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**(2017) 02 J&K CK 0021**

**In the Jammu And Kashmir High Court**

**Case No :** 822 of 2005

Sandya Devi & ors. APPELLANT

Vs

State of J&K & ors. RESPONDENT

**Date of Decision :** 06-02-2017

**Acts Referred:**

<a href=3998>Constitution of India</a>, <a href=3998-14>Article 14</a>, <a href=3998-47>Article 47</a> -
Jammu and Kashmir Liquor License and Sales Rules, 1984, Rule 30(7)

**Citation :** (2017) 02 J&K CK 0021

**Hon'ble Judges :** Ali Mohammad Magrey

**Bench :** SINGLE BENCH

**Advocate :** Z. A. Shah, Vipin Gandotra, R. K. Gupta, Riteesh Mahajan, Abhinav Sharma, S. K. Shukla, J. I. Ganai, Ehsan Mirza, Faraz Iqbal, Pranav Kohli, Meenakshi Salathia, Sachin Dogra, W. S. Nargal, Ravi Abrol, Mohd Shaqir Hussain, C. S. Azad

**Final Decision :** Disposed Of

## Judgement

1. These eleven writ petitions relate to licences for retail sale of Indian Made Foreign Liquor (IMFL), popularly termed as JKEL-2 license, and I

wish to commence this judgment recording my conviction about the universal truth that gross loss of unimaginable magnitude in intoxicants

overweighs the little benefits in them, and that there cannot be any good in something that covers minds, induces ruin in the biological beings and

economy of a people, and reduces most of the consumers to abject penury.

2. In four of these petitions - OWP nos.822/2005, 826/2005, 827/2005 & 835/2005 - the petitioners challenge communications dated

14.12.2005, styled as ''notice for cancellation of temporary licence'' addressed to them by the Excise Commissioner; in the other four writ petitions

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- OWP nos. 802/2005, 817/2005, 972/2006 and 137/2010 - mostly, the very same petitioners seek, inter alia, regularisation of the temporary

licenses issued in their favour by the competent authority by draw of lots after they were subjected to the procedure formulated by the

respondents; in writ petition, OWP no.326/2006, the petitioner has challenged Government order no.668-STS of 2005 dated 30.12.2005 insofar

as the same directs opening of sub-vends at Palma Mendhar, Gujroo, Nagrota, and, at the same time, has raised his grievance against grant of

licenses in favour of the private respondents 3 to 5 therein for sale of liquor as a sub-vendees and prayed or issue of command to the respondents

to allot the sub-vends in his favour; in OWP no.536/2005, the petitioner therein is aggrieved of an order issued by Excise Commissioner debarring

the petitioner - a women of 45 years of age - from obtaining the off-license for retail sale of IMFL; in OWP no.524/2005, the petitioner is

aggrieved of selection of respondents 3 for allotment of license in his favour and of placement of respondent no.4 in the waitlist. In all these

petitions, the petitioners have also prayed for other and/or consequential reliefs.

3. I heard learned counsel for the parties and considered the matter.

4. The grievance of the petitioners in these writ petitions, barring OWP no.524/2005, OWP no.536/2005 and OWP no.326/2006, mostly seems

to be surrounding the legality or otherwise of the action of the official respondents to cancel the temporary licenses and/or notice dated 14.12.2005

issued by the Excise Commissioner in his capacity as the Licensing Authority, but there is something more to be dealt with, in that in the lead case,

OWP no.822/2005, private respondents 4 to 53 have been impleaded as such in terms of orders dated 03.06.2011 and 18.08.2011 passed in

various CMPs moved by the these respondents in that behalf after they were allowed to do so by the Supreme Court. The matter, therefore, calls

for a resume of its genesis of the controversy and of the circumstances in which the above private respondents had been allowed to seek

impleadment in these writ petitions as also of their case. The backdrop of facts of the matter is elaborately drawn by a Division Bench of this Court

in its judgment in State of J&K v Vikas Jandial, 2005(2) JKJ 451. In fact, private respondents 4 to 53 impleaded in OWP no.822/2005 had gone

to the Supreme Court feeling aggrieved of the judgment of the Division Bench of

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this Court in the aforesaid case. The petitioners in OWP

no.822/2005 have also stated these facts in their writ petition. Therefore, I feel that narration of some of these background facts from the said

judgment herein becomes imperative, and I lift such facts from the aforesaid judgment and proceed to reproduce them hereunder.

5. The trade of liquor and intoxicating drugs in the State is governed by the Jammu and Kashmir Excise Act, 1958 and the Rules, known as J&K

Liquor Licence & Sales Rules, 1984. Earlier, there was a dual system adopted by the State to regulate the trade of liquor: the Indian Made

Foreign Liquor was sold through separate retail vends on a fixed annual licence fee whereas the Country Liquor was sold exclusively through

identified vends with the privilege of trading granted in open auction conducted yearly and/or through departmental operations as per the provisions

of J&K Excise Act and the Rules made thereunder.

