after-thought in order to get over the provisions of Section 13 read with Section 26 of the Act and Rule 3(2) of the Bottling Rules, for, if these provisions applied, the selection of respondents 3 and 5 to 10 is indefensible. In fact in the penultimate paragraph of the advertisement dated 11-4-1984, there is a specific statement that successful applicants would have to take bottling license on payment of licence fee of Rs. 1,000/-. Further, in paragraph 5 of the statement of objection, the State has stated thus :

"5. In view of the decision taken by the State Government to see that Arrack is sold only in sealed bottles and the work of bottling of Arrack should be entrusted to persons after calling for applications from the intending contractors, it was felt that the Rules, i.e., the Karnataka Excise (Bottling of Liquors) Rules 1967 required to be amended enabling these contractors to apply for and obtain necessary licences of bottling of Arrack, Therefore, the Karnataka Excise (Bottling of Liquors) Rules, 1967 were amended by 1984 Amendment Rules. Amendment

Rules 1984 amended Sub-rule (2) of Rule 3 enabling the persons entrusted with the work of bottling of Arrack by the Government to apply for and obtain the bottling licenses. The draft of the Amendment Rules was duly published and thereafter, the Rules were finalised. The Amendment of Rule 3 became necessary in view of the decision of the Government to see that bottling of Arrack should be entrusted to a separate set of contractors. It is denied that the Rules have been amended with an ulterior motive. The mala fides attributed by the petitioners in so far as Amendment Rules is concerned, are wholly baseless. The Rules will have to be amended from time to time depending upon the exigencies and the situations. To meet the present requirement, Rules had to be suitably amended. Hence, it is submitted that the allegations made to the effect that the Rules are amended to accommodate certain persons, are baseless."

In the file, which led to the amendment of the Rules, there is also the letter dated 6-11-1984, i.e., after more than a month after the impugned order was made and had become the subject matter of challenge before the Court- It reads :

"No. ESE. SO. 12/84-85 Office of the Excise Commissioner in Karnataka, Bangalore, Dated : 6th Nov. 1984

To :

The Secretary to Government, Home Department, Vidhana Soudha, Bangalore.

Sir,

Sub : Amendment to Rule 30 of Sub-rule 13 of Karnataka Excise (Sale of Indian and Foreign Liquor) Rules 1968 and to Rule 3, Sub-rule 2 of the Karnataka Excise (Bottling of Liquor) Rules, 1967.

I write to state that Government have approved in their G.O. No. HD 24 EAA 84 dated 29-9-1984 for the sale of Arrack in the sealed bottles. In order to implement the orders of Government contained in the above Government order, the amendments for the above rules are necessary. Unless these amendments are issued, the bottling units approved by the Government in the above Government order cannot be issued licence for bottling unit. Hence, I request that the enclosed draft amendments may kindly be approved and issued by Government.

Yours faithfully, Sd/- Excise Commissioner."

(Underlining by us)

In the face of the contents of notification dated 11-4-1984 and the stand taken in the statement of objection which is in conformity with the above letter, the contention advanced at the time of arguments that Section 13 and the Bottling Rules were inapplicable is a somersault. However, as such a construction was sought to be placed on Section 13, we proceed to ascertain the true meaning of

Section 13 of the Act.

43. In our view, the clear meaning of Section 13 of the Act is, if the liquor to be bottled is meant for sale to the general public, the activity of bottling must be carried on under licence issued u/s 13 read with Section 26 of the Act and in accordance with the Rules prescribed under the Act. In the present case, admittedly the arrack which is required to be bottled by respondents 3 to 10 is only for sale to consumers with the object of ensuring the supply of pure arrack to the consumers.

44. In the matter of construction of Section 13, the decision of the Supreme Court in the case of Assessing Authority-cum-excise and Taxation Officer, Gurgaon and Another Vs. East India Cotton Mfg. Co. Ltd., Faridabad, is apposite. In the said case, The Supreme Court was interpreting the words "for use in the manufacture--of goods for sale" used in the Section 8(3)(b) of the Central Sales Tax Act. Rejecting the contention of the Assessing Authority that in order that a lower concessional rate of tax is applicable in respect of goods purchased and used in the manufacture of other goods for sale, that a registered dealer must himself sell the manufactured goods, the Supreme Court said thus :

"I he goods purchased by the registered dealer must be used by him in the manufacture of goods which are intended for sale, but such sale need not be by the registered dealer himself. It may be by anyone."

The Supreme Court observed that unless the words "by him" were added after the words "the manufacture of goods for sale" it was not possible to interpret the words as a provision attracting only such cases where the goods manufactured by a registered dealer were sold by him. Similarly in the absence of the words "by him" after the words "bottling for sale" in Section 13, the construction placed on the provision by the respondents is untenable. Therefore, we find no substance in the contention of the respondents that Section 13 had no application to the case of bottling contract entrusted to respondents 3 to 10. Once Section 13 of the Act is attracted, it follows that Section 26 and the provisions of the Bottling Rules also get attracted. Therefore, having regard to the wording of Rule 3(2) of the Bottling Rules, respondents 3 and 5 to 10 were ineligible to undertake bottling operations.

45. In the face of the above statutory provisions, it was impossible for the Excise Commissioner or the Government to exclude eligible applicants and consider only the applications of ineligible applicants, but they did so.

46 (i) Learned Counsel for the respondents, however, submitted that whether to entrust the work of bottling to persons who are already distillers or arrack vendors, was a matter of policy decision and it was open for the State to take such policy decision at any time and the same need not even be recorded. In support of the above contention, Counsel for the respondents relied on the Judgment of the Supreme Court in State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others, Relevant portion of the judgment reads :

"....The Government may change or refuse its policy from time to time and we see no reason why change of policy by the Government, subsequent to the auction but before its confirmation may not be a sufficient justification for the refusal to accept the highest bid. It cannot be disputed that the Government has the right to change its policy from time to time, according to the demands of the time and situation and in the public interest.

xxx xxx xxx xxx It is true that there is no express policy decision of the Government recorded after the date of auction. It is implicit in the very action of the Government in cancelling the auction and allotting the forest lots to the Forest Corporation."

