(1999) 08 MAD CK 0065

In the Madras High Court

Case No : W.A. No. 888, 872, 875, and etc., of 1998

S. Ganesan APPELLANT

Vs

Assistant Commissioner Excise, Collectorate, Chennai and another RESPONDENT

Date of Decision : 26-08-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226, 47
Madras Prohibition Act, 1937 — Section 17, 20A, 52A, 55
Tamil Nadu Liquor (Retail Vending) Rules, 1989 — Rule 11(B)(2), 13(1), 14, 17, 18
Transfer of Property Act, 1882 — Section 106

Citation : (2000) 1 CTC 193

Hon'ble Judges : R. Jayasimha Babu, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : Mr. R. Thiagarajan, Mr. A.M. Packianathan, Mr. R. Subramanian, Mr. R. Gandhi, Mr. V. Ayyathurai, Mr. D. Veerasekaran, Mr. G. Veerapattiran, Mr. A. Shanmugavel, for the Appellant; Mr. Patti B. Jagannathan, Special Government Pleader, Mrs. Rita Chandrasekaran for M/s. Aiyar and Dolia, Mr. N. Krishnamithra, Mr. C. Rajagopalan, Mr. E.R.K. Moorthy, Mr. S.C. Ramalingam, Mr. R. Subramaniam, Mr. K. Doraiswami, for the Respondent

Judgement

Judgement Pronounced by R. Jayasimha Babu, J.—In this batch of writ appeals directed against the common order made by the learned

single Judge on 9.7.1998 in W.P.Nos.5071, 6809,6963,7158,7571,7454,7470,7483,7728,7724,7629,7963,8118,8142, 8235,8236 and 8409

of 1998, the question raised is regarding the validity and scope of Rule 13(1) of the Tamil Nadu Liquor (Retail Vending) Rules, 1989 (hereinafter

referred to as the Rules'') in so far as that Rule requires the person, in whose favour the sale of the privilege of vending Indian made Foreign Liquor

in retail is confirmed, to produce a certificate in Form No. III from the Excise

Officers, or an officer not below the rank of the Deputy Tahsildar

duly authorised by the Collector regarding the suitability and also ownership or lease of the building for not less than a year of the shop from where

he intends to sell liquor, and the further requirement in that Rule that a xerox copy of the document showing that the auction purchaser himself is the

owner of the building or a xerox copy of the lease agreement executed with the landlord of the building wherein the proposed shop is to be located

he produced.

2. All the appellants herein are tenants who either do not have a subsisting lease agreement in their favour, or whose lease agreement do not permit

them to carry on trade in liquor in that premises. The writ petitions from which these writ appeals arise had been filed by a tenant, who, had

challenged the validity of this Rule to the extent indicated above) and by certain other tenants, who, though retaining possession of the premises

claimed only the status of statutory tenants, and did not have subsisting lease agreements in their favour, as also by also by landlords who were

aggrieved by the grant of licence to the persons in occupation of the premises, and whose legal status would only be that of statutory tenants, and

not contractual tenants.

3. The requirement in Rule 13(1) of the Rules that the person in whose favour the sale of the privilege of the retail vend of Indian Made Foreign

Liquor is confirmed should either be the owner of the premises or be a lessee thereof who is in a position to produce the lease agreement executed

by the landlord for a period of not less than a year, was earlier a part of Rule 7 of the same set of Rules prior to 27.11.1990. After that date, what

was earlier Rule 7(2)(C) was in effect made a part of Rule 13(1) by amending the same.

4. Rule 13(1) of the Rules reads as under:

13(1) within seven days of receipt of the order''s of confirmation if the sale of the privilege in Form V, the auction purchaser shall make an

application in Form VI to the licensing authority for the grant of the licence together with the application fee specified in sub-rule (3). a certificate in

Form III from the Excise Officer or an officer not below the rank of a Deputy Tahsildar duly authorised by the Collector regarding suitability and

also ownership or lease of the building for not less than a year of the shop from where he intends to sell liquor, and a xerox copy of the document

showing that the auction purchaser himself is the owner of the building or a xerox copy of the lease agreement executed with the landlord of the

building wherein the proposed shop is to be located

5. A learned singles Judge of this Court in W.P.No.11263 of 1991 decided on 13.8.1991. interpreted this Rule 13(1) in favour of statutory

tenants by holding that the reference to the lease agreement in that Rule would include a statutory tenant as such tenants are protected by the Tamil

Nadu Buildings (Lease and Rent Control) Act, and the possession of such statutory tenants must be regarded as lawful possession. A similar view

was reiterated by another learned single Judge of this court in W.P.No. 10861 of 1993 decided on 16.6.1993. Following those decisions and

relying on an opinion which the Government Pleader has furnished to the Commissioner of Prohibition and Excise, the commissioner had issued

instructions on 7.4.1995 directing that the licensing authorities should accept the lease deeds if any, produced, in the case of statutory tenants, if

such statutory tenants produce evidence of possession such as receipts from the landlords.

