(1983) 01 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 321 of 1982

The Citizens of Simla	APPELLANT
Vs	
State of H.P. and Others	RESPONDENT

Date of Decision : 14-01-1983

Acts Referred:

Constitution of India, 1950 — Article 226, 298, 37, 47
Himachal Pradesh General Clauses Act, 1968 — Section 2(12)
National Highways Act, 1956 — Section 2, 2(1), 3
Punjab Excise Act, 1914 — Section 13, 34, 35, 36, 58
Punjab Excise Powers and Appeal Orders, 1956 — Order 2
Punjab Intoxicants Licence and Sales Order, 1956 — Order 8
Punjab Liquor Licence Rules, 1956 — Rule 18, 36(3), 36(4)

Citation : (1983) 12 ILR HP 5

Hon'ble Judges : Vyas Dev Misra, C.J;V.P. Gupta, J

Bench : Division Bench

Advocate : D.K. Khanna, K.D. Sud and Bhawani Singh, for the Appellant; Indar Singh, General, Kedar Ishwar, Chandershekhar, Arun Kumar Goel and Deepak Gupta, for the Respondent

Judgement

V.D. Misra, C.J.—A letter was received by this Court purporting to be from the residents of Shimla. It was complained that the State has granted and set-up liquor vends in Simla and other places in violation of the State''s declared policy. It was averred that most of the liquor vends are practically next to educational institutions, places of worship, hospitals, and defined labour and harijan colonies. It was stated that they were afraid to come to the Court by way of a regular writ petition because "the moment we will do so we are sure that the Alcohol Kings would storm our business and residences and make our and our children''s life miserable both under intoxication and with the influence of their purses and the army of goondas at their back and call." It was also stated: "in the past few years numerous instances of shop breaking, window smashings, incidents of student fightings under influence of liquor, eve-teasing, destroying the calm atmosphere at Simla and making movements of citizens as also visitors in Simla after sun-set are numerous which the authorities refuse to take notice. On 30-11-1982 fresh incident took place when the. goondas smashed the doors etc. of Embassy Restaurant on the Mall, Simla, at 9.00 p.m." This letter was converted into a civil writ petition. At our request S/Shri D.K. Khanna, Kapil Dev Sood and Bhawani Singh, Advocates, agreed to appear for the residents of Shimla. Notice was issued to the State calling upon it to give full details of the liquor vends at places mentioned in the letter. The State was also directed to disclose the names of the proprietors of these vends. The State gave a list of some of the liquor vends. Notices were issued to the proprietors of these vends. The State as well as the proprietors of the vends in question have filed their returns.

2. The State in its return again enclosed a list of various vends. There are 14 vends in Simla Town; 39 vends in the Simla district excluding the town; 8 vends in District Chamba; one in District Una; 14 vends in District Mandi; 17 in District Solan; 9 in District Sirmur; and 7 in District Bilaspur. This list (Annexures R-1, R-2, and R-3) shows the distance of every vend from educational institutions and places of worship etc. It also shows the vends which are situated on the national highway. A very great majority of liquor vends are within 200 yards from educational institutions, places of worship, hospitals, and defined labour and harijan colonies. One of the liquor vends (at SI. No. 4 of Annexure R-1) is only 22 yards from the school. Another liquor vend (at serial No. 5 of Annexure R-1) is only 28 yards from the school. Many vends are hardly 40 to 60 yards from the places of worship. Numerous vends are on the national highway. Some are near recognised labour colonies.

3. Before we discuss the contentions raised before us, we may straightaway notice the stand of the State. The State does not deny that the defaulting vends are situated at places where they should not be according to the declared policy of the State. But their location is justified "in the larger interest of Government revenue as the excise revenue is also a major source of income of the H.P. State exchequer which are utilised towards various developmental and welfare programmes of the State." The return is based on the affidavit of Shri B.K. Kapoor, Under Secretary (Excise and Taxation) to the Government of Himachal Pradesh, Simla. It is prayed in the return that "the request of the Petitioners may be rejected in larger public interest and much needed revenue to the State Government."

