

(1998) 09 AP CK 0029

In the Andhra Pradesh High Court

Case No : WA No. 920 of 1998 and Batch

Superintendent, Prohibition and Excise, Bhimavaram, Eluru,
W. G. Dist.

APPELLANT

Vs

Krishna Wines and Others

RESPONDENT

Date of Decision : 04-09-1998

Acts Referred:

Andhra Pradesh Excise Act, 1968 — Section 31, 31(1), 32, 36
Andhra Pradesh Excise Rules — Rule 6
Constitution of India, 1950 — Article 14, 19(1), 226, 229
Customs Act, 1962 — Section 112, 114
Penal Code, 1860 (IPC) — Section 481, 482, 483, 484, 485

Citation : (1998) 6 ALD 204 : (1998) 5 ALT 498

Hon'ble Judges : Umesh Chandra Banerjee, C.J.; C. V. N. Sastri, J

Bench : Division Bench

Advocate : A.G. and Government Pleader for Prohibition and Excise, for the Appellant; Mr. K. L. N. Swamy, for the Respondent

Judgement

Umesh Chandra Benerjee, CJ.

1. The doctrine of judicial reviewability has a special significant in public law, particularly in the countries having a written constitution, since in common acceptation, the doctrine of judicial review works through the remedies of appeal and revision as prescribed by the prevalent procedural law. The Constitution is a legal instrument and this law is superior in status to the laws made by the Legislature. Dr. Basu in his Tagore Law Lectures very succinctly stated the broad features of the doctrine to the following effect:

"Where the Constitution operates as a higher law, any act which transgresses the mandates of that higher law becomes unconstitutional and since not only the Executive but the Legislature itself is limited by that higher law, as in the USA or in India, a legislative act, too, would be unconstitutional and invalid when it contravenes the Constitution. The peculiarity of judicial review in the Constitutional sphere is that this power is welded by the Judiciary, not over any

inferior Tribunal, but over co-ordinate authorities viz., the Legislature and the Executive."

2. Be it noted that prior to the advent of constitutionalism the law Courts had to deal with the issue of judicial reviewability on the basis of the doctrine, as propounded by Coke, C.J. in *Bonham's case* 1610: 8 Co.114(a). Subsequently, however, upon adoption of a written Constitution in the United States, Law Courts did find a more tangible foundation for the claim in favour of fundamental law embodied in the Constitution. Marshall, C.J. in the case of *Merbury v. Madison*, 1803 (1) Cr. 137 stated:

"The powers of the Legislature are defined and limited and those limits may not be mistaken or forgotten, the Constitution is written..... Certainly all those who have framed written Constitutions contemplate them as forming the fundamental and paramount law of the nation and consequently...an act of the Legislature repugnant to the Constitution is void."

3. Dr. Basu in his lecture stated that wherever there is a written Constitution imposing legal limitation upon the organs of the Government, there must be an interpreter of the Constitution and that function must be entrusted to the Judiciary which alone is competent to interpret legal instruments. In fine, Dr.Basu stated the doctrine under three several counts as follows:

"(i) Since the Court is to regard the Constitution as superior to an Act of the Legislature, it is for the Courts in case of conflict, to declare which law shall prevail and to disregard the repugnant Act, which is no law, in determining the case before it.

(ii) Since the Constitution is the paramount law, of the nation being the declared will of the people themselves, an act of the Legislature (whose powers are limited by the Constitution) which is repugnant to it must be void.

(iii)It is the province and duty of the judicial department to say what the law is and if two laws conflict with each other the Courts must decide on the operation of each."

4. Ours is a written Constitution having three independent organs viz., the Legislature, the Executive and the Judiciary: Whereas the Legislature legislates and the Executive administers, the Judiciary is the controlling factor in regard to the abuse of power be it the executive or the Legislature: It is the Constitution which is supreme and it is the Constitution itself which has conferred power on to the judiciary to discharge its role effectively in terms of the provisions of the Constitution.

5. Be it noted, that we ourselves have conferred on to ourselves this Constitution of ours as a sovereign, socialist, secular and democratic republic. Democratic polity is the basic fervour of our Constitution and it is the judiciary alone which maintains this basic fervour by reason of the powers conferred on to it and is authorised to strike down the award of legislative impertinence whenever

occasion arises. The judiciary in terms of the provisions of the Constitution has the obligation to rise up to the occasion and there ought not to be any hesitation in regard thereto in the event of there being any departure from the guiding principles as laid down in the Constitution. (In this context, reference may be made to a Bench decision of the Calcutta High Court in the case of the State of West Bengal v. Rudra Jyoti Bhattacharjee & others, in appeal arising out of matter No.72 of 1995).