6. Notwithstanding that instruction, and the earlier decisions, the authorities acting under the Rules having declined to grant the licence to statutory

tenants on the ground that the lease agreement with the landlord valid for the year for which the licence was being sought had not been produced,

some of the writ petitions out of which these appeals arise, came to be instituted. Some of the landlords, who also came to court have also

instituted writ petitions contending that the grant of licences to persons, who do not have a valid lease deed for the period covering the period of

licence was contrary to Rule 13(1) of the Rules.

7. The learned singles Judge, in an elaborate judgment, in which he has exhaustively considered the relevant provisions of the Tamil Nadu

Prohibition Act, as also of the Rules and the applicable decisions of the Apex Court and of this Court, held that Rule 13(1) of the Rules is valid,

and that the reference therein to the lease agreement requires a prospective licensee to produce a subsisting lease agreement with the landlord and

in the absence of such lease deed, no licence could be granted by the authorities for running a shop for the retail vend of Indian Made Foreign

Liquor in such premised. It was also held by the learned single Judge that in cases where the landlord expressly stipulated that the premises is not

to be used for trade in liquor, licence under Rule 13(1) of the Rules could not possibly be granted.

8. In these appeals, it has been contended before us by leaned counsel appearing for the appellants that Rule 13(1) imposes an unreasonable

restriction on the rights of the persons, who bid for the privilege of retail vend of Indian Made Foreign Liquor, and that the Rule in so far as it

requires the production of a subsisting lease agreement is arbitrary and is also discriminatory. It was further contended by counsel that even if the

Rule is valid, the Rule does not preclude a statutory tenant from being a recipient of a licence, as the only object of requiring a lease agreement was

to ensure that the tenant was in possession of the premises, and a statutory tenant, who enjoyed the status of irremovability would clearly satisfied

the purpose of the rule, and would therefore be entitled to a licence. It was also further contended that the reference to the lease agreement in Rule

13(1) of the Rules is only to any lease agreement, and not necessarily to a lease agreement for the period covered by the licence.

9. We will first deal with the question as to whether this Rule is violative of the petitioner''s right under Articles 14 and 19 of the constitution of

India. It has been held by the Supreme Court in more than one decision, and the principle has been reiterated time and again that there is no

fundamental right to carry on trade in liquor. In case of Nashirwar and Others Vs. State of Madhya Pradesh and Others, the Court made the

following observations with regard to the claim of a fundamental right of citizens to carry on trade of business in liquor:

There arc three principal reasons to hold that there is no fundamental right of citizens to carry on trade or to do business in liquor. First, there is the

police power of the state to enforce public morality to prohibit trades in noxious or dangerous goods. Second, there is power of the state to

enforce an absolute prohibition of manufacture or sate of intoxicating liquor. Article 47 states that the State shall endeavour to bring about

prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injuries to health. Third, the history of

excise law shows that the State has the exclusive right or privilege of manufacture or sale of liquor.

10. That the State has ample power to regulate trade in liquor was emphasised by the Constitution Bench of the Supreme Court in the case of

Prem Ex-servicemen Co-op. Tenant Farming Society Ltd. and Others Vs. State of Haryana and Others, , wherein it was observed thus:

The wide right to prohibit absolutely would include the narrower right to permit dealings in intoxicants on such terms of general application as the

State deems expedient.

The Court, in that same decision, also observed that if the Government is the exclusive owner of those privileges, reliance on Article 19(1)(g) or

Article 14 becomes irrelevant. The principles laid down in the earlier decisions were reiterated by the Supreme Court in the case of M/s. Khoday

Distilleries Ltd. etc. Vs. State of Karnataka and others, .

