

(1966) 07 CAL CK 0015
In the Calcutta High Court
Case No : Civil Revn. No. 387 (W) of 1966

Ruttonjee and Company

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 18-07-1966

Acts Referred:

Bengal Excise Act, 1909 — Section 13, 15(2), 8(1), 8(3), 85
Bengal Excise Rules, 1993 — Rule 209, 44A, 58, 62, 73
Constitution of India, 1950 — Article 226

Citation : AIR 1967 Cal 450

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : A.K. Sen, T.P. Das, B. Chowdhury and Sailadhar Chowdhury, for the Appellant; A.C. Mitter, S.C. Bose, R.C. Deb, Kshetra Mohan Chatterjee, Somenath Chatterjee and Sudhir K. Bose, for the Respondent

Final Decision : Allowed

Judgement

D. Basu, J.—The petitioner is a registered firm (hereinafter referred to as the "firm"), carrying on business under the name and style of Ruttonjee and Co. Its partners are Hirjoo Ruttonjee Bhesania. Feroze Mancherchaw Bhesania. The opposite party No. 4 is a limited company (hereinafter referred to as the "company"), of which the partners of the firm are also directors amongst others. The company is carrying on its business under the name Ruttonjee and Co. Ltd. The firm whose original business was sale of liquors, alleges that in 1957, it applied to the proper authority for permission to start a brewery in West Bengal, and obtained such permission from the State of West Bengal (O/P. No. 1), and also obtained the permission of the Government of India for the establishment of a new industrial undertaking for the manufacture of beer. In 1959 however, before the brewery was established, the partners of the firm decided to promote a limited company to assist the firm in the financing and implementation of the project of establishing and working the said brewery. The company was accordingly incorporated in 1960, including the two partners of the firm in its

Board of Directors.

2. The brewery license under the Rules framed under the Bengal Excise Act, 1909 (hereinafter referred to as the "Act"), was eventually granted for the period from the 2nd August, 1965 to the 31st March, 1966, (Anx. "C-D" to the petition), not in the name of the firm alone but jointly in favour of the firm and the company, subject to certain conditions as imposed by the Government of West Bengal in their letter of 24th July, 1965, (Anx. "C")

3. For the next year commencing from the 1st April, 1966 an application for renewal of the license was submitted to the Collector of Nadia (the licensing authority) jointly by the firm and the company (Anx. "F" to the petition) and it is alleged that the firm from its own fund deposited a sum of Rs. 2,000 (Rs. two thousand), as the license fee (vide challan in Anex. "H"). But on the 5th April, 1966, the petitioner received a copy of a letter (Anx. "I" written by the Assistant Secretary, Excise Department, Government of West Bengal, to the Excise Commissioner (O/P. No. 2) by which the Government approved of the grant of the brewery license in respect of the said brewery to the company alone, to the exclusion of the firm for the year 1966-67.

4. The firm has, therefore, brought this petition under Article 226 of the Constitution for proper writs directed against the impugned letter of the State Government (Anx. "I") on the grounds inter alia, (a) that the application of the petitioner for the renewal of license jointly in favour of the company has not been dealt with by the Collector and the Commissioner of Excise (O. P. Nos. 2 and 3) who are alone entitled to deal with the application according to law, (b) that the State Government (O/P. No. 1), has no jurisdiction to pass the impugned order. It is stated in the petition that no license has yet been issued pursuant to the impugned order. The petitioner, accordingly, prays for appropriate writs to quash the impugned order and command the opposite parties Nos. 1, 2 and 3 to cancel or give effect to the impugned order and then to deal with the petitioner's application for renewal according to law.

5. The most peculiar feature of this case is that the O/P. No. 4, the company, is sought to be represented by two groups of persons and two sets of affidavits have been filed on behalf of the same company; the first- one, dated the 3rd May, 1966, has been filed by Framroze Ruttonjee Bhesania, who is a brother of Hirjoo Ruttonjee (partner of the firm) and a director of the company. The affidavit of Framroze is to the effect that he is a permanent director of the company under the articles of the association of the company and that he alone has been directed by the Board of Directors, by a resolution, dated the 29th July, 1965, to represent the company "in all the matters connected with excise license." He also states that it was he who signed the application for the joint license on behalf of the company by virtue of the company's resolution authorising him, as aforesaid. He supports the petition and states that the renewal of the license should be made jointly in favour of the firm and the company inasmuch as there would be "endless difficulties in running the brewery

without the co-operation or assistance of the petitioner."

