

(1974) 10 PAT CK 0002

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No's. 8 and 9 of 1974 (R)

Sangram Singh Jaiswal and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-10-1974

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 22, 7(2)
Constitution of India, 1950 — Article 14, 166(1), 19(1), 245
Rules of Executive Business, Bihar, 1979 — Rule 219, 28

Citation : AIR 1975 Patna 199

Hon'ble Judges : S.K. Jha, J; Nagendra Prasad Singh, J

Bench : Division Bench

Advocate : K.D. Chatterji, G.P. Jaiswal, Narendra Prasad and M.C. Chagla, for the Appellant; Balbhadra Prasad Singh, S. Shamsul Hassan, R. Prasad, D.P. Sinha, A.B.S. Sinha, Ganga Prasad Bimal, K.P. Verma, R.C. Sinha, Rajeshwari Prasad and Naish Singh, for the Respondent

Final Decision : Dismissed

Judgement

Jha, J.—Both these writ petitions are based upon A common set of facts and the points involved in them are identical.

The petitioner in C. W. J. C. No. 8 is one Sangram Singh Jaiswal while that in C. W. J. C. No. 9 is a partnership firm by the name of Messrs. Ram Narain and Sons. The reliefs claimed in both the writ petitions are for issuance of an appropriate writ quashing the order of the Member, Board of Revenue, Bihar, respondent No. 2 dated the 22nd of April, 1974 (Annexure 3) by which exclusive privilege for the whole sale supply of country liquor to the warehouses in the State of Bihar for the period from, the 1st of April, 1974 to the 31st of March, 1977, has been granted to Messrs. S. K. G. Sugar Ltd., respondent No. 4, along with two others and for a writ of mandamus commanding the State of Bihar, the Member, Board of Revenue and the Commissioner of Excise, Bihar (respondents 1 to 3) to grant exclusive privilege to the petitioners in the two cases for the areas tendered by them. 2. The facts, on the basis of which arguments have been advanced in

these cases, may be stated in a very narrow compass Although the briefs are rather voluminous Mr. Chagla appearing for the petitioner firm in C. W. J. C. No. 9, whose arguments were adopted by Mr. K.D. Chatterji appearing for the petitioner in C. W. J. C. No. 8, confined his submissions on only these facts. On the 31st of October, 1973 a notification was published in the Bihar Gazette inviting tenders for grant of exclusive privilege for the wholesale supply of country liquor to the warehouses in the State of Bihar for the period--1st April, 1974 to 31st March, 1977--under Section 22 of the Bihar and Orissa Excise Act, 1915 (hereinafter referred to as the Act), The last date fixed for the receipt of tenders was the 15th of December, 1973. The tender form and tender notice have been annexed as Annexures 1 series to the petition. Fifteen tenders were received in the office of the Excise Commissioner, respondent No. 3, out of which, ultimately, only seven tenderers remained in the field, quoting various rates per L. P. litre. The rates tendered by them varied between 0.45 paise per L. P. litre and 0.60 paise per L. P. litre in the following manner:

- (i) M/s. S. K. G. Sugar Ltd. respondent No. 4 0.51 L. P. litre
- (ii) M/s. Kanpur Sugar Works, Marhowrah 0.51 "
- (iii) M/s. Arun Chemical Industries (P.) Ltd., Sultangani 0.80 "
- (vi) M/s. Ram Narain and Sons, Ranchi petitioner in C. W. J. C. No. 9 of 1974 0.48 "
- (v) M/s. Vicky Brothers, Bhagalpur: ?
For north Bihar 0.46 "
For south Bihar 0.49 "
- (vi) Shri Sangram Singh Jaiswal, petitioner in C. W. J. C. No. 8 of 1974 0.45 "
- (vii) Shri Maya Shankar Singh, Sitamarhi 0.47 "