11. It is, therefore, clear that a person, who bids at the auction for the sale of the right of retail vend of Indian Made Foreign Liquor has no

Fundamental right to carry on business in liquor, and that his right to carry on business in liquor is limited to the extent of the privilege granted by

the State, and the conditions subject to which it is granted. Rule 13(1) in so far as it requires the production of a lease agreement as a pre-

condition for the grant of licence to person who are not owners of the premises for carrying on business of retail vend of Indian Made Foreign

Liquor is a Rule which is well within the power of the State to make, and it does not contravene Article 14 or 19 or the Constitution of India.

12. It is no doubt true that the power of the State cannot be exercised in an arbitrary fashion even when it seeks to regulate trade in liquor. The

Rules or conditions imposed by the State must be non-arbitrary. However, while considering the question as to whether a Rule framed by the State

in exercise of it a power to regulate trade in liquor is arbitrary or not, the Court would be slow to interfere with the policy laid down by the

Government. That is so, as observed by the Supreme Court in the case of State of M.P. and Others Vs. Nandlal Jaiswal and Others, , because of

the inherently pernicious nature of the commodity. The Curt would allow to the Government ""a large measure of latitude"" in determining its policy of

regulating manufacture and trade in liquor. As observed by the Apex Court in that case, the grant of licences for manufacture and sale of liquor

would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the State Government has

done, unless it appears to be plainly arbitrary, irrational or mala fide.

13. In this case, the requirement in Rule 13(1) that prospective licensees, who are not owners of the building must produce a lease agreement with

their landlords cannot be regarded as an irrational requirement or a requirement which is arbitrary or mala fide. This requirement is also not capable

of being regarded as discriminatory. The Rule applies with the same vigur to every intending licensee. Anyone, who wishes to carry on retail vend

of Indian Made Foreign Liquor, must either own the building in which he intends carrying on such business or must have a lease agreement with the

owner permitting him to carry on such business in that premises. That Rule applies not only to those carrying on such business in cities to which the

rent control legislation is made applicable, but also to persons carrying on business in areas to which rent control legislation has not been extended.

14. It is open to the State while granting the privilege to prescribe the conditions subject to which the privilege is to be enjoyed. The uniform policy

adopted by the State of requiring every licensee to either own the building, in which he will carry on business of retail vend of liquor, or have a

subsisting lease agreement from the landlord is a condition which it is open to the State to impose. The policy of the State in that regard is not open

to judicial review, as the policy is one, which is within the province of the State to make and is not on the face of it arbitrary or irrational or mala

fide.

15. Rule 13(1) of the Rules requires the production of a xerox copy of the document showing that the auction purchaser himself is the owner of the

building, or the production of a xerox copy of the lease agreement executed with the landlord of the building, wherein the proposed shop is to be

located. Such copies are to be furnished within seven days of the receipt of the orders of confirmation of the sale of the privilege. The lease

agreement, having regard to the purpose for which it is to be produced, and the context in which the requirement is mandated is clearly lease

agreement which covers the period for which licence is sought. In the case of the owner, of the building as long as he continues to be owner, there

is no possible threat to his continued enjoyment of the premises, in normal circumstances. A person, who is not a owner can assert a right to remain in occupation of the premises belonging to another only when such a right is granted to him by the owner. The grant of such a right, which

would enable the grantee to have undistubed possession and enjoyment can only be under a lease. That is the reason why in the Rule, it is provided

that a lease agreement executed with the landlord of the building shall be produced before the licence can be received by the person, whose offer

for the purchase of the privilege has been accepted confirmed by the authority.

16. A contractual tenant, who has a valid and subsisting lease in his favour, has a right to retain possession of the premises for the duration of the

lease subject to the conditions of the lease. So long as he complies with the condition, he has a right to remain in occupation. The duration for

which he is in occupation, in the context of the grant of the licence for the retail vend of liquor, has necessarily to include the duration for which the

licence is sought. Even before the grant of the licence, the copy of the lease deed is, therefore, required, so as to assure the state that the licensee

will be in a position to carry on uninterrupted trade in that premises for the period for which the licence has been granted.

17. The express reference to ""lease agreement"" in this Rule clearly excludes statutory tenants from the scope of the Rule. Statutory tenants as a

class are incapable of becoming licensees as their right to retain possession of the premises is not derived from the lease agreement valid for the

duration of the period of licence, but is only traceable to the immunity conferred by law against their dispossession except in accordance with the

provisions of the Rent Control Legislation. The statutory irremovability of such tenants while it may entitle them to remain in occupation till such

time, as the landlord institutes a proceeding under the provisions of the Rent Control law and obtains a decree for eviction and execute the same,

does not confer on them the status of a tenant under a lease agreement.

