

(1970) 03 CAL CK 0033
In the Calcutta High Court
Case No : A.F.O.O. No. 223 of 1967

State of West Bengal and Others

APPELLANT

Vs

Ruttonjee and Company and Another

RESPONDENT

Date of Decision : 16-03-1970

Acts Referred:

Bengal Excise Act, 1909 — Section 13, 44A, 8, 8(1), 8(2)
Bengal Excise Rules, 1993 — Rule 207, 208, 209, 58, 87
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22
Constitution of India, 1950 — Article 14, 226

Citation : AIR 1970 Cal 548

Hon'ble Judges : Sabyasachi Mukharji, J; A.K. Mukherjea, J

Bench : Division Bench

Advocate : P.K. Sen Gupta and B.S. Bagchi, for the Appellant; A.K. Sen, T.P. Das and Bibhu Choudhury for Respondent No. 1 (First set of appearance), Somnath Chatterjee and Sudhir Bose for Respondent No. 1 (second set of appearance), R.C. Deb and Chandan Banerjee, for the Respondent

Judgement

Sabyasachi Mukharji, J.—This is an appeal over right to brew intoxicants in a brewery at Kalyani. There is a registered firm hereinafter referred to as the firm carrying on business under the name and style of Ruttonjee and Company. Its partners are Hirjoo Ruttonjee Bhesania and Feroze Manchershaw Bhesania. There is also a limited Company bearing the name Ruttonjee & Company Ltd., hereinafter referred to as the limited Company. The company was incorporated in 1960 including two partners of the firm in its Board of Directors. It appears that the firm whose original business was sale of liquors, applied in 1957 to the appropriate authority for permission to start a brewery in West Bengal and obtained such permission from the State of West Bengal and also obtained the permission of the Government of India for the establishment of a new industrial undertaking for the manufacture of beer. In 1959 the brewery was established and the partners of the firm decided to promote a limited company. The brewery licence under the Rules framed under the Bengal Excise Act, 1909, hereinafter referred to as the Act, was granted for the period from the 2nd August, 1965 to

the 31st March, 1966, jointly in favour of the company and the firm, subject to certain conditions mentioned in the letter of the Government of West Bengal dated 24th July, 1965. For the next year, commencing from the 1st April, 1966, an application for renewal of the licence was submitted to the Collector on the 25th of February, 1966, jointly by the firm and the company for the renewal of the licence granted for the previous period. The firm further alleged that on the 5th of April, 1966, the firm received a copy of the letter which is Annexure "I" and appearing at page 1 of the Supplementary Paper Book, and which is dated 30th March, 1966, written by the Assistant Secretary, Excise Department, Government of West Bengal, to the Excise Commissioner by which the Government expressed its approval for the grant of the brewery licence in respect of the said company alone, to the exclusion of the firm for the year 1966-67 commencing on the 1st of April, 1966. The firm thereafter made an application to this Court under Article 226 of the Constitution challenging the decision to issue Excise Licence for the brewery at Kalyani for the year 1966-67 in the sole name of the Company, on the ground, inter alia, that the application for renewal jointly made has not been dealt with by the Collector or the Commissioner of Excise who is alone entitled to deal with the application according to law and the State Government has no jurisdiction to pass the impugned order or direction. It was stated in the petition that no licence had then been granted pursuant to the impugned order, the petitioner therefore prayed for appropriate writs to quash the impugned order and command the respondents, the State Government, the Commissioner of Excise, West Bengal and the Collector of Excise to cancel or not to give effect to the impugned order and then to deal with the joint application for renewal according to law.

2. There was dispute among the Directors of the Company and there were certain proceedings under the Companies Act, 1956. The company was separately represented in respect of two contending groups before the learned trial Judge and they have been so represented before this Court. There is one group represented by the Bhesania Group of Directors and Mr. R. C. Deb, learned Advocate, appeared for them before us, another group representing Mr. A. K. Thakur and others was represented by Mr. Somnath Chatterjee. It appears that the proceeding under Companies Act has come to an end. We were however told that further proceedings have started challenging the internal management of the Company. Be that as it may, it is not necessary for adjudication of the disputes between the parties in this appeal to advert to the same any more.