6. For opening of a vend for the purposes of sale of Indian Made Foreign Liquor (IMFL), a person desirous of trading in the commodity was

required to apply to the Excise Commissioner, who had the competence/authority to grant a licence after the applicant fulfilled the requisite

formalities and the Excise Commissioner satisfied himself about the need for the grant of licence to the person/premises.

7. During the year 1996 the grant of licences to liquor shops by the State Government became the subject matter of controversy which resulted in

filing of certain writ petitions in Public Interest before this Court viz. PIL nos. 7/1999, 70/1999 and 136/1999. The said petitions were filed by

residents of the areas where the liquor vends had been opened or were likely to be opened. The challenge in the said Public Interest Litigations

was common to the effect that the State was under an obligation under Article 47 of the Constitution of India to impose prohibition for

consumption of liquor. It was averred that the State was bound to impose prohibition and discourage the policy of grant of licences for opening of

liquor vends in the State of Jammu & Kashmir but, instead of doing so, the State was proliferating the trade of liquor by granting fresh licences to

liquor vends.

8. The aforesaid writ petitions filed in public interest were disposed of by a Division Bench by a common order, whereby directions were issued to

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the State respondents to declare the policy in regard to licensing of liquor vends.

9. Consequent upon the directions of the Court, the Government took a policy decision and issued Government Order No. 112-F of 2001 dated

3.4.2001, laying down the following policy for the year 2001-2002:

i. The Government does not recognize sale of liquor as a normal trade activity but one which requires to be kept under restriction and strictly

confined within the parameters of laws and rules framed on the subject.

ii. Requests for issuing of licences for manufacturing, stocking, sales (wholesale, retail, bars etc.) shall be generally denied and any fresh licences

issued only if justified by exceptional circumstances.

iii. Even when such exceptions are made, fresh licences shall strictly conform to the provisions of the Act and the Rules which govern issue of such

licences and due regard shall also be given to the public sensitivities as also to the factors like public nuisance, environmental pollution etc.

10. The State Government after formulating the aforementioned Policy, placed it on the record of LPA No. 145/99, titled ''Residents of Kunjwani

v. State of Jammu & Kashmir''. However, before fresh licences could be issued under the Policy for the year 2001-02, another writ petition in

public interest, being PIL No. 803/2001, titled, ""Vaid Vishnu Dutt v. State of J&K"" came to be filed. That petition was disposed of by the Court

on 30.5.2003, observing that the grievance made in the petition stood already redressed in terms of the directions of the Court passed in the earlier

writ petitions filed in public interest directing the Government to formulate a policy, pursuant to which the Government, vide Order No. 112-F of

2001 dated 3.4.2001, had, in fact, formulated the above quoted policy.

11. It may be mentioned here that, however, no licence was issued till 2003. On expiry of the policy for the year 2001-02, the Government, vide

Order No. 99-F of 2003 dated 7.4.2003 read with Order No. 156-F of 2003 dated 22.7.2003, notified the Excise Policy for the year 2003. The

policy recognized the need for restrictive and regulative trade in the liquor till the time it was considered appropriate to bring about a total

prohibition. Under the policy it was decided that in processing the requests for grant of retail licences, consideration of un-serviced areas arresting

the menace of bootlegging, the demand potential and the relevance from tourist point of view shall be of paramount importance. The Policy further

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provided that a clear precedence shall be drawn in processing the applications with priority consideration for educated unemployed youth and ex-

servicemen.

12. In regard to the disposal of applications, which had already been received, the policy provided that such applications would be treated as a

class and processed along with other new applications, as would be received by the Government within the time prescribed. In accordance with

the policy decision, the department identified the locations for which it could consider grant of licences. In this regard the Excise Department issued

a public notice on 22.7.2003 notifying a tentative list of areas/places. Simultaneously, a Committee was constituted to make survey of un-

served/under-served areas and also the areas requiring the facility from tourist point of view. Based on the recommendations of Committee, 89

locations were finally put to notice by the department vide No. EC/ STS/207/2003-04/1027-31 dated 22.9.2003 inviting applications from

individuals, societies/partnerships for such locations. It was specifically made clear in the notice that the applicants, who had previously applied to

the department, should also submit their bio-data with documentary proof of having applied earlier.