It is true that as far as the decision on policy matters is concerned, it is open for the executive to take any decision which in the opinion of the Executive is good for the State and the fact of taking such a policy decision could be gathered from the decision itself. The Court cannot inquire into the wisdom or correctness of such policy decision.

(ii) But it is well settled that the Executive has no power to take any such decision contrary to the statutory provisions. If a matter is not covered by any statutory provision, then it is open for the Executive to take a new policy decision or even superseding an earlier policy decision taken by the Government, subject of course to the provisions of the Constitution.

47. In the present case, the policy of the State itself was incorporated in the provisions of the Karnataka Excise Act and the Bottling Rules framed thereunder. The policy was that no person shall carry on the bottling operations without a license issued by the Deputy Commissioner concerned (vide : Section 13 of the Act) and that no person shall be granted a license to bottle liquor unless he held one of the licenses referred to in Rule 3(2). Therefore, it was neither open for the Government nor the Excise Commissioner to take a policy decision in violation of the statutory rules. The distillers concerned in this are the persons who carry on the distilling and manufacturing operations under the license issued by the State Government under strict supervision of the Distillery Officer and who have paid the licence fee of Rupees one lakh. It is the spirit distilled and the arrack manufactured out of the spirit distilled by them which is required to be bottled. Therefore, the Bottling Rules provide that the persons who were holding distillery licence are also persons who are eligible to undertake bottling. The rule also confers such eligibility on persons holding right to vend liquor and persons holding other kinds of licenses such as compounding, blending or reducing of liquors etc. Those licenses also can be obtained only after compliance with the relevant rules governing the grant. That being the position, we fail to see how persons eligible under the Rules could be excluded and the cases of persons who are ineligible could be preferred for the grant of contract. On the face of it, the decision smacks of arbitrariness and is a flagrant violation of The Rule of Law which constitutes one of the basic structures of the Constitution as laid down by the Supreme Court in the case of His Holiness Kesavananda Bharati

Sripadagalvaru Vs. State of Kerala,

48. No reason is forthcoming in the recommendation of the Excise Commissioner or in the letter addressed to the Government or in the file of the Secretariat in which the impugned decision was taken, as to why respondents I and 2 excluded the applications of persons eligible under Rule 3(2) of the Bottling Rules. In the statement of objection, relevant portions of which are extracted earlier, it is stated that if bottling is entrusted to distillers or arrack contractors, there was the possibility of adulteration. The person who has sworn to the contents of this affidavit is a Special Officer for framing rules in the Office of the Excise Commissioner. He states in his affidavit that the facts stated in the statement of objection are based on records. But actually reasons not found in the records have been put forward in the statement of objection. In this behalf, the Supreme Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, observed thus :

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Commissioner of Police, Bombay Vs. Gordhandas Bhanji,

"Public orders publicly made in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".

Orders are not like old wine becoming better as they grow older."

It appears to us that the reasons given in the statement of objection which are not found in the records cannot but be characterised as an afterthought.

49. Moreover, such a reason could not be put forward when Rule 3(2) provided for grant of licence only to distillers and other specified persons in the rules and prohibited the grant of bottling licence to others.

50. Further, it is pertinent to point out that The Mysore Sugar Company a State Government undertaking and a distiller/manufacturer of liquor, was one of the applicants. From the report of the Technical Committee for fixing the price of bulk/bottled arrack assisted by Chartered Accountants K. V. Narasimhan and Company, it is seen that major supplier of arrack to the Government was Mysore Sugar Company. Figures regarding sales of bulk arrack given in that Report, vide Annexure-VI are:

1979-80

1980-81

1981-82

Mysore Sugar Company

53.3%

57.3%

66.7%

Ugar Sugar Works

27.6%

25.2%

20.7%

Pampasar

19.1%

17.5%

12.6%

The figures indicate that 66 per cent of arrack is supplied by the Mysore Sugar Company to the Government. The Mysore Sugar Company and Ugar Sugar Works and Pampasara, the other two distillers/manufacturers and suppliers of arrack to the Government, were also among the 131 applicants.

51. We have set out earlier the Distillery Rules, The rules require that the distillate has to be discharged into a locked chamber and its key would be with the Distillery Officer. Every operation of distillation of spirit and manufacture of liquor including quality control not only at the time of distillation and manufacture but also at the time of despatch is to be under the strict check and supervision of distillery officer and other inspecting officers. Obviously for this reason, law in its wisdom prescribed that a person holding distillery license is eligible to secure bottling licence. In the face of these rules to exclude the distillers in particular. The Mysore Sugar Company, who were eligible under Rule 3(2) of the Bottling Rules on the ground that they would indulge in adulteration and select respondents 3 and 5 to 10 who were ineligible, is not only a glaring and flagrant violation of Rule 3(2) of the Bottling Rules but also an outrageous defiance of logic.

52. Moreover, the selection of respondent No. 4 who is an arrack contractor, for grant of bottling licence shows that respondents 1 and 2 did not believe that it was not safe to entrust the bottling contract to an excise contractor and the inevitable inference from this would be that all other applications of persons

eligible under the rules were excluded arbitrarily and by such elimination process respondents 3 to 10 were selected. Therefore, the conclusion that decision was arbitrary and capricious is inevitable.

53. The contents of rule of law has been explained by Bhagwati. J, (as he then was) in the case of R. D. Shetty 1982 (2) KLJ.35 at para 10 thus :

"Every action of the executive Government must be informed with reasons and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimum requirement."

Again in the Judgment in the case of Bachan Singh, Sher Singh and Another and Ujagar Singh and Another Vs. State of Punjab and Others, Bhagwati J, said thus ;

"10. Now if we look at the various constitutional provisions including the Chapters on Fundamental Rights and Directive Principles of State Policy, it is clear that the rule of law permeates the entire fabric of the Constitution and indeed forms one of its basic features. The rule of law excludes arbitrariness : its postulate is "intelligence without passion" and "reason freed from desire". Wherever we find arbitrariness or unreasonableness there is denial of the rule of law."