6. The other affidavit on behalf of O/P. No. 4 has been Bled by A. K. Thakur on the 7th May, 1966, opposing the petition and supporting the impugned order. He claims to have been appointed (on 6-10-65) a director of the company on the retirement of one of the directors named B. K. Roy and states that the partners of the firm as well as their relations, such as Framroze Ruttonjee, have ceased to be the directors of the company with effect from June or July, 1965, by reason of an alleged contravention of the provisions of Section 295 of the Companies Act, 1956. The validity of the appointment of Shri Thakur is, however, questioned in the affidavit of Framroze on the ground of irregularities in the holding of the meeting by which the appointment took place. On the other hand, it appears that the question whether the Bhesanias and their kins have ceased to be the directors of the company by reason of a contravention of the statute is itself pending a decision in a suit before the Original Side of this court (Suit No. 1925 of 1965), which has been instituted by Shri Thakur for a declaration to that effect.

7. In these circumstances, it is difficult to make any finding in the present proceedings that Framroze has ceased to be a director of the company or to represent the company nor is it open to Shri Thakur to make any contention to that effect so long as the suit referred to is not decreed in his favour. Even assuming that the allegations of Shri Thakur in that behalf are correct, it is not clear on the record as to how he can claim alone to represent the company or why from his counter-affidavit the court should hold, in the present proceeding, that the company is opposing the petitioners case for a joint renewal of the existing license. It is not, however, necessary to come to a definite finding upon the internecine quarrel amongst the two different groups of directors of the company in the present proceeding inasmuch, as the counsel representing the petitioner and O/Ps. 1-3 have argued the case on the assumption that the issues raised between these two contesting parties in the instant proceeding can be disposed of without any finding as to whether Framroze or Thakur is entitled in law to represent the company in the instant proceeding.

8. The questions raised in this case may be dealt with under the following heads:--

1. Whether the application for renewal presented by the petitioner, along with the Company (Anx. "F") has been determined according to law.

2. Whether the State Government has jurisdiction to issue the impugned order or direction.

The right to apply for a brewery licence, is a statutory right conferred by Rule 87 (8) of the Rules framed by the Government in exercise of its powers u/s 86 of the Act. It requires little authority to assert that a mandamus will issue directing the relevant statutory authority to determine it according to law, if it is established that it has not been determined according to the provisions laid down in these Rules or the Act. *R. v. Metropolitan Police Commr.* (1911) 2 KB 1131;

Prescott v. Birmingham Corporation (1954) 3 All ER 698. A.

9. It would be useful at once to refer to the relevant statutory provisions. Section 13 of the Act provides, inter alia, that no intoxicant shall be manufactured and no distillery or brewery shall be worked "except under the authority and subject to the terms and conditions of a license granted in that behalf by the Collector." The working of a brewery without a license or in contravention of the terms thereof is made an offence u/s 46 of the Act. Sections 42 and 43 of the Act empower the authority who granted the license to cancel, suspend or withdraw it, under certain circumstances specified therein. Section 44A then provides--"no person to whom a license has been granted under this Act shall have any claim to the renewal of such license, or, save as provided in Section 43, any claim to compensation on the determination thereof." Rule-making power is conferred on the State Government by Sections 85 and 86 of the Act. While the subject of a Vending" license, that is to say a license for the sale of an intoxicant comes under Sub-sections (1) and 2(e) of Section 85, the matter relating to a brewery license. on the other hand, would come in u/s 86 of the Act which says-

"The State Government may make rules-

(1) For regulating the manufacture, supply or storage of any intoxicant, and in particular and without prejudice to the generality of this provision, may make rules for regulating-

(a) the establishment, inspection, supervision, management and control of any place for the manufacture, supply or storage of any intoxicant and the provision and maintenance of fittings, implements and apparatus therein. .".

10. It is in exercise of the foregoing power conferred by Section 86 that the State Government has made Rule 87, providing for the "licensing and regulation of breweries," as follows:

"(1) Every brewer for sale and every brewer of beer for private consumption shall, before he begins to brew, deliver to the Commissioner through the District Officer a description in writing, signed by himself, of all premises, rooms, places and vessels intended to be used in his business, specifying the purpose for which each is to be used, and the distinguishing mark of each. On the outside of the door of every room and place in which the business is carried on, and on some conspicuous part of each of the aforesaid vessels, there shall be legibly painted in oil colour the name of the vessel, utensils, room or place according to the purpose for which it is intended to be used. If more than one vessel is used for the same purpose, each shall be distinguished by a progressive number.