13. In consequence of the above notices, the department received 7781 applications for aforesaid 89 locations.

14. Before the applications for issuance of licenses for the aforesaid 89 locations could be processed, the Government of India convened a

meeting of Excise Commissioners of all the States to discuss, inter alia, the broad strategies about the trade of liquor in the States. Based on the

experience of the States, a consensus was evolved for doing away with the system of public auction for granting licences. It was felt that the

auction system prevalent then had led to creation of mafias in different States, seriously prejudicing the revenue interests of the States. As a sequel

to the consensus arrived at the national level, the State of Jammu & Kashmir also decided to do away with the dual system of sale of liquor trade in

the State. It was decided that the sale of country liquor shall be abolished and, instead, IMFL of the same strength, degree and essence would be

provided to the consumers of country liquor. For this purpose, it was provided that the existing country-liquor vends would be converted into

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IMFL vends, through which, apart from other brands of IMFL, the liquor of the strength, degree and essence of erstwhile country liquor, to be

branded as JK-Desi Whisky, shall be allowed to be sold as a branded product on a fixed fee. The shift in discarding the system of sale of country-

liquor and replacing it by branded liquor, known as JK-Desi Whisky, involved a major policy decision which was announced by the Government

as a part of budgetary measure for the year 2004-05 in the State Legislature. The decision was formally communicated after the legislature

accorded its approval to the budget proposals for the year 2004-05.

15. Because of the shift in the policy of sale of IMFL and country liquor, apart from 89 locations already notified, need was felt to issue licences

for 170 erstwhile country-liquor vends also. Since 54 vends of country-liquor were already operating in 89 locations notified for grant of IMFL

licences, the actual number of locations for which the IMFL licences were required to be issued came to 205.

16. As already indicated, in response to the notice issued for grant of licences for 89 locations, the Excise Commissioner received more than seven

thousand applications. For the additional vends, numbering 116, the State decided to make selection out of the applicants who had already

applied.

17. However, a question arose as to how should the Excise Commissioner make selection when there were large number of applications for the

limited number of vends. The Excise Commissioner suggested the short listing of the applicants for any vend through the procedure of draw of lots.

The Government considered the proposal of Excise Commissioner and accorded approval to the suggestion and Notification No. ET/E/5/2004

dated 25.02.2004 was issued in this regard.

18. As mentioned above, in all there were 7334 aspirants for grant of such IMFL licenses, also known as OFF-Licences, for retail sale of IMFL

liquor for the 89 locations notified by the department. The said applicants were also considered for 116 remaining erstwhile country-liquor vends

as well. In the preliminary process, 447 applications were found to have been received in duplicate, while 759 applicants (with the break-up of

438 educated unemployed youth, 27 ex-servicemen, and 294 general) had not applied for any specific location notified by the Government. Since

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as per the Excise Policy for the year 2003-04 preferential treatment was to be given to educated unemployed youth and ex-servicemen,

applications were categorized and a break-up of the various categories was as under:

General : 2192

Educated unemployed youth :4648

Ex-servicemen : 494

19. The procedure to be adopted for draw of lots was that if for a particular location the first candidate happened to be from general category and

second and/or third candidates from the preferential categories, i.e., educated unemployed or ex-servicemen, the candidate from the preferential

categories would be graded as selected and placed above the candidate of general category, who, in turn, was to be pushed down to the waiting

list in accordance with the preferential treatment laid down in the excise policy. The first candidate was to be graded as selected and the second

and third candidates were to be placed on the waiting list in the order in which they were picked.

20. Two consecutive lucky draws were to be drawn, the first being in respect of the 89 notified locations. For each of these locations, the draw

was to be confined to those who had applied for a particular location. The second draw in respect of 116 locations was to be amongst the

applicants including those who had applied for non-specific locations. Those who would be selected in the first draw for 89 locations were to be

excluded and those of the applicants, who would figure in the waiting list for various places in the first draw, were also to be included in the second

draw. The applicants, who would figure in the waiting list of any location in the second draw, were to be included in the draw for each subsequent

location as well. An applicant who figured in the waiting list of a particular location of the first draw and may subsequently be selected for another

location in the second draw, was to forego the selection for the second draw in case he had been picked up from the waiting list because of the

person already selected in the first draw for that specific location being dropped for any reason including non-fulfilment of formalities. It was also

decided that if any computer error would occur during a draw for a particular location, lots would be redrawn for the said location immediately.

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Before actual grant of licences, applicants were to fulfil conditions under the rules.

21. Pursuant to a published by the Excise Commissioner in that behalf, the draw of lots took place on 27.2.2004 and immediately its results were

announced. But before the process of formulation of the select list was concluded, some of the non-selectee-applicants filed writ petitions before

this Court seeking quashing of selections made by way of draw of lots. In some of those writ petitions challenge was in regard to the process of

draw of lots in respect of 116 locations, which earlier were dealing in the sale of country liquor, on the ground that no public notice for the said

vends was given. The writ petitions were clubbed together and decided by the learned Writ Court by a common judgment dated 10.6.2004,

quashing the selection of prospective licensees by draw of lots with liberty to the State to conduct fresh exercise after inviting applications in

respect of 116 locations and to consider the applications received in respect of 89 notified locations on merits giving preference to educated

unemployed youth and ex-servicemen.