3. After the application under Article 226 of the Constitution was moved before this Court, a rule nisi was issued. It was contended in the petition that after the joint application filed by the firm and the company for the renewal of the licence for the aforesaid period 1966-67, a separate application on behalf of the company was also made. Thereafter it appears the then Minister for Excise, Mr. I. D. Jalan considered the matter and recorded certain decisions and directions, which are appearing at pages 150-155 of the Paper Book. It was further contended that on the 12th May, 1965, there was a letter which is at page 101 of

the Paper Book written by the firm, inviting the Minister and the Government to arrive at a decision regarding the renewal of the licence. By that letter the firm undertook, it has been asserted, to abide by whatever decision that is arrived at by the Minister or the Government regarding the renewal, i.e., whether it is decided to renew the licence in favour of the Company alone or in favour of the Company and the firm jointly. It was further asserted on behalf of the Government as well as on behalf of one group of directors representing the company that the lease of the premises in which the brewery is carried on as well as the industrial licence stand in the name of the limited company. Therefore, it was asserted that the limited company is alone entitled to grant or renewal of the licence. It was further asserted that in view of the amendments made to the pal Excise Act by the Act of 1965 the State Government has jurisdiction and authority to issue directions of the type that it has done in this case. On the other hand, on behalf of the company represented by the Bhesania group of Directors, and the firm, it was contended that the application for grant of licence or renewal of licence solely in the name of the company said to have been made by Mr. A. K. Thakur on behalf of the Company, was without authority. It was asserted that the letter of the 12th May, 1965, was given for a specific purpose and in view of the facts and circumstances of the case it cannot be relied on by the government. The circumstances and the purposes for which the undertaking was given have been sought to be explained in paragraph 13 of the affidavit of Hirjoo Buttonjee Bhesania affirmed on 14th May, 1966, appearing at p. 263 of the Paper Book. It was asserted that the State Government has no authority to direct the Collector as to how a particular application should be dealt with and it was submitted that from its very nature brewery licence is of permanent nature, than vending licence and when conditions arc similar when the grantee of a previous licence apply for renewal, it is entitled to such renewal. It was further submitted that the State Government has no authority to direct the renewal in the manner it has done.

4. The matter came up for hearing before P. Basil, J. and by a judgment delivered and order passed on the 18th July 1966, D, Basu. J. has made the rule nisi absolute and directed an order in the nature of mandamus to issue restraining the respondents, State Government, Commissioner and the Collector of Excise from giving effect to the impugned order dated 30th March, 1966 and commanding respondents, the Commissioner as well as the Collector to determine, according to law, the application for renewal of the licence jointly made by the firm and the company on 26th February, 1906. The learned Judge came to the conclusion that the expression "control" under Sub-section (1) of Section 8, introduced by the Bengal Excise (Amendment) Act, 1965 cannot authorise the State Government to interfere with the licensing power vested by the statute and the rules made thereunder by the Collector and the Excise Commissioner. The State Government could only exercise the power of revision under Sub-section (3) of Section 8. The learned Judge further came to the conclusion that the specific provisions of Sections 13 and 15(2) read with Rule 87

framed in exercise of the power u/s 86, which deal with the matter of a grant or renewal of a brewery licence, expressly vest the discretionary power in the two authorities, Collector and Excise Commissioner without interference by such other persons or authority and as such the State Government has no power or authority to issue the impugned order. Discussing the nature of the brewery licence the learned trial Judge came to the conclusion that this is of a more permanent nature than vending licence. The learned Judge came to the conclusion that by reason of Section 44A of the Act there can be no legal right in favour of a holder of an existing licence to obtain a renewal, but where the government does not think fit to refuse it the renewal will be in favour of the holder or holders of the existing licence and on the same terms and conditions as in the existing licence as indicated by Sub-rule (3) of Rule 87. Regarding the undertaking contained in the letter dated 12th of May, 1965, the learned trial Judge came to the conclusion that though mandamus is a discretionary remedy, but acquiescence is not applied to refuse mandamus in a case of want of jurisdiction, in the same way as it may be done to refuse Quo Warranto. As he held, the State Government has no jurisdiction to issue the impugned order, the learned trial Judge came to the conclusion that the letter of the 12th May, 1965 is no impediment to grant reliefs asked for in this case.