(2) Before the licence to brew is granted, an Excise Officer authorised by the Commissioner shall inspect the premises, etc., compare the same with the particulars stated in the aforesaid written description and certify accordingly. The licence shall be granted by the Collector with the sanction of the Commissioner if Ac description be found satisfactory and the applicant be considered a fit person

to receive a licence.

(3) The licence for a brewery must be renewed annually. Such renewal will be granted by the Collector, subject to the approval of the Commissioner."

11. It is evident that the foregoing statutory provisions have not been complied with in making the impugned order at Ann. I to the Petition (p. 35):

12. The impugned order is not an order of renewal, which was applied for by the holders of the existing licence per Ann. F (p. 26), [but an order for the grant of a fresh licence for the year 1966-67, on terms and conditions newly specified, as if it was an order on an application for a new licence.

13. It has been rightly pointed out that the statute and the rules prescribe different procedures to be followed in the case of an initial application and an application for a renewal. Before going to the relevant Rules, it may be noted though in the case of a vending licence, Section 85(2)(e) specifically authorises the State Government to prescribe the periods for which such licences may be granted, there is no specific provision in Section 86 to prescribe such periods. Separate sets of rules, have in fact, been framed by the Government under the two provisions just mentioned. Rule 58, relating to a vending licence, provides that, except in the cases specified in Clauses (1) to (6) of that Rule where the period may be longer, a vending licence shall be for a period of one year only; there is no provision for renewal, which means that on the expiry of one licence, an application in respect of the next period shall be treated as an application for a new licence, and the same principles as are laid down in Rule 62 and the same procedure as is prescribed in Rules 73 et seq., read with Sections 30-35 of the Act have to be followed each time an existing licence expires. In the case of an application for a brewing licence, on the other hand, the only rule which is relevant is Rule 87. Sub-rules (1) and (2) of this Rule prescribe the procedure to be followed when an application for a new licence is made, and Sub-rule (8) then deals with the renewal of an existing licence. In the case of a new licence, the licensee must, in his application, give a description of his premises and implements and before any such licence is granted, there must be an inspection of the premises to verify the foregoing particulars as stated in the application. This procedure, evidently, is not required to be followed in the case of an application for renewal.

14. It is true that there is no legal right in favour of the holder of an existing licence to obtain a renewal, by reason of Section 44A. But where Government does not think fit to refuse renewal, the renewal will be in favour of the holder or holders of the existing licence and on the same terms and conditions as in the existing licence. This is suggested by the short provision in Sub-rule (8) that "the licence for a brewery must be renewed annually." What is emphasised by me in this context is that in the case of an application for renewal, there is no need for furnishing again the particulars referred to in Sub-rule (1) or for an inspection under Sub-rule (2), nor for the Government imposing new terms etc., as if it

were an application for a new licence.

15. It follows from the above that the relevant Rules lay down different substantive and procedural provisions for vending and brewing licences; for an application for a new brewing licence and an application for the renewal thereof. In this context, it should be further noted that Rules 207-209, made under the power conferred by Section 86(2)(viii), which cannot possibly relate to a "vending licence", but must relate to a brewing licence, contain detailed provisions for the "transfer of licences" by act of parties, by death and by reason of a change in partnership subsequent to the grant of a licence. Of these, Rule 209, which expressly relates to "renewal", says-

"On the death of a licensee, the Collector may renew the licence on the same terms in favour of a representative of the deceased, if he be satisfied that such representative is fit to hold it, and on the condition that any arrears due from the deceased licensee are recovered before the licence is so renewed. In such case no fresh deposit need be called for."

16. All these provisions go to indicate that a brewing licence is considered to be a more permanent thing than a vending licence, for the obvious reason that it involves a greater amount of cost and energy to set up a brewing establishment and that accordingly, a brewing licence should, ordinarily, be renewed (even though there is no legally enforceable right in that behalf) and that such renewal shall be made in favour of the holder or holders of the existing licence, except in the case of devolution of the interest of a licensee in any of the modes referred to Rules 207-209.

17. This much is clear, therefore, that the relevant provisions of the statute or the I Rules do not warrant-

(i) the application for renewal of a brewery licence being treated as an application for a new licence; or

(ii) a renewal, being granted in favour of one of two holders of an existing licence, except in the case of a devolution of interest, which is specifically dealt with by the Rules.

18. It has been held by the Supreme Court that where the Rules provide differently for different situations, the statutory authority cannot adopt a procedure other than that provided by the Rules for the situation before the Authority vide *Gandhara Transport Co. Ltd. Vs. The State of Punjab and Others*, .