(Underlineing by us)

From the above enunciation it is clear that in order that the decision of the Government satisfies the rule of law, it must be based on reason and not merely motivated by desire. All that we can make out from the proceedings and recommendation of the Excise Commissioner and its approval by the Government is that they were desirous of excluding the Distillers and all Arrack Contractors except respondent No. 4 and were desirous of selecting respondents 3 to 10, and the decision to select them was as a result of that desire, and was not based on reason. In this behalf it is also pertinent to refer to the query made by the Secretary to Government with the Excise Commissioner as to the material on the basis of which he had certified as to the financial soundness and the possessing infrastructure for undertaking of bottling of this magnitude by respondents and the reply of the Excise Commissioner making a bald assertion that he was satisfied about those aspects, which are extracted earlier. In the records, there is a representation dated 27-10-1984 made after the impugned order signed by all the respondents 3 to 10 addressed to the Excise Commissioner which shows that query made by the Secretary was very significant. Relevant portion of the representation reads :

"XI. Date of commencement : We propose commencement of production by December 15, 1984, but in the event of the other units in the State not being ready, we may request you for extension of time.

XII. Collateral to the financial institutions : As we have to avail bank loans to procure machinery and other inputs, establish the plant and have large amounts spent on daily working expenses we request that we offer our plant and

machinery as second charge to the Bank.

(Underlining by us)

By his reply dated 6th November, 1984, the Excise Commissioner said thus on the above two points :

"XI. Re. Date of commencement :

This will be examined separately and depending on the circumstances suitable date could be fixed :

XII. Re. Collateral to the Financial Institute: This will be examined".

Thus, these facts and circumstances establish that the selection of respondents 3 and 5 to 10, ineligible under the Bottling Rules, to the exclusion of distillers and in particular the State owned Mysore Sugar Company 1--1 who were eligible under the Rules and had the bottling units and ready to start bottling operations, stemmed from the desire of respondents 1 and 2 to select them and not based on reason inherent in Rule 3(2) of the Bottling Rules.

54(i) When the decision of the Government was challenged in the Writ Petitions before this Court, hurried steps were taken by the Excise Commissioner to have the rules amended in order to make ineligible persons eligible. The Excise Commissioner addressed the letter dated 6th November, 1984 to the Government, extracted earlier, pointing out to the necessity of the amendment of the Rules. The contents of the letter are self-explanatory. After the selection of respondents 3 to 10 the Excise Commissioner says that bottling licence cannot be issued unless the Rule was amended. Thereafter, on 23-11-1984, the State Government issued a notification proposing to amend Rule 3 of the Bottling Rules. The notification reads :

"GOVERNMENT OF KARNATAKA

No. HD 8 PES 84. Karnataka Government Secretariat, Vidhana Soudha, Bangalore, dated : 23rd November 1984.

NOTIFICATION

The draft of the following rules further to amend the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968, which the Government of Karnataka proposes to make in exercise of the powers conferred u/s 71 of the Karnataka Excise Act, 1965 (Karnataka Act 21 of 1966) is hereby published as required by Sub-section (1) of the said section for the information of all the persons likely to be affected thereby and notice is hereby given that the said draft rules will be taken into consideration on or after 28-1-1984.

Any objections or suggestions which may be received by the State Government from any person in respect of the said draft rules before the date specified above will be considered by the State government. Objections or suggestions may be addressed to the Secretary to Government, Home Department, Vidhana soudha,

Bangalore 560001.

DRAFT RULES

1. Title and commencement : (1) These rules may be called the Karnataka Excise (Sale of Indian and Foreign Liquors) (Amendment) Rules, 1984,

(2) They shall come into force at once.

2. Amendment of Rule 3 :--In Sub-rule (13) of Rule 3 of the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968, after the word and figure "Rule 8" the words "or to persons entrusted with the bottling of arrack by the Government shall be inserted.

XXX XXX XXX XXX A letter of the same date was addressed to the Compiler, Karnataka Gazette, for publishing the draft notification immediately. The notification was also published in the Gazette (extraordinary) No. 653, dated 23-11-1984. In the above notification, time was given till 28-11-1984 for filing objections and suggestions to the said amendment. The petitioners have alleged that no objections could be received as the extraordinary gazette could and was made available to the public only along with the next weekly gazette dated 29-11-1984. Though this allegation was denied, a verification of the official gazette shows that it was annexed to the official gazette dated 29-11-1984. Immediately after 28-11-1984 stating that an objections and suggestions were received to the said proposal, final notification dated 36-11-1984 was issued amending the Rule as indicated in the draft notification. By the amendment the words "or to persons entrusted with the bottling of arrack by the Government" was added to Rule 3(2) of the Bottling Rules.

(ii) A comparison of the original Rule and the amendment shows that while the unamended Rule 3(2) conferred eligibility to secure Bottling Licence on persons who held licenses referred to in the said Rule, by the amendment eligibility was sought to be conferred on persons selected by the Government and not eligibility for selection.

(iii) Again in April, 1985, when it was found that amendment of Rule 4 was also necessary, steps were taken to amend Rule 4 of the Bottling Rules which provide for making application for licence for bottling, as according to the said Rule, respondents 3 to 10 were not persons who could make application under the said Rules unless the said Rule was also amended so as to bring it in conformity with Rule 3 of the Bottling Rules though by that time licence had already been granted. By notification dated 11th April, 1985, Rule 4 was also amended. That notification reads :

"GOVERNMENT OF KARNATAKA

No. HD 8 PES 84 Karnataka Government Secretariat, Vidhana Soudha, Bangalore, dated : 11th April 1985

NOTIFICATION

Whereas a draft of the following rules further to amend the Karnataka Excise (Bottling of liquor) Rules 1967 was published as required by Sub-section 1 of Section 71 of the Karnataka Excise Act 1964 (Karnataka Act 21 of 1966) Section 2c(1) of the Karnataka Gazette (Extra-ordinary) dated 2-4-1984 inviting objections and suggestions from all persons likely to be affected thereby on or before 8-4-1984.

And whereas the said gazette was made available to the public on 2-4-1985.

And whereas no objections or suggestions have been received on the said draft.

Now therefore in exercise of the powers conferred by Section 71 of Karnataka Excise Act, 1964 (Karnataka Act 21 of 1966) the Government of Karnataka hereby makes the following rules, namely :

1. Title and commencement : (1) These rules may be called the Karnataka Excise (Bottling of Liquor) (Amendment) Rules 1985.