6. While it is true that there ought not to be any hesitation in regard to the exercise of jurisdiction as conferred on to the High Court under Article 226 of the Constitution, but in the event of such an exercise, the law Court should be cautious enough to remain within the restraints of its jurisdiction. The institutional remedy, as the Constitution provides, must be offered but not anything beyond the same. The doctrine of flexibility as propounded by Roscopound ought to be read subject to such a limitation as above. The law Courts ought to grant relief and protect the constitutional rights, but that does not, however, clothe the law Courts to usurp the powers of the authorities and the law is well-settled on this score for quite sometime that in a judicial review the Courts does not sit on appeal against the orders passed by the statutory authorities. In this context, reference may be made to the decision of the Supreme Court in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, , as also a recent decision of this Court in the case of ECIL Officers Association Vs. Government of A.P. and Others, wherein this Court observed:

"The powers of the High Court under Article 226 of the Constitution is of widest possible amplitude in the matter of grant of relief, but, that power is, however, limited by its very nature, since the Court desirous of protecting the citizens" constitutional rights and for strengthening the socio-economic fabric, needs to move with a degree of judicial circumspection with certain self-imposed limitations and in accordance with known principles of law. The Court needs to balance the authority of the past with the urges of the future. The essential identity of the institution that it is a Court must remain preserved so that every action of the Court is informed by fundamental norms of law and by the principles embodied in the Constitution and other sources of law....."

7. Before adverting to the factual matrix and the contentions raised, it would, however, be worthwhile to note a significant element of justice dispensing system that the law Courts exist for the society and justice dispensing system ought to be administered in a manner beneficial to the society. The Law Courts have a social duty which ought not to be lost sight of: whereas there may or there may not be an obligation or a duty caste on to the law Courts for social reformation and for which we are not expressing any opinion, but the factum of administration of justice for the benefit of the society cannot be doubted. It is on this perspective that the concept of public interest needs to be gone into as to whether the same demand introduction of some moral values as well by the law Courts: While morality ought not to be the criterion for justice dispensing

system, but the concept of morality having due regard to the interest of the society cannot be said to be obliterated from the jurisprudential system altogether. Public interest on the score of morality may be looked into by a Court of Law while administering the justice dispensing system more so, by reason of the fact that law Courts exist for the society, as noted above. In the event, public interest demand introduction of some moral values, in our view, morality of the situation in the justice administration system should not also be overlooked.

8. Turning attention on to the contextual facts, be it noted that these appeals are directed against similar orders of the learned single Judge wherein the learned Judge has been pleased to pass an order for interim suspension of the impugned memorandum. The challenge in the writ petition pertains to an order of suspension of liquor licence u/s 31(1) of the Andhra Pradesh Excise Act, pending enquiry.

9. As noted above, the learned single Judge granted interim suspension of the above order and hence the appeal.

10. During the course of hearing it came to light that several writ petitions are pending final adjudication before the learned single Judge and since identical questions of law and facts are involved, as are in these appeals we deemed it fit and expedient to hear a batch of writ petitions along with these writ-appeals and the learned advocates appearing for different parties did also lend their concurrence in regard thereto. It is placed on record, however, that while some of the writ petitions pertain to off-licence premises, but some others pertain to on-licence premises, but, orders of suspension have been issued u/s 31 (1) of the Andhra Pradesh Excise Act irrespective of the nature of licence granted.

11. Section 31 of the Act confers power on to the licensing authority to suspend or cancel the licence in the event of there being any violation of the terms of licence. This is a power, which is absolute in nature, though however, there is some statutory restriction in regard to the manner and method of user of such power. Be it noted that the Excise Act provides for an of-licence and on-licence to a dealer of intoxicants. Of-licence obviously, as the expression denotes, mean and imply, sale of intoxicants only and without there being any consumption of the same in the premises. As a matter of fact there is no dispute to that effect that of-licence authorises the dealer to the sale of intoxicants only in sealed containers and not otherwise. As regards the on-licence, it is consumption of alcoholic beverages on the premises and the premises concerned is licensed to that effect. Therefore, consumption of alcoholic beverages in an of-licensed premises is forbidden.

12. Incidentally, it is significant to note that these licences are granted having due regard to various factors and that is precisely the reason as to why the Legislature does not, in fact, grant any on-licence near about a school or near a place of worship or near the hospital, etc. The of-licence has also certain criteria but may not be termed to be that rigid for obtaining the licence.

13. The order of suspension is preceded by complaint and information pertaining to user of the of-licenced premises as on-licenced premises. It is significant to note in this context that there is a duty cast on to the licensing Authority to react to such a situation forthwith otherwise the society suffers and consequently public interest gets degenerated. Is it conceivable that the Legislature intended that the licensing officer can take steps only upon affording an opportunity of hearing to suspend the licence in terms of the provisions of Section 31? Morality of the situation and interest of public, though harmonious in nature, probably would not permit such a situation - a deaf ear and a blind eye until requirement of opportunity of hearing is given cannot possibly be the intent of the Legislature having due regard to the public morality and public interest. The premises licensed to sell alcoholic beverages if turns out to be an on-licence premises and if it is stated that the concerned authority has no authority in law or jurisdiction to suspend pending enquiry until after compliance with the requirement of the statute, to wit, affording an opportunity that would be, in our view, reading something on to the statute which is not available therein. It is true that Section 31 has conferred power of suspension upon affording an opportunity of hearing. But the issue arises as to whether having due regard to the public interest and public morality, one needs to read a power inherent of suspension in the event of contravention of the terms of licence or one needs to read and interpret the words with strictest possible interpretation. Mr. Advocate General appearing for the appellant, on this issue, contended that a power inherent on to the licensing authority for suspension ought to be read as otherwise the powers of the licensing authority would be rendered a total statutory mockery. It has been contended that if the licensing authority is not in a position to issue any suspension order on coming to know of deliberate or intentional contravention of the terms of licence and if the licensing authority is said to be compelled to take recourse to Section 31 viz., offer an opportunity of hearing and then issue the order of suspension, the public interest would stand subverted and public morality will be given a total go-by, which cannot by any stretch be permitted by a Court of Law. It is at this juncture, however, one needs to have a look at Section 31 of the Act. Section 31 reads as follows:

"31. Power to cancel or suspend licence etc :--(1) Subject to such restrictions as may be prescribed, the authority granting any licence or permit under this Act may cancel or suspend it (irrespective of the period to which the licence or permit relates-

- (a) If any duty or fee payable by the holder thereof is not duly paid; or
- (b) In the event of any breach by the holder thereof, or by any of his servants or by any one acting on his behalf with his express or implied permission, of any of the terms and conditions thereof; or
- (c) If the holder thereof or any of his servants or any one acting on his behalf with his express or implied permission, is convicted of any offence under this Act, or

(d) If the holder thereof is convicted of any cognizable and non-bailable offence or of any offence under the Narcotics Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985 or under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 or under the Trade and Merchandise Marks Act, 1958 or u/s 481, Section 482, Section 483, Section 484, Section 485, Section 486, Section 487, Section 488, Section 489 of the Indian Penal Code or of any offence punishable u/s 112 or Section 114 of the Customs Act, 1962 irrespective of the fact whether such conviction relates to the period earlier or subsequent to the grant of licence or permit; or

(e) if the conditions of the licence or permit provide for such cancellation or suspension at will:

Provided that no licence or permit shall be cancelled or suspended unless the holder thereof is given an opportunity of making his representation against the action proposed.

(2) Where a licence or permit held by any person is cancelled under clause (a), clause (b), clause (c) or clause (d) of sub-section (1), the authority aforesaid may cancel any other licence granted or permit issued to such persons under this Act, or under the Opium Act, 1878.

(3) The holder of licence or permit shall not be entitled to any compensation for its cancellation or suspension nor to the refund of any fee paid or deposit made in respect thereof."

14. It is significant to note, however, that the Legislature thought it prudent to use the words "cancel" or "suspend" in the body of Section 31 itself and as such the proviso appended therein after sub-section (1) (e) which also in no uncertain terms records an opportunity of hearing both for cancellation and for suspension and it is on this score strenuous submissions have been made to the effect that the licensing authority has no power or authority to issue orders of suspension without first affording an opportunity of hearing. The issue therefore arises as to whether there exists an obligation to offer an opportunity of hearing or whether there is an in-built power given to the licensing authority to issue an order of suspension, pending an enquiry. It is now well settled that doctrine of natural justice if embodied in the statute, ought to be given its true and proper meaning, and one need not give it restrictive meaning, but the entire text of the statute shall have to be looked into for the purpose of attributing a proper meaning. Section 31, therefore, encompasses two severable elements, the first being the power inherent and the second being the power as prescribed. In the event of there being an order of suspension simpliciter, question of invocation of the second element, does not and cannot arise, but in the event, however, the order of suspension partakes the character of a penalty, then and in that event, question of reading into the statute the first element does not arise.

15. Before proceeding, however, further on this score, a very well considered Full Bench Judgment of this Court ought to be noticed. The full Bench of this Court in

the case of *Toppers Co-op.Society.Maddur v. Supdt. of Excise*, 1984 (2) APLJ 1 (per majority) observed:

"44. The power of suspension which is concomitant or adjunct is no doubt restricted by the statutory provision under the provision question to pass final orders of suspension but that power cannot be said to have been taken away to pass an interim order of suspension not intended to be a penalty but only interim measure to pass effective orders. This conclusion of ours applies with greater force when we notice that we are concerned with the liquor licences in which the citizen has no right guaranteed under Article 19(1)(g) of the Constitution of India but only a privilege. No doubt once a licence is granted valuable right would accrue to him and that can be taken away as per the provisions of the Act. But as a rule of construction the proviso cannot have a larger affect than it intended to govern the final disciplinary proceedings of suspending or cancelling a licence or permit....."

16. In a more recent Bench decision in the *Asst. Commissioner of Prohibition & Excise/Prohibition & Excise Supdt. RR District & Ors. v. M/s Jayadeep Wines, Gaddiannaram.W.A.Nos. 877 & 878 of 1998 dated 1-6-1998* Judgment delivered by the Bench comprising of SVM J & BVRR J., this Court while dealing with an allied issue, in no uncertain terms observed:

"It is now well settled that the power to suspend a licence pending enquiry is inherent and therefore if the order is in the nature of an interim order, the principles of natural justice need not be complied with unless the order is in the nature of an interim order and therefore in exercise of the inherent power, the authorities are competent to suspend the licences."