In the tender notice (Annexure 1) it was specifically stated that the Board of Revenue would not be bound to accept either the lowest or any of the tenders submitted and further that, other things remaining the same, those tenderers would be given preference who had their own distilleries. Admittedly, only three of the tenderers, namely, Messrs. S. K. G. Sugar Ltd., respondent No. 4, Messrs. Arun Chemical Industries (P.) Ltd. and Messrs. Kanpur Sugar Works (the latter two not being parties to any of the petitions) have their own distilleries. Along with the tender submitted by respondent No. 4 a letter was annexed saying that the rate quoted by it had been arrived at on a consideration of transport charges for the warehouses in north Bihar which were at a little distance from its distillery at Mirganj. It had, therefore, stated in the letter that if the entire area of the State was not allotted to it, the rate of tender would not stand at 51 paise per L. P. litre and it would submit a fresh rate of supply. While there is an assertion in both the writ petitions that the Commissioner of Excise, respondent No. 3, asked the tenderers, after calling upon them by a letter dated the 27th of February,

1974 to appear on the 5th of March, 1974, to reduce the rates quoted by them, to which the petitioner in C. W. J. C. No. 9 agreed to reduce the rate tendered from 0.48 paise per L. P. litre to 0.45 paise per L. P. litre and the petitioner in C. W. J. C. No. 8 expressed unwillingness to reduce the same, there is a categorical statement in the counter-affidavit filed on behalf of respondents 1 to 3 that all the tenderers offered that, keeping in view the fast increasing incidental and transport charges, any suitable and reasonable rate decided by the authorities, even though lower than their quoted rate, would be acceptable to them. Ultimately, however, the Commissioner of Excise, respondent No. 3, recommended only three tenders, namely, those of M/s. S. K. G. Sugar Ltd. (respondent No. 4), Messrs. Kanpur Sugar Works and Messrs. Arun Chemical Industries, because only these three tenderers had their own distilleries. The file was sent by the Commissioner of Excise to the Member, Board of Revenue, respondent No. 2. Admittedly, although the power to grant exclusive privilege u/s 22 of the Act is in the State Government this power was delegated to the Board of Revenue u/s 7 (2) (e) as far back as in 1919. For the last 20 years, however this power has been exercised by the Government and not by the Board. The Member, Board of Revenue, therefore, forwarded the file to the Minister in charge of Excise to decide whether the tenders will be finalised by the Government or by the Board. According to the petitioners, respondent No. 4, in the meantime, submitted a representation to the Chief Minister although this fact is disputed. I shall, however, proceed upon the assumption that such a representation was filed since it is of no major consequence. I must, in all fairness, state here that, although in the petitions allegations of mala fide on the part of the Chief Minister have been made, learned counsel for the petitioner in C. W. J. C. No. 9, in course of his submissions, very fairly stated that the allegations of mala fide would not be pressed by him. The Minister of Excise recorded his minutes on the file of the department, which, the petitioners assert, were final orders passed by the Government, on the 13th of April, 1974 allotting the warehouses in favour of five tenderers in the following manner:--

(i)

Messrs. Ram Narain and Sons, (petitioner in C. W. J. C. No. 9).

? All warehouses in the district of Ranchi.

(ii)

Messrs. Lakshmi Narain and Sons.

?

All warehouses in the districts of Gaya, Nawadah and Giridih.

(iii)

Messrs. Kanpur Sugar Works, Marhowrah.

?

All warehouses in the districts of Saran, Purnea and Hazaribash.

(iv)

Messrs. Arun Chemical Industries, Sultanganj.

?

All warehouses in Bhagalpur and Santhal Parganas.

(v)

Messrs. S. K. G. Sugar Ltd. (respondent No. 4).

?

Rest of the warehouses not allotted to others in north Bihar plus Monghyr, Begusarai, Dhanbad, Singh-bhum, Palamau, Patna, NaLanda, Rohtas and Bhoipur.

The Minister, after having recorded his minutes, forwarded the file to the Chief Minister. On the 18th of April, 1974, the Chief Minister passed the following orders:--

"Let the Board of Revenue exercise its statutory powers and decide." The file was received by the Member, Board of Revenue, on the 22nd of April, 1974 and he passed an order contrary to the order of the Minister of Excise and fixed the rate at 0.48 paise per L. P. litre. The order was communicated to the petitioners by a forwarding letter dated the 26th of April, 1974 from the Commissioner of Excise. By far the major portion of the area of the State was allotted to respondent No. 4 and some area was allotted to Messrs. Kanpur Sugar Works and some to Messrs. Arun Chemical Industries (P.) Ltd. No challenge is made in the present petitions to the grant of exclusive privilege regarding the areas allotted to Messrs. Kanpur Sugar Works and Messrs. Arun Chemical Industries (P.) Ltd. Since exclusive privilege in respect of a very large area in the State has been granted to respondent No. 4, it is asserted that a virtual monopoly has been conferred on it.