(2) They shall come into force at once.

2. Insertion of New Rule 4 : In Rule 4 of the Karnataka Excise (Bottling of Liquor) Rules 1967 after the word and figure "Rule 3" the words "or to persons entrusted with the bottling of arrack by the Government" shall be inserted.

By Order and in the name of the Governor of Karnataka. Sd/- C. Ramaiah Under Secretary to Government, Home Department, (Excise)."

The above amendments effected after the impugned order and during the pendency of Writ Petitions before this Court clearly establish that not only the provisions of Section 13 of the Act and the provisions of the Bottling Rules were applicable in respect of undertaking bottling of arrack, though an attempt was made before this Court to show that those provisions were not applicable, but also that respondents 3 and 5 to 10 were selected for entrustment of bottling work in contravention of Rule 3(2) of the Bottling Rules.

55. To act in conformity with the law enacted by the Legislature or statutory rules when they are in existence or to act in conformity with the policy evolved by the executive itself in the absence of law and made known to all persons concerned in respect of any matter and taking a decision in obedience to the law or without departing from the executive policy declared, as the case may be, is the very essence of the Rule of Law. Citizens are entitled to see that the Government conforms to Rule of Law. If the Government in its wisdom considered that any change in the policy was called for, the only course open to it, to implement that policy, was by taking steps to frame or amend the Rules first in accordance with the provisions of the Act regulating the disposal of the largess/privilege, of bottling arrack to persons other than those who had secured the privilege of distilling/manufacturing liquor or the right to vend liquor etc., in terms of Section 17 of the Act and the Rules framed thereunder. (See : Paragraph 34 of the Judgment of the Supreme Court in Ramana Dayaram Shetty

Vs. International Airport Authority of India and Others, The Government has no liberty to say "I shall select the man first and take care of the Rules next by changing its text," as it is the very anti-thesis of a decision taken in accordance with Rule of Law. Unfortunately, that is what exactly has been done in this case.

56. The action of respondents 1 and 2 in disposing of the largess in the form of bottling of arrack contract involving a turnover of 50 crores of Rupees to respondents 3 and 5 to 10 in violation of the provisions of the Act and the Rules in particular Rule 3(2) of the Bottling Rules, shocks the judicial conscience. Moreover as against the normal rule of granting an excise privilege only for one year the privilege is granted for nearly four years to respondents 3 to 10. Private individuals, namely, respondents 4 and 5 were selected by arbitrarily excluding the Mysore Sugar Company, a State owned undertaking, for undertaking bottling at Mandya. We are convinced that the impugned decision of the Government is unlawful, arbitrary, capricious and subversive of Rule of Law. Once we are so convinced we are in duty bound to set aside the decision. On this aspect, the Supreme Court in the case of Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, said thus :

"It is imperative in a democracy governed by the rule of law that governmental action must be kept within the limits of the law and if there is any transgression, the Court must be ready to condemn it. It is a matter of historical experience that there is a tendency in every government to assume more and more powers and since it is not an uncommon phenomenon in some countries that the legislative check is getting diluted, it is left to the Court as the only other reviewing authority under the Constitution to be increasingly vigilant to ensure observance with the rule of law and in this task, the Court must not flinch or falter. It may be pointed out that this ground of invalidity, namely, that the governmental action is unreasonable or lacking in the quality of public interest, is different from that of mala fides though it may, in a given case, furnish evidence of mala fides."

(Underlined by us)

Therefore, the impugned order has to be set aside.

57. (i) The other ground of attack against the decision of the Government is about the rate fixed by the Government without giving opportunity for submitting tenders. The rates were fixed in the 11-4-1984 notification itself. They read :

"The charges payable to the films are as follows :

Rs. 3. 00 per bottle of 750 ml. Rs. 1. 30 per bottle of 375 ml. Re. 0.95 per bottle of 180 ml. Re. 0. 03 per sachet of 100 ml. Re. 0. 05 per sachet of 180 ml.

According to the petitioners, the rate fixed is exorbitant, There is an assertion that cost for bottling 750 ml arrack at the highest would be Re. 1/. Except making a bald assertion to this effect, no material is placed by the petitioners.

(ii) On behalf of the State, reliance was placed on the report of the committee appointed by the State Government in the year 1982, for fixing the price of bulk as well as bottled arrack. The said committee was appointed at the instance of manufacturers/distillers of liquor, consisting of technical experts assisted by Chartered Accountants K.V. Narasimhan and Company. The relevant portion of the report reads :

"7.5. The cost of production of Bottled Arrack per bottle of 750 ml. 375 ml. and 180 ml. in respect of Pampasar Distillery for 1981-82 are as follows : --

750 ml.

375 ml.

180 ml.

Pampasar Distillery

Ltd - cost per bottle

3-09

1-37

0-96

7.6. In view of the increase in cost of naked arrack and also the cost of bottles, caps, labels and cartons and other clement of cost as evidenced from the details in Annexures IV and V and considering the representative character of Pampasar Distillers (being the largest supplier of bottled arrack) it is fair to allow a margin of 17 1/2% on the total cost of 180 ml, 375 ml. and 750 ml, bottled arrack in which case the selling price per bottle as against the present selling price would be as follows :

Pampasar Distillers

180 ml.

375 ml.

750 ml.

Cost

0-96

1-37

3-09

Add; 17 1/2 profit margin

0-17

0-24

0-55

Present selling price

0-95

1-49

2-34

As can be seen from the report, 17 1/2 per cent profit margin was allowed by the said committee. According to the Government it reduced the profit margin to 10 per cent and fixed the rates specified in the notification dated 11-4-1984 taking into account the transporting and other charges to be incurred by the bottlers.

58. The contesting respondents have also furnished statement of calculations to show that the rates fixed are reasonable.

59. Learned Council for the petitioners submitted that the report of that committee had not been accepted by the Government, which indicates that rates fixed must have been considered by the Government as unreasonable. He also submitted that calculation made in the report was in respect of bottling small quantity of arrack and could hardly serve as the basis for fixing price for bottling in lakhs. Counsel for the State submitted, the fact that it was not rejected and the matter was still under consideration would indicate that the Government had not considered it unreasonable and further the very fact that Government had based the rates on that report shows that in the view of the Government the rates recommended were reasonable.