5. Being aggrieved by the said judgment and order of D. Basil, J., the State of West Bengal as well as the company, represented by Mr. A. K. Thakur, preferred appeals to this Court. This is the appeal of the State of West Bengal, challenging the said order of D. Basil, J. Several contentions in support of this appeal were urged by Mr. P. K. Sen Gupta, learned Advocate for the appellant. Mr. Somnath Chatterjee, learned Advocate for the Company represented by Mr. A. K. Thakur, contended that the appeal has become infructuous inasmuch as the period for which the application for renewal had been made has elapsed and during the pendency of the appeal pursuant to the orders made by this Court, Receiver has been granted licence for the said period. He therefore, submitted that the appeal has become infructuous. On behalf of the State Government it was however urged before us that in view of the fact that several points regarding the grant of licence under Bengal Excise Act, 1900 being involved in this appeal it would invite a decision for future guidance of the Department. Mr. Chatterjee made certain submissions supplementing the submissions made on behalf of the State of West Bengal by Mr. P. K. Sengupta.

6. Before we deal with the several contentions urged on behalf of the State of West Bengal as well as on behalf of the Company represented by Mr. A. K. Thakur as well as the contentions on behalf of the respondents, we have to deal with a point of procedure raised by Mr. Deb, learned advocate for the Company, representing Bhesania Group of Directors. It was contended by Mr. Deb, that Mr. Chatterjee cannot support the appellant in view of the fact that his client has preferred no cross objections and further in view of the fact that the appeal preferred by his client has been withdrawn., Mr. Deb, drew our attention to the provisions of Sub-rule (1) of Rule 22 of Order 41 of the Code of Civil Procedure.

The said sub-rule is in the following terms:--

"(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow." Mr. Deb contended that Mr. Chatterjee's client is a respondent, he can support the decision of the Court below on any ground decided against him but he cannot challenge the decision on any grounds in view of the fact that his client has not filed any cross-objection and further in view of the fact his client has withdrawn the appeal filed by it. It appears that at one stage it was the view of this High Court that the provision of Rule 22 of Order 41 is not applicable to appeals under Clause 15 of the Letters Patent. Reference may be made to the decision of Mookherjee. C. J. and Fletcher, J., in the case of Brojendra Chandra Sarma V. Prosanna Kumar Dhar 24 CWN 1916 : (AIR 1920 Cal 776). In view however of the subsequent decision of the Privy Council in the case of Sabitri Thakurain v. Savi 48 Ind Ann 76 : (ATR 1921 PC 80) it must be held that Order 41, applies to the appeals under Letters Patent. Therefore on a matter of procedure Mr. Deb is right in his submission that without filing any cross-objection Mr. Chatterjee's client cannot support the appellant. The question however is of little practical importance in this case because we have the advantage of Mr. Chatterjee's arguments and in considering this appeal, it is of little consequence whether we treat his argument as separate argument or as additional points in support of the appellant, the State of West Bengal.

7. In support of this appeal it was urged that the application to this Court under Article 226 of the Constitution was premature. It was submitted that what is contained in Annexure I was merely a direction by the State Government and if the direction is given effect to the Collector will issue a licence and then any party aggrieved may move either in revision or in appeal as provided in Sub-sections (2) and (3) of Section 8 of the Act. It was urged that then a party may have a right to move this Court. It was, therefore, submitted that the decision of the State Government as contained in the communication dated 30th of March, 1960 is not an order or direction against which the firm could move this Court under Article 226 of the Constitution. The petitioner cannot be aggrieved by such communication. It was then submitted that the amendment of Section 8, Sub-section (1) gives the State Government the right to control the Collector apart from the right of appeal and right of revision. It was emphasized that the provision of Section 8, Sub-section (1) has not been challenged in this proceeding as being ultra vires or beyond the competence of the legislature. It was therefore submitted that the State Government has the authority to issue the impugned communication dated 30th March, 1966. It was then submitted that the firm has no right to get a renewal in view of the provisions of the Act.