22. However, on appeals by the State and the selectees, a Division Bench of this Court in State of J&K v Vikas Jandial (supra) set aside the

judgment of the learned Writ Court and held that the procedure of draw of lots adopted by the Excise Commissioner was legal. The Division

Bench nonetheless directed that the State respondents shall initiate a fresh exercise for identification of locations/areas, notify the same in all leading

newspapers and, thereafter, invite fresh applications, which shall be restricted only to identified locations. It was held that the official respondents

shall be at liberty to make selection of prospective licensees by resorting to draw of lots in accordance with the procedure already approved by the

Government vide order dated 22.2.2004. The State Government, however, was held to be at liberty to change or modify the policy in public

interest. The concluding paragraphs of the aforesaid Division Bench judgment are quoted hereunder:

45. In the present case, as already noticed that vide public notices the Excise Commissioner invited applications for grant of licence

in respect of 89 notified locations and the last date for receipt of applications was 6.10.2003. Before the applications could be

processed, budget meeting of the State Legislature took place on 13.2.2004 and

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a decision regarding restructuring of the sale of

liquor in the State was taken. On 20.2.2004 budget was announced in the State Legislature and decision dispensing with the system

of sale of country liquor by auction and replacing it by branded liquor, known as JK-Desi Whisky, to be sold on the same network of

IMFL, was formally communicated when the Legislature accorded its approval to the budget proposal for the year 2004-05. On

22.2.2004 the Government approved the suggestion of Excise Commissioner in regard to the short-listing of the applicants through

the procedure of draw of lots. On 25.2.2004 proposal for draw of lots was notified. The draw of lots took place on 27.2.2004,

which was not limited to only 89 locations already notified, but for additional 116 locations as well, which had not been notified. In

this background, we find merit in the submission of Mr. R.K. Gupta, learned counsel appearing for some of the writ petitioners, that

the decision of the Government with regard to putting of country liquor, to be branded as JK-Desi Whisky, on IMFL network was

not given wide publicity, and for this reason not only the persons carrying on the trade of country liquor, but the new entrants, who

may have been interested into the business of sale of IMFL-cum-country liquor, branded as JKDesi Whisky, were shut out. In our

view, the change in policy not only should have been made known to all concerned, but the appellants ought to have invited

applications afresh in terms of the change brought out in the previous policy. The action of the appellants in restricting the selection

amongst the applicants who had applied before the policy came to be changed, was clearly unfair, unreasonable and discriminatory.

Such an action cannot be sustained being violative of Article 14 of the Constitution of India.

46. Resultantly, the order of learned Single Judge, whereby learned Single Judge has quashed Notification No. EC/STS/108/2004-

05/1944-45 dated 27.2.2004 along with all consequential actions of appellants for selection of prospective licensees by draw of lots,

is set aside.

47. Instead, we hold that the procedure of draw of lots adopted by the Excise

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Commissioner was legal.

48. We further set aside the order of learned Single Judge, whereby the learned Single Judge has directed the appellants to conduct

exercise afresh and consider applications already received on merits in respect of 89 notified locations, and further invite fresh

applications in respect of 116 locations for which the applications had not been invited for grant of JKEL-2 license.

49. Instead, we direct that the appellants shall initiate the exercise afresh for identification of the locations/areas and notify the same in

all leading newspapers.

50. The appellants, thereafter, shall invite fresh applications, which shall be restricted only to identified locations. They shall be at

liberty to make selection of prospective licensees by resorting to draw of lots in accordance with the procedure already approved by

the Government vide order dated 22.2.2004. In the Notice Inviting Applications, the appellants shall make it clear in unambiguous

terms that mere invitation of applications would not confer any right or claim for the grant of license, and each selectee shall have to

fulfill the formalities prescribed under the Act and Rules before the license is granted. The State Government, however, shall be at

liberty to change or modify the policy in public interest. The appeals stand disposed of in the terms indicated above.

23. The aforesaid judgment of the Division Bench in the bunch of LPAs, lead by State of J&K v Vikas Jandial (supra), came to be challenged in

SLP nos.3309-3310 of 2005, titled Satvir Singh and ors. v. State of J&K & ors. Therein the Supreme Court on 25.02.2005 passed an order to

the following effect:

Issue notice limited to the question as to whether fresh steps should have been, as directed, taken even in respect to 89 IMFL

shops.

Another SLP titled Vikas Jandial & ors. v. State of J&K & ors. was also filed before the Supreme Court challenging the judgment of the Division

Bench and the two SLPs were clubbed together.

