
(2004) 03 P&H CK 0143
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3628 of 2004

Sanjeev Bhandari

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 31-03-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 226
Punjab Excise Act, 1914 — Section 35(3)
Punjab Liquor Licence Rules, 1956 — Rule 1, 1A, 36, 36(5), 36(5A)

Citation : (2006) 142 PLR 191 : (2004) 4 RCR(Civil) 358

Hon'ble Judges : N.K. Sud, J; Hemant Gupta, J

Bench : Division Bench

Advocate : Mohan Jain, for the Appellant; Harbhagwan Singh, General and Salil Sagar, Additlial A.G. for Respondent Nos. 1 to 3, Ashok Aggarwal and Anil Kshetarpal and J.K. Sibal and Sapandhir, for the Respondent

Final Decision : Allowed

Judgement

Hemant Gupta, J.—The petitioner, who is a Wine Contractor, has invoked the jurisdiction of this Court for issuance of a writ in the nature of certiorari quashing the auction of liquor vends of Hoshiarpur and Nawanshahr Districts alleging to be in violation of auction conditions, Punjab Liquor License Rules, 1956 (for short "License Rules 1956") and the directions of this Court in Civil Writ Petition No. 4781 of 1995 titled Makhan Lai & Company v. State of Punjabi decided on August 04, 1995.

2. Licence for various categories of liquor vends are granted under the licence Rules 1956. L-2 and L-14A liquor vends are in dispute in the present writ petition. L-2 license is for wholesale and retail vend of foreign liquor to the public only which can be granted by auction, pre-determined price or by way of negotiations under the license Rules 1956. License L-14A is granted for retail vend of country spirit for consumption off the premises and the mode of grant is again auction, pre-determined price or by way of negotiations. The process of

auction of liquor vends to grant license in the form of L-2 and L-14A is held in the month of March and the license is from 1st of April to March 31 next year. Auction announcements were made for the grant of liquor vends for the year 2004-2005 on 19.2.2004. In pursuance of such auction announcements, the auction of liquor vends was to start from March 4, 2004. Auction notice in respect of liquor vends for Jalandhar, Hoshiarpur and Nawanshahr was published in the newspapers on 29.2.2004. As per public notice, auction liquor vends of Jalandhar I, Jalandhar II, Hoshiarpur and Nawanshahr, was to be conducted at Jalandhar. It was stipulated in the auction notice that intended bidder is required to deposit Rs. 250/- as entry fee in the form of slip against which he will be allowed entry inside the auction venue. It was further stipulated that the successful bidder shall be required to deposit 15% amount as security of the license fee, out of which 5% will have to be deposited at the spot at the fall of the hammer by means of Bank Draft or cash, 5% by 25th of March, 2004 and remaining 5% on or before 31st of March, 2004. Country liquor vends and foreign liquor vends will be put to auction together in groups. The information regarding allotment of quota, formation of groups will be displayed in the office of the Asstt. Excise and Taxation Commissioner one day before.

3. The petitioner filed the present writ petition on 1.3.2004 even before the auction apprehending that the auction shall not be in accordance with the Rules and the State of Punjab has decided to allot all the liquor vends of Hoshiarpur and Nawanshahr in favour of one Ponti Chadha, a Wine Contractor of Uttar Pradesh for the year 2004-2005 or to his associates in any other name by joining the groups contrary to law as settled/directions given by a Division Bench of this Court. This Court passed the following order on March 02, 2004:

Learned counsel for the petitioner states that this petition be taken up for hearing after the auction date i.e. 4.3.2004 and that if his apprehensions are corroborated by any prima facie evidence, he shall amend the petition accordingly and the same shall be taken up for hearing.

Adjourned to 8.3.2004.

4. On 8.3.2004, the petitioner filed amended writ petition impleading respondent No. 4-successful bidder of Jalandhar I, Jalandhar II and Nawanshahr in the sum of Rs. 163.16 crores as against the government bid (Sarkari Boli) of Rs. 163.11 crores. Respondent No. 5 is the successful bidder of Hoshiarpur in the sum of Rs. 70 crores as against the government bid of Rs. 68.78 crores. It has been alleged by the petitioner that auction proceedings started at 11.00 a.m. on 4.3.2004 and were completed at 11.10 a.m. The auction was conducted in total violation of License Rules 1956, auction conditions and directions given by this Court in Civil Writ Petition No. 4781 of 1995 titled Makhan Lai and Co. v. State of Punjab and Ors. It has been further pointed out that the entire auction process of the Districts was completed within few minutes without following the procedure as prescribed under the License Rules 1956 and the same was allotted to the firms of Mr. Ponti Chadha. It has been mentioned that the liquor vends of District

Nawanshahar were allotted for mere Rs. 37 crores against the available bid of Rs. 40 crores. Similarly, auction was closed at Rs. 70 crores in respect of Hoshiarpur in spite of the fact that the petitioner and his associate Mr. Mohinder Pal had offered Rs. 72 crores as the bid which was totally ignored. Reference was made to the newspaper reports to show that the auction proceedings were stage managed to allot the license in favour of Ponti Chadha or his associates. The petitioner has further stated that if there had been a fair auction in terms of the License Rules 1956, the State could have earned much more revenue. If the auction had been conducted group wise and within the revenue limit as contemplated under the License Rules 1956, the cumulative auction proceeds for the Districts of Nawanshahr and Hoshiarpur taken together would have been at least more by Rs. 5 crores. The petitioner has assured and undertaken before this Court to this effect. It has been further mentioned that at the time of auction on 4.3.2004, Mr. Mann made bid on behalf of his group of contractors, which was found Rs. 5 crores more than the amount at which the bids of liquor vends of Hoshiarpur and Nawanshahr were closed. It was further pleaded that if given a chance of re-auction in groups of Rs. 15 crores as a unit, the petitioner assures this Court that the proceeds for these two districts will get enhanced by at least Rs. 5 crores or even more.

5. In reply, the State Government has pointed out that auction was held under the guidance of senior most officers of the Excise and Taxation Department in the presence of more than 300 persons after due publication in the press and with prior intimation to Excise officials and public at large. It is further pointed out that this is a speculative litigation which must be discouraged. Reference was made to the judgment of the Hon'ble Supreme Court in the case of State of Punjab v. Yoginder Sharma Onkar Rai and Co. (1996) 6 Supreme Court Cases 173, wherein it has been held that while loss to the exchequer is a factor, which maybe taken into account in genuine cases, the finality of the auction must also be recognised in the interest of exchequer. It has been pointed out that the petitioner has challenged the grouping/clubbing of vends in auction whereas even the petitioner himself got the clubbed group of Hoshiarpur, Haryana and Mahilpur in the financial year 2003-2004 for a sum of Rs. 34.31 crores in District Hoshiarpur itself. Practice has been to auction bigger groups by grouping/clubbing of vends in such a way so that unviable and smaller groups could be sold alongwith lucrative groups and there is neither any undercutting of prices nor there is any loss to the State revenue. Thus, the petitioner is estopped from challenging the action of the respondent-State of grouping/clubbing of vends at the time of auction. It has been pointed out that for these four districts, the department had to suffer a loss of Rs. 8.31 crores in the year 2003-2004 whereas this year the gain is Rs. 1.28 crores. The allegations of the petitioner in respect of bid of Rs. 72 crores or that bid of Mr. Mann of Rs. 5 crores more was denied as frivolous and baseless. It has been further stated that Ponti Chadha has not been impleaded as a party whereas all the partners of the firm who secured the liquor business are of sound financial position. It was pointed out

that under Rule 1 of License Rules 1956, the license in the form of L-2 and L-14A could be granted either by way of auction, negotiation or pre-determined license fee as specified in Sub-rule (5-A) of Rule 36 of the License Rules 1956. Rule 36(5-A) of the License Rules 1956 contemplate that in exceptional cases, the Collector or the Presiding Officer may with the prior approval of the Excise Commissioner attach a vend or a group of vends at a pre-determined license fee with another group being auctioned. It was alleged that in exercise of such powers conferred under Sub-rule (5-A), it was decided to group/club the excise Districts Jalandhar I and Nawanshahr at a pre-determined price with Jalandhar II. It was Jalandhar II which was put to auction in exercise of powers conferred under Clauses 12(iii) and 12(v) of the auction announcements. It has been further mentioned that 589 persons deposited Rs. 250/- to enter into auction venue but only 294 attended the auction. The allegations of mala fide or any extraneous considerations were denied.