As a matter of fact, all relevant decisions in the matter were duly considered and upon consideration of the facts and the law on the subject, it has been recorded:

"The judgments relied on by the learned Counsel for the respondents are not relevant to the facts of the present case as these are the cases where the learned Judges were of the view that the order of suspension was in the nature of final order and also in the nature of penalty. For that matter, the learned Judges themselves have recognised that the authorities are competent to suspend the licences without following the principles of natural justice in a case where it is of an interim nature."

17. Incidentally, be it noted that the Bench was considering an appeal from an order of the learned single Judge against an allied order as is impugned in the facts of the matter under consideration.

18. Two other decisions, though of the learned single Judges, ought also to be noticed at this juncture. The first being the decision of this Court in the case of *Sree Devi Wines v. Dy. Commr. of Excise Kakinada & Ors.*, 1995 (I) ALD 164 wherein the learned single Judge has been pleased to observe:

"...that if the suspension of a licence is to be effected in a substantive way under

sub-section (1) of Section 31 of the Act, the proviso to that sub-section requires that unless the holder of the licence or permit is given an opportunity of making the representation against the action proposed, no licence or permit shall be cancelled..."

19. It is to be noticed that the learned single Judge has been careful enough to record suspension of licence is to be effected in a substantive way and it is on this perspective the contextual facts as has been narrated by the learned single Judge ought to be noted:

"4. On the other hand, it has to be noticed that the suspension order discloses that the 2nd respondent herein had already arrived at a conclusion and a finding as follows:

"Thus the licensee of M/s Sree Devi Wines FL.24, Atilli has violated the rules and conditions of the A.P. FL and IL Rules, 1970. The licensee has willfully violated licence conditions and rules and indulged in malpractices u/s 36(b) of A.P. Excise Act.

Hence, the shop licence of M/s Sri Sri Dcvi Wines, Attili in Form FL. 24... is hereby suspended u/s 31(1) of A.P. Excise Act with immediate effect pending further investigation."

The malpractice referred to is under Clause (b) of sub-section (i) of Section 36, which is as follows:

"(b) wilfully docs or omits to do anything in breach of any of the conditions of his licence or permit not otherwise provided in Ais Act."

Sub-section (i) of Section 36 provides for penalty for misconduct of licensees and what is mentioned in clause (b) is described as an offence and the punishment provided on conviction for the said offence, is as follows:

"in the case of an offence falling under...clause (b)with imprisonment for a term which shall not exceed two years and with fine which may extend to one thousand rupees."

When the 2nd respondent had already come to a conclusion that the petitioner violated the rules and conditions of the licence, I fail to understand what further investigation remains for initiating criminal prosecution, if at all. Andhra Pradesh Foreign Liquor and Indian Liquor Rules, 1970 do not provide for suspension pending investigation. Rule 66 of the said Rules which deals with suspension, withdrawal or cancellation of a licence or permit provides that "A licence or permit may be suspended, cancelled or withdrawn in accordance with the provisions of Section 31 or Section 32 of the Act." Section 32 deals with the power to withdraw licence. It is only Section 31 of the Act which deals with the power to cancel or suspend the licence etc. If suspension of a licence is to be effected in a substantive way under sub-section (I) of Section 31, the proviso to that sub-section requires that unless the holder of the licence or permit is given

an opportunity of making his representation against the action proposed, no licence or permit shall be cancelled. This is in negative and emphatic terms. In the present case, as already pointed out, a reading of the impugned suspension order discloses that the 2nd respondent had already concluded that the petitioner "wilfully violated licence conditions and the rules and indulged in malpractices" that is a finding under Clause (b) of sub-section (1) of Section 31 of the Act, which is as follows:

"(b) in the event of any breach by the holder thereof, or by any of his servants or by any one acting on his behalf with his express or implied permission, of any of the terms and conditions thereof" If the impugned suspension order is to be viewed as a final order of suspension, it is undoubtedly bad for violating the statutory requirement of opportunity under the proviso to sub-section (1) of Section 31 of the Act."

20. While it is true that the facts of the matter in Sree Devi Wines case (*supra*) cannot be placed at par with the matter under consideration, but it is to be noticed here also that the learned single Judge has made a differentiation between an order of suspension and a final order of suspension and it is on this score that the words "pending enquiry" become significant. The decision therefore runs counter to the submissions of the writ petitioners that in the event of there being an order of suspension, the same must afford an opportunity of hearing.