3. The petitioners' case is that they having been granted such privilege in respect of the area claimed by them in the past, there was no reason why their cases should have been unduly ignored.

In reply, it has been asserted by respondents 1 to 3 as well as respondent No. 4 that the most impelling criteria for the allotments in question were considerations of the quantum of production of each one of the tenderers and its capacity to feed the requirements of the warehouses. The past experience of the department, during the previous term of contract, showed that it was becoming increasingly difficult for a non-distillery owner to make regular and prompt supply of spirit to the warehouses after purchasing the same from distillers. Almost all the warehouses under the contract of those contractors who had no running distilleries of their own went dry at one time or the other and the supplies were mostly made by Messrs. S. K. G. Sugar Ltd., respondent No. 4, or by two other distillers, with which we are not concerned. The supplies made by

respondent No. 4 outside its contracted area were almost at par with the supplies in its own contracted area. Thus, while it met the full, annual demand of 1.20 crore L. P. litres pertaining to its own contracted area, it supplied on demand from contractors of outside its contracted area to the extent of 1.02 crore L. P. litres as it was bound in law to do in view of condition 7 (B) of licence in Form 27. And, had it not met the demands of spirit of the warehouses attached to the non-distiller contractors, the State Government would have been put to a tremendous loss of revenue of nearly ten crores of rupees. The performance of non-distiller contractors was very poor and it was expected to be poorer in view of the increasing difficulties relating to procurement and transport of spirit in the current contract. It was for the above reason that the Board was compelled to take a decision that preference will be given to such tenderers who have their own distilleries.

4. On these facts, the petitioners have challenged the order of the Board of Revenue dated the 22nd of April, 1974 as being without jurisdiction. Mr. Chagla contended that for the last 20 years the power to grant exclusive privilege under the provisions of the Act had been exercised by the Government and not by the Board of Revenue; so also in the instant cases the Minister of Excise having passed a final order distributing the exclusive privilege in respect of different areas to different tenderers on the 13th of April, 1974 and he having forwarded the same to the Chief Minister in the first instance. Chief Minister had no jurisdiction in law to send the file to the Board of Revenue for passing any fresh orders. As a necessary corollary, the Board of Revenue had been denuded of its delegated authority by reason of the power having once been exercised by the Minister of Excise. As such, the order of the Board could not be upheld. Alternatively, it was contended that, assuming the order of the Board to be in exercise of its delegated authority, even then it was liable to be struck down, for it offended Rule 219 of the Instructions issued by the Board of Revenue under the Act, which runs as follows :

"In dealing with the tenders submitted, due consideration will be shown to the claims of existing contractors and to the rates quoted by different parties also to the capacity of the parties to carry out the terms of the contract satisfactorily, but large monopolies will be discouraged and the object aimed at will be the establishment of a number of moderately sized distilleries working in separate interests, rather than of a few large concerns, even though the latter might offer a lower rate. The Board will not be bound to accept the lowest or any tender."

Learned counsel submitted that encouraging monopoly, as was sought to be done by the Board in the present case, was contrary to the letter and spirit of Rule 219 aforesaid. Thirdly, it was contended that there was no valid tender at all by respondent No. 4 since it was conditional as a letter was appended with it and this made the tender conditional, which could not be treated as a valid tender. In any event, therefore the grant of exclusive privilege to respondent No. 4 could not be sustained in law. I shall deal with each of the points raised seriatim.

5. The first question that arises for consideration is as to whether the minutes recorded by the Minister in charge of the department of Excise on the 13th of April, 1974 amounted to a final order allotting and allocating the exclusive privilege for supply of country liquor to all the warehouses in favour of the persons mentioned therein; whether therefore, the Board of Revenue had been denuded of its powers by the exercise of such a power by the State Government.