6. At this stage, it will be beneficial to reproduce hereunder relevant statutory provisions and few of the decisions taken by the State Government in respect of the auction proceedings for the year 2004-2005.

Punjab Liquor License Rules, 1956

Rule 1:

There shall be the following class of licenses. Their mode of grant and the authorities to grant and renew them shall be noted against each;-

-----								Authority				
empowered	to	Form	Nature	Mode	of	grant	Grant	Renew				
-----								1	2	3	4	5
Foreign												liquor
-----								XX	XX	XX		
XX XX												

L-2 wholesale vend Auction, Collector Not of foreign liquor and Negotiation renewable Punjab Medium or at pre-determined Liquor Whisky licence fee as of seventy five specified in Sub-rule degree proof (5-A) of Rule 36. to the public.

XX XX XX XX XX

II Country spirit

XX XX XX XX XX

L-14 A Retail Auction. Collector Not vend of country Negotiation or at renewable spirit for pre-determined consumption off licence fee as specified the premises. in Sub-rule (5-A) of Rule 36. XX XX XX XX XX

Rule 36:

The following procedure is prescribed for the grant of licences by auction:

...

(3) The Collector will give timely notice of the date and place of the auction.

(4) Before the auction begins, the Presiding Officer will read out the notice and conditions to which the auction shall be subject.

(5) He will the proceed to put up each vend to auction, after carefully explaining its locality. The auction shall normally be of each vend separately but the Collector or the Presiding Officer as the case may be may with the prior approval of the Excise Commission auction in groups either L-14A vends or L-2 vends or L-2 vends with L-14A vends in the same village town or area keeping the exigencies of a particular situation and government interest in view. However, the grouping of L-14A and L-2 vends shall be upto fifteen crore rupees and that of L-2 vends upto a maximum of one crore rupees based on the license fee for the preceding year:

Provided that the limit of three crores rupees shall not be applicable in the case of single vend in respect of which license fee exceeds this limit.

The Collector or Presiding Officer as the case may be under exceptional circumstances, with the prior approval of the Excise Commissioner auction all the vends in a circle or a group of circles.

If any L-2 vend is auctioned in group with L-14A vend the Collector may, in respect of L-2 vend determine the annual licence fee at which the vend may be licensed. The amount licence fee shall be determined by taking into consideration the licence fees to which the vend or the vends in the nearby area were put to auction in the previous years, consumption of quantity of liquor and other relevant factors:

Provided that a licensee who secures more than one L-2 vends in the same locality may, subject to securing permission of the Excise Commissioner, opt one or more of them and may carry on sales at the remaining vends, subject to the condition that the closure of any vend(s) will not absolve him of his liability to pay the licence fee in respect of all the vends secured by him. Permission to exercise this option shall, however, be granted by the Excise Commissioner after taking into account all the relevant factors including the convenience of the customers.

Provided further that in suitable cases of group of vends, the Excise Commissioner, may, extend the aforesaid limit of fifteen crores rupees with the approval of Government.

(5-A) In exceptional cases the Collector or the Presiding Officer, as the case may be, made with the prior approval of the Excise Commissioner attach a vend or a group of vends at a pre-determined licence fee calculated keeping in view the; license fee of the proceeding year and other relevant factors such as location; sale and population etc. with another group being auctioned. The Collector or the

Presiding Officer, as the case may be, shall announce at the time of auction of the vend or group of vends that are to be attached at pre-determined licence fee, the amount of pre-determined licence fee and group of vends being auctioned with which these are to be attached.

...

AUCTION ANNOUNCEMENTS DATED 19.2.2004 (Annexure P-1)

...

(2) No person shall be allowed to bid for any license unless he has deposited a sum of Rs. 250/- for each auction venue into the Government treasury or makes such deposit with the Presiding Officer at the time of auction. While getting such receipt the shall give his complete address and append his full signature on it. This entry fee will be non-refundable and non-adjustable.

...

(12) (i) The licenses for retail vends of liquor of country liquor shall be granted on the basis of the license fee fixed by auction or at a predetermined license fee.

(ii) Licenses in Form L-14A for the retail vend of Country liquor will be auctioned in groups alongwith L-2 vends.

(iii) The grouping of vends in the same locality, village, town or area will be allowed with the prior approval of Excise Commissioner. Normal size of group may be upto Rs. 15 crores, on the basis of license fee for the year 2003-04. Any relaxation on the size of group shall be allowed with the approval of the Government.

(iv) The quota of Punjab Medium Liquor (in proof liters) fixed for each vend and that of the group shall be announced before such vends are put to auction.

(v) In case no bid at the time of auction is forthcoming in respect of a vend or a group of vends or if the situation otherwise warrants or it is expedient to do so, the Presiding Officer may grant the license for that vend/group of vends by private contract through negotiations. In certain exceptional circumstances, if it may become necessary the Presiding Officer may attach a vend or a group of vends on a predetermined license fee with another group being auctioned.

(13)(i) The successful bidder shall deposit security equivalent to 15% of the amount of the annual license fee - 5% of it on the spot at the fall of the hammer, 5% by 25th of March, 2004 and 5% by 31st March, 2004. In case security is not paid within the prescribed time, the bid shall be deemed to have been cancelled and the department shall acquire the right to resell the vends.

...

AUCTION NOTICE DATED 29.2.2004 (Annexure P-2),

It is hereby informed for the information of general public that licences for country liquor (L-14A) and the retail vends of foreign liquor (L-2) of Jalandhar Division will be auctioned for the financial year 2004-2005 (01-04-2005 to 31 .-03-2005) as per programme given below.

...

Country liquor vends and retail vends of foreign liquor will be put to auction together in groups. The information regarding allotment of quota, formation of groups will be displayed in the office of Assistant Excise and Taxation Commissioner one day before. Auction condition will be announced on the spot. Detailed information regarding auction of vends can be had from the office of the Assistant Excise and Taxation Commissioner of the district concerned. Successful bidders will have to submit clearance certificates of sales tax/income tax.

-----						S. Name of the
District	Date	Day	Time	Place	of	Auction No.
-----						1. Jalandhar-1,
4.3.2004	Tuesday	11.00	Red Cross	Jalandhar-2 auditorium	Hoshiarpur and Red	
				Cross Bhawan, Nawanshahr. Lajpat Nagar, Jalandhar.	2. Amritsar-1	7.3.2004
Sunday	11.00	Gymnasium Hall	Amritsar-2	Gol Bagh, Gurdaspur and Amritsar.		
Kapurthala	-----					

Annexure R-1 is the approval of the groups by the Financial Commissioner (Taxation) exercising the powers of the State Government on 3.3.2004 in terms of the provisions of Condition No. 12(iii) of auction announcement. Para No. IO.O and 11.0 are reproduced hereunder:

10.0. We have held extensive pre-auction meetings with prospective bidders. Efforts were also made to rope in new bidders to ensure the success of the Excise Auctions to be held on 4.3.2004. However, prospective bidders have shown little interest in bidding at rate close to the existing license fees but for a few groups and expressed no interest in the others, Jalandhar-I and II are revenue intensive districts and going to the last year's revenue figure of Rs. 125.42 crore and especially in view of the lukewarm response of prospective bidders and the anticipated fear that the auctions might go the same way as they went last year, it is proposed that the auction of vends may be done district wise to safeguard the revenue interests of the State.