19. II. The next question for my determination is whether the State Government has jurisdiction, under the law, to make the impugned order.

20. It has been stated at the outset that Section 13 of the Act expressly mentions the Collector as the authority to grant a brewery licence, just as Section 15(2) mentions the Excise Commissioner as the authority whose permission is required to establish a brewery. It would follow from this that the

Collector shall also be the authority to grant the renewal of a licence. The Act does not mention that in the matter of granting a licence, the Collector shall have to obtain the sanction or approval of any other authority. But Rule 87, framed under the power conferred by Section 86, provides that in the matter of the grant of an initial licence (Sub-rule (2)), the Collector must obtain the "sanction" of his administrative superior, namely, the Excise Commissioner and that, in the matter of a renewal, similarly, the grant by the Collector shall be "subject to the approval of the Commissioner". It has not been contended that the words "sanction" and "approval" have different connotation, nor has the vires of these provisions been challenged on the ground, that it has made the decision of the Collector, who alone is mentioned by the statute, subject to the concurrence of the Excise Commissioner.

21. But if the Rules have to be read along with the Act, this much is clear that the specific provisions which deal with the matter of a grant or renewal of a brewery licence, expressly vest the discretionary power in the two authorities, Collector and Excise Commissioner, If the matter rests here, the State Government can assume no jurisdiction to interfere with the exercise of this discretionary power by the two authorities specified by the statute, for,--(a) that the function of licensing is a discretionary power vested by statute is beyond question [R. v. Torquay Licensing Justices (1951) 1 All ER 656; R. v. Licensing Committee (1957) 1 All ER 112 ; Associated Provincial Picture Houses v. Wednesbury Corporation (1947) 2 All ER 680 ; Commissioner of Police, Bombay Vs. Gordhandas Bhanji, .

Of course, at an earlier stage of the hearing, there was some controversy as to whether the licensing function was also quasi-judicial but, later, Mr. Sen stated that he would not contend that the function was quasi-judicial, because he was entitled to succeed even if it were an administrative power inasmuch as the power was a discretionary power vested by statute.

22. (b) Mr. Sen is right in his contention that where a discretion is vested by statute in a specified authority, the discretion must be exercised by that very authority, without interference from some other person or authority. The facts in the English case of Simms Motor Units v. Minister of Labour. (1946) 2 All ER 201 were peculiar. The power involved was a discretionary power to direct an employer to reinstate a dismissed worker. Under the relevant Defence (General) Regulations, the Minister of Labour could confer this power either upon himself or upon a "national service officer". The Minister conferred the power upon a particular officer but thereafter sought to issue instructions to guide the officer in the matter of exercise of the discretion conferred upon the latter by his own statutory order. The direction issued by the national service officer, in pursuance of such directions issued by the Minister, was held invalid by the Court on the following grounds :--

".... the national service officer has not exercised his discretion. . . In our view, the Minister cannot by instructions limit the duties or limit the discretion of his

national service officer"

23. In short, even the authority who himself confers a statutory power upon a particular person, cannot thereafter interfere with the exercise of the discretionary power lawfully vested in the latter.

24. The decision of our Supreme Court in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, , is no less illuminating. Under Rule 250 of the Rules framed under the City of Bombay Police Act, 1902, the Commissioner was vested with the power to grant, refuse or cancel a licence for the erection of a cinema. When the Commissioner cancelled a licence on the ground that he was so "directed by the Government", the Supreme Court struck down the order of cancellation and issued a mandamus directed the Commissioner to make a proper order. It was observed-

". . . the Commissioner did not, in fact exercise his discretion in this case and cancel the licence he granted. He merely forwarded to the respondent an order of cancellation which another authority had purported to pass. . . . He was therefore bound to exercise it and bring to bear on the matter his own independent and unfettered judgment and decide for himself whether to cancel the license or reject the objections."

25. Stronger observations, to the same effect, are to be found in the later case of *Mannalal Jain Vs. The State of Assam and Others*, , in relation to the function of licensing under the Essential Commodities Act, 1955.

26. It was faintly suggested on behalf of the Government that the Collector or the Excise Commissioner to whom the impugned letter at Ann. I is addressed, has not yet passed any order in pursuance thereof. But it would hardly be reasonable to presume that the Excise Commissioner, an employee of the State Government, can dispose of the Petitioner's application for renewal in any manner contrary to the directive and decision of the Government contained in Ann. I. To quote the words of the Supreme Court in *B. Rajagopala Naidu Vs. State Transport Appellate Tribunal and Others*, .