21. The second decision of another learned single Judge, as referred to above, ought also to be noticed at this juncture. The learned single Judge in the case of *Sunil v. Assistant Commissioner of Prohibition & Excise/ Excise Supdt., Hyd., 1997 (4) ALD 625*, in paragraphs 4, 5 and 6 of the judgment observed:

"4. This Court as early as in the year 1984 took the view that "the power of suspension which is concomitant or adjunct is no doubt restricted by the statutory provision under the proviso in question to pass final orders of suspension but that power cannot be said to have been taken away to pass an interim order of suspension not intended to be a penalty but only interim measure to pass effective orders. This conclusion of ours applies with greater force when we notice that we are concerned with the liquor licences in which the citizen has no right guaranteed under Article 19(1)(g) of the Constitution of India but only a privilege. No doubt once a licence is granted valuable right would accrue to him and that can be taken away as per the provisions of the Act. But as a rule of construction the proviso cannot have a larger affect than it intended to govern the final disciplinary proceedings of suspending or cancelling a licence or permit" (see 1984 (2) APLJ 1 (FB)). The impugned order in this case itself says that the licence of the petitioner is kept under suspension pending enquiry. It is not a final order. Enquiry is yet to be commenced and a final decision has to be taken. It is true that the petitioner is required to be given an opportunity of making his representation before making a final decision in the matter. The statute does not require issuance of any notice or opportunity for keeping the

licence under suspension or pending enquiry. The requirement of notice and opportunity is only in cases of final decision of suspension or cancellation of the licence, as the case may be. Therefore, the impugned order cannot be declared as ultra vires the provisions of the Act or the Rules. The principles of natural justice have no application as the rights of the petitioner to hold the licence till the end of the period for which it is granted is yet to be decided. The order of suspending pending enquiry is an interim measure taken by the authority in public interest.

5. The learned Counsel for the petitioner, however, relied upon a decision rendered by this Court in *Satyanna Goud and Others Vs. The Excise Superintendent and Others*, , in support of his submission that the petitioner's licence could not have been kept under suspension by merely depending upon the confessional statement of one D. Ramesh who has no concern whatsoever with the petitioner's business. It is true there is a reference to the confessional statement of the said D. Ramesh that he is selling the liquor with the consent of the petitioner on a dry day i.e., on 1-7-1997. But, it is required to notice that on verification it was found that the liquor seized on 1-7-1997 from the possession of the said Ramesh was supplied to the petitioner's shop on 4-6-1997 and 25-6-1997 by the Andhra Pradesh State Beverage Corporation Limited for the purpose of selling the same in retail by the licensee. In *Satyanna Goud (supra)* the Court observed that there is no material whatsoever except the alleged oral statement of the person from whom the toddy was seized. In such view of the matter, the Court came to the conclusion that there was no basis whatsoever for keeping the licence under suspension. Such is not the case on hand. The suspension order passed by the respondent is not only based upon the confessional statement of the said Ramesh but also based upon the further material available on record that what was being sold by D. Ramesh was the same liquor supplied by the Beverage Corporation to the petitioner for the purpose of retail sale through the licensed shop. It cannot be said that there is no prima facie case for keeping the licence under suspension pending enquiry. The observations of the Court are made only for the purpose of considering the submission made by the learned Counsel for the petitioner. No opinion as such is expressed on the merits of the case and the observations shall have no bearing whatsoever on the enquiry to be made by the respondents for taking further appropriate action in accordance with law. The decision in *M/s. Madhavi Wines Mancheri v. Excise Superintendent, Adilabad, 1994 (3) ALT 17 (NRC)*, has no application, whatsoever, to the instant case. It was a case where the licence was suspended as a substantive punishment and not an interim measure pending enquiry of the charges levelled against the licensee. It was a case where final order of suspension was passed without giving any opportunity to the licensee to represent his case. The Division Bench came to the conclusion that such a final order suspending the licence without giving a reasonable opportunity to the licensee is ultra vires Section 31(1) (b) of the A.P. Excise Act, 1968.

Here is a case of suspension pending enquiry and not a final order. The decision

relied upon by the learned Counsel for the petitioner in *Sree Devi Wines v. Dy. Commissioner of Excise, Kakinada and Ors.* (supra), also has no application. It was a case where the impugned order of suspension was construed and viewed as final order of suspension as the authority passing the order has already concluded about the violations of the condition by expressing final opinion that the licensee has wilfully violated the licence conditions and rules and indulged in malpractices u/s 36(b) of the A.P. Excise Act, 1968. No such final opinion is expressed by the authority in this case. Therefore, the present impugned order is an order which is pure and simple order of suspension of the licence of the petitioner pending enquiry.

6. It is settled law that this Court in a judicial review proceeding under Article 226 of the Constitution does not act as a Court of appeal against the orders passed by the statutory authorities. The Court is more concerned with the decision making process. Court is not required to express any opinion on the merits of the case while considering the validity of an order of suspension pending enquiry. Rights of the licensee are yet to be adjudicated. In such cases, a very limited judicial review is available. The Court would interfere only in a case where the impugned order is passed without jurisdiction or which could be said to be so perverse that no reasonable person could have taken such a decision in the facts and circumstances of the case. Such is not the case on hand."