60. The petitioners could have produced price-list of manufacturers of bottles regarding the cost of bottles. They have not done so. Respondents 3 to 10 also could have produced the bills to show the price at which bottles were purchased. They have not done so. No information is also forthcoming as to whether the bottles are secured back from the customers by paying any nominal price and thereby the cost of bottling cannot be the same in respect of second and subsequent bottling even after making a reasonable provision for breakage, in which event the profit margin would be much large. Thus, there is no material to decide that the rate fixed is exorbitant as pleaded by the petitioners. Moreover the challenge to the fixation of rate on the ground that it was exorbitant and was intended to benefit the contractors at the cost of consumers could only be a subject matter of a petition representing the interest of consumers, as exorbitant rate would only affect the interest of that identified class of persons.

61. One other contention urged for the petitioners was that sacheting of arrack, as proposed in notification dated 11-4-1984 in respect of 100 and 180 ml of arrack was given up and in respect of these quantities also bottling was provided only to help respondents 3 to 10. Sri Shantibhushan, Learned Counsel for the State, submitted that sacheting was given up as there were opinions to the effect that it was injurious to health of consumers on account of chemical reaction. He

also stated that a subsequent event, namely, that a doctor had filed a Public Interest Petition before the Kerala High Court in respect of the same matter and on the said Petition the Kerala High Court had directed the Kerala Government to reconsider the question of sacheting, would show that the decision was based on the rational basis.

62. In our view, the decision of the Government that instead of sacheting of arrack as proposed earlier it is better to have it bottled, is certainly a matter of executive wisdom, which does not contravene any provision of law and cannot be a subject matter of interference on the ground that by sacheting, the arrack would have been available to consumers at cheaper rate or any other ground. Hence we reject this contention.

63. Counsel for the respondents made a scathing attack against the petitioners for having made false allegations against the Chief Minister. Relevant portion of the averments made by the petitioners read :

"On further enquiry and investigation, petitioner learns which he believes it to be true that the said person who is closely related to the Chief Minister is the son-in-law of the Chief Minister. Petitioner learns that the son-in-law of the Chief Minister has a film Distributors business known as Amruth Film Enterprises of which one Sri Manjunath Hegde is also a partner Petitioner learns which he believes to be true that the said Manjunath Hegde and his younger brother have set up firms called the Sea Shell Bottling Company and Canara Bottling Company wherein few other name lenders have been included as partners. Petitioner learns which he believes to be true that the said Manjunath Hegde is the sole controlling partners of the two firms and he is in fact negotiating with the distillers and other bigger contractors for sale of the rights that have accrued under the order of the Government.

2. Petitioner also learns that since the filing of this Writ Petition there has also been a move to change the partners of the firm and it is very likely to be changed during the course of this week. Petitioner humbly submits that In so far as the averments made in regard to Contracts at Sl. No. 11, 12 and 13, it has been stated that the petitioner learns which he believes to be true that the said contracts have been given to a person who is a benami for the Minister for Information in the State of Karnataka. Petitioner learns that the said Chaitanya Kumar, Respondent-9 in this Writ Petition has no means whatsoever to undertake such a contract and he has been awarded the contract only as a Benamidar to other persons who have sought to speculate and make profits. Petitioner learns which he believes it to be true that the said Chaitanya Kumar is only a political worker and he has no business or independent avocation. Petitioner also learns which he believes it to be true that Respondents 5 and 6 herein are also not the persons capable of undertaking the contracts that have been awarded for they have no means nor desire nor plans to undertake the contract. The contract has been given to them only as Benamidars for the benefit of the third parties who are at the back of the deal."

64. In the statement of objection filed by the respondents the above allegations have been denied. The Chief Minister has also filed an affidavit denying the allegation that contract at Serial Nos. 1, 17 and 19 had been given to a person who is closely related to him and that Manjunatha Hegde alleged to be connected with respondents 3 and 10, was a partner in Amruth Distributors of which his son-in-law was a partner and that he was negotiating in the matter of entrustment of bottling contract.

65. Learned Counsel for the respondents submitted that on the short ground that the petitioners have made such false allegation involving the Chief Minister, the Petitions should be thrown out. In support of this submission, they relied on the judgment of the Supreme Court in Hari Narain Vs. Badri Das, in which case the Supreme Court revoked the special leave granted earlier on the ground that the same was obtained by making untrue statements.

66. Learned Counsel for the respondents submitted that it might be, in view of the handicaps with which a public interest petitioner suffers, the Court might show some latitude in the matter of pleadings, but if they were to indulge in making false allegation, the Petitions should be dismissed.

67. In fact at the time of commencement of his arguments, Sri G. V. Shantaraju Learned Counsel for the Petitioners submitted that while the petitioners stand by every one of the allegation made in the Petitions to the effect that the impugned decision was arbitrary, capricious and mala fide, the petitioners and himself were expressing their sincere regret for the allegation involving the Chief Minister to the effect that contracts at Serial Nos. 1, 17 and 19 had been given to a relative of the Chief Minister and that person concerned with respondents 8 and 10 was a partner in Amruth Distributors of which the son-in-law of the Chief Minister was a partner and the former had negotiated in the matter of conferring the largess to respondent 3 to 10, which the petitioners made on information which they believed to be true and which they were unable to substantiate.

68. We were satisfied as to the sincerity of the Learned Counsel in making the statement.

69. Learned Counsel for the petitioners also submitted that the attack made against the petitioners that they had made such allegations to secure admission of the petitions was not justified. He said that what the petitioners had stated was on information which they believed to be true and therefore even if it is found to be untrue, it constitutes no ground for dismissing the petitions. He also pointed out that other allegations in the petitions which the petitioners are pressing were by themselves serious which required consideration on merits and further there were already Writ Petitions filed against the impugned order which were pending before this Court.