11.0 Keeping in view the position explained above, in order to prevent any further decline in revenue and to protect the revenue interests of the State, it is proposed that the group clubbing may be allowed for Jalandhar-I, Jalandhar-II, Hoshiarpur and Nawanshahr by the Government, exercising the powers vested under Clause 12(iii) of the Excise Policy. It is further proposed that all the vends/circles of Jalandhar-I. II and Nawanshahr (total) revenue Rs. 163.01 crores) may be clubbed together and put to auction as a Single unit and all the vends/circles of Hoshiarpur District (total revenue of Rs. 68.87 crores) may be put to auction as another independent unit.

7. The above note dated 3.3.2004 was prepared by the Deputy Excise and Taxation Commissioner, Jalandhar, Division which was approved by the Excise and Taxation Commissioner as well as Financial Commissioner (Taxation) on 3.3.2004 itself. The minutes, of the auction held on 4.3.2004 has been attached as Annexure R-2.

8. The arguments in the writ petition were heard in part on 16.3.2004. The State Government was directed to furnish the information regarding the minutes, if any, prepared of pre-auction meeting with prospective bidders as mentioned in the note of Deputy Excise and Taxation Commissioner, Jalandhar, dated 3.3.2004. The State Government was directed to produce the records of the auction as well as the file pertaining to such pre-auction meetings with prospective bidders. The case was adjourned to 18.3.2004. An affidavit dated 18.3.2004 has been filed wherein it has been stated that there is no official record of such meeting maintained by the department. In fact, it is pre-auction consultations which is a well established practice in the department since 1976. The main purpose of these consultations is to assist the Deputy Excise and Taxation Commissioner-cum-Collector to assess and form an opinion regarding the revenue prospects in the coming auctions and also to assess the situation in regard to recommendations of clubbing/grouping of vends in order to maximise the government revenue. It is mentioned that such process is not formally structured by way of having an agenda note or maintaining of record of discussions and persons who attended such meetings. It has never been the practice in the department to maintain any formal record in this re-gard. The discussions/consultations are held on one-to-one basis between the Collector and the prospective bidders. It has been mentioned that these consultations by their very nature are not amendable to be recorded in a formal manner. On the basis of such discussions, a detailed note was prepared by the Deputy Excise and Taxation Commissioner which was approved by the Excise and Taxation Commissioner, Punjab and the Financial Commissioner (Taxation) on single file. Both these officers were comparing at Jalandhar during the auction period.

9. The record produced by the respondents includes knock down slips containing the bid sheets as well as. A perusal of Annexure R-1 shows that the pre-determined price was fixed for Jalandhar-I at Rs. 41.12 crores and that for Nawanshahr at Rs. 37.64 crores. The government bid in respect of Jalandhar-II was fixed at Rs. 84.35 crores. One Anil Wadia had given bid of Rs. 84.37 crores and Inderpreet Singh, the successful bidder, of Rs. 84.40 crores. The names, their father's names and addresses of the partners of the successful bidders are as under:

1. Inderpreet Singh s/o Shri Charanjit Singh r/o 19-F, Sarabha Nagar, Ludhiana.
2. Ashok Wadia s/o late Shri Krishan Lal Wadia 8-36, Mohan Park, Naveen Shahadra, Delhi.
3. Tejinder Pal Singh s/o Shri Gurbax Singh, 19-F, Sarabha Nagar, Ludhiana.

4. Rattan Lal s/o Sh. Ram Rakha, 230 Urban Estate, Phase-II, Jalandhar

5. Manmohan Walia s/o Ram Kishan Walia, 306 B, Sector 3S-D, Chandigarh.

10. In respect of Hoshiarpur, against the government bid of Rs. 68.87 crores, Anil Wadia has given bid of Rs. 69.50 crores whereas Ramandeep Singh, Inderpreet Singh and Gurinder Singh of M/s J.K. Associates have given a bid of Rs. 70 crores. The names and address of the partners are as under:-

1. Ramandeep Singh s/o late Shri Harvinder Singh, C-35, Friends colony, New Delhi.

2. Gurinder Singh Oberio s/o late Shri Inder Singh Azad, 1576, Kothi Shake Bagh, Naveen Shahadra, Delhi.

3. Inderpreet Singh S/o Shri Charanjit Singh, 19-F, Sarabha Nagar, Ludhiana.

11. The said file also contains the details of the auction in respect of Amritsar I, Amritsar II, Kapurthala and Dera Baba Nanak Circle of Gurdaspur (hereinafter to be referred as "Amritsar Group"). Amritsar I, Amritsar II and Dera Baba Nanak were attached with Kapurthala. Predetermined price of bid of Amritsar I was Rs. 61.80 crores, Amritsar II Rs. 46.02 crores and Dera Baba Nanak Rs. 4.50 crores. The government bid of Kapurthala was Rs. 45 crores. Inderpreet Singh of Punjab Enterprises is the successful bidder in the sum of Rs. 46.40 crores.

12. The partners of such Punjab Enterprises are as under:

1. Inderpreet Singh s/o Shri Charanjit Singh, 19-F, Sarabha Nagar, Jalandhar"

2. Anil Wadia w/o Late Shri Krishan Lai Wadia, B-II, 39/13, Civil Lines Quarters, Hoshiarpur;

3. Harjit Singh Chadha s/o Shri Charajit Singh Chandha, 19-F, Sarabha Nagar, Jalandhar"

4. Tejinder Pal Singh s/o Shri Gurbax Singh Chadha, 19-F, Sarabha Nagar, Jalandhar;

5. Manmohan Walia s/o Shri Ram Kishan Walia, 3068, Sector 35-D, Chandigarh. (Jaldanhar appears to be wrongly written in lieu of Ludhiana).

13. With this background, Mr. Mohan Jian, learned Counsel for the petitioner, has argued that in terms of Sub-rule (5) each vend has to be normally auctioned separately but the Collector or the Presiding Officer, keeping in view the various circumstances, make group of L-14A or L-2 liquor vends in the same village, town or area. Still further, such grouping shall be on the basis of the license fee for the preceding year. Vide public notice Annexure P-Z the State Government has resorted to grant of license by auction and, thus, the State Government could not abandon the said mode and resort to another mode i.e. at a pre-determined license fee. It is argued that by virtue of amendment dated 26.3.1996, one of the modes of grant of liquor license of L-2 and L-14A was

introduced on the basis of pre-determined license fee. Grouping of Jalandhar-I and Nawanshahr with Jalandhar-II purporting to be in exercise of the powers conferred under Rule 36 (5-A) of the License Rules, 1956 is illegal, contrary to the Rules and, thus, grant of license in this manner cannot be sustained. Still further, the groups which could be formed in respect of vends in same village, same town or same area. The area so contemplated is an area which is neither a village or town but well defined part of a town or a village as warranted by ground situation.

14. Learned counsel for the petitioner has referred to the incidence Chart prepared and circulated by the Excise department for the purpose of excise auction for the year 2004-2005 to be conducted on 4.3.2004 to show that such chart reflects groups within a circle in respect of L-2 and L-14A vends attached together reflecting the quota of daily bottles and annual bottles in respect of each liquor vend. In the said chart, Hoshiarpur district consists of seven circles. Each of the circle is further divided into groups containing a number of L-14A vends and L-2 vends. For example, Group-I of Hoshiarpur circle consists of 21:L-14A vends and 16 L-2 vends are attached in the said group. Similarly, Group II of Hoshiarpur circle consists of 26 L-14A vends and 15 L-2 vends are attached with the said group.