6. At the outset I may dispose of one short matter in this connection. It was submitted by learned Advocate General for the State as also by Mr. Rajeshwari Prasad, learned counsel for respondent No. 4 that the Minister in charge of Excise had no jurisdiction to pass any order or to record any minutes on the file on the 13th of April, 1974. The submission is that the Ministry had already tendered its resignation prior to that date and on that very date i.e. the 13th of April, 1974 the resignations of the Ministers including that of the then Excise Minister were accepted by the Governor. It was suggested that the then Excise Minister recorded his minutes after his resignation had already been accepted. It is evident from the gazette notification which was produced before us that the resignations had been accepted on the 13th of April, 1974 but the resignations had been accepted with effect from the afternoon of the 13th of April, 1974, we do not know for certain as to whether the order passed by the then Minister of Excise was so passed in the forenoon or sometime before his resignation had been accepted or actually the order was passed after the resignation had taken its effect. In that view of the matter, I would not treat the matter of resignation and of the jurisdiction of the then Excise Minister to record the minutes in question as of any decisive importance in the instant cases.

7. Section 22 (1) (c) of the Act makes the State Government the sole repository of power to grant to any person on such conditions and for such period as it may think fit the exclusive privilege of selling liquor wholesale or retail. Such a power, however, as has already been stated earlier, can be delegated u/s 7 (2) (e) of the Act to the Board, the Commissioner of a division or the Excise Commissioner. The State Government may, under the aforementioned provision of law, delegate to the said authorities all or any of the powers conferred upon it by or under the Act except the power conferred by Section 89 to make rules. Admittedly, the power to grant exclusive privilege had been delegated by the State Government to the Board of Revenue as far back as in the year 1919 by a notification. It may be mentioned here that u/s 7 (2) (f) any powers conferred or duties imposed upon any officer or person under the Act may be withdrawn by the State Government by a notification. No such notification withdrawing the delegated authority of the Board has been issued at any time after 1919. Mr. Chagla contended and, rightly so that the word "delegation" is generally used to imply not a parting with powers by the person who grants the delegation but points rather to the conferring of an authority to do things which, otherwise, that person would have to do himself. By issuing the notification in 1919 delegating the powers of the State Government u/s 22 to the Board of Revenue, the State Government had not denuded itself of the power to act in pursuance of Section 22 itself. This

principle is well settled and also finds support from the decision of the Supreme Court in *Godawari S. Parulekar and Others Vs. State of Maharashtra.*, . Since the State Government could, in spite of such delegation of power, itself act in pursuance of the provisions of Section 22, the question is whether in the present cases it can be said that the State Government may be said to have granted to the persons mentioned in the aforesaid minutes of the Excise Minister any exclusive privilege. The mere fact that the State Government has been exercising such a power itself for the last 20 years will not be decisive one way or the other in so far as the exercise of such a power in the instant cases is concerned. The minutes recorded by the Excise Minister forwarded to the Chief Minister for perusal cannot in my view, be said to be any order of the State Government granting any exclusive privilege to any person and for the following reasons. No order expressed in the name of the Governor, as required by Article 166(1) of the Constitution of India, was ever passed nor was any such order communicated to the persons concerned including any of the petitioners. Until the formality of action being taken in the name of the Governor is observed, such an action cannot be regarded as that of the State. Furthermore, in order to make any order or action a decision of the Government, it must be communicated to the person concerned. Reliance in this connection may be placed on the decision of the Supreme Court in *Bachhittar Singh Vs. The State of Punjab*, wherein it has also been held that it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order, for, until the order is communicated to the person affected by it, it would be open to the Government to consider the matter over and over again till its communication. So long as the communication is not made, even if it turns as an order, it cannot be regarded as anything more than provisional in character. Of course, there may be cases, as was the position in the case of *R. Chitralekha and Another Vs. State of Mysore and Others*, where an order is sought to be communicated by a Secretary or a Deputy Secretary or an Under-Secretary to the Government which by itself is not expressed to be in the name of the Governor, and yet no challenge is made that no order of Government has been passed; and in such cases, if it can be shown by the Government either on affidavits or on other materials on record that the order had been duly passed by the Government, the communication per se would not be held to be not in pursuance of an order of the Government duly passed. That, however, is not the position in the present cases. Reference in this connection may also be made to a Bench decision of this Court in *M.N. Hoda v. State of Bihar* 1971 BLJR 719) wherein it has been held that mere passing of an order by the then Revenue Minister without communication of the same to the petitioner in that case was not effective and could not be equated with an order of the Government duly passed. In my considered view, therefore, merely recording of the minutes on the file by the then Excise Minister before forwarding the file to the Chief Minister did not amount to an order of the State Government granting any exclusive privilege to any one u/s 22 of the Act.