24. Since the Supreme Court did not pass any stay order against the judgment of the Division Bench of this Court, the Excise Department was free

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to proceed ahead with implementation of the directions made by the Division Bench in its judgment. Resultantly, on 25.06.2006 a notice was

issued by the Excise Commissioner which was published in the local dailies to the following effect:

Whereas the Division Bench of Hon''ble High Court J&K Jammu in its judgment dated 21.12.2004 in LPA(OW) No.63/2004 titled

State of J&JK & ors v/s Vikas Jandial & ors. upheld the procedure of grant (of) licenses by draw of lots but quashed the result of

draw of lots for grant of JKEL-2 licenses for 204 locations with the direction to initiate the exercise afresh for identification of the

locations for grant of JKEL-2 licenses.

Whereas Excise licenses are issued for a period of one year only and the 204 locations for which draw of lots was conducted have

lost relevance as these pertained to the year 2004-05;

Whereas, the Committee of officers constituted for identification of locations afresh for grant of off-licenses as per Court directive has

after taking into account the effect of the restructuring of the distribution network and other factors identified only 95 locations for

grant of fresh licenses during 2005-06 out of which 39 locations coincide with the 89 locations which were advertised in the year

2003. All the rest of the locations notified earlier numbering 50, it is not proposed to grant a new license now.

Whereas the judgment of the Division Bench of Hon''ble High Court of J&KJ has been challenged in the Hon''ble Supreme Court of

India through SLP (Civil) nos. 3309-3310 of 2005 titled Satvir Singh & ors. v. State of J&K & ors. and the Apex Court has passed

the following order:

''Issue notice limited to the question as to whether fresh steps should have been, as directed, taken even in respect of 89 IMFL

shops.''

Whereas in another SLP titled Vikas Jandial & ors. v. State of J&K & ors., filed in the Hon''ble Supreme Court against the aforesaid

judgment of the Division Bench of the Hon''ble High Court, J&K, the Apex Couret has issued the following order:

''Permission to file SLP is granted. Issue notice.''

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Whereas, inviting of applications for 36 locations against whom the word conditional has been mentioned under remarks column shall

be without prejudice to the litigation pending in the Apex Court and subject to the outcome of SLP titled Satvir Singh & ors. v. State

of J&K & ors. pending before the Apex Court. In the event of judgment in favour of the earlier selectees for these 36 locations, the

new applicants/selectees, if any, shall have no claim whatsoever.

Whereas, the grant of license herein shall further be without prejudice to the litigation pending in the Apex Court and subject to the

outcome of the SLP titled Vikas Jandial & ors. v. State of J&K & ors.

Whereas, it is proposed to grant new off-licenses (JKEL- 2) for retail vending of IMFL for 90 locations noted below by draw of lots:

...

...

Whereas, out of the above locations sub-vends are functional at 75 places as an interim arrangement which are proposed to be

replaced by regular license.

Now, therefore, interested persons may apply for grant of license on the above locations. Mere acceptance/receipt of an application

in the Excise Department shall not confer any right or claim for the grant of a license. Each selectee shall have to fulfill the formalities

prescribed under the Jammu and Kashmir Excise Act, Jammu & Kashmir Liquor License and Sales Rules, 1984 and the Policy

framed under before the actual grant of a license.

25. In consequence of the process undertaken pursuant to the above notice, the Excise Department, under the supervision of Divisional

Commissioner, Jammu, and in presence of respondent no.2, conducted the draw of lots. The result of the draw of lots was published vide notice

no.EC/ST/207/2005-06/2889-92 dated 09.08.2005. Thereafter, respondent no.2 also informed the selectees, prospective licensees, about their

selection and required them to fulfill the formalities under the J&K Excise Act and the Rules framed thereunder requisite to the grant of licenses in

question, which included deposit of non-refundable amount of Rs.10,000/, execution of agreement, making necessary arrangements for operation

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of liquor vends at specified locations and furnishing of other documents such as undertaking, site plan of the proposed licensed premises, certificate

from Deputy Director, Employment, and affidavits. While the selectees were in the process of completion of such formalities or had completed the

same, the Excise Department issued Temporary Licenses (JKEL-2) in their favour on fixed annual license fee of Rs.2.00 lakhs for a period of four

months commencing from 20.08.2005 to 19.12.2005 subject to the conditions mentioned in each of these licenses.

26. However, a week or so before the expiry of the temporary licenses, the licensees were issued notices with identical content for cancellation of

the above temporary licenses requiring them to submit their reply/objections thereto by or before 19.12.2005, i.e., the date of expiry of the

temporary licenses. The aforesaid notices were issued to the licensees on the grounds mentioned therein, the sum and substance of which is that

there were allegations of irregularities having been committed in the drawing of lots. The contents of one such notice issued under no.JKEL-

2/257/EXC-6539 dated 14.12.2005 to one such licensee are reproduced hereunder:

OFFICE OF THE EXCISE COMMISSIOINER,

J&K GOVERNMENT,

EXCISE AND TRXATION COMPLEX, RAIL HEAD JAMMU

Sub : Notice for cancellation of Temporary License.