70. It is well settled that if a petitioner, approaching the superior Courts in its extraordinary jurisdiction makes a false statement in order to secure Rule Nisi and/or an interim order, he disentitles himself to be heard on the merits. But in

order that the Petition is dismissed summarily on such ground, The allegation made must be shown to be false to the knowledge of the petitioner, when he made it. It was so in the case of Hari Narain Vs. Badri Das, (See also : Mohan v. Assistant Commissioner) 1978 (2) K.L.J. 186. In the present case the petitioners made the allegation stating that they were making it on inquiry, which they believed to be true. We asked the Learned Counsel for the respondents whether they could make out that the allegations were false to the knowledge of the petitioners. They were unable to do so. Thus, it is not shown that the allegation was false to the knowledge of the petitioners. Therefore, the petitions do not suffer from the taint of containing an allegation false to the knowledge of the petitioners.

71. For these reasons, it is not possible to accede to the submission that the petitioners have, by making the allegations, disentitled themselves to the adjudication of the petitions on merits.

72. Learned Counsel for the respondents alleged that the two petitioners themselves were not bonafide, in that, they were inspired by arrack contractors and were politically motivated. Except making such wild allegation against the petitioners, Counsel for Respondents were unable to substantiate them. We find no substance in the allegation.

73. Learned Counsel for respondents 3 to 10 submitted that they have made heavy investments and any interference would not only bring to an end the bottling of arrack which is in public interest, but would also cause great inconvenience and hardship to respondents. We are not impressed by the submission.

74. In this behalf what the Supreme Court said in the case of C. Channabasavaiah Vs. State of Mysore and Others, is apposite. In the said case in addition to the list of 98 candidates selected by the Public Service Commission for appointment as Gazetted Probationers, 24 candidates who were not selected by the Commission were added to the select list by the Commission at the instance of the Government. Other 16 unsuccessful candidates filed Writ Petitions before this Court challenging the selection. Being unable to sustain the validity of selection, in particular of the latter 24, the Government entered into a compromise with the 16 Writ Petitioners offering them Gazetted posts. Encouraged by this compromise, a few other unsuccessful candidates filed Article 42 petitions before the Supreme Court. The Supreme Court, struck down the appointments of 24 plus 16 candidates. The observations made in the judgment are apposite to this case also. They read :

"8.....Such a dealing with public appointments is likely to create a feeling of distrust in the working of the Public Service Commission which is intended to be fair and impartial and to do its work free from any influence from any quarter.

xxx xxx xxx 9. It is very unfortunate that these persons should be uprooted after they had been appointed but it equality and equal protection before the law have

any meaning and if our public institutions are to inspire that confidence which is expected of them we would be failing in our duty if we did not even at the cost of considerable inconvenience to Government and the selected candidates do the right thing.

We express similar feeling as regards the manner and method in which the largess of the order of turnover of 50 crores of rupees in bottling of arrack concerned in these petitions, was disposed of by respondents 1 and 2, and that we are also of the view that we would be failing in our duty if we did not, even at the cost of considerable inconvenience to the Government and respondents 3 to 10, do the right thing.

III-B. Whether the decision is mala fide ?

75. On this aspect Learned Council submitted as follows : If the decision of the Government is found to be unlawful capricious and arbitrary, as pointed out by the Supreme Court in the case of *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, , it would be a piece of evidence of mala fide exercise of power. He submitted that an inference that the decision was mala fide was inevitable from the facts and circumstances and manner and method of selection established in the case. As the petitioners are entitled to succeed on the ground that the impugned order is unlawful, we consider it unnecessary to decide this plea.

76. We are also not expressing any opinion on the validity of the amendment of Rule 3 of the Bottling Rules as the specific prayer for striking down the amendment is made not in the first two petitions but only in the other petitions. However, in the context of amendment of Rule 3(2) of the Bottling Rules, we would like to invite the attention of the Government to certain aspects. Under Rule 3 of the Bottling Rules, as it stood prior to the amendment, the privilege of bottling arrack formed part of the excise privilege of distilling/manufacturing or vending arrack, which could be secured for valuable consideration from the Government. The former could be secured on payment of a licence fee Rs. One lakh per excise year and the latter by purchase of the right to vend in a given area in open competition, for a few lakhs of rupees per excise year. The diverting of a part of such excise privilege, namely, the privilege of bottling arrack and entrusting it to persons other than those who had secured privilege of distillery or vending, subject only to the taking of a licence on payment of Rs. 1,000/- and a cash deposit of Rs. 50,000/- as has been done now, might invite the criticism that the excise privilege of bottling arrack at the rate fixed, has been given free to the persons selected by the Government and thereby the State is deprived of considerable revenue, which it would have got by disposing of the privilege of bottling arrack by sale or auction. The Government might consider this aspect before disposing of the largess/privilege afresh.

77. As regards the memos filed in the Writ Petitions filed by unsuccessful eligible applicants, we would like to observe that the question as to whether a petition

presented seeking redress of the individual grievance of a petitioner, which disclose a primary and independent injury of considerable magnitude to public interest, can be permitted to be withdrawn, is a matter of great public importance in view of the disturbing facts about the fate of such petitions set out by us while considering the question of locus standi. We have considered it unnecessary to examine that question in depth as the two Public Interest Petitions have been seriously prosecuted and in view of our order on those petitions, we are dismissing these petitions as unnecessary.

78. The last aspect for consideration is about the form of the order. In view of our conclusion at paragraph 56 of this order, the impugned order is liable to be set aside and consequently the contracts and licences granted pursuant to the said order also get invalidated. As a result the bottling of arrack, which is in the interest of the consumers, would come to an end. Therefore, we consider it appropriate to allow respondents 3 to 10 to continue the bottling operation for a reasonable period so as to enable the State Government to arrange for bottling arrack in the meanwhile, in accordance with law.

79. Accordingly, we make the following order :

I. In Writ Petition Nos. 19851 and 19208 of 1984 :

(i) Rule made absolute,

(ii) The impugned order dated 29-9-1984 (Annexure-B) is quashed.

(iii) The contracts entered into between the Government and Respondents 3 to 10 and the licenses for bottling arrack granted to Respondents 3 to 10 pursuant to the impugned order dated 29-9-1984 shall be rendered ineffective with effect from 31st March, 1986.

II. In W.P. Nos. 17011 of 1984 and 18 and 6316 of 1985 :

In view of the order made in Writ Petitions Numbers 19851 and 19208 of 1984, these Petitions are dismissed as having become unnecessary.