18. ''Statutory Tenant'' is a term used in English Law, which has been adopted in India. The Supreme Court in the case of Gian Devi Anand Vs.

Jeevan Kumar and Others, had this observation to make with regard to statutory tenants.

Now the term statutory tenant as used in English Rent Act, has been used by the Indian courts to denote a tenant whose contractual tenancy has

been terminated but who has become endued to continue to remain in possession by virtue is the protection afforded to him by the statutes in

question, namely, the various Rent Control Acts, prevailing in different States of India.

Thus, a statutory tenant is one who has ceased to a contractual tenant, but whose possession is protected by statute.

19. The Supreme Court in the case of V. Dhanapal Chettiar Vs. Yesodai Ammal, held that Section 106 of the Transfer of Property Act providing

for termination of a lease either by the lessor or by the lessee by giving a requisite notice is not an extra protection against eviction, and that the

purpose of Section 106 is merely to terminate the contract which the overriding Rent Acts did not permit to be terminated. The distinction between

a contractual tenancy and a statutory tenancy is thus underscored by the fact that for bringing about a termination of the statutory tenancy, no

notice u/s 106 is required, while it is essential for terminating a contractual tenancy.

20. A ''statutory tenant'' by definition is one who has ceased to be a contractual tenant and whose right to retain possession is dependent upon

several uncertain factors. A statutory tenant has no way of knowing as to when his landlord will seek to initiate eviction proceedings against him. It

is open to landlord to do so, if he is otherwise entitled to claim possession under the Rent Control Act, to initial proceedings at a time of his

choosing. The statutory tenant has no way of knowing as to whether a landlord who initiates such proceedings would ultimately succeed, and also

as to the tune at which a decree for eviction may be passed, nor can such a tenant foresee with certainty as to when an order for eviction, which

may be obtained by a landlord may be executed against him. A statutory tenant may himself by his own acts of omission expose himself to being

evicted by committing defaults, such as failing to pay the rent for a period longer than the one permissible under the provisions of the Rent control

Act. A contractual tenant'', on the other hand, knows for certain the period for which he may remain in occupation of the premises. Such tenant is

entitled to protect his possession, even against the landlord for the duration of the lease. The landlord has no right of entry into the premises so long

as the lease continues, except to the extent permitted by the terms of the lease. The status of a contractual tenant, therefore, cannot be equated to that of a statutory tenant on the sole ground that both contractual tenants and statutory tenants are entitled to retain possession of the premises.

While in the case of contractual tenants, there is certainty regarding the period, and the extent provided by the provisions of the applicable Rent

control law, and the circumstances governing the landlord as also the tenant.

21. The lease agreement referred to in Rule 13(1), which necessarily implies the subsistence of a contractual tenancy, clearly contemplates lawful

possession of the premises. Here juridical possession will not satisfy the requirement of the Rule. The Supreme Court, in the case of R.V. Bhupal

Prasad Vs. State of Andhra Pradesh and others, , while considering the meaning of the term lawful possession in Rule 11(B)(2) of the A.P.

Cinema (Regulation) Rules, held that the possession of the premised by a tenant at sufferance is neither legal nor lawful, but was only a litigious

possession. The Court observed with regard to the tenant / appellant before it that,

The appellant may remain in possession until his ejectment in due course in execution of the decree in the suit filed by the respondent but his

possession cannot be considered to settled possession. He was akin to a trespasser, though initially he had lawful entry..........A tenant at

sufferance is one who comes into possession of land by lawful ode, but who holds it by wrong after the termination of the termed or expiry of the

lease by efflux of time. ""The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of lawful tide. There

is little difference between him and a traspasser. A tenancy at sufferance does not create the relationship of landlord and tenant.

Though a statutory tenant is indeed a tenant entitled to retain possession, that right to retain possession is not a right, which is derived from the

consent of the landlord, but is one conferred by the statute upon a person whose contractual tenancy has come to an end but, who is nevertheless

allowed to retain possession subject to the provisions of the Act A statutory tenant no doubt cannot be characterised as a trespasser Nevertheless

his status is not the same as that of a contractual tenant, as the essential requirement of the continued consent of the landlord is absent, and the

statutory tenant is liable to be evicted at any point of time, if the landlord is in a position to do so in accordance with the provisions of the applicable Rent Control Act.