1. Whereas applications were invited for grant of retail liquor vends by draw of lots vide this department notification

No.EC/STS/207/2005-06/1531-34 dated 25.06.2005; and

2. Whereas 9,910 applications were received in the Department in response to the said notification; and

3. Whereas the electronic draw of lots for selection of prospective licenses from amongst the applicants for grant of off-licenses at 90

locations (84 Jammu Division and 6 Kashmir Division) was conducted on 09.08.2005; and

4. Whereas on the bass of the said electronic draw of lots conducted on 09.08.2005 Ninety applicants, whose names are given in the

Schedule annexed to this Notice, were selected from amongst the applicants for grant of licenses; and

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5. Whereas your name figures at Srl. No.11 in the annexed Schedule and were selected for grant of JKEL-2 license for establishment

of a vend at BATYTAL BLLAN for retail sale of liquor; and

6. Whereas pending completion of prescribed formalities for grant of a regular license a temporary license under No.257 in Form

JKEL-2 for a period of four months was granted to you on 8/20/2005 in terms of sub-rule (8) of rule 30 of the Jammu and Kashmir

Liquor License and Sales Rules 1984; and

7. Whereas on receipt of information alleging irregularities in drawing of lots on 09.08.2005 for grant of said license, the State

Vigilance Organization carried out a joint surprise check; and

8. Whereas the State Vigilance Organization vide its letter No.SVO/PE-SLK-2/05-11988-90 dated 16.09.2005 addressed to the

Chief Secretary recommended to take appropriate remedial action; and

9. Whereas Commissioner of Vigilance, Jammu and Kashmir Srinagar vide is letter No.SVO/PE-SLK-2/05-15912- 14 dated

23.11.2005 has again intimated the Government that the C. D. carrying the programme through which lots were draw on computer

by the Excise Department was referred to Senior System Analyst, CBI whose findings have been summarised as follows:

''i. On inspection of the code, it was found that the logic to pop-up a particular random number was so designed that

first a 5 digit number will appear and then 2 or 3 digit numbers and lastly 4 digit numbers will appear. There was no 5

digit numbers to be allotted. Therefore, the probability of appearing listed numbers are divided into two categories i.e.

50% to 2 and 3 digit numbers and 50% to 4 digit numbers.

ii. Chances of appearance of a 2 or 3 digit numbers is ten times more than appearance of a 4 digit number.

iii. For favouring 4 digit numbers another code was available on system to draw only 4 digit numbers.''

10. Whereas the Commissioner Vigilance vide aforecited communication has concluded that the report has proved that there was

inherent defect in the computer programme favouring 2 or 3 digit numbers and that the presence of abnormally high proxy candidates

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on behalf of serving/retired employees of the Excise Department in the select list as also brother-in-law of the software designer do

raise a suspicion about the programme having been tutored; and

11. Whereas the draw of lot was become doubtful in view of the aforementioned report of the State Vigilance Organization and it

would not be proper and just to allow the licensees the benefit of a defective e and doubtful draw of lots; and

12. Whereas the Government has considered the matter in the totality of the circumstances and is of the view that the licenses merit to

be terminated forthwith.

Now, therefore, it is to inform you through the medium of this notice that before cancellation of liquor license No.257 JKEL-2

granted in your favour on 8/20/2005 for four months period you may submit your reply / objections, if any, to this office by or before

19.12.2005 positively failing which it shall be presumed that you have to say nothing in this regard and your license shall stand

cancelled.

27. It may be mentioned here that prior to the issuance of the aforesaid notices to the selectees, some of them - 45 in number - sensing some

trouble, on 13.12.2005 filed OWP no.802/2005 titled Sandya Devi & ors. v State of J&K & ors. wherein they sought mandamus to command

the respondents to issue regular licenses in their favour on expiry of the period of temporary licenses, and for prohibition restraining the

respondents from stopping the operation of the petitioners'' retail vends. This petition came up for consideration before the learned Writ Court on

14.12.2005 and the Court issued notice to the learned Advocate General and directed the matter to be listed on the following day, i.e.,

15.12.2005. On 15.12.2005, the matter was ordered to be listed on 16.12.2005 on which date it was posted for 19.12.2005. Meanwhile, since

the aforesaid notices dated 14.12.2005 had been issued, the very same petitioners in collaboration with some other selectees (56 persons in all)

filed another writ petition, OWP no.822/2005, questioning the legality of the said notice. Like-wise, six other selectees also filed a separate

petition, being OWP no.817/2005, titled Ved Kumari & ors. v. State of J&K & ors., questioning the legality of the notices issued to them. OWP

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no.802/2005 ultimately came up before the Court on 19.12.2005 and on that date the Court ordered the same to be listed alongwith OWP nos.