Our attention was drawn to the several provisions of the Act and the rules framed there under for the argument that the firm has no right to get a renewal. Our attention was also drawn to the amendment of Rule 87 framed u/s 86 of the Bengal Excise Act, 1909 by the Notification published on the 23rd February, 1967. We shall deal with this argument and the amendment later on. Reliance was placed on the decision of this Court in the case of *Asoke Chandra Banerjee v. B. N. Sen* 1963 Cal LJ 30.

8. On behalf of the firm Mr. A. K. Sen, learned Advocate, contended that the State Government has no such authority under the expression "control" in Sub-section (1) of Section 8 of the Act to issue the impugned direction or to interfere with the discretion of the Collector, who according to him, is the sole statutory authority, who must exercise the discretion unhampered by the directions from any other authority. Mr. Sen further urged that the brewery licence was of a different nature than the vending licence and must be treated to be of a more permanent nature and unless there have been changes of the material conditions, the parties are entitled to have a prior licence renewed. Mr. Sen drew our attention to the several provisions of the Act and the Rules framed thereunder. It was also urged, that as the points involved in the appeal would arise in respect of the application for subsequent period, we should pronounce our views as to how the future applications for renewal should be dealt with by the appropriate authorities. Several decisions were also referred to us. Mr. R. C. Deb, learned advocate for the company representing Bhesania Group of Directors, supported Mr. Sen's contentions. He also referred us to certain provisions of the Acts and the Rules and to certain decisions.

9. The main point that requires consideration in this case is whether u/s 8, Sub-section (1) as amended by the Act of 1965 the State Government has the authority to issue the impugned direction. Prior to the amendment of 1965, Section 8 was in the following terms-

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

(2) Orders passed under this Act or under any rule made hereunder shall be appealable in such cases, to such authorities and under such procedure as may be prescribed by rule made u/s 85, Clause (c).

(3) The State Government may revise any order passed by the Collector, the Excise Commissioner or the Commissioner of a Division or by any officer exercising the powers of an appellate authority under any rule made u/s 85, Clause (c)." After the amendment by the Bengal Excise (Amendment) Act, 1965, the said section was amended as hereunder:--

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

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

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

(2) Orders passed under this Act or under any rule made hereunder shall be appealable in such cases, to such authorities and under such procedure as may be prescribed by rules made u/s 85, Sub-section (2), Clause (c).

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

10. The question is, what is meant by this expression "control"? Can the State Government by the process of control direct the Collector as to how a particular application should be dealt with? Before the said question is answered, it would be necessary to discuss the relevant provisions of the Bengal Excise Act of 1909. Section 13 of the Act provides, inter alia, that no intoxicant shall be manufactured and no distillery or brewery shall be worked except under authority and subject to the terms and conditions of the licence granted in that behalf by the Collector. The working of a brewery without a licence or any breach of the terms thereof has been made an offence u/s 46 of the Act, Sections 42 and 43 of the Act give the authority powers under certain circumstances specified to cancel, suspend and withdraw the licence. Inasmuch as certain arguments were advanced about the right of the petitioner to get a renewal, it is necessary to set out Section 44A of the Act, which is: "No person to whom licence has been granted under the Act shall have any claim to the renewal of such licence or save as provided in Section 43, any claim to compensation on the determination thereafter." Under the Act the State Government has the rule-making powers by Sections 85 and 86. It appears that the vending licence, that is to say, a licence for the sale of an intoxicant is controlled by Sub-sections (1) and (2) (e) of Section 85 while the brewery licence is controlled by Section 86. Pursuant to this authority rules have been framed both under Sections 85 and 86. It would be relevant to consider in this context Rule 58 framed u/s 85 of the Act. The marginal notes state under Rule 58 (d) that it deals with the period for which licence may be granted for wholesale and retail vend of intoxicants. The said Rule 58 provides that licences for the wholesale or retail vend of intoxicant may be granted for one year from 1st April to 31st March or for any shorter period subject to certain conditions mentioned therein. Rule 87 framed u/s 86 of the Act deals with licensing and regulation of breweries. It may be relevant to set out the rules as hereunder:--