4. The Punjab Excise Act, 1914, the Punjab Liquor Licence Rules, 1956, the Punjab Intoxicants Licence and Sale Orders, 1956, as well as the Punjab Excise Powers and Appeal Orders, 1956, have been made applicable to the State of Himachal Pradesh. The relevant provisions relating to the grant of licence may be noticed. Chapter 6 of the Act deals with Licenses, Permits and Passes. Section 34 inter alia lays down that every licence under this Act shall be granted (a) on payment of such fees, if any; and (b) subject to such restrictions and conditions, as the Financial Commissioner may direct. The licences are granted u/s 35 of the

Act. It reads:

"35. Grant of Licences for sale.- (1) Subject to the rules made by the Financial Commissioner under the powers conferred by this Act, the Collector may grant licences for the sale of any intoxicant within his district.

2. Ascertainment of public opinion.- Before any licence is granted in any year for the retail sale of liquor for consumption on any premises which have not been so licensed in the preceding year, the Collector shall take such measures, in accordance with rules.

3. A licence for sale in more than one district of Punjab (Himachal Pradesh) shall be granted by the Financial Commissioner only."

5. Section 36 empowers the authority granting any licence subject to such restrictions as the State Government may prescribe to cancel or suspend the licenses, inter alia, for breach of any of the terms or conditions of the licence. Section 58 empowers the State Government to make rules for the purpose of carrying out the provisions of the Act as well as for implementing generally the policy of prohibition. But Section 13 empowers the State Government to delegate its powers under the Act to the Financial Commissioner except those mentioned in this section. The State Government may also permit the delegation by the Financial Commissioner, Commissioner or Collector to any person or class of persons specified in the notification. The Excise and Taxation Commissioner, admittedly, has issued the Announcements under the law.

6. The Rules lay down various classes of licences as well as their mode of grant and the authorities to grant and renew them. We are in this case concerned with L-2, L-3, L-4, L-5, L-10, L-14, and L-14-A. L-2 relates to "wholesale and retail vend of foreign liquor to the public." L-3 relates to "retail vend of foreign liquor in a hotel or dak bungalow." L-4 relates to "retail vend of foreign liquor in a restaurant." L-5 relates to "retail vend of foreign liquor in a bar attached to a restaurant (supplementary to Form L-4)." L-10 relates to "retail vend of beer for consumption on and off the premises." L-14 relates to "retail vend of country spirit for consumption on and off the premises." L-14-A relates to "retail vend of country spirit for consumption off the premises." The rules also lay down the method of auction. Rule 36 deals with the procedure for the grant of licences by auction. It is provided that before the auction the Presiding Officer will read out the notice and conditions to which the auction shall be subject. Order 8 of the Punjab Intoxicants Licence and Sale Orders, 1956 requires the Collector to take all reasonable steps to ascertain the opinion of persons, who reside or have property in the neighbourhood and are likely to be affected by the proposal when it is proposed to grant a licence for the retail vend of liquor for consumption on any premises which were not licensed in the preceding year. Then follows the Orders which require the Collector to consult various authorities and the method of dealing with the objections. Under Order 2 of the Punjab Excise Powers and Appeal Orders, 1956, all the Deputy Excise and Taxation Commissioners have

been appointed to discharge the functions of a Collector under the Act throughout the districts under their respective charges except the powers u/s 79 of the Act. Licences L-2, L-14, and L-14-A are being granted by auction every year.

7. The Excise and Taxation Department of the Himachal Pradesh published the Announcements, Excise Auction, 1982-83 (referred to as the Announcements). These were made at the time of the auction of the excise licences for the retail vends of country liquor, foreign liquor, beer, and country fermented liquor in Himachal Pradesh for the financial year 1982-83. We may now notice some of the relevant clauses of these Announcements:

"1. All liquor licences whether for wholesale or retail sale shall be granted under these Announcements and shall be subject to the provisions of the Punjab Excise Act (1 of 1914) as in force in Himachal Pradesh and Rules framed there under from time to time. A licensee shall be himself responsible for fulfilling any other obligation under any other law, not specifically mentioned in these Announcements.

21. The licensees shall have to make their own arrangements for procuring liquor and also for suitable vends (shops) to carry on their business in