22. In that view of the matter, we do feel it inclined to record that the power inherent for issuance of an order of suspension for the purpose of making an enquiry has not been taken away by the Legislature in terms of the provisions of Section 31 of the Act and the proviso available on the body of the Section viz., offering an opportunity of hearing is only applicable in the event of the suspension of the licence in a substantive way as and by way of a penalty. The Legislature has not intended any restriction on to the power inherent, for the purpose of enquiry in terms of the provisions of the Excise Act and to read anything contra, would not do proper justice to the Legislature, and as such we do record our concurrence to the view expressed, by the learned single Judge in *Sree Devi Wines* case (supra) as also the view expressed in *Sunil's* case (supra).

23. Similar is the view expressed by another Bench of this Court in the case of *M/s. Madhavi Wines v. Excise Superintendent Adilabad*, 1994 (2) APLJ 295, wherein this Court observed:

"...There can be no difficulty in cases where suspension is resorted to as an interim measure pending enquiry into the charges levelled against the licensee, but where suspension is resorted to as a substantive punishment, an opportunity of hearing has to be given to the person whose licence is proposed to be suspended."

24. It is to be noted that when a statutory functionary makes an order based on certain grounds in the normal course of events, the Court would be rather loath

to interfere with such an order, otherwise the entire administrative set-up would come to a grinding halt, unless, of course, there are positive reasons and material on record that he has, in fact, over-stepped his limits or exceeded his jurisdiction or the order is otherwise not in accordance with law. In the contextual facts, we do not have such a material on record so as to enable us to come to a finding as regards exercise of power beyond the jurisdiction vested on to the concerned statutory functionary. An enquiry is sought for only and no motive can be ascribed. The submission as regards the mala fides, in our view, does not find any factual support. Malice in common English acceptation means and implies "spite or ill-will". There is in the contextual facts no evidence in that regard and as such question of there being any malice or mala fides does not arise and cannot arise.

25. Be it noted that where an Act confers a jurisdiction it impliedly also grants the power of doing of such acts or employing such means as are essentially necessary to its execution. In this context, reference may be made to the decision of the Supreme Court in the case of *The Sub-divisional Officer, Sadar, Faizabad Vs. Shambhoo Narain Singh*, .

26. In any event, by reason of the pronouncement of the Full Bench decision, as noticed above (*supra*), in our view, question of recording a different opinion probably would neither be fair nor proper having due regard to the recognised and healthy principles of judicial discipline of decorum and propriety. The Supreme Court in a recent decision in the case of *State of U.P. and another Vs. C.L. Agrawal and another, etc.*, , of the judgment observed:

"....Law is therefore well settled that judicial discipline shall have to be observed and followed and the matter ought not to be examined *de novo* by reason of the fact that the same stands concluded by the decisions of the Full Bench of this Court."

27. Be it, however, noted that in the case of *Davis v. Johnson*, 1978 (1) All. ER 841 Lord Denning MR, upon consideration of the decisions in the matter of judicial precedence, did set-up a new guideline and observed:

"So I suggest that we are entitled to lay down new guidelines. To my mind, this Court should apply similar guidelines to those adopted by the House of Lords in 1966. Whenever it appears to this Court that a previous decision was wrong, we should be at liberty to depart from it if we think it right to do so. Normally, in nearly every case, ofcourse, we would adhere to it. But in an exceptional case we are at liberty to depart from it."

28. We do, however, deem it expedient to record that by reason of the factum of settlement of law by the Supreme Court, as above, question of further investigation or dilution does not and cannot arise. It is now a settled law and there is no difficulty whatsoever in that regard. Lord Denning also, however, recorded in the judgment itself that there must be a finding to the effect that the previous decision was wrong and it is then and then only, however, the liberty to

depart from the previous decision might be exercised. In the normal circumstances there is however existing no divergence as regard the principles to be followed so far as judicial precedents are concerned. As a matter of fact, there is total unanimity in that respect and the exception carved out by Lord Denning does not have however any bearing in the contextual facts. As such by reason of the Doctrine of Stare Decisis and by reason of the law as laid down by the Supreme Court in Agrawal's case (supra) we do not feel it inclined to record a counter finding upon what has already been recorded by the majority view of the Full Bench decision referred to above.

29. In that view of the matter and as discussed above, we are unable to record our concurrence with the contentions raised in support of the petitioners insofar as the submissions pertaining to Section 31 of the Act of 1968 is concerned.

30. The other aspect of the matter advanced before us is in regard to the arbitrary exercise of power and in this context the observations of the Full Bench decision of this Court in Tappers Co-op. Society's case (supra) as recorded in paragraph-45 of the judgment has been very strongly relied upon by the learned Advocate appearing in support of the petitioner. In order, however, to appreciate the matter in its proper perspective, paragraph 45 of the judgment is set-out herein below:

"45. However, we must make it clear that this incidental or ancillary powers cannot be exercised in a routine way or as a matter of course. The licensing authority is bound to exercise the discretion reasonably, bona fide and without negligence considering the circumstances of the case when such interim suspension is necessary. If it is possible to give an opportunity to the petitioner and the circumstances do not warrant such a drastic step, the licensing authority is bound to afford an opportunity and the power of suspension pending enquiry should not be allowed to continue for an unduly long period. The authorities are bound to complete the enquiry as early as possible and any undue delay when it constitutes abuse of power makes the order liable to be set aside. Whether the suspension of licence must be preceded by notice or opportunity must depend upon various factors such as, degree of urgency involved, the duration of suspension, the nature of the breach, public danger to be avoided, and other similar circumstances with warrant any immediate action where it is not feasible or possible or even advisable to give an opportunity to the holders of the licences before passing interim orders of suspension."