"87 (1) Every brewer for sale and every brewer of beer for private consumption shall, before he begins to brew, deliver to the Commissioner through the District

Officer a description, in writing, signed by himself, of all premises, rooms, places and vessels intended to be used in his business, specifying the purpose for which each is to be used, and the distinguishing mark of each. On the outside of the door of every room and any place in which the business is carried on, and on some conspicuous part of each of the aforesaid vessels, there shall be legibly painted in oil colour the name of the vessel, utensils, room or place according to the purpose for which it is intended to be used. If more than one vessel is used for the same purpose, each shall be distinguished by a progressive number.

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

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

11. It has to be mentioned further that by notification published in the Gazette on the 22nd February, 1967 there were certain alterations of this Rule 87.

12. On a consideration of the whole scheme of the Act and the language of the section as amended by the Act of 1965, we have come to the conclusion that the learned trial Judge was right on the construction of the expression "control". We are of the opinion it does not authorise the State Government to make the impugned decision or direction. We will state the reasons for our conclusion. But before we do so, it would be relevant to refer to the decision of the Supreme Court in the case of *State of Punjab v. Hart Kishan* AIR 3966 SC 1081 upon which reliance was placed by both sides. There the Supreme Court had occasion to consider similar provision u/s 5(2) of the Punjab Cinemas (Regulation) Act (11 of 1952). Sub-section (1) of Section 5 provided that the licensing authority should not grant a licence under this Act unless he was satisfied about certain matters mentioned in Clauses (a) and (b) of that sub-section. It was thereafter provided by Sub-section (2) of Section 5 that subject to the foregoing provisions of this section and to the control of the Government, the licensing authority might grant licences under this Act to such persons as it thought fit, on such terms and conditions as it might determine. Sub-section (3) authorised any person aggrieved by the decision of the licensing authority refusing to grant a licence under this Act, might within such time as may be prescribed, appeal to the Government or to such other person as the Government might specify in this behalf. Sub-section (4) of Section 5 authorised the Government to issue directions to licencees. What had happened was that the State of Punjab had issued instruction to the licensing authority stating that all requests for the grant of permission for opening all new permanent cinemas should be referred to the State of Punjab. The questions that came up for consideration were whether, the State Government had power or jurisdiction to issue such instructions in respect

of a license, and the ambit and authority of the State Government under the relevant provisions of the Act. The Supreme Court came to the conclusion that the State Government Was not justified in assuming jurisdiction which had been conferred on the licensing authority by Section 5 (1) and (2) of the Punjab Cinemas (Regulation) Act. If, therefore, the State Government required that all applications for the licences to be forwarded to it for disposal, it really converted itself into the original authority itself because section 5(3) clearly allowed an appeal to the State Government to be preferred by a person who is aggrieved by the rejection of his application for a license by the licensing authority, the Supreme Court observed. The Supreme Court further held that though the language used in Section 5(1) was very wide, but however wide this control might be, it did not justify the State Government to completely oust the licensing authority and itself usurp his functions. Section 5(3), the Supreme Court pointed out, provided for an appeal at the instance of the party which was aggrieved by the rejection of its application for the grant of a licence. No appeal was provided for against an order granting the licence; but when it appeared to the Government that an application had been granted erroneously or unfairly, it could exercise its power of control specified by Section 5(2) and set aside such an erroneous order and that would make the provision as to appeal or revision self-contained and satisfactory. The Supreme Court further observed that the expression "control" as contemplated by Section 5(2) might justify the issuance of general instruction. It was contended in support of this appeal that the facts of the instant case are different, inasmuch as, that by the passing of the impugned order there has not been any divestiture of the authority of the Collector or the licensing authority. It was suggested that it was not the fact that the authority was deprived of his power by the instruction of the State Government. On a careful consideration of the decision of the Supreme Court, however, we are of the opinion that it is not possible to accept this submission on behalf of the appellant. There the language used by the statute was "subject to the foregoing provisions of the section and to the control of the Government". Even then the Supreme Court held that the licensing authority is solely given the power to deal with the said applications in the first instance and this position cannot be changed by the Government by issuing an executive order or by making rules. At p. 1085 of the report the Supreme Court observed "To hold that the control of the Government contemplated by Section 5(2) would justify their taking away the entire jurisdiction and authority from the licensing authority, is to permit by means of its executive power to change the statutory provision in a substantial manner: and that position is not clearly sustainable." There Sub-section (3) of Section 5 of the Act provided for an appeal but there was no provision for revision while in the instant case before us revisional power has been given in express terms by Sub-section (3) of Section 8. Therefore in view of the whole scheme of the present Section. 8(1) read with the entire scheme of the Act and the rules, we are of the opinion that the "control" may be exercised by issuing general instruction or direction but that power cannot authorise the State Government to issue specific instructions about the disposal of a particular