"It would. . . be idle to suggest that any Transport Authority functioning in the State would normally refuse to comply with the order issued by the State Government itself."

The presumption, having regard to the natural course of human affairs, would be that the discretion, vested in the Excise Commissioner and the Collector, has been taken away by the impugned letter and it is futile to expect that they would still be in a position to exercise their discretion independently, so long as the impugned letter is not removed, particularly in view of the fact that in Para. 20 of the counter-affidavit filed jointly on behalf of Respondents 1-3, the Collector and Commissioner join in the contention that the State Government has the power, under amended Section 8(1), to issue an administrative direction such as the impugned one, binding upon them in the matter of issue of licence. Apart from

that, once it is held that the impugned letter seeks to interfere with the statutory discretion of some authority other than the State Government, it would follow, at once, that the directive contained in the impugned letter is without jurisdiction and should, as such, be struck down, leaving the statutory authorities to exercise their discretion, without interference.

27. It has, however, been contended by Mr. Mitra, the learned standing counsel, that the State Government has jurisdiction to issue such a direction in view of the changes introduced in Sub-section (1) of Section 8 of the Act, as it was substituted on December 31, 1965. It should be pointed out at once no substantial change has been introduced in Sub-sections (2) and (3) of the section by the amendment in question, but the control of the State Government has been added, by a redrafting of Sub-section (1), as follows: -

Original Sub-section (1).

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

After the amendment of 31-12-65.

"(1) In doing anything or taking any action under this Act-

(a) the Collector shall be subject to the control of the Excise Commissioner and of the State Government and, in such matters as the State Government may direct, also of the Commissioner of the Division; and

(b) the Excise Commissioner shall be subject to the control of the State Government."

28. It is evident that the word "control" was in the sub-section even before the amendment of 1965. It is, therefore, natural to see what interpretation was put to this word before the amendment. Though there is no direct decision on the Bengal Act, there is a Bombay decision, reported in *Ratanshaw Nusserwanji Todiwalla Vs. Geoffrey William McElhinny*, under the Bombay Abkari Act, 1878, which is relevant because the provisions of that Act are comparable to those of the Bengal Act, on the point in question. Section 4 of the Bombay Act says :--

"4. Subject to the control and direction of the Commissioner and the orders of the Provincial Government, the Collectors are charged with the collection of the Abkari revenue, and with the carrying out of the provisions of this Act. . . ."

Section 14(1) then provides :--

"Save as hereinafter otherwise provided (a) no intoxicant shall be manufactured. . . . except under the authority and subject to the conditions of a license granted in that behalf by the Collector."

29. It was held that (i) by Section 14 an implied power was conferred upon the

Collector to grant licenses; (ii) the "control" referred to in Section 4 relates only to control in reference to "establishment" and not the power to grant licences and that, accordingly, (iii) neither the Commissioner nor the Government could "control" the Collector in the matter of exercise of his statutory power to grant licences.

30. Though no contrary decision could be pointed out by the learned counsel for the respondents, it was argued, rather vehemently, that the substitution, by the Act of 1965, of the words "doing anything or taking any action" in place of the words "in all proceedings", in Section 8(1) of the Bengal Act has introduced a different situation than under the Bombay Act and that, since this amendment, the function of licensing has also been brought under the omnibus power of "control" under Sub-section (1). It is not possible to accept this contention, for a number of reasons :--

31. (a) The previous expression "all proceedings" was no less comprehensive and a proceeding for the grant or renewal of a licence could literally have been brought in under this expression or the expression "carrying out of the provisions of this Act" in the Bombay Act, if there were no other legal objection to accept such literal interpretation.

(b) Though there have been mere verbal changes in Sub-section (1) of Section 8 of the Bengal Act, in 1965, the arrangement of Chapter II remains the same and Section 8 retains its old position under the head "Establishments, control, appeal and revision", and the licensing provisions of the Act, including Section 13, which exactly corresponds to Section 14 of the Bombay Act, come under a separate Chapter, following Chapter II, so that it may be said, in tune with the Bombay decision, that the object of the amendment of 1965 was not to alter the legal position as regards the statutory function of licensing, belonging to the Collector u/s 13.

(c) It has been rightly contended by Mr. Sen on behalf of the petitioner that wherever the Act intended to give a power to the State Government, it has done so by specific provisions, such as Sections, 11, 12, 14, 15(1)(a), 19(1), 22(1), 35, 36, 38(2) and so on. If it were intended by the amendment of Section 8(1) to confer an omnibus power upon the State Government to discharge all the functions under the Act, by overriding the decisions and orders of other authorities vested with specific power by the Act itself, the Legislature would have redrafted the Act as a whole instead of amending Section 8(1) only and leaving the other specific provisions relating to due State Government untouched. Such a wide object behind the amendment cannot be inferred in the absence of any material whatever.