8. Mr. Chagla then contended that in any event the order of the Chief Minister directing the Member, Board of Revenue, to exercise his powers under statute was without jurisdiction as under Rule 9 of the Rules of Executive Business "without prejudice to the provisions of Rule 7, the Minister incharge of a department shall be primarily responsible for the disposal of the business appertaining to that department" and Rule 7, in its turn, runs thus:--

"The Council shall be collectively responsible for all advice tendered to the Governor and all executive orders issued in the name of the Governor in accordance with these rules whether, such advice is tendered or such orders are authorised by an individual Minister on a matter appertaining to his portfolio or as the result of discussion at a meeting of the Council or howsoever otherwise."

Learned counsel submitted that the Excise Minister being primarily responsible for the disposal of the file in question, the Chief Minister could not sit in judgment over the minutes recorded by him. This argument, in my view, is not tenable as I shall presently show. But before I do that I may notice here a submission made by Mr. Rajeshwari Prasad on behalf of respondent No. 4. He contended that Rule 12 of the Rules of Executive Business provides that all cases referred to in the Third Schedule shall be submitted to the Chief Minister after consideration by the Minister in charge with a view to obtaining his order for circulation of the case under Rule 13 or for bringing them up for consideration at a meeting of the Council. Item 18 of the Third Schedule relates to proposals involving any important change of policy or practice and item 24 covers cases required by the Chief Minister to be brought before the Council. It is true that the cases referred to in the Third Schedule have to be submitted to the Chief Minister with a view to obtaining his orders for circulation of the case to the Ministers for opinion or for bringing them up for consideration at a meeting of the Council. This, however is no complete answer to the argument of Mr. Chagla because it may be suggested that since the Chief Minister in the instant cases has not passed any order regarding the placing of the matter before the Council of Ministers, the provisions aforementioned or, for that matter, the Third Schedule may not be said to be attracted. Nonetheless, there are two good reasons why the contention of Mr. Chagla cannot be accepted. Firstly, if, as I have already held above, there was no order of the State Government nor any action taken for grant of any exclusive privilege by it, the authority of the Board of Revenue under its delegated power cannot be challenged, and this point remains more or less academic in nature. Secondly, Rule 28 (a) (ii) of the Rules of Executive Business makes the position amply clear. The aforesaid rule runs thus:--

"28 (a). The following cases shall be submitted to the Chief Minister through the Chief Secretary by the Secretary of the department concerned after consideration by the Minister in charge but before the issue of orders:--

.....

(ii) Cases raising questions of policy and cases of administrative importance not

covered by the Third Schedule." Clause (ii) of Rule 28 (a) in my opinion, sufficiently clothes the Chief Minister with the power to pass an order of the kind which he has made here. The point as to whether the power to grant exclusive privilege should be exercised by the Board of Revenue under its delegated authority or by the State Government and then again, whether exclusive privilege should be granted only to distillery owners or even to those who did not own any distillery, certainly raises a question of policy. Although the rule does not say that the Chief Minister could not be entitled to pass orders but when it says that he is entitled to call for the file before the issue of orders, it clearly implies that he has a right to interfere and make such orders as he thinks appropriate. There was thus no infirmity in the order passed by the Chief Minister directing the Board of Revenue to exercise its delegated power in the matter of grant of exclusive privilege under the provisions of Section 22 of the Act. In this view of mine I am fortified by the decision of the Supreme Court in *Bachhittar Singh Vs. The State of Punjab*, where their Lordships were considering the effect of Rule 28 (1) (ii) of the Punjab Rules of Business, the language of which is more or less the same as the Language of Rule 28 (a) (ii) of the Bihar Government's Rules of Executive Business. The provision in the Punjab Rules of Business, quoted in that case, runs thus:--

"28 (1). The following classes of cases shall be submitted to the Chief Minister before the issue of orders:--

(ii) cases raising questions of policy and cases of administrative importance not already covered by the schedule." And, their Lordships held-

"We, however, think that Clause (ii) would certainly entitle the Chief Minister to pass an order of the kind which he has made here. The question to be considered was whether though grave charges had been proved against an official he should be removed from service forthwith or merely reduced in rank. That unquestionably raises a question of policy which would affect many cases and all the departments of the State. The Chief Minister would, therefore, have been within his rights to call up the file of his own accord and pass orders thereon. Of course, the rule does not say that the Chief Minister would be entitled to pass orders but when it says that he is entitled to call for the file before the issue of orders it clearly implies that he has a right to interfere and make such orders as he thinks appropriate."