application.

13. It was suggested that the learned Judge has considered the provisions of the Act as amended in 1965 with reference to the rules framed under Sections 85 and 86. It was argued that such a method of construction was unwarranted. We are not impressed by this criticism of the judgment. What the learned Judge has done is not to construe the Act with reference to the rules but the learned Judge has tried to make a harmonious construction of the provisions of the Act and rules. The Amendment introduced in 1965 has not introduced any relevant or material change in the licensing functions of the Collector or the Commissioner, save Section 8, no changes were also made in the rules regulating the licensing function of the Collector either in the rules framed u/s 85 and Section 86 of the Act. A harmonious construction, if possible, of the different provisions of the Act and Rules, should be striven for. It was then contended that the decision in the case of *Ratanshaw Nusserwanji Todiwalla v. Geoffery William McElhinny* AIR 1042 Bom 1 is incorrect and secondly it was contended that the facts of that case were entirely different. That case was dealing with the provisions of Bombay Abkari Act. We are of the opinion that the provisions of that statute and the facts of that case were entirely different from the facts before us and the provisions of the present Act. We, therefore, do not think it necessary to discuss the question whether that case was correctly decided or not. We are further of the opinion, that giving the State Government the authority to issue the impugned order in view of the expression "control" u/s 8(1) of the Act, would mean giving an uncontrolled authority to the State Government without any guiding principle. If the argument of the appellant is accepted on this point it would amount to giving the State Government unrestrained and unguided power. A provision which leaves an unbridled power to an authority cannot be said to be reasonable. Reliance may be made for this proposition on the decision of the Supreme Court in the case of *LaLa Hari Chand Sardar Vs. Mizo District Council and Another*, . Such a provision is liable to be struck down as ultra vires our Constitution. In the case of *S.G. Jaisinghani Vs. Union of India (UOI) and Others*, it has been observed by the Supreme Court "In the context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law." In the scheme of the Act it was the Collector or the Commissioner, as the case may be, who was constituted as the licensing authority. Such licensing authority must act in accordance with the principles and policies laid down under the Act in the matter of granting, renewal of licence and the other functions that have to be discharged under the Act. If, over and above that the State Government, independently of its power of revision and appeal, is given an authority to control and direct the decision of the licensing authority, without indicating the occasions on which the State Government may decide to exercise its decision and control and without indicating the principles upon which such direction or control may be

exercised by the State Government in particular cases, that would make the provision of Section 8 vulnerable to be struck down as ultra vires. That construction, if possible, should be avoided. It is a well-known principle of construction that where two constructions are possible, one which would make the statute valid should be preferred rather than the one which would make it invalid. Reliance may be placed for this on the decision of the Supreme Court in the case of R.L. Arora Vs. State of Uttar Pradesh and Others, of the report the Supreme Court has observed as follows :--

"Thus there are two possible constructions of this clause, one a mere mechanical and literal construction based on rules of grammar and the other which emerges from the setting in which the clause appears and the circumstances in which it came to be enacted and also from the words used therein, namely, acquisition being for a company which has a public purpose behind it, and therefore the building or work which is to be constructed and for which land is required must also have the same public purpose behind it, that animates the company making the construction. We are, therefore, clearly of opinion that two constructions are possible of this clause of which the second construction which is other than literal is the better one. It is well settled that if certain provisions of law construed in one way will be consistent with the Constitution, and if another interpretation would render them unconstitutional, the Court would lean in favour of the former construction."