22. The exclusion of statutory tenants from the purview of Rule 13(1) of the Rules, Thereby disentitling them from becoming licensees does not in

any way affect the validity of the Rule, as already observed by us. The express language found in Rule 13(1) clearly discloses the legislative intent

to exclude statutory tenants, and to confine the grant of licence for the retail vend of Indian Made Foreign liquor only to those who own the

premises in which the business is to be carried on, and to those who have subsisting lease agreement with the landlords under which they are

entitled to carry on business in liquor in that premises. The provisions of the Rent Control Act, which protect the possession of statutory tenants

subject to the provisions of the Act do not anywhere confer on such statutory tenants the right to carry on any business of their choice in the

premises they happen to be in possession of. No statutory tenant Can assert a right to carry on business in liquor unless the landlord had agreed to

such business being carried on, or had retrained from prohibiting the carrying on of such business in that premises. There is no fundamental right in

a statutory tenant to carry on business in liquor in the premises in which he is the statutory tenant, or to claim a right to receive a licence for carrying

on such business in such premises.

23. The policy adopted by the State requiring persons, who seek licenses for the retail vend of Indian Made Foreign Liquor to be contractual

tenants in all cases, where they are not owners of the premises in which the business is to be carried on can by no means be regarded as arbitrary.

Had the State decided to permit statutory tenants also to obtain such licenses, it would have been well within the competence of the State to do so.

The policy decision of the legislature to exclude the statutory tenants from the eligibility for grant of a licence for the retail vend, is in the realm of

policy, and is not table to be interfered with. The policy, on the face of it, is neither mala fide nor arbitrary and no fundamental right of the statutory

tenant can be said to have been violated by such policy of the state.

24. The rights of a statutory tenant are limited to those recognised by the statute, which protects his continues occupation of the premises, even

against the will of the landlord. The provisions of the Rent control Act do not provide that statutory tenants shall enjoy the right to carry on business in liquor in their premises against the will of the landlord, and notwithstanding any rule that the state may make in exercise if it''s powers to regulate

the grant of privileges for the retail vend of liquor. No such right could possibly be extended to statutory tenants by the Rent control legislation and

advisedly such legislation does not recognise any such right. The limited right of retaining possession of the property till such time as the person is

evicted in due course by invoking the machinery provided under the Rent control legislation cannot be enlarged to anything more that what is

expressly saved by the Rent control Act. The Apex Court has held that such statutory tenancy is heritable, unless the terms of the statute prohibit it.

That, however, does not enable the statutory tenancy to make further claim that the state be complete to grant licences and privileges for the retail

vend of liquor in the premises in which they are statutory tenants.

25. The provisions of Rule 13(1) of the Tamil Nadu Liquor (Retail Vending) Rule is in the nature of a mandatory rule which any person who

wishes to enjoy the privilege obtained by him from the state for the retail vend of foreign liquor, must satisfy. As noticed by us earlier, the State has

ample powers to prescribe the conditions subject to which such privilege is allowed by it to be enjoyed by any citizen. Greater latitude is shown to

the state in those matters than in respect of other businesses as business in liquor has always been regarded as inherently pernicious. In fact, the

licenses issued to the person who bids accepted and one who have become eligible for securing the licence, require the licensee to display

prominently a sign board on the premised where the liquor is sold with the following slogan:

Liquor ruins country, family and life:-

persons engaged in such business must accept rigorous conditions that the state may impose while granting the privilege to them and they do not

have a right to insist that the conditions shall not be imposed, or that the conditions unalready imposed be diluted.

26. The fact that a category of tenant a with the nomenclature of statutory tenants is recognised in law does not confer on that class a right to be

recognised as tenants in each and every rule that may be made by the state under each and every legislation that may affect the right to carry on

business, where for instance the business is regulated by law by grant of licenses or permits.

27. Rule 13(1) has been in exercise of a valid power conferred on the state by section 20-A(c) of the Tamil Nadu Prohibition Act which enables

the Government to have regard to such other matters, as may be prescribed while granting privileges and licenses. The power is also traceable to

section 52-A of the Act, which empowers the State to make rules for the issue of licensees and permits, and the enforcement of conditions thereof.