(d) Though the language of Sub-section (1) of Section 8 of the Act was changed in 1965, no changes were made in the Rules regulating the licensing function of the Collector, whether in relation to a vending or a brewery licence or the like. If the object of the 1965 Amendment was to make the power of the Collector

subject to the sanction or control of the State Government in addition to that of the Excise Commissioner, one would have expected the words "State Government" being appropriately added to Sub-rules (1) and (2) of Rule 87. So king as the Rules are not amended, it can be argued,--as was argued in the Bombay case,--that the statutory Rules would be rendered meaningless if the State Government could interfere with the orders of the Collector or Excise Commissioner, regardless of what was provided in the Rules. We cannot, obviously, accept an interpretation of Section 8(1) which would render the statutory rules nugatory, when the Act itself provides that the matter of licensing should be regulated by such Rules. It can hardly be overlooked that the 1965 amendment has not introduced any change in any other relevant provision of the Act itself save Section 8.

(e) Above all, no change having been introduced in Sub-section (3) of Section 8, it cannot be concluded that the 1965 amendment has given a power to administratively revise the licensing orders of the Collector unless we hold that the object of the amendment was to give the State Government power to revise such Orders both administratively under Sub-section (4) as well as quasi-judicially under Sub-section (3), or that in other words the function of licensing would be subject both to Sub-sections (1) and (S). Sub-section (4) it as follows :--

"The State Government may revise any order passed by the Collector, the Excise Commissioner or the Commissioner of a Division or by any officer exercising the powers of an appellate authority under any rule made u/s 85, Sub-section (2), Clause (c)."

32. It has not been contended by Mr. Mitra that a licensing order of the Collector is excluded from the purview of Sub-section (3). His contention is that it would be subject both to Sub-sections (1) and (3). The result of such a contention would be that when a Collector's order is revised by the State Government administratively, it would still be open to the aggrieved party to apply in revision to the State Government, so that the latter would then be in the unhappy position of dealing with its own order in the quasi-judicial revision under Sub-section (3). Mr. Mitra argued that there was no anomaly involved in accepting such a conclusion because there were instances where a person who has dealt with a matter administratively has been given revisional power in another capacity. But a formidable objection against the argument of Mr. Mitra is that it has been laid down by the Supreme Court that where a revisional function is vested in an authority by statute, even though it may relate to a discretionary matter such as an excise licence, the function of revision cannot but be exercised quasi-judicially: *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, . Hence, it is clear that the State Government cannot interfere with an order of the Collector administratively under Sub-section (1) when it is bound to exercise such power of interference only in a quasi-judicial manner,--because the nature of the revisional power,

according to the Supreme Court, is such that it can be exercised only in the quasi-judicial manner.

(f) Apart from that, in construing the two provisions in Sub-sections (1) and (9) of Section 8, in order to find out their respective scope, the maxim "*generalia specialibus non derogant*" cannot be overlooked. Whatever be the subject-matter of a particular appeal or proceeding in revision, it is evident that the legislature provides these remedies in order to afford a private individual, who is affected by the order of an inferior authority, an opportunity of getting relief from a superior authority. A person who applies for the grant or renewal of a licence is such a person and he has the right to move the appellate or revisional authority under Sub-section (2) or (3). If it be asked that when the power either under Sub-section (1) or Sub-section (3) may be exercised suo motu, what makes the difference if the State Government proceeds under either of these powers, the answer has been given already, namely, that even where the State Government elects to exercise its power of revision suo motu under Sub-section (3), it cannot but proceed quasi-judicially and it cannot avoid that quasi-judicial obligation by claiming to proceed under Sub-section (1). It would follow that Sub-section (1), even after the amendment, must be construed to relate to departmental or other administrative matters but not to matters where a private individual is affected by the statutory authority, say, in the matter of licensing, in respect of which he may exercise his right of appeal or supervision under the same section. The object of the legislative provision of the power of revision in Sub-section (3) was clearly to give relief to aggrieved private individuals who could not get any relief without any such statutory provision to approach a higher authority.

33. I hold, therefore, that in exercise of the administrative power of "control" under Sub-section (1) of Section 8, the State Government has no jurisdiction to interfere with the licensing power vested by the statute and the rules made thereunder in the Collector and the Excise Commissioner. It could do so only in exercise of the power of revision under Sub-section (3). But a number of pleas in bar must be disposed of before the petitioner can be given any relief.