14. Reliance was placed on the decision in the case of The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others, . In that case the Supreme Court was concerned with an order passed under the "Sugar Cane" (Control) Order of 1966. It was held by the Supreme Court, in the facts and circumstances of that case, that the impugned orders in that case though purported to have been made by the Cane Commissioner were in fact made by the Chief Minister and they were invalid. The Supreme Court observed that the power exercisable by the Cane Commissioner under Clause 6 (1) of the Order was a statutory power which could be exercised only by him. It must however be observed that in that case the Supreme Court had no occasion to consider a provision of a statute similar to Section 8(1) of the present Act as amended by the Act of 1905. Therefore, for the purpose of disposing of this case it will not be proper for us to rely on the aforesaid decision of the Supreme Court.

15. There is another aspect of this matter. By Sub-section (3) of Section 8 the State Government has been given the authority to revise the orders passed by the Collector, by Sub-section (2) the State Govt. has been given the authority to hear appeal from the decision of the Collector or the Commissioner. If over and above this, the State government is given the authority, to direct the Collector or the Commissioner and thereupon the same State government is given the authority to revise such order and/or to dispose of appeals therefrom it would lead to certain amount of anomaly. The power of determining appeal and the revisional power must be exercised quasi-judicially. It is true that there are

instances where an authority has been given the jurisdiction to decide administratively certain matters and the same authority has been given the authority to revise its order quasi-judicially. But in a matter like the licensing unless the clear language and the intendment of the Act compel such a construction, in our opinion, it should be avoided. We are further of the opinion, that the clear language and the intendment of the Act do not lead to the construction sought for by the appellant. We have, therefore, come to the conclusion that the expression "control" in Sub-section (1) of Section 8 does not authorise the State government to issue the impugned communication or direction dated 30th March, 1966.

16. The next argument that requires consideration in this case is, whether the petitioner has any right to ask for renewal and whether if there is any claim which has to be acceded in favour of the grantee of a brewing licence for renewal if the conditions are similar to those prevailing at the time of the original grant of the licence.

17. Before this aspect of the matter is discussed in detail it is important to reiterate that it is not the case of the petitioner that it has not been granted the renewal of the brewing licence. This is not an application for directing the respondents to renew the licence in favour of the petitioner. The petitioner's case was and is that the application for renewal has not been dealt with in accordance with law. The petitioner further contends that the State government has no authority to issue the impugned direction dated 30th of March, 1966. We have considered the question of the authority of the State government to issue the impugned direction. It was contended on behalf of the respondents that the Chapter VI of the Act, which deals with the licences, permits and passes, and which contains Sections 30 to 44A, deal with vending licence or licence for the retail sale. Therefore, it was urged, Section 44A which in express terms states that no person to whom a licence has been granted under this Act shall have any claim to the renewal of such licence, or, save as provided in Section 43, any claim to compensation on the determination thereof, really do not affect a brewing licence. Even though there is a good deal of force in this argument as it appears that most of the sections in Ch. VI from the very terms thereof must relate to vending licence and not to brewing licence, in view of the clear language used in Section 44A and in view of the heading of the Chapter, we are of the opinion that it cannot be said that Section 44A of the Act has no application at all to a brewing licence. In this connection we may refer to a decision upon which some reliance was placed by the appellant, namely the case of 1963 Cal LJ 30. However, in view of the fact that that was a case dealing with the licence to run a country spirit shop, we do not think that in considering the nature of a brewing licence this case is of any assistance to the appellant. Section 85 of the Act empowers the State Government as mentioned hereinbefore to make rules. Clause (c) of Subsection (2) of Section 85 in specific terms empowers the government to make rule for regulating the periods for which licences for the wholesale or retail vend of any intoxicant may be granted.