15. As an alternative argument, learned Counsel for the petitioner submitted that in Clause 12(v) of the Auction Announcements. Annexure P-II. It is contemplated that in case no bid at the time of auction is forthcoming in respect of a vend or a group of vends or if the situation otherwise warrants or it is expedient to do so, the Presiding Officer may grant the license for that vend/group of vends by private contract through negotiations. It is, thus, contended that the vend by private contract through negotiations can be granted only if the situation warrants or it is expedient to do so in case no bid at the time of auction is forthcoming. It is thereafter, in exceptional circumstances, the Presiding Officer may attach a vend or a group of vends on a pre-determined license fee with another group being auctioned. In other words, it is contended that, firstly, the vend or a group of vends is to be auctioned. Secondly, if the situation warrants or it is expedient to do so, the Presiding Officer may grant license in respect of a vend or a group of vends by private contract through negotiation, and, thirdly, in exceptional circumstances may attach a vend or a group of vends on a pre-determined license fee with another group being auctioned. In the present case, the official respondents have neither put the vend or a group of vends to auction nor resorted to negotiation but in the first instance itself auctioned Jalandhar-I, Jalandhar-II and Nawanshahr (hereinafter to be referred as "Jalandhar Group"), on a pre-determined license fee which is not contemplated either under the License Rules, 1956 or in Auction Announcements or by way of Public Notice.

16. It is further argued that the Excise districts of Jalandhar-I and Nawanshahr are in itself large excise districts generating liquor fee of more than Rs. 30 crores from groups of vends falling in such districts. The clubbing was done by the State

Government with a pre-determined move to oust the small bidders from the contest and only to permit the chosen one to participate in the auction. The groups were formed with predetermined mind and were tailor made to help the successful bidder. Had auction proceedings been conducted in terms of the License Rules, 1956, the petitioner and many others similarly situated contractors would have successfully participated in the auction and the State Government would have earned much more revenue. It is further submitted that as against the total government bid of Rs. 163.11 crores, the bid of respondent No. 4 is of Rs. 163.126 crores i.e. increase of merely Rs. 5 lacs. Such bid had been accepted. The auction is, thus, a mere eye wash.

17. It is further submitted that though 294 persons are shown to be present in the auction hall but presence of such persons in the hall itself is no evidence of fee and fair auction as the entire auction proceedings were tailor made which is evident from the fact of the nominal increase from the government bid and by creating large group to facilitate the acceptance of offer of the private respondents.

18. Learned counsel for the petitioner has also argued that, in fact, grouping of liquor vends on pre-determined license fee dated 3.3.2004 has not been done on the date it bears nor the same possibly could be done before 11.00 a.m. on 3.3.2004 as the public notice contemplated the display of such grouping at least one day before that auction. It is submitted that the authorities were required to display the information regarding "allotment of quota" and "formation of groups". Such formation of groups is in terms of Sub-rule (5) and not auction of vends at a pre-determined license fee in terms of Sub-rule (5-A). The learned Counsel during the course of arguments submitted that the petitioner is ready and willing to pay a sum of Rs. 3 Crores over and above the price for the vends situated in Hoshiarpur excise district although during the course of auction he had given a bid of Rs. 72 crores i.e. Rs. 2 crores more than the bid offer by the successful bidder. To show his bona fides, the petitioner has deposited as a sum of Rs. 4,06,50,000/- by way of demand drafts. Mr. Mohan Jain, learned Counsel for the petitioner, has further stated that in the past there are instances when vends in circles have been clubbed but never before districts have been clubbed to be auctioned on a pre-determined price with another district.

19. Learned counsel for the petitioner has placed reliance on the judgment of a Division Bench of this Court rendered in the case of Ajaib Singh and Ors. v. The Excise and Taxation Officer, Bhatinda and Ors. 1968 Current Law Journal 406, to contend that the License Rules 1956 proves that each shop must be auctioned separately. To auction them in a bunch is exception to the "rule". Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of Rajamalliah and Anr. v. Anil Kishore and Ors. 1980 (Supp.) Supreme Court Cases 81, to contend that the provision which insist upon recording of reasons before an action is taken must, prima facie, be considered mandatory, as it aimed at preventing arbitrariness. In the said case, it was found that the fixation

of the number of shops, their location, and grouping is considered so . important a matter that the power in regard to it is vested in the apex authority. If some changes have to be made, as a measure of emergency such changes also can only be made in accordance with the administrative instructions issued on the subject by the Commissioner after recording reasons. While placing reliance upon the decision of the Hon''ble Supreme court in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, learned Counsel for the petitioner, has argued that technicalities should not come in the way of granting relief under Article 226 of the Constitution. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water light compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available to reach injustice wherever it is found. Reliance was also placed on another decision of the Hon''ble Supreme Court rendered in the case of Ram and Shyam Company Vs. State of Haryana and Others, wherein it was found that judicial intervention can serve larger public interest. It was a case where the mineral lease was subject-matter of dispute and auction was conducted in the Court itself.

20. Mr. Harbhagwant Singh, learned Advocate General, Punjab, has argued that the petitioner has not raised any objection at the time of auction. He has participated in the auction proceedings and, therefore, he is estopped to challenge the auction. Reliance was placed upon the judgment of a Division Bench of this Court in the case of Satya Pal and Others Vs. State of Punjab and Others, In the said case, the decision to club the groups for the purpose of auctioning the liquor was not found to be arbitrary or unconstitutional and the allegation that video tapes have not been correctly recorded was not gone into in writ jurisdiction as it would require recording of evidence. It was found that the petitioner has not given any bid during the course of auction. Learned Advocate General, Punjab, also relied upon the decision of the Hon''ble Supreme Court in the case of State of Punjab Vs. Yoginder Sharma Onkar Rai and Co. and Others, , wherein a Division Bench of this Court has set aside the auction after setting aside the order passed by the Financial Commissioner holding that the offer of the petitioner was much higher and was, thus, a loss to the exchequer. However, Hon''ble Supreme Court held that loss to the exchequer is a factor which maybe taken into account in genuine cases, the finality of auctions must also be recognised to be in the interests of the exchequer. The order passed by the Financial Commissioner was to the effect that the writ petitioner did not have adequate funds to deposit the bid money at the fall of the hammer and, therefore, did not bid at all. The Financial, Commissioner found that it was hard to believe that the Collector, who was present at the auction, would not have intervened in these circumstances when the writ petitioner offered a rise of Rs. 50 lacs over the last bid. The Financial Commissioner found that there is no evidence that the auction has been stage-managed.

21. Learned Advocate General, Punjab, has also argued that the petitioner has

not disclosed that he was called for pre-auction meetings. Non-disclosure of such fact disentitle the petitioner to invoke the extra-ordinary writ jurisdiction of this Court. It is further submitted that the petitioner himself is a beneficiary of grouping of vends in respect of auction of liquor vends for the year 2003-04 inasmuch as Hoshiarpur, Hariana and Mahilpur circles were clubbed together and the petitioner was the successful bidder and, thus, he is estopped to raise any objection in respect of grouping of vends.