I would accordingly hold that the power conferred on the State Government u/s 22 had not been exercised by it so as to denude the Board of Revenue of its delegated authority to deal with the matter of grant of exclusive privilege. I, therefore, hold that the order of the Board of Revenue cannot be held to be without jurisdiction on any of the grounds aforesaid canvassed by Mr. Chagla.

9. The next question that arises for consideration is as to whether in the exercise of his power the Member, Board of Revenue, has acted in contravention of Rule 219 of the Executive Instructions. I have already quoted the aforesaid rule

earlier. The rule clearly stipulates that the capacity of the parties to carry out the terms of contract satisfactorily would also be one of the relevant considerations. From the counter-affidavits both of respondents 1 to 3 on the one hand and respondent No. 4 on the other, it is amply clear that the past experience of the State Government showed that the contractors who were granted exclusive privilege in regard to their contracted areas having no distilleries of their own put the State to a tremendous loss of revenue amounting to nearly, 10 crores of rupees. That is why in the tender notice the Board clearly mentioned that, other things remaining the same, preference would be given to such tenderers who had their own distilleries. The petitioner in C. W. J. C. No. 9, which was a contracting party during the past period in respect of a limited area in the Chotanagpur division, had amply exhibited its incapacity to carry out the terms of the contract satisfactorily and respondent No. 4 had to come to the aid both of the State Government as also of such contracting parties, thus saving the State from a tremendous loss of revenue. In such circumstances, the clause in the tendered notice regarding the preference to the distillery owners cannot be held to be either unreasonable or arbitrary or in contravention of Rule 219 of the Executive Instructions. Nor is it incumbent upon the State in such cases always to accept the lowest tender, for the acceptance of tender merely on the basis of rates may more than offset the advantage in the matter of revenue which the State can otherwise acquire. As has been held by the Supreme Court in the case of State of Orissa and Others Vs. Harinarayan Jaiswal and Others, while dealing with the provisions of this very Act-

"One of the important purposes of selling the exclusive right to sell liquor in wholesale or retail is to raise revenue. Excise revenue forms an important part of every State's revenue. The Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. Hence quite naturally, the legislature has empowered the Government to see that there is no leakage in the revenue. It is for the Government to decide whether the price offered in an auction sale is adequate. While accepting or rejecting a bid, it is merely performing an executive function. The correctness of its conclusion is not open to judicial review." The rejection of tenders of the petitioners in the two cases by the Member, Board of Revenue, therefore, cannot be said to be in any way prejudicial to the interest of the State, in so far as revenue is concerned, on the facts stated in the counter-affidavits. While complaining of the violation of Rule 219 aforesaid, learned counsel also contended that it would be advancing the cause of monopoly which is sought to be retarded by the aforesaid rule. The contention that the effect of the grant of exclusive privilege in favour of respondent No. 4, amounts to a virtual conferment of monopoly to the exclusion of others and is, therefore, liable to be struck down cannot be sustained. As held by the Supreme Court in the case of Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others, :--

"Elimination and exclusion from business is inherent in the nature of liquor business and it will hardly be proper to apply to such business the principles

applicable to trades which all could carry. The provisions of the regulation cannot be attacked merely on the ground that they create a monopoly. Properly speaking, there can be a monopoly only when a trade which could be carried on by all persons is entrusted by law to one or more persons to the exclusion of the general public. Such, however, is not the case with the-business of liquor." In my view, therefore, there has been no violation or contravention of Rule 219. In any event, Rule 219 of the Instructions issued by the Board of Revenue is merely a piece of Executive Instructions. Such Executive Instructions have no statutory force. Hence, even assuming:-- though it is, by no means, clear -- that these instructions have been disregarded, the non-observance of these instructions cannot affect the power of the Board of Revenue to make its own decision in the matter of grant of exclusive privilege nor can the validity of such an order or decision based on it be affected by any non-observance of the instructions. I am fortified in this view by a decision of the Supreme Court in the case of Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, wherein it has been held at page 413:--