Section 86 deals with brewing licence. Rule 58 framed u/s 85 provides that licences for the wholesale or retail vend of intoxicants may be granted for one year, upon the terms and conditions mentioned in that rule, while Rule 87 which deals with the application of brewing licence framed u/s 86, does not specify any period for which licence may be granted. Sub-section (3) of the said rule provides that it must be renewed annually. It was argued that the provision to renew licence annually is for revenue purpose and it casts an obligation upon the authorities and not upon the grantee of the licence. It is further to be borne in mind that setting up of a brewery involves large sums of moneys and it is unlikely that any body would invest such a large amount of money if it was only for one year. In this context reference may be made to Rules 207 to 209 made u/s 86 of the Act. These rules, indicate that they relate to brewing licences, and they contain detail provisions for the "transfer of licence" by act of the parties, by death and by reason of change in the partnership subsequent to the grant of licence. Having therefore, considered all these aspects, we are of the opinion, that a brewing licence is of a more permanent nature than a vending licence. Even though we do not hold, for the purpose of this application, that there is any legally enforceable right in favour of the grantee of a brewing licence to have it renewed, if the conditions are similar to the conditions when the original grant was made, in material respects, if an application is made for renewal, the applicant is entitled to have that application dealt with in accordance with law. It was then urged that there have been certain amendments to Rule 87 by the Gazette Notification published on the 23rd February, 1967. We are of the opinion that the said amendments do not affect the application for renewal for the year 1966-67. Therefore it is not necessary for us to consider the effect thereof.

18. It is now necessary to consider the argument of Mr. Sengupta that the application was premature. Mr. Sengupta argued that no order has yet been passed by the Collector pursuant to the direction or decision of the Minister. We are, however, unable to accept this contention. The order of the government or the direction of the government dated 30th March 1966 was communicated to the petitioner. Further we find that on the 7th April 1966 a formal order was passed regarding the approval of the government to the grant of a fresh brewery licence in the name of a public limited company. The same appears at page 10 of the Supplementary Paper Book. It is inconceivable that under these circumstances the brewery licence would not be given in accordance with the direction, more so, when the respondents Nos. 1, 2 and 3 are all contending that the government has the authority to give the impugned direction. In that view of the matter, we are unable to accept this contention of Mr. Sengupta. Lastly, it was contended that in view of the undertaking referred to hereinbefore dated 12th of May 1965, the petitioner was not entitled to any relief in this application under article 226 of the Constitution. In our opinion, the learned Judge was right in holding that where the government has acted without jurisdiction the undertaking would not disentitle the petitioner to have the order made without jurisdiction quashed. Government cannot and do not acquire jurisdiction by

virtue of the undertaking given by the petitioner. Furthermore in the facts and circumstances of this case it is highly doubtful whether any reliance can be placed upon such undertaking by the petitioner, in view of the fact that the undertaking was given under certain specific circumstances as referred to hereinbefore.

19. For the above reasons we are of the opinion that the learned trial Judge was right in his judgment and the order. The learned trial Judge has quashed the impugned order, being Annexure I, dated 30th of March, 1966. The said order of the learned trial Judge is hereby confirmed. The learned trial Judge has further directed respondents Nos. 2 and 3 in the petition to determine, according to law, the application for licence which is annexure "F" to the petition. That was the application dated 25th February, 1966 for the licence for the year 1966-67. After the order of the learned trial Judge, the Court of Appeal had appointed Receiver and had directed the government to grant brewery licence for the aforesaid period to the Receiver appointed by this Court. As a matter of fact the Receiver appointed by this Court has been granted brewery licence and the Receiver had this licence renewed in the year 1969-70 ending 31st March, 1970. Therefore, in view of the fact that the period for which the application for renewal in respect of which application under article 226 of the Constitution was made has elapsed, and in view of the fact for the said period Receiver has been granted licence, we vacate that portion of the order of the learned trial Judge. We, however, make it clear in future if any application is jointly made for renewal of the brewing licence this must be dealt with in accordance with law and in accordance with the observations made in this judgment. Subject to the aforesaid variation the appeal is dismissed. The parties will pay and bear their own costs of this appeal. We however do not vary the order for costs as directed by the learned trial Judge.

20. There is an application for the discharge of the Receiver and for certain consequential directions. We shall pass separate orders in respect of the same.

Arun K. Mukherjea, J.

21. I agree.