22. Mr. Ashok Aggarwal, learned Senior Advocate representing respondent No. 4, has submitted that the petitioner has not invoked the jurisdiction of this Court with clean hands and, thus, is not entitled to any indulgence by this Court. The petitioner has levelled vague, inconsistent and contradictory allegations. In para No. 12 of the writ, the petitioner has alleged that the vends of district Nawanshahr were allotted for mere Rs. 37 crores against the available bid of Rs. 40 crores. It was pointed out that the vends of Nawanshahr district were not put to auction at all nor the petitioner has disclosed the name of the person who was willing to pay Rs. 40 crores. Similarly, in respect of allegation of the petitioner that the petitioner and his associate Mohinder Pal offered Rs. 77 crores for vends situated in district Hoshiarpur is contradicted by the averments made in Annexure P-5 wherein Shri Kuldeep Singh has stated that the bid was given for one district of Nawanshahr in the sum of Rs. 72 crores by Sanjeev Bhandari and his associate Mohinder Pal. The auction was required to be conducted in groups and information regarding allotment was displayed at the office of the Assistant Excise and Taxation Commissioner one day before. The petitioner could get the detailed information from the office of the Assistant Excise and Taxation Commissioner of the district concerned. There is no averment that the petitioner has approached the office of the Assistant Excise and Taxation Commissioner for information nor there is any allegation that such information was not displayed in the office of the Assistant Excise and Taxation Commissioner. Still further, the allegation in Para No. 17 of the writ petition that Mr. Mann has made a bid on behalf of his group of contractors which was Rs. 5 crores more than at which the bids of Hoshiarpur and Nawanshahr were closed is again vague. The identity of Mr. Mann is not disclosed nor the vends in the district of Nawanshahr were put to auction. It is further submitted that the executants of affidavit Annexures P-5 and P-6 i.e. Kuldeep Singh and Amit Kumar, though paid Rs. 250/- as entry fee but never entered the auction hall. In these circumstances, the petitioner has not approached with clean hands.

23. It is further pointed out that the auction has been conducted in groups alone as stipulated in Auction Notice, Annexure P-2, in as much as the groups situated in Jalandhar-I and Nawanshahr have been clubbed on a pre-determined license fee with Jalandhar-II which has been put to auction. It was argued that during the last 10 years, vends were never put to auction individually. A practice had developed in the department to auction the vends in groups alone. Reference was made to the affidavit filed on behalf of the Deputy Excise and Taxation Commissioner, Jalandhar Division, to the effect that no single vend has been put

to auction for the last 8 years and the practice of clubbing of excise districts has been prevalent even in the past. By way of illustration, it has been pointed out that in the year 1999-2000 Amritsar-I District and Amritsar-II district were clubbed together whereas in the year 2003-04 Banga and Behram circles of Hoshiarpur were clubbed with district Kapurthala, district of Amritsar-I, Amritsar-II and Dera Baba Nanak, part of district Gurdaspur district, were clubbed together. Ludhaina which has three districts were auctioned bifurcating in two parts. Similarly, in the year 2003-04, all the groups of Amritsar-I, Amritsar-II and Dera Baba Nanak of Gurdaspur district were attached at pre-determined price and City Hall Gate of Amritsar-II was put to auction. Similarly, Jalandhar-I, Jalandhar-II except Jyoti Chowk group was put to auction were attached at a pre-determined price with Jalandhar-I. Similarly, Kapurthala, Banga and Behram (Nawanshahr district) were attached at a pre-determined price and Phagwara of Kapurthala district was put to auction. In view of the said averment in the affidavit, the learned Counsel for the respondents submitted that a practice has developed in the department, which is prevalent for the last number of years, to auction the vends in a group. Since last year the vends at a pre-determined license fee has been attached with another group of vends to be auctioned, therefore, such practice which is not contrary to the rules should be allowed to be followed. The department has understood the rules in a particular manner and have applied the same for the last number of years and, thus, the Courts would be reluctant to accept the interpretation which would upset and reverse the long course of action and decision taken by the authorities. Reliance was placed upon the judgments of the Hon'ble Supreme Court rendered in the cases of Dr. Uma Kant Vs. Dr. Bhika Lal Jain and others, ; N. Suresh Nathan and another Vs. Union of India and others, ; and National and Grindlays Bank Ltd. Vs. The Municipal Corporation of Greater, Bombay, .

24. It has been pointed out that right to trade in liquor is not a fundamental right infringement of which can be complained of by the petitioner in terms of Article 19(1)(g) of the Constitution of India and the rule creating monopoly in liquor trade is not bad on that account alone. Reference was made to Section 35(3) of the Punjab Excise Act to contend that the Act itself contemplate auction of more than one district by the Financial Commissioner. Reliance has been placed upon the decision of the Hon'ble Supreme court in the cases of Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others, and Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, .

25. Referring to Sub-rule(5) of Rule 36 of the License Liquor Rules 1956, it was submitted that the Collector or the Presiding Officer, under exceptional circumstances, with the prior approval of the Excise Commissioner is empowered to auction all the vends in a circle or group of circles. Such provision is not exception to the main rule but is as an independent provision. The Collector has recorded the circumstances as detailed in Annexure R-1 which has been approved by the Excise Commissioner and the State Government. The Excise

Commissioner is empowered to extend the limit of Rs. 15 crores with the approval of the Government. Still further, it has been pointed out that in exceptional circumstances the Collector or the Presiding Officer with prior approval of the Excise Commissioner attach a vend or a group of vends at a pre-determined license fee. It was submitted that since respondents No. 1 to 3 have the jurisdiction to form groups and such groups have been formed after recording reasons in Annexure R-1, it will not be open to the Courts in exercise of its power of judicial review to hold that the formation of such groups is unjustified. In the trade of liquor, greater latitude is available to the Government as the petitioner has no fundamental right to trade in liquor.

26. Mr. J.K. Sibal, learned Senior Advocate appearing for respondent No. 5, has vehemently argued that the petitioner has no locus standi to challenge the auction finalised in favour of the said respondent. There is no proof that the petitioner gave a higher bid of Rs. 72 crores. It is very easy for any person to allege after the finalisation of auction to say that he was ready and willing to pay a particular amount. Since the petitioner has not raised any objection at the time of auction nor able to prove higher bid during the course of auction, therefore, the allegation that the auction has been conducted in violation of the rules is not available to the petitioner. Reference was made to Clause 12(ii) of the Auction Announcements. Annexure P-1, to contend that the auction of individual vend has been done away with while announcing such policy.

27. Referring to the provisions of Rule 36(5) of the License Rules, 1956, it was submitted that the provision relating to grouping of L-14A and L-2 vends is an independent provision which could be exercised by the Collector with the prior approval of the Excise Commissioner. Still further, the ceiling of Rs. 15 crores in the first part of Sub-rule (5) of the License Rules 1956 could be extended by the Excise Commissioner with the approval of the Government. Therefore, vide Annexure R-1, groups have been formed in terms of the provisions of Sub-rule (5) of the License Rules, 1956 and such formation of groups have been approved by the Government.

28. It has been further argued that under the exceptional circumstances, the Collector or the Presiding Officer, with the prior approval of the Excise Commissioner, auction all the vends in a circle or a group of circles. However, such power is not circumscribed by any ceiling.

29. Referring to Rule 36(5-A) of the Licence Rules 1956, it was submitted that the clubbing of groups is permissible. Such groups have been formed with the approval of the State Government. The Collector has made necessary announcements and thereafter, vends were put to auction.

30. We have heard learned Counsel for the parties at great length and with their assistance gone through large number of judgments referred by them. We have also watched the video cassette prepared by the State Government of the auction proceedings. We have found that most of the time of the recorded

auction proceedings has been taken by the official to read out the auction conditions. The Presiding Officer has firstly announced that Jalandhar-I and Nawanshahr have been attached at a pre-determined license fee with Jalandhar-II which was put to auction. The second bid of one of the partners of respondent No. 4 has been accepted. However, in respect of auction proceedings pertaining to Hoshiarpur, the video recording shows that the second bid was of one of the partners of respondent No. 5 but at the same time a voice is heard from the balcony. It is not clearly audible as to what is said by the said person but all the persons have started looking upwards towards the balcony. Thereafter, the Presiding Officer has called upon the partners of respondent No. 5 to deposit the amount. The persons sitting in the hall then started jeering the person sitting in the balcony.