34. Firstly, it has been urged that since Section 44-A specifically says that the holder of an existing licence has no legally enforceable right to obtain a renewal, no writ of mandamus can issue in the matter of renewal.

35. The short answer to this contention is that the petitioner does not, in the instant proceeding, seek to command the respondent authorities to grant a renewal in its favour but simply asks for a writ or order to direct the proper authorities to hear and determine its application for renewal according to law. It is established beyond dispute that even where an authority is vested by a statute with a discretionary power, though mandamus will not issue to compel the authority to exercise its discretion in a particular way, it will issue to command the authority to exercise his discretion in one way or the other, provided, of course, the discretion is coupled with a duty to exercise the discretion. It is established both in England and India that even though a licensing authority has

the discretion to grant or refuse an application for licence and an applicant for licence has no legally enforceable right to obtain a licence,--where the licensing function is guided by statutory provisions, the statutory authority has the duty to exercise his discretion by considering each application, according to the relevant statutory provisions and that if such authority fails to consider an application or the relevant statutory provisions are contravened in the exercise of his discretionary power, mandamus will issue to command that authority to proceed according to law (1911) 2 KB 1131 ; R. v. Bowman (1898) 1 QB 663; R. v. Gotham (1898) 1 QB 802 ; R. v Licensing Committee (1957) 1 All ER 112 ; K.N. Guruswamy Vs. The State of Mysore and Others, ; Shrinivasa Reddy and Others Vs. State of Mysore and Others, ; State of Punjab and Another Vs. Hari Krishan Sharma, .

36. Secondly, it has been urged that the petitioner firm has not got that much of interest in the brewery to which the licence relates as would entitle the petitioner to apply for mandamus or any other writ under Article 228 of the Constitution.

37. This tier of the argument of Mr. Mitra was founded on certain provisions of the Act. It has been said that Section 13(e) and Section 46(e) of the Act show that the licence in question relates to the "working" of the brewery and that, accordingly, a person who has no participation in the actual working of the brewery in dispute is not entitled to bring any application under Article 226 of the Constitution in respect of the renewal of such licence, particularly when Government has decided to grant a licence for the working of the brewery in respect of the period for which renewal was applied for by the petitioner.

38. No determination on this question can, however, be made unless the scope of the reliefs claimed in the instant proceeding is properly appreciated. The petitioners do not, to reiterate, seek an order that the renewal must be granted in its favour; its complaint is that its application for renewal (Ann. F) has not been determined by the proper authority according to law. The question of locus standi has to be decided from this point of view, namely, whether the petitioner has sufficient legal interest that the application for renewal should be disposed of according to law.

39. It is settled that though a petitioner under Article 226 must show that he has got a legal right, such right need not necessarily be a proprietary interest in the subject-matter Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, ; any person who has been prejudicially affected by an act or omission of a statutory authority can apply under Article 226, challenging the legality of the act or omission (ibid), even though he has no proprietary interest of any kind in the subject-matter to which the application relates. It was on this principle that it was observed in K.N. Guruswamy Vs. The State of Mysore and Others, , that a bidder at a public auction, even though he had no legal right to obtain a licence by virtue of his bid being the highest, was entitled to have a writ of mandamus, in the absence of any other bar, where the statutory provisions relating to the granting of licence by public auction had been violated. In a Patna case,

Rambharosa Singh Vs. The Govt. of the State of Bihar and Others, , it has been held that even an intending bidder at a public auction has the right to insist that it must be held as enjoined by the law.

40. In the case before me, the petitioner is not only a joint holder of the existing licence which is sought to be renewed but has made an application for renewal and deposited the licence fee required. In this situation, regardless of the question of title to the brewery, into which the Excise Minister has unnecessarily entered, the petitioner has the legal right to insist that there should be a disposal of its application for renewal according to law, even though it may not have a legal right to insist that the licence must be renewed. For the same reason, it is unnecessary to decide the question raised by Mr. Mitra that under the Act, a brewery licence can be granted only in favour of the person or persons who actually work the brewery or into the question whether the petitioner firm has any part in the actual working of the brewery to-day. In fact, any expression of opinion by this Court on the point might influence the licensing authority in the exercise of its discretionary power to grant or refuse the renewal, and might constitute an assumption by this Court, in its writ jurisdiction, the powers of a Court of appeal over the administrative authority, empowered by the statute to determine an application for a licence or for renewal thereof.