Section 55 of the Act provided that the rules and notifications issued under the Act when published in the official gazette shall have the same effect

as if they have been enacted in the Tamil Nadu prohibition Act.

28. The Rules, which deal with the change in the location of the shops in Rule 17 also require the licensee to have a valid lease agreement with

respect to the premises to which he intends to shift viz., Form VIII-A in column 10 imposes a requirement from the owner for a term not less than

the current period of the licence.

29. The very notice of tender/auction, the form of which is prescribed in the Rules being Form No. I, which is the form referred to in Rule 5 which

deals with notice of auction, in clause 5(c) provides thus:

No person shall be permitted to bid/ tender unless he furnishes...........(c) a certificate from the Excise officer regarding ownership or lease or the

building where be intends to sell liquor and that it satisfies Rule IS in Form III. The intending bidder or tenderer must applied to the Taluk Excise

Officer for inspection of the proposed building at least 48 hours before the time of auction.

Rule 18 deals with the location of the shop. It requires that the shop shall not be established within the distance mentioned in the rule from any

place of worship or educational institution, that it shall be housed in a pucca building: and that there shall be provision for keeping liquor under lock

and key, accessible only to it''s authorised employees. The conditions set out in the tender conditions in Form I at condition 5(c) is in addition to

the requirements set out in Rule 18. The requirement so spelt out in Form No.I is entirely consistent with Rule 13(1). It is also consistent with what

was earlier Rule 7(2) (c) which had imposed a similar requirement. Even the provision dealing with renewals Rule 14 and Form VIII make it clear

that the person who wishes to continue to carry on business of retail vend of

Indian made Foreign Liquor must continue to be a contractual tenant.

Rule 14(1) requires the licensee, who seeks renewal to apply atleast 60 days before the date of expiry of the licence for renewal in Form No. VIII

Column 8 in Form No,. VIII requires the applicant to state as to whether the shop continues to be in his possession for a further period of one

year. The reference to further period of one year would indicate that the lease agreement which the licensee had produced at the time of the initial

grant either covered the period of the renewal, or the licensee had obtained a fresh lease for a further period during which the licensee sought the

privilege of continuing to be a licensee. The word possession in column 8 of Form VIII must be understood in the same manner in which the

possession under the lease agreement referred to in Rule 13(1) to required to be understood Rule 13(1) refers to the tease agreement in the

context of the requirement that the licensee be in a position to assert a right to remain in undisturbed possession of the premises. During the period

of renewal of the licence also. The licensee is required to be in a position to assert a similar right to remain in undisturbed possession, such right

having been derived from a lease agreement.

30. The learned single Judge has in his judgment stated that after examining the record of the two writ petitions, in which certain observations had

been made by two learned singles judges of this Court in W.P.Nos.11283 of 1991 and 10861 of 1993 that those matters were not cases of the

initial grant of licence, but were cases of renewal. Those decisions rendered in W.P. Nos.11283 If 1991 and 10861 of 1993 are required to be

and are overrules, as they do not correctly set out the legal effect of the requirement of Rule 13(1).

31. The requirement that there should be a lease agreement in favour of persons, who wish to carry on retail vend as retail licensee in a premises of

which they are not the owners is requirement, which is made known to every intending bidder, even before he takes part in an auction. Condition

5(c) in Form No. I makes that amply clear. After his bid is accepted before he can receive the licence, he must produce the tease agreement, That

is the requirement of rule 13(1). If after becoming a licensee, be wishes to shift the location of the shop, then again, he must produce the lease

agreement regarding the premises to which he intends to shift. That is the requirement under rule 17. For renewal of the licence after the initial

period of one year, the licensee must apply for renewal under Rule 14 and satisfy the conditions set out in Form No.VIII, more particularly

condition No.8, which requires that the licensee continues to be in possession of the premises for a further period of one year. The specification of

the period is a requirement which can be complied with only if the licensee is a contractual tenant, and not otherwise, as the statutory tenant cannot

claim to be a tenant for any specific period. It may well be possible that a statutory tenant remains in the same premises for decades together. It is

also possible that a statutory tenant suffers ejectment within a short period after becoming a statutory tenant. As to whether he is ejected or not

depends inter alia, upon the landlord, the requirement of the landlord, the eligibility of the landlord to seek eviction in terms of the provisions of the

Rent Control Act, the willingness of the landlord to resort to eviction proceedings under the Act and his prosecuting the same diligently till such

time as he obtains possession of the premises from the statutory tenant.