31. From the perusal of the records produced before this Court. It is apparent that one Inderpreet Chandha is a partner in respect of auction of Jalandhar-II attached at a pre-determined license fee in respect of Jalandhar-I and Nawanshahr. Said Inderpreet Singh is also a partner in the firm which was successful in respect of contract at Hoshiarpur. He is also a partner of the firm which is successful for Amritsar Group. Still further, Shri Anil Wadia, the first bidder in respect of Jalandhar-1, is a partner of successful bidder of Amritsar Group. Tejinderpal Singh, Rattan Lal and Manmohan Walia are the common partners in respect of Jalandhar Group and Amritsar Group. It may be stated that one of the grounds to challenge the auction of the liquor vends is that it is stage managed so as to grant license of liquor vends to Ponti Chandha or his friends or his relations. Learned counsel for the petitioner, during the course of arguments, stated that Inderpreet Singh Chadha is a close relative of Ponti Chadha. Such statement was not disputed.

32. Division Bench of this Court in Makhan Lal's case (supra) decided on 4.8.1995 has issued certain directions so that the provisions of the Excise Act and the Rules made thereunder including the terms and conditions are not violated by the auctioning officer. That was a case where three circles, namely, Bhuchio, Maur and Rampura Phul were tagged jointly for auction. The minimum license fee for the vends of Bhuchio and Maur was fixed. It was Rampura Phul circle which was put to auction. All the three circles were part of Bhatinda circle. Similar argument that liquor license could not be equated with the ordinary contract and that it is privilege of the State and the State, therefore, could deal with it in the manner it deemed fit was negative. It was held that arbitrariness of the State or its instrumentaties is always open to judicial review. The privilege of the Government to auction the vends for the sale of liquor cannot be kept away from judicial scrutiny when such action ex-facie is arbitrary and is an abuse of power or colourable exercise of power under the garb of the authority vested in them under the provisions of law. A citizen may not be able to claim as of fundamental right to such trade or business and consequently Article 14 may not be infringed. Reliance was placed upon the decision of the Hon''ble Supreme Court in the case of State of M.P. and Others Vs. Nandlal Jaiswal and Others, ,

wherein it was held to the following effect:

There is no fundamental right in a citizen to carry on trade or business in liquor. The State under its regulatory power has the power to prohibit absolutely every form of activity in relation to intoxicants - its manufacture, storage, export, import, sale and possession. No one can claim as against the State the right to carry on trade or business in liquor and the State cannot be compelled to part with its exclusive right or privilege of manufacturing and selling liquor. But when the State decides to grant such right or privilege to others the State cannot escape the rigour of Article 14. It cannot act arbitrarily or at its sweet will. It must comply with the equally clause while granting the exclusive right or privilege of manufacturing or selling liquor. It is, therefore, not possible to uphold the contention that Article 14 can have no application in a case where the licence to manufacture or sell is being granted by the State Government. The State cannot ride roughshod over the requirement of that Article. But while considering the applicability of Article 14 in such a case, the Court must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor. The Court would, in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy of regulating, manufacture and trade in liquor. Moreover, 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.

33. After relying upon such judgment, the Court concluded that the arbitrary action of the State even in liquor license matters would be open to challenge. We respectfully agree with the following findings.-

It is the settled principle of law that State has discretion to formulate its policy and impose such restrictions for grant of licenses for sale of liquor and other vend items in the manner the State considers it proper and beneficial to the State revenue. But once the State has formulated such policy which according to the State is in consonance with the provisions of law applicable, the State must act fairly and its decision vis-a-vis the citizen must not be arbitrary....

34. In fact, such is the consistent view starting from Cooverjee 8. Bharucha's case (supra) wherein it has been held that it is open to the petitioner under Article 226 of the Constitution to approach the High Court for a mandamus if the officers concerned have conducted themselves not in accordance with law or if they have acted in excess of their jurisdiction.

35. In *Khoday Distilleries Ltd. and Ors. v. State of Karnataka and Ors.* (1995) SCC 574, it has been held that when the State permits trade or business in the potable liquor with or without limitation, the citizen has the right to carry on trade or business subject to the limitations, if any, and the State cannot make

discrimination between the citizens who are qualified to carry on the trade or business.

36. It is needless to make reference to the various judgments referred to by the parties to the effect that there is no fundamental right to do trade or business in intoxicants. The State, under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants - its manufacture, storage, export, import, sale and possession. In all their manifestations, these rights are vested in the State and without such vesting there can be no effective regulation of various forms of activities in relation to intoxicants. However, once the State Government has framed the rules for grant of privilege of sale of liquor, the State Government cannot act arbitrarily and at its sweet will. It must comply with the equality clause while granting the exclusive right or privilege of manufacturing or selling liquor. It cannot be said that Article 14 has no applicability in a case where license to sell liquor is granted by the State Government but while considering the applicability of Article 14, the Court would be slow to interfere with the policy laid down by the Government and allow a large measure of latitude to the State Government. But the State Government cannot choose to ignore the rules or instructions for the grant of such privilege.

37. We do not find merit in the argument raised by the respondents that the petitioner has no locus standi to challenge the auction as he has not offered higher bid during the auction proceedings. The presence of the petitioner during the course of auction proceedings is not disputed. Although it would be a disputed question of fact whether the petitioner has given a higher bid of Rs. 72 crores as the voice is not clearly audible in the video recording prepared by the Government. The video recording shows that the Presiding Officer has not waited response from the public even though a voice is heard. Instead of elucidating response from the persons present, the Presiding Officer called upon partners of respondent No. 5 to deposit the draft. The video recording does not show count of 1, 2, 3 and the fall of the hammer. Therefore, we are of the opinion that the petitioner has locus standi to invoke the jurisdiction of this Court to challenge the arbitrary conduct of auction and on account of violation of the statutory rule in respect of auction of the liquor vends.

38. We do not find any merit in the argument raised by the learned Counsel for the respondents that the petitioner is estopped to challenge the grouping of liquor vends as he himself was a beneficiary last year. The grouping in the year 2003-2004 in respect of Hoshiarpur, Haryana and Mahilpur circles was within Hoshiarpur district. Such grouping is not being challenged by the petitioner which is stated to be within the four corners of Sub-rule (5) of Rule 36 of the license Rules, 1956. Similarly, we do not find any merit in the argument raised by the learned Counsel for the respondents that non-disclosure of pre-auction meetings disentitle the petitioner to invoke the writ jurisdiction of this Court. It is the stand of the respondents that pre-auction meetings are not statutory nor any record is kept thereof. Keeping in view the totally informal nature of pre-auction meetings,

the petitioner cannot be disentitled to invoke the writ jurisdiction of this Court.

39. Before examining the scope of the provisions of Sub-rule 36(5) and (5-A) of the License Rules 1956, it would be just and appropriate to restate the fundamental principles relating to interpretation of the provisions of the statute. It is a cardinal principle of construction that the words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning unless that leads to some absurdity or unless there is something in the context or in the object of the statute to the contrary. The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. Every effort should be made to give meaning to each and every word used by the legislature. Reference may be made to the decision of the Supreme Court in the case of *The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc.*, wherein it has been held to the following effect:

Generally speaking, it is true that the proviso is an exception to the main part of the section, but it is recognised that in exceptional cases a proviso may be substantive provision itself. However, the Court is not precluded from looking at the proviso in interpreting the main part of the Section or Sub-section.

Maxwell on Interpretation of Statutes, Eleventh Edition at P. 155 where it is observed.

There is no rule that the first or enacting part is to be construed without reference to the proviso.

The proper course is to apply the broad general rule of construction, which is that a section or enactment must be construed as a whole, each portion throwing light, if need be, on the rest.

The true principle undoubtedly is that the sound interpretation and meaning of the statute, on a view of the enacting clause saving clause and proviso, taken and construed together is to prevail.

40. In view of the above principle laid down, the provisions of Rule 36(5) and (5-A) of the License Rules 1956 are required to be interpreted.