817/2005 and 822/2005 after vacation. Meanwhile, by way of interim measure, the Court directed that till next date before the Bench there shall

be status quo as on that date with regard to the business in question. As already mentioned, some twenty of the common petitioners in OWP

no.802/2005 and 822/2005 have also filed another writ petition, OWP no.972/2006, titled Sandya Devi & ors. v. State of J&K & ors.,

challenging communication no.SVO/PE-SLK-2-2005/15912-14 dated 23.11.2005 which had been addressed by the Commissioner of Vigilance,

J&K, to the Chief Secretary of the State mention of which had already been made in the impugned notices.

28. In may be mentioned here that there have been numerous interim directions passed in the civil miscellaneous petitions moved by the petitioners

from time to time whereby the official respondents have been directed to continue and/or renew the licenses issued in favour of the petitioners and

to accept the requisite annual fee in lieu thereof from the petitioners.

29. Meanwhile, the two SLPs filed against the Division Bench judgment of this Court in State of J&K v Vikas Jandial (supra), which were pending

before the Supreme Court, came to be disposed of by the Supreme Court by order dated 30.04.2009 in the following terms:

These appeals arise out of a challenge to the Liquor Policy for the year 2004-05 framed by the State of Jammu & Kashmir. As the

liquor vends are operable for a year, we find that no relief can now be granted to the appellants with respect to the policy for the year

2004-05. Mr. L.N. Rao, the learned senior counsel for the appellants has, however, pointed out that some of the observations made

by the Division Bench in its judgment dated 21.12.2004 are in favour of the appellants but the grievance of the appellants is with

respect to the direction to the Department to initiate action afresh for identification of the locations/areas and notify the same in all

leading newspapers of all the liquor vends including the 89 for which selection had been made earlier. He also informs us that a writ

petition being Original Writ Petition No.822/2005 challenging the selection made in the year 2005 has been filed and the matter is still

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pending before the High Court. In the light of what has been observed above we find that the observations afore-referred in the

judgment of the Division Bench shall be deemed to be confined only for the year 2004-05 and will not affect any allotment for

subsequent years. We also give liberty to the parties herein to intervene as parties in the writ petition pending in the J & K High

Court. We would also request the High Court to dispose of the matter expeditiously and clarify that it will be open to all parties to

raise all issues before the High Court. Mr. T.S. Doabia, the learned senior counsel appearing for the appellants in

C.A.No.7295/2008 has invited our attention to Annexure ''P-3'', a Government Order dated 22.07.2003 in which some exceptions

have been carved out with reference to the liquor licenses. This question too will be available to the appellants to argue before the

High Court. The appeals are disposed of accordingly.

30. It is in the aforesaid background facts and circumstances that the appellants before the Supreme Court sought permission to be impleaded as

party respondents in the lead case, OWP no.822/2005. Their prayer was allowed and they have been arraigned as respondents 4 to 53. These

respondents have filed their objections to the claim of the writ petitioners made in their writ petitions.

31. The grievance of the writ petitioners in writ petition, OWP no.822/2005, which is the lead case herein, and the connected petitions filed on

identical cause, principally relates to the notice dated 14.12.2005 issued to them wherein they were informed that the draw of lots has become

doubtful and that the Government was of the view that the licenses merited to be terminated forthwith, though they have taken numerous other

grounds claiming a right to be issued regular licenses in terms of Rule 30(7) of the J&K Liquor License and Sales Rules, 1984, and renewal and

continuation of the same year after year subject to their depositing the annual fee in accordance with the relevant provision(s) of the Rules. It is

pleaded that the decision not to issue regular licenses in favour of the petitioners in terms of Rule 30(7) of the Rules is actuated by the report of the

Vigilance Commissioner recommending cancellation of licenses on the plea that the draw of lots was screwed. It is the case of the petitioners that

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the report of the Vigilance Commissioner cannot be relied upon to scuttle the rights of the petitioners vested in them under the provisions of the

Excise Act and the Rules framed thereunder, particularly when they were never associated with any such inquiry conducted by the Vigilance

Commissioner. It is the further case of the petitioners that the licenses issued under the J&K Liquor Licenses and Sales Rules, 1984 are

automatically renewable subject to fulfillment of certain formalities and do not terminate by afflux of time. The licenses issued in the form JKEL-2

are not only renewable every year but are inheritable also. According to the petitioners, refusal on the part of the respondents to issue regular

licenses in their favour is arbitrarily and violative of the provisions of the Act and the Rules framed thereunder as well as Article 14 of the

Constitution.