We do not, however, find any arbitrariness of exercise of power in excess or jurisdiction in the contextual facts as has been contended in support of the petition. There is neither any negligence nor there is any unreasonable exercise of discretion. As regards the issue of malice or mala fide, we have already recorded a negative finding on that score. Arbitrariness ought to have some factual support, but, unfortunately in the contextual facts mere is none. The concerned respondents have acted only for the purpose of the Act and not de hors the same. In the premises, question of the observations as recorded in

paragraph 45 of the Full Bench judgment having any relevance in the contextual facts does not arise.

31. While it is no doubt true that the powers vested on to the concerned authority ought not to be exercised in such a manner and method which can be ascribed to be a routine one, but in the contextual facts it does not so depict. Several notices were served on to the petitioners, one pertaining to violation of Rule 6 and the second in regard to the consumption of liquor in an of-licensed premises. As noted above, both these two issues require investigation and enquiry and in the event the Excise Officials think it proper to investigate and enquire, in our view, question of intervention of the law Courts on the plea of arbitrariness does not and cannot arise. Rule 6 of the Andhra Pradesh Excise Rule provides certain guidelines and in the event a licence which has already been issued said to be violating Rule 6, the power to enquire into the matter ought not to be thwarted by intervention of the law Courts. It is now a well settled principle of law that question of there being any fundamental right in the matter of carrying on business or trade as regards intoxicants does not arise and, as noted above, if the Excise Authorities are vigilant enough to require into some of the issues alleging some violation of conditions of licence, it is no part of the Court's duty to intervene or interfere with such an attempt, more so, by reason of the fact that moral values of the society shall also have to be preserved, as detailed above.

32. During the course of hearing, a faint attempt has been made that once the licence was granted and money was deposited, there is existing a promise by the Respondents that the licensee would be entitled to carry on the business without any interference. Strong reliance was placed on the decision of the Calcutta High Court in the case of Surendra Prasad Misra Vs. Oil and Natural Gas Commission, , wherein the Court held as below in Paragraph 18 of the Report:

"18. The law, therefore, is now well settled to the effect that where Government or a Governmental agency makes a promise knowing or intending that it would be acted upon by the promisee and if the promisee acting in accordance therewith and thereby alters his position, the Government or the Governmental Agency would be held to be bound by the promise and the promise would be enforceable against the Government or the Governmental agency at the instance of the promisee, notwithstanding that there is no consideration for the promise or that the promise has not been reduced to writing in the form of a contract as required under Article 229 of the Constitution. Government or the Governmental agency has a duty to the public in general to act fairly and reasonably so as to create a feeling amongst the general public that the latter would not be deprived of justice and fair play. This ought to be the most accepted methodology of any administration and contra belief or contra action on the part of the Government or the Governmental agency, would lead not only to a social catastrophe but violate the basic principles of rule of law. Fair play and justice ought to be the basic criterion on which a governmental agency should act. The concept of

justice and Rule of Law is not however a static one, but is ought to keep pace with the socio-economic changes in the country."

33. It is on this perspective also that the learned Advocate appearing in support of the writ petitions contended that there was, in fact, a legitimate expectation of the writ petitioners so as to be able to carry on the liquor business by reason of the grant of licence. In Halsbury's Laws of England (Vol.I(1)151) the doctrine has been stated as follows:

"81. Legitimate expectations :--A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice.

The existence of a legitimate expectation may have a number of different consequences; it may give locus standi to seek leave to apply for judicial review; it may mean that the authority ought not to act so as to defeat the expectation without some overriding reason of public policy to justify its doing so; or it may mean that, if the authority proposes to defeat a person's legitimate expectation, it must afford him an opportunity to make representations on the matter. The Courts also distinguish, for example in licensing cases, between original applications, applications to renew and revocations; a party who has been granted a licence may have a legitimate expectation that it will be renewed unless there is some good reason not to do so, and may therefore be entitled to greater procedural protection than a mere applicant for a grant."