Scope of Rule 36(5) of License Rules 1956:

41. The present Sub-rule (5) is the amended form of the rule substituted initially vide Punjab Liquor Licence (First Amendment) Rules, 1987 vide notification dated 13.03.1987. It reads as under: -

(5) He will then proceed to put up each vend to auction, after carefully explaining its locality. The auction shall normally be of each vend separately but the Collector or the Presiding Officer, as the case may be, may with the prior approval of the Excise Commissioner auction in groups either L-14A vends or L-2 vends or L-2 vends with L-14A vends in the same village town or area keeping

the exigencies of a particular situation and government interest in view.

If any L-2 vend is auctioned in group with L-14A vend, the Collector may, in respect of L-2 vend determine the annual licence fee at which the vend may be licensed. The amount licence fee shall be determined by taking into consideration the licence fees to which the vend or the vends in the nearby area were put to auction in the previous years. Consumption of quantity of liquor and other relevant factors;

Provided that a licensee who secures more than one L-2 vends in the same locality may, subject to securing permission of the Excise Commissioner, opt one or more of them and may carry on sales at the remaining vends, subject to the condition that the closure of any vend (s) will not absolve him of his liability to pay the licence fee in respect of all the vends secured by him. Permission to exercise this option shall, however, be granted by the Excise Commissioner after taking into account all the relevant factors including the convenience of the customers,

Subsequently, by virtue of Punjab Liquor Licence (First Amendment) Rules, 1989, vide notification dated 27.03.1989 following amendment was made in Sub-rule (5):

(ii) in Sub-rule (5), after the words "Government interest in view", the following shall be inserted, namely: The Collector or the Presiding Officer, as the case may be, may under exceptional circumstances, with the prior approval of the Excise Commissioner auction all the vends in a circle.

Note.- The expression circle in this Sub-rule means the area under the control of an Excise Inspector.

Still further, vide Punjab Liquor Licence (First Amendment) Rules, 1990, vide notification dated 26.03.1990, the following amendment was made:

3. In the said rules, in rule 36,-

(i) ...

(ii) in sub rule (5), between the words "interest in view", and the words "The Collector", the words, "However the grouping of L-14A vends shall be upto a maximum limit of rupees one crores and that of L-2 vends upto a maximum of rupees seventy five lakh based on the licence fee for the preceding year", shall be inserted." Still further, vide Punjab Liquor Licence (First Amendment) Rules, 1991, vide notification dated 22.03.1991, following clause was inserted:

(i) in Sub rule (5) -

(a) for the words "rupees one crore and that of L-2 vends upto a maximum limit of rupees seventy-five lakh based on the license fee for the preceding year", the following shall be substituted, namely.-

one crore rupees and that of L-2 vends upto a maximum of seventy-five lakhs

rupees based on the license fee for the preceding year:

Provided that the limit of one crore rupees shall not be applicable in the case of single vend in respect of which license fee exceeds this limit and.

(b) for the words "with the prior approval of the Excise Commissioner auction all the1 vends in a Circle", the words "with the prior approval of the Excise Commissioner auction all the vends in a Circle or a group of Circles" shall be substituted.

42. Thereafter, the ceiling in Sub-rule (5) has been amended from time to time and the rule as it now exists has been reproduced in the earlier part of this judgment. Under Sub-rule (5), the Presiding Officer is normally to put each vend to auction separately but the Presiding Officer with the prior approval of the Excise Commissioner auction in groups L-14A vend with L-2 vends on satisfaction of the conditions specified therein in the same village, town or area. However, group can be of the maximum amount of Rs. 15 crores. Under exceptional circumstances, the Presiding Officer with the prior approval of the Excise Commissioner auction all the vends in a circle or a group of circles. Still further, the Excise Commissioner in suitable cases of group of vends extend the aforesaid limit of Rs. 15 crores with the approval of the Government. Smallest unit available for auction is a vend. A number of vends can be joined together to form a group. A circle may consist of one or more groups. It is number of circles which form a district. What is contemplated under Sub-rule (5) is that normally auction is of each vend separately but the Presiding Officer may form groups of vends situated in the same village, town or area with a ceiling of Rs. 15 crores on the basis of license fee for the preceding year.

43. The word "area" is not to be interpreted disjunctively but in view of the context in which it has been used. It is to be interpreted ejusdem generis to the word village or a town. It can be an area in view of its geographical proximity which is apparent from the words "exigencies of a particular situation", Government interest is to secure maximum revenue. The auction of vend in a circle or a group of circles by the Presiding Officer with the prior approval of the Excise Commissioner under exceptional circumstances is not an independent provision. In fact, such clause enlarges the scope of main part of Sub-rule (5) wherein the vends located in the same village, town or area alone could be grouped. Such clause is in the nature of explanation and, therefore, the ceiling of Rs. 15 crores would still be applicable in the cases of auction of vends in a circle or a group of circles. It is further evident that the proviso to extend the limit of Rs. 15 crores is at the end of Sub-rule (5).

44. A perusal of the legislative history of Sub-rule (5) shows that initially grouping of vends was permitted without any ceiling. The Presiding Officer was permitted to auction with the prior approval of the Excise Commissioner all the vends in a circle vide amendment in the year 1989. The ceiling in respect of grouping of vends was introduced only in the year 1990. It is, thus, apparent

that while permitting auction of vends in a circle there was no ceiling till the year 1990. Such provision enables the Presiding Officer to auction all the vends in a circle which was not permissible under the main part of Sub-rule (5). If auction of vends in a circle was not permissible under the main part of Sub-rule (5), the grouping of districts in which group of circles falls first could not be contemplated. An affidavit of the Deputy Excise and Taxation Commissioner has been filed that no single vend has been put to auction for the last 8 years. However, examples of grouping of districts disclosed in the affidavit are primarily of the last year 2003-2004 except once in the year 1999-2000 when Amritsar-I, Amritsar-II were clubbed together. In Makhan Lai's case (supra), pertaining to the year 1995-96, three circles were combined i.e. Bucho, Maur and Rampura Phul, all forming part of Bhatinda district. In Satpal's case (supra), liquor vends of group Nos. 103 to 117 of excise circle Ludhiana were in controversy. In Yoginder Sharma's case (supra), liquor vends of group Nos. 108 to 111 in Khanna circle of district Ludhiana were subject matter of challenge in the writ petition. Even in the order Annexure R-I, the department has suggested certain permutations and combinations of groups falling within Jalandhar-I and Jalandhar-II although subsequently 14 groups of Jalandhar district were auctioned together. Similarly, three circles of Hoshiarpur district, such as, each of Hoshiarpur, Haryana and Mahilpur; Tanda, Mukherian and Dasuya were clubbed, whereas Garhshankar circle was auctioned separately. Different circles of Gurdaspur district were auctioned together.

45. The incidence chart produced by the official respondents during the course of arguments shows that in Hoshiarpur circle there are two groups although in the Hoshiarpur district there are other five groups. Each of the seven groups contains number of L-14A vends as well as L-2 vends attached with them. It is, thus, apparent that the State Government has followed the rule interpreting in the manner that the vends falling in a circle are grouped together and put to auction. There is nothing on the record to show that it was a long standing practice prevailing in the department whereby the liquor vends in different districts were grouped together.

46. The Excise Commissioner can seek extension of the limit of Rs. 15 crores in respect of the groups formed in respect of a village, town, group or groups of circles with the approval of the Government. However, the extension of limit cannot be stretched to such an extent to render legislative intent totally redundant. As against the ceiling of Rs. 15 crores, the group formed was of over Rs. 160 crores. Such grouping cannot be justified.

47. In view of the above, we hold that under Sub-rule (5) of Rule 36 of the License Rules, 1956, the Presiding Officer with the prior approval of the Excise Commissioner can auction liquor vends after forming groups situated either in the same village, town or area located in a circle or in a group of circles subject to the ceiling of Rs. 15 crores. However, the Excise Commissioner is competent to extend the aforesaid limit of Rs. 15 crores with the approval of the

government.