32. The respondents on the other hand have taken objection to the maintainability of these writ petitions and/or pleaded that the relief prayed for

cannot be granted in favour of the petitioners. The learned Advocate General specifically argued that no writ can lie against a show cause notice. In

support of his argument, the learned Advocate General relied upon the decision of the Supreme Court in Special Director v. Mohd Ghulam

Ghouse, (2004) 3 SCC 440. However, Mr. Z. A. Shah, learned senior counsel appearing on behalf of the petitioners, on submitted that the notice

in question makes it abundantly clearly that the Government/respondents have already taken a decision to terminate the temporary licenses,

therefore, the writ petition against the impugned notice is maintainable. Mr. Shah relied upon and cited the decision of the Supreme Court in

Siemens Ltd. v State of Maharashtra, (2006) 12 SCC 33.

33. Having considered the matter, I think it stands concluded by the order of the Supreme Court dated 30.04.2009 quoted above, insofar as it has

been observed therein that as the liquor vends were operable only for one year, no relief could now be granted at this stage. From a perusal of the

order of the Supreme Court, inter alia, the following things become axiomatic:

i) that the appeals before the Supreme Court arose out of a challenge to the Liquor Policy for the year 2004-05 framed by the State of Jammu &

Kashmir;

ii) that the Supreme Court found that as the liquor vends were operable only for

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a year, no relief could now be granted to the appellants therein

with respect to the policy for the year 2004-05;

iii) that the appellants before the Supreme Court had also some grievance with respect to the direction to the Department to initiate action afresh

for identification of the locations/areas and notify the same in all leading newspapers of all the liquor vends including the 89 for which selection had

been made earlier;

iv) that the Supreme Court laid down that the above observations made by the Division Bench in its judgment shall be deemed to be confined only

for the year 2004-05 and will not affect any allotment for subsequent years;

v) that the aggrieved parties before the Supreme Court were also given liberty to intervene as parties in the Original Writ Petition No.822/2005

challenging the selection made in the year 2005 pending in the J & K High Court; and

vi) that the parties before the Supreme Court were also permitted to raise all issues before this Court, including the questions concerning the

exceptions carved out with reference to the liquor licenses in terms of Government Order dated 22.07.2003.

34. In the instant petitions, Government Order dated 22.07.2003 is not in challenge. However, herein also there is no dispute that by notice dated

25.06.2006 issued by the Excise Commissioner the licenses were essentially operable only for one year, i.e., for the year 2005-06 and with

respect to 95 locations only identified by the Committee of officers constituted by the respondents in compliance of the directions of the Division

Bench. Therefore, I think, it would be inconsequential to delve into the legality or otherwise of the impugned notices issued to the petitioners. Any

discussion on the submissions made at the Bar would have only academic value. Furthermore, the temporary licenses in question were issued in

favour of the petitioners in terms of the Excise Police promulgated in terms of Government, vide Order No. 99-F of 2003 dated 7.4.2003 read

with Order No. 156-F of 2003 dated 22.7.2003. More than thirteen years have passed since then. The said policy recognized the need for

restrictive and regulative trade in the liquor till the time it was considered appropriate to bring about a total prohibition. Since the matter has been

pending in the Court since then and there had been an interim order operating in

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the matter, obviously, the Government and the official respondents

have not been able to revise the liquor policy during these years. On the other hand, the petitioners, who were granted temporary licenses for four

months which could be regularised to be operable, at best, for one year, have been continuing on such licenses for more than eleven years now on

Court orders merely because of pendency of these petitions.

35. I think it would be just and appropriate to dispose of all these writ petitions with liberty to the State respondents to review its Excise Policy, if

they so feel, in view of the decision of the Court in PIL nos. 7/1999, 70/1999 and 136/1999 which was placed on record of LPA No. 145/99,

titled ''Residents of Kunjwani v. State of Jammu & Kashmir'', and the Government''s recognition of the need for restrictive and regulative trade in

the liquor till the time it was considered appropriate to bring about a total prohibition. This would take care of the grievances of all the petitioners

as well as private respondents. In that case, it would also be open to the respondents to undertake a denovo exercise to identify the locations for

continuing or opening of such retail vends in accordance with any such policy as may be adopted.

36. These petitions are, accordingly, disposed of in terms of the above along with all connected CMPs. The official respondents shall undertake

and complete the requisite exercise by the end of the current financial year, i.e., 31.03.2017, and issue fresh licenses to the selectees for the year

2017-2018 operative with effect from 01.04.2017. In case the present vendees have not paid the annual fee and other dues for the current or any

other previous year, he shall deposit the same with the Excise Department before closure of the present financial year. If any petitioner has

deposited his fee or other dues before the Registry of this Court pursuant to any Court order, the Registry shall release and pay the same along

with interest in favour of the Excise Commissioner, J&K Government, Excise and Taxation Complex, Rail Head, Jammu, under proper receipt

through the learned Advocate General.

37. This shall dispose of all the connected CMPs and the interim directions, whatever kind in operation, shall stand vacated.

38. Records produced by learned Advocate General are returned to him in the open Court.

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39. No order as to costs.

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