Venkatesh, J.—Since the facts of the case and the rival submissions made by the learned Counsel appearing for the parties have been lucidly brought on record by my Learned Brother, it is not necessary to repeat the same. While concurring with the order he has made, I would like to express as under on the questions that arise for consideration in this proceeding. The questions are of considerable importance and one of them, question No. 3 (iii), is indeed of a different dimension.

(2) The questions are ;

(1) Have the petitioners no locus standi to maintain these petitions ?

(2) Is the decision of the Government assigning the contracts in question in favour of Respondents 3 to 10 non-justifiable ?

(3) Even if the answers on the aforesaid questions are in favour of the petitions, have they been able to establish that public interest has suffered by Respondents 1 & 2 assigning the bottling contracts to Respondents 3 to 10 for the reason that.

(i) the Government had not followed the usual trade practice of calling for tenders while fixing the charges of bottling ;

(ii) the charges of bottling fixed as per Annexure-A(in W.P. No. 19208/(4) is highly excessive and thereby the arrack consuming public have suffered financial loss ;

(iii) in implementing its policy decision that arrack should be supplied to consumers in bottles or sachets the State Government has violated the law governing this trade.

3. On Locus Standi : In the present context, as observed in de Smith's Judicial Review of Administrative Action (Fourth Edition) page 416, locus standi is understood to mean legal capacity to challenge an act or decision. Garner and Jones in their Administrative Law (Sixth Edition) page 175 are of the view that locus standi is a threshold question in the simplest or clearest cases of lack of standing. The following observations of the learned Authors may be noted :

"Thus, locus standi is a threshold question, finally determinable at the "leave to apply" stage only in the simplest or clearest cases of lack of standing. In most cases the standing of the applicant in relation to the matter in question might better be regarded as constituting a ground upon which the Court while hearing, or having heard, the substance of the case might exercise its discretion to refuse the relief claimed."

The two petitions with which we are concerned cannot be said to be either simplest or clearest cases of lack of standing. The allegations made in the petitions, the nature of the transactions under challenge, the financial implications involved and the attack on the decision of the State Government on the ground that it was injurious to public interest being wholly contrary to law, were factors against the dismissal of the petitions on the ground of locus standi at the very threshold. It is true the petitioners have not been able to prove their case that the bottling charges fixed at Annexure-A, were highly exorbitant and thereby the arrack consuming public had suffered. The question still remains whether the petitioners cannot challenge the decision of the Government in assigning these contracts in favour of respondents 3 to 10 on the ground that that decision was in violation of the law governing the matter in question.

4. When viewed in this context the problem posed raises many questions. Who has violated the law ? violation of what magnitude ?; and of what consequence ?; and even if violated, what does it matter to persons like petitioners ?; and why should they bother about it ? would all be questions that simultaneously arise and crave for answers. Possibly, it is having in view such situations, Bhagavati, J (as he then was) has observed in S.P. Gupta Vs.

President of India and Others, thus :

".....infinite number of situations are bound to arise which cannot be imprisoned in a rigid mould or a procrustean formula. The Judge who has the correct-social perspective and who is on the same wavelength as the Constitution will be able to decide, without any difficulty and in consonance with the Constitutional objectives, whether a member of the public moving the Court in a particular case has sufficient to initiate the action."

(Underlining supplied)

The following observations of the Learned Judge at Para 23 of the very case are also indeed revealing :

".....It is a fascinating exercise for the Court to deal with Public Interest Litigation because it is a new jurisprudence which the court is evolving, a jurisprudence which demands judicial statesmanship and high creative ability. The frontiers of public law are expanding far and wide and new concepts and doctrines which will change the complexion of the law and which were so far as embedded in the womb of the future, are beginning to be born."

5. In the instant case it was argued that even assuming that the petitioners are able to show that the Government had violated the relevant provisions of the Karnataka Excise Act and the Rules made thereunder while assigning these contracts in favour of Respondents 3 to 10 they having no sustained any specific legal injury, cannot be said to have any locus standi to maintain these Petitions. We have indeed an answer to such a question in the following observations of Bhagwati, J., in S.P. Gupta Vs. President of India and Others,

".....But if no specific legal injury is caused to a person or to a determinate class or group of persons by the act or omission of the State or any public authority and the injury is caused only to public interest the question arises as to who can maintain an action for vindicating the rule of law and setting aside the unlawful action or enforcing the performance of the public duty. If no one can maintain an action for redress of such public wrong or public injury, it would be disastrous for the rule of law, for it would be open to the State or a Public Authority to act with impunity beyond the scope of its power or in breach of a public duty owed by it. The Courts cannot countenance such situation where the observance of the law is left to the sweet will of the authority bound by it, without any redress if the law is contravened. The view has therefore been taken by the Courts in many decisions that whenever there is public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury."

(Underlining supplied)

As observed in that case at para 19A :

"What is sufficient interest to give standing to a member of the public would have to be determined by the Court in each individual case. It is not possible for the Court to lay down any hard and fast rule or any strait-jacket formula for the purpose of defining or delimiting sufficient interest and it has necessarily to be left to the discretion of the Court."

As already stated this is not a proceeding to consider the standing of the petitioners at the threshold. We will examine later whether they can successfully challenge the impugned

6. Re. non-justifiability : On the question of justiciability my Learned Brother, while discussing that issue, has referred to the decisions relied upon by the Learned Counsel for the respondents. In appreciating the contentions of the Learned Counsel we have to bear in mind the special features of this case. Admittedly the petitioners are not persons who had staked their claim for these contracts. Nor are they questioning the right of the State to formulate and implement any policy it may choose in the matter of this liquor trade in the interest of the general public. But, what they contend is what the Government have now done is quite contrary to the very law that governs this field of activity. The principles enunciated in the decisions relied upon by the Learned Counsel for the respondents cannot be used by them as a shield for this attack of the petitioners in this proceeding. In this view of the matter, the action of the Government is open to challenge.

7. Re. the 3rd point : It may not be possible to say that the Government could not have fixed their own charges for bottling of arrack and then invited applications from persons intending to undertake the work. As already stated, the petitioners have not been able to show that the bottling charges fixed were highly excessive and thereby the arrack consuming public are made liable to pay more for the arrack they consume.