Scope of Sub-rule (5-A) of License Rules, 1956:

48. In Makhan Lai's case (supra), a Division Bench of this Court was considering the auction of Rampura Phul circle which was put to auction by attaching Bhucho and Maur circles on minimum license fee. One of the arguments raised was that there was no indication in the advertisement that the vends of the three circles would not be put to auction but would be clubbed. However, on facts, the Court negated the plea of the petitioners but held that the State Government has no justification to give a licence on a fixed license fee while they are holding auction. Under the rules, then existing, the mode of grant of license was either by way of auction or negotiation. The minimum license fee contemplated under the rules is only for the purpose of holding the auction and not for grant of license on fixed license fee. The Court held to the following effect:

The respondents have a power to club the circles within the restrictions provided under the Excise Rules and under Clause II of the terms and conditions of auction, but they may not have justification to give a license on fixed license fee while they are holding the auction. Under the Punjab Liquor License Rules, 1956. L-2 licenses cannot be given at fixed license fee. They have to be auctioned or negotiated. The authority is Collector alone for this purpose. Even the licenses pf L-14 and L-14A are not liable to be licensed at fixed license fee. Under these rules, mode of grant of licenses of different kind has been provided. The respondents have to adhere to such statutory rules and modes until the rules are amended or changed. Under Rule 36 of the Punjab Liquor License Rules, 1956, the Excise Commissioner alone is the person whose approval is to be taken and any direction in regard to issuance of licenses. This rule also places restriction on the grouping and clubbing of vends with regard to amount and which must have approval of the Excise Commissioner before such auction is taken. The expression prior approval in the rules is an indication of conscious decision by the Excise Commissioner which has to be in conformity with the statutory provisions.

The rules only give power to the official respondents to fix the minimum license fee from where according to them auction should commence. In cases of L-2, L-14, and L-14A licenses with which we are concerned in the present case, these licenses are to be given by auctioning or negotiation and minimum license fee can be fixed only for the purpose of holding an auction and not for grant of license on a fixed license fee. The Excise Commissioner while keeping these provisions in mind may issue directions in conformity with the rules and within four-corners of the restrictions imposed in these rules. Such order should be reasonable and based on fair principle. In these circumstances, the action of the respondents in grouping may be good but auctioning at fixed license fee as done in the case of Maur circle is not procedurally sound.

48. After the said Division Bench judgment, the State Government amended Rule 1-A and inserted Sub-rule (5-A) in Rule 36 of the License Rules 1956 on

29.6.1996 whereby one of the mode for grant of license was on a pre-determined fee as contemplated under Rule 36(5-A) of the License Rules 1956. A perusal of the rule shows that the license to trade in liquor can be granted by three separate modes i.e. either by auction or negotiation or on a pre-determined fee in terms of Rule 36(5-A) of the License Rules 1956. Each of the mode is a separate and distinct and could be adopted by the State Government in administrative exigencies. The State Government was also competent to decide the alternative mode of grant of license while announcing auction. However, while framing Auction Announcements on 19.2.2004, Annexure P-I, the Excise and Taxation Commissioner made public that in case no bid at the time of auction is forthcoming in respect of a vend or a group of vends, the Presiding Officer, if situation otherwise warrants or expedient to do so, may grant the license of that vend or group of vends by private contract through negotiation. In exceptional circumstances, the Presiding Officer was permitted to attach a vend or a group of vends on a pre-determined license fee with another group. The relevant clause may be reproduced again for ready reference:

12(v) In case no bid at the time of auction is forthcoming in respect of a vend or a group of vends or if the situation otherwise warrants or it is expedient to do so, the Presiding Officer may grant the license for that vend/group of vends by private contract through negotiations, in certain exceptional circumstances if it may become necessary the Presiding Officer may attach a vend or a group of vends on a predetermined license fee with another group being auctioned.

49. A reading of the above clause shows that the vend or a group of vends was required to be auctioned first. However, if the situation otherwise warrants or is expedient to do so, the license in respect of the vend or group of vends can be granted through negotiation. In exceptional circumstances alone, the vend or a group of vends can be attached on a pre-determined license fee.

50. Thus, we are of the opinion that Rule 36(5-A) of the License Rules 1956 provides for a separate and distinct mode of grant of license on a pre-determined license fee. Such mode of grant of license could be a last resort in terms of condition No. 12(v) of Auction Announcements dated 19.2.2004, Annexure P-I. Since the respondents have bound themselves to grant license of liquor vends for the year 2004-2005 in terms of Auction Announcements dated 19.2.2004. Annexure P-I, the respondents were bound to auction liquor in terms thereof.

51. Auction Notice dated 28.2.2004, Annexure P-2, contemplates the grant of license of liquor vends of Jalandhar Division by way of auction. We are unable to agree with the arguments raised by the respondents that such public notice empowered the Collector/Excise Commissioner with the approval of the State Government to form group, attach such vends on a pre-determined license fee and auction the same. In fact, what is contemplated is displaying of information regarding allotment of quota and the formation of groups. The formation of groups is for the purpose of auction for which public notice has been issued. Auction is a separate mode of grant of license than on a pre-determined license

fee in terms of Sub-rule (5-A). A Division Bench of this Court in Makhan Lal's case (supra) has negated such plea of the State wherein it was contended that a vend on a minimum license fee can be attached with another group to be auctioned. It has been held in the said case itself that once it has been decided by the State Government to auction the vend, it could not club the vends on a minimum license fee. Therefore, having publicised Auction Announcements (Annexure P-1) for the grant of liquor license, the State Government was not competent to depart from such declared policy.

52. It is the stand of the respondents that pre-determined license fee was fixed in respect of Jalandhar-I and Nawanshahr and it was Jalandhar-II which was put to auction. Such mode of grant of license was not resorted to by the State Government in the Auction Notice dated 29.2.2004. Annexure P-2, nor could be resorted to in view of Clause 12(v) of the Auction Announcements dated 19.2.2004. Annexure P-1, wherein it was contemplated to be the last resort.

53. Since auction has not been done in accordance with License Rules 1956. Auction Announcements dated 19.2.2004, Annexure P-1, and Auction Notice dated 29.2.2004, Annexure P-1 and Auction Notice dated 29.2.2004. Annexure P-2, auction of liquor vends by grouping Jalandhar-I and Nawanshahr with Jalandhar-II is, therefore, not sustainable. Thus, the said auction is set aside subject to the condition of petitioner depositing a sum of Rs.2 crores i.e. 5% of Rs. 40 crores stated to be the available bid in respect of Nawanshahr. The respondents are at liberty to conduct fresh auction in accordance with License Rules 1956 under the supervision of a committee of three officers of the rank of Principal Secretary or above of the State Government.

54. So far as the auction of liquor vends situated in Hoshiarpur district is concerned, the same was not at a pre-determined license fee. However, the conduct of auction proceedings wherein respondent No. 5 has been called upon to deposit 5% of the security amount without fall of hammer and "without caring to elucidate response" (Corrected as "without caring to elucidate response" vide R/A 117 of 2004, decided on 15.04.2004) from the public, which is evident from the video recording of the auction proceedings, is arbitrary and is not fair. The petitioner has approached this Court even before the auction conveying his apprehensions. He has offered higher amount and deposited a sum of Rs. 4,06,50,000/- to show his bona fides. Most of the bank drafts deposited are dated 2nd or 3rd March, 2004 except the one in the sum of Rs. 4 lacs which is dated 4th March, 2004. The allegation that one group is being favoured is also not without any substance. Therefore, the auction in favour of respondent No. 5 in respect of Hoshiarpur district is also set aside. The respondents are at liberty to conduct fresh auction in accordance with License Rules 1956 under the supervision of a committee of three officers of the rank of Principal Secretary or above of the State Government.

55. Consequently, the writ petition is allowed in the manner indicated above.

56. The records produced by the State Government be returned to the official respondents except the Video Cassette which may be kept in a sealed cover.