"The utmost that has been suggested is that it has not carried out certain Executive Instructions..... But all these are only Executive Instructions which have no statutory force." Reference may also be made to a Bench decision of this Court in a batch of cases in Kuldeep Narain Jaiswal v. The State of Bihar (C. W. J. C. No. 563 of 1971 and analogous cases decided on 18-5-1973) (Pat.). A similar grievance had been made in those cases with regard to the violation of Rule 218, and it was held-

"I would state that I am inclined to accept the submission made on behalf of the respondents that the provisions contained in paragraph 218 of the Manual mere instructions having no statutory force. In the very beginning of the Manual it has been stated as follows:

"Instructions issued by the Board of Revenue under the Bihar and Orissa Excise Act II of 1915".

I thus find no merit in the contention either that there has been a violation of Rule 219 of the Executive Instructions or that the violation, if any, would adversely affect the decision of the Board of Revenue granting exclusive privilege to respondent No. 4.

10. It was, however, contended that assuming that paragraph 219 of the Executive Instructions were mere administrative orders or instructions, they will still be binding on the State, and the petitioners will be entitled to a relief on the basis of such an order. Reliance was placed on a decision of the Supreme Court in the case of Union of India (UOI) Vs. K.P. Joseph and Others, . This contention has to be stated merely to be rejected. K.P. Joseph's case was treated by the Supreme Court as one of the exceptions to the general rule that an administrative order confers no justiciable right. In that case it was held, relying on a decision of the Supreme Court in the case of Sant Ram Sharma Vs. State of

Rajasthan and Another, , that Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules, although Government cannot supersede statutory rules by administrative instructions. On the special facts of that case, their Lordships of the Supreme Court held that the office memorandum in question providing for certain benefits to ex-military personnel on re-employment on the basis of length of service conferred a right relating to conditions of service and was, therefore, justiciable. And, their Lordships hastened to add that-

"We should not be understood as laying down any general proposition on this Question."

Paragraph or Rule 219 of the Executive Instructions in the instant cases cannot be equated with the service conditions in K.P. Joseph's case.

11. It was lastly contended that, since the tender submitted by respondent No. 4 was accompanied with a letter saying that the rate quoted by it would not remain the same if exclusive privilege for the entire area in the State was not granted to it, the tender was conditional and, therefore, not valid. This contention has to be rejected for two reasons. Firstly, it is highly doubtful whether the petitioner in either of the two applications can be said to have any legal right challenging the validity of the tender of respondent No. 4. But the more important reason is that in the aforesaid Bench decision of this Court in the case of Kuldeep Narain Jaiswal, C. W. J. C No 563 of 1971, D/- 18-5-1973 (Pat.), in which batch were involved, more or less, all the parties to the instant cases, a similar contention which had been raised in those cases was rejected in the following words:--

"It is an admitted position that M/s. S. K. G. Sugar Ltd. (respondent No. 5 of C. W. J. C. No. 729 of 1971) submitted the tender fulfilling all the conditions laid down in the tender notice and there was no defect in their tender. They had also not put any condition in their tender. The only ground on which the validity of their tender has been impugned is that they sent along with their tender a letter in which they stated that if there would be a rise in the price of raw materials or in the cost of liquor or if there would be enhancement of any tax during the currency of the contract, the cost price should be increased proportionately. In my opinion merely because such a letter was sent by M/s. S. K. G. Sugar Ltd. along with their tender, it cannot be held that the tender submitted by them was defective and not in accordance with the conditions laid down in the tender notice. Thus, there is absolutely no merit in the contention raised on behalf of the petitioners that the tender submitted by M/s. S. K. G. Sugar Ltd. was defective or that it was a conditional tender."

The decision aforesaid squarely covers the point raised in the instant cases.

12. I thus do not find any merit in any of the contentions raised on behalf of the petitioners. Both the applications are accordingly dismissed. In the circumstances of the cases, however, there would be no order as to cost.

Singh, J.

13. I agree.