34. Relying on the aforesaid explanation of the doctrine as above in Halsbury's Laws of England, Jayachandra Reddi, J., with utmost lucidity in the case of Union of India and others Vs. Hindustan Development Corpn. and others, stated (vide para 36):

"36. Legitimate expectations may come in various forms and owe their existence to different kind of circumstances and it is not possible to give an exhaustive list in the context of vast and fast expansion of the governmental activities. They shift and change so fast that the start of our list would be obsolete before we reached the middle. By and large they arise in cases of promotions which are in normal course expected, though not guaranteed by way of a statutory right, in cases of contracts, distribution or largessee by the Government and in somewhat similar situations. For instance in cases of discretionary grant of licences, permits or the like, carries with it a reasonable expectation, though not a legal right to renewal or non-revocation, but to summarily disappoint that expectation may be seen as unfair without the expectant person being heard. But there again the Court has to see whether it was done as a policy or in the public interest either by way of G.O., rule or by way of a legislation. If that be so, a decision denying a legitimate expectation based on such grounds does not qualify, for interference

unless in a given case, the decision or action taken amounts to an abuse of power. Therefore, the limitation is extremely confined and if the according of natural justice does not condition the exercise of power, the concept of legitimate expectation can have no role to play and the Court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the Court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the Legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the Court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. For instance if an authority who has full discretion to grant a licence and if he prefers an existing licence holder to a new applicant, the decision cannot be interfered with on the ground of legitimate expectation entertained by the new applicant applying the principles of natural justice. It can therefore be seen that legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. It would thus appear that there are stronger reasons as to why the legitimate expectation should not be substantively protected than the reasons as to why it should be protected. In other words, such a legal obligation exists whenever the case supporting the same in terms of legal principles of different sorts, is stronger than the case against it. As observed in Attorney General for New South Wales case (1990 (64) Aus LJR 327). "To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the Courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law". If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the Court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the Courts for the review of administrative action must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is "not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which shuts the Court out of review on the merits", particularly when the element of speculation and uncertainty is inherent in that very concept. As cautioned in Attorney General for New South Wales's case the

Court should restrain themselves and restrict such claims duly to the legal limitations. It is a well-meant caution. Otherwise a resourceful litigant having vested interests in contracts, licences etc., can successfully indulge in getting welfare activities mandated by a directive principles thwarted to further his own interests. The caution, particularly in the changing scenario, becomes all the more important."

35. Having considered the law on the subject as above, the issue arises however in the contextual facts as to whether the expectation of the petitioner has been reasonable or legitimate in the contextual facts since legitimate expectancy varies from person to person depending upon the facts and circumstances of each case. Be it noted, however, that the doctrine of legitimate expectation ought always to be thought of and considered in the larger public interest, which may, however, outweigh the individualistic expectation. In the contextual facts the liquor licence stands suspended pending enquiry by reason of an alleged violation of the conditions of licence. As noted above, law Courts ought to be cautious enough to approach the problem since the writ petitioners are dealers in intoxicants having due regard to the public interest and public morality. The larger public interest, therefore, ought to be focal point for consideration rather than individual expectation of continuance of licence. The observations of the Supreme Court in the case of *Union of India v. Hindustan Development Corporation and others* (supra) lends support to the observations as above. In that view of the matter, question of the action being barred under the doctrine of promissory estoppel or there being a legitimate expectation for continuance of the licence in the contextual facts does not and cannot arise. The Excise Authority deemed it expedient to make an enquiry in regard to certain alleged incidents and in regard to grant of certain licences where there are specific allegations of violations of the statutory provisions, in Particular Rule 6, question of the action of the State-respondents being barred by the Doctrine of Promissory Estoppel, in our view, cannot be sustained and we are unable to record our concurrence in regard thereto.

36. In fine it is to be noticed here that the licence in issue pertains to intoxicants which cannot, by any stretch, be termed to be a requirement of the society since intoxicating liquors are inherently harmful to individuals consuming them and to the society as a whole and it can even be prohibited the law as declared by the Supreme Court in the case of *State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.*, , expressly negated the existence of fundamental right in the liquor trade and as such the law Courts while dealing the matter ought to consider the same in its proper perspective and not as a matter of ordinary trade. The law Courts ought to use proper circumspection and only in the case of a reasonable certainty an intervention can be had but not otherwise since it is positively dangerous to the society at large. Persons in authority are supposed to be knowing of this requirement of the society and as such in any event some laxity in regard thereto ought to be had in the matter of grant or continuation or suspension or cancellation of a liquor licence.

37. In that view of the matter, the appeals succeed and the writ petitions are dismissed. This order however, will not prevent the concerned authority under the law to dispose of the pending representations, including applications for shifting, inaccordance with law, within a period of three weeks from the date hereof. To expedite the issue, however, the parties would be at liberty to forward the copies of the representations to the appropriate authority within a period of one week from the date hereof.

38. It is further ordered that whilst there should be any embargo in the matter of conducting an enquiry in terms of the provisions of the Act, the proposed enquiry should be completed, if not already completed, with utmost expedition and preferably within a period of six weeks from the date hereof and the matter be finally dealt with in accordance with law upon completion of such enquiry immediately thereafter. The urgency of the situation is emphasized by reason of the submissions of irretrievable prejudice to the writ petitioners.

39. Let it be placed on record that during the course of hearing the learned Advocate General upon instructions submitted that in the event, the licensees are desirous of obtaining refund of the licence fee, the Government is prepared to refund. In that view of the matter, having due regard to the submissions made as above, we do feel it expedient to direct that in the event of there being applications for refund, the same be dealt with utmost expedition and refund be effected within a period of four weeks from the date of such applications. Let it be clarified however, that the applications for refund pertain to Rule 6 violations.

40. There shall be no order as to costs.