8. What remains for consideration is the last ground, it being that the assignment of these contracts was wholly in violation of the relevant law governing this trade. Let us examine it.

9. The relevant provisions of the Karnataka Excise Act and the relevant Rules made thereunder have been extracted by my Learned Brother which may please be seen. In Karnataka State the liquor trade and matter connected therewith are governed by the provisions of the Act. As the very preamble to the Act says that it provides "for at uniform law relating to the production, manufacture, possession, import, export, transport, purchase and sale of liquor and intoxicating drugs--an the State of Karnataka and for certain other matters hereinafter appearing". The clear mandate of Section 13(1)(e) is that no person should bottle liquor for sale except under the authority and subject to the terms and conditions of a licence granted in the manner referred to in that provision and the rules made thereunder. Sub-rule (2) of Rule 3 of the Rules, as it stood at the relevant time, made only the lessee of the right of retail vend of arrack, the

holder of a licence for the distillation or manufacture of liquor or trade or the holder of a licence for compounding, blending or reducing of liquors eligible to obtain a licence to bottle liquor. The case of the Government is that in the matter of the contracts in question, it had not proceeded in accordance with the said Rules for the reason that it had taken a new policy decision not to entrust bottling work to distillers, manufacturers etc., at all. Thus what it says is that it had decided upon a policy which was outside the purview of the rules for bottling in vogue and purports to have done so in the best interest of the arrack consuming public. Thus one thing is clear and that is, that even though the mandate of the law and the rules made thereunder provided that bottling of liquor should be done in the manner provided thereunder, the Government in the instant case did not at all choose to follow that mandate. Outside the purview of that law it purports to have evolved a new policy and implemented it. No doubt it says that as a matter of caution it had taken steps to amend the Bottling Rules enabling the authority concerned to issue licence to bottlers it had selected. Admittedly, this amendment was made subsequently and, as already stated, the whole scheme with which we are concerned had been envisaged, given shape and implemented by assigning contracts to Respondents 3 to 10 outside the relevant law and the Rules.

10. Under Sub-section (4) of Section 71 of the Act, every rule made u/s 71 shall have to be laid before each House of the State Legislature. Sub-section (3) of Section 71 says that every rule made under the Act shall have effect as if enacted in the Act itself. It is clear, therefore, that the then prevailing rules for bottling had acquired the force of law.

11. The Act while broadly laying down its policy in the matter of liquor trade has no doubt conferred the rule making power on the Executive. But, it has also further provided that the rules it (the Executive) makes under the Act shall have to be laid before the House. This shows the legislature certainly intended to keep its vigilance and control over the Executive in so far as the function of the Executive extends to the liquor trade. In this connection I may refer to the following observations of a Constitution Bench of the Supreme Court in *D.S. Garewal Vs. The State of Punjab and Another*,

".....At the same time Parliament took care to see that these rules were laid on the table of Parliament for fourteen days before they were to come into force and they were subject to modification, whether by way of repeal or amendment on a motion made by Parliament during the session in which they are so laid. This makes it perfectly clear that Parliament has in no way abdicated its authority, but is keeping strict vigilance and control over its delegate".

The vigilance of the legislature, its desire to have its brooding presence over the liquor trade is quite understandable. While it is one of the major sources of revenue in several States, it is also a breeding ground of several unlawful activities. It has given scope for unscrupulous trade practices at the cost of the physical and mental health of the weaker sections of the society. No wonder, the

legislature is unwilling to confer unfettered discretion on the Executive in this field. The following observations of the Supreme Court in K.N. Guruswamy Vs. The State of Mysore and Others, may be seen. The Court was considering the power of the State to regulate and control the licensing in the liquor trade and the purpose behind such regulations. The Court observes at paras 10 and 11 thus :

".....that the sale of these licences forms such a lucrative source of revenue that State legislature have deemed it wise not to leave the matter to unfettered executive discretion ; accordingly legislation has been enacted in most parts of India to regulate and control the licensing of these trades; Acts are passed and elaborate Rules are drawn up under them. It is evident that there is a policy and a purpose behind it all and it is equally evident that the fetters imposed by legislation cannot be brushed aside at the pleasure of either Government or its officers. The Rules bind State and subject alike.

The Act and the Rules make it plain that liquor licensing in the State of Mysore can only be done in certain specified ways and such discretion as is left to the authorities is strictly controlled by statute and Rule.

12. It is not each and every violation of the Rule and of whatever nature and consequence that can be challenged by a citizen who is not individually and personally affected by it characterising it as a violation of the Rule of Law and that had caused public injury and as a member of the public he too had suffered. In a public interest litigation like the one with which we are concerned the term "Rule of Law" is used in a somewhat restricted and special sense and not loosely. The violation should have had a greater impact and consequence. The decision under challenge in this proceeding involving as it does the business of bottling of arrack, extending to the entire State, continuing for a considerable period of time and with a turnover of considerable financial outlay has its own impact.

13. Bottling of liquor is a part of the liquor trade and this field is governed by an Act of the State Legislature. When this field of activity is governed by the Act and the rules made thereunder, can the Government simply ignore those laws, keep them aside and proceed in the matter by passing them stating that they had evolved a new policy touching the matter ? No doubt, it is open to the Executive to get the rules changed or law amended by incorporating therein any change of its policy. But in a parliamentary system of Government concerning any field of governmental activity if the legislature has already made a law spelling out therein its policy and giving its guidelines, the Executive is bound to go in accordance with that policy following the broad guidelines given therein. It cannot choose to pursue its own course of action. If it does so, it will be violative of the rules of law and will amount to striking at the root of an orderly administration of law. The "rule of law" as observed in Bachan Singh, Sher Singh and Another and Ujagar Singh and Another Vs. State of Punjab and Others, "permeates the entire fabric of the Constitution and indeed forms one of its basic features."

14. The challenge is by the two citizens of the country who are also residents of the State of Karnataka, the State in which the impact of the decision is primarily felt. It is, therefore, fit and proper that the decision challenged herein shall have to be nullified.

Accordingly, I agree with the orders made by my Learned Brother.