32. In some of the writ petitions, it had been urged for the tenant that their landlord, viz:, the Corporation of the City of Chennai could not have

possibly insisted that they should not carry on business in liquor in the premises which they had been allowed to take on lease after the same had

been auctioned. It was not disputed by those tenants that even before they were allowed to occupy the premises, the Corporation had informed

them that trade in liquor in the premises is prohibited. Clearly the landlord in these cases, the corporation was unwilling to, and had in fact refused

in advance consent for running of the liquor shop in the premises.

33. The consent of the owner for running the specific business in the premises is only an incident of the requirement that the tenant be a contractual

tenant A person cannot be a contractual tenant without the consent of the landlord. The consent of the landlord has to be there, either expressly, or

impliedly for the business which the tenant proposes to carry on in the premises. In cases where the landlord has refused permission, or has

opposed the grant of any licence to the tenant for running a liquor shop there, or the landlord is unwilling to consent to the user of his premised for

such purpose, then notwithstanding the existence of a lease agreement, which merely permits the user of the premised for a purpose other than the running of a liquor shop such a tenant cannot claim the right to receive a licence under rule 13(1) of the Tamil Nadu Liquor (Retail Vending) Rules.

34. Before the learned single Judge, It had been urged that the Rule should be read down, or should be read with words added thereto. The

learned Judge has referred to the relevant decisions of the Supreme Court, and has rightly held that the Rule cannot be read in the manner

suggested, so as to extend it''s application to statutory tenants as well.

35. Persons who after bids at the auctions conducted by the State with full knowledge of what the Rules contained and the conditions which they

are required to fulfil in order to obtain the privilege cannot after the auction is over, turn around and question the vary conditions, subject to which

they had made their offers. As observed by the Constitution Bench of the Supreme Court in the case of Har Shankar and Others Vs. The Dy.

Excise and Taxation Commr. and Others, persons who with open eyes had submitted their offers cannot late turn around and wriggle out of their

obligations by contending that the conditions imposed, and made known to them at the time of the auction were invalid or unenforceable.

36. The result of the foregoing discussion is that Rule 13(1) of the Tamil Nadu Liquor (Retail Vending) Rules, 1989 framed by the State in exercise

of the powers conferred on it by Sections 17-C, 17-D, 17-E, 18-B, 18-C 20, 21 and 54 of the Tamil Nadu Prohibition Act, 1937 is perfectly

valid. The rule mandates that the person who wishes to obtain a licence for exercising the privilege of retail vend of Indian Made Foreign Liquor

should be the owner of the premises in which that business is to be carried on or should be a contractual tenant thereof for the duration of the

period of the licence. The requirement that he be a contractual tenant would also apply to the place, which he may wish to shift after having

obtained the license. The requirement that he be a contractual tenant would also apply to the period for which he may seek renewal as a licensee.

The rule framed by the state is in the realm of policy which the state is entitled to frame with regard to the conditions subject to which persons

would be allowed to enjoy the privileges of carrying on business in liquor a commodity which is recognised as being inherently pernicious, and

whose consumption is required to be reduced and not to be increased. The policy framed by the state is in no way arbitrary, nor is it mala fide. The fact that the State could have framed a policy in a different way so as to permit statutory tenants also to enjoy the privileges does not render the

policy already framed in any way defective. The choice in this matter is entirely for the state to make, and it is not for the court to mandate that the

statutory tenants be given the right to carry on the business of retail vend in foreign liquor. Thee consent of the owner of the premises for carrying

on such a business is essential. Absent such consent, the authority is not entitled to grant a license to the tenant, even if he be a contractual tenant.

The landlords, therefore have the right to question, the grant of licenses for the privileges of retail vend of Indian Made Foreign Liquor to their

tenants in case where the landlords have not given their consent in the lease deeds, and they are unwilling to grant such consent for the carrying on

of such business in their premises. A tenant does not have a fundamental right to carry on any business of his choice in the premises belonging to

another.

37. We do not find it necessary to examine the facts in relation to each Writ Petition as they have already been considered by the learned single

judge and having perused his findings we agree with those findings and affirm the same. The directions given by him with regard to the reliefs sought

in each of the writ petitions are upheld.

38. All these writ appeals are, therefore dismissed, but in the circumstances, without costs. Consequently, all the pending W.M.P. are also

dismissed.