41. Even assuming that the State Government has been given any power to "control" the licensing function, it could at best issue general instructions, laying down the procedure or principles to be followed by the licensing authority; it cannot make or suggest the actual decision in a particular case, for, to do that would be to usurp the statutory function of the licensing authority. In the name of "control", the State Government cannot do that, as held by the Supreme Court in its unreported decision in CA 763 of 1963, D/-9-12-1965: (now reported in *State of Punjab and Another Vs. Hari Krishan Sharma*,). The learned Standing Counsel, of course, argued that in the case before the Supreme Court what the Government did was to direct that all applications for licence must be presented to itself instead of before the licensing authority specified by the statute and that, accordingly, the Supreme Court decision is distinguishable. I am unable to accept this contention for the simple reason that, in the result, it makes little difference whether the Government picks up each individual application and determines that as the licensing authority should have done or does the same thing by issuing a general instruction that all applications must be presented before it to be determined by itself instead of by the statutory authority. In either case, there is usurpation of the statutory function of licensing vested in an authority other than the Government,--and that is the decision of the Supreme Court in the cited case.

42. Of course, a change in the circumstances may be a relevant ground for refusal of renewal to the holder of an existing licence [vide (1957) 1 All ER 112. But the only change in the circumstances which the Minister has relied upon in coming to his impugned decision (Ann. C to the counter-affidavit on behalf of the

Respondents 1-3, pp. 46-49) is the alleged change in the constitution of the Board of Directors of the Company, resulting in a disappearance of the interest of the partners of the firm in the management of the company. But, as the Minister has himself pointed out, these are the very questions pending decision of a competent Court in a suit brought by Thakur; nothing in the Excise Act gives the Minister a jurisdiction to decide these justiciable questions, and to refuse a renewal to one of the joint licensees on such a consideration before the Court has decided against the petitioner, is without jurisdiction.

43. From whatever point of view it is viewed, the impugned order must fail on the ground of ultra vires.

44. But there is yet a third argument in bar advanced on behalf of the respondents. It has been vehemently urged that it is not open to the petitioner to urge that the State Government had no jurisdiction to make the impugned order because (a) Even the order for the issue of the existing licence had been made by the State Government, in a similar manner (Ann. C to the petition p. 21), and the petitioner had accepted the licence issued in pursuance thereof; (b) In a letter of the 12th May, 1965, the petitioner had represented that it would be willing to accept the grant or renewal of the licence in favour of the company exclusively (Ann. A to the counter-affidavit of Respondents 1-3, pp. 17-18). This is, in substance, a plea of estoppel. But there cannot be any estoppel against a statute nor can acquiescence vest jurisdiction in an authority which it has not, under the law. Apart from that, the representation or undertaking in question had been made by the partners at a time when there was perfect amity between the firm and the company and before the dispute as to the constitution of the Board of Directors arose and this is clearly brought out in the Minister's decision at Ann. C itself. The obvious motive that prompted the petitioner at that time was to get a licence as early as possible, getting rid of any objection that might be raised in the way. The petitioner protested as soon as it came to know that an application for a new licence in favour of the company exclusively had been made by Thakur alone [vide Para. 17 of the counter-affidavit of Respondents 1-3 and Ann. B thereto, D/-15-3-66].

45. No doubt mandamus is a discretionary remedy, but acquiescence is not applied to refuse mandamus in a case of want of jurisdiction, in the same way as it may be done to refuse Quo Warranto, in appropriate cases. Where there is a failure in the performance of public duties or usurpation of jurisdiction, and there is no other remedy, mandamus would issue almost as a matter of course, because its object is "to supply defects of justice" [R. v. Archbishop of Canterbury (1812) 15 East 117; R. v. Poplar Borough Council, (No. 1) (1922) 1 KB 72; Rochester Corporation v. R. (1858) EB and E 1024 (1030)]. In the case before me, I have held that the State Government has exercised a jurisdiction not vested in it by law and also interfered with a power vested in another authority. In these circumstances, mandamus should issue, in the interests of the proper conduct of the public administration, irrespective of the conduct of the

petitioner before me or irrespective of a consideration of the chances of the petitioner to eventual success on the merits if its application is dealt with by the proper authorities according to law.

46. In the result, the Rule is made absolute, with costs against Respondents 1-3, hearing fee being assessed at five gold mohurs.

47. Let an order in the nature of mandamus issue restraining Respondents 1-3 from giving effect to the impugned order at Ann. 1 to the petition and commanding Respondents 2-3 to determine, according to law, the application for renewal of the licence at Ann. F.

48. Let the operation of this order be stayed for a period of three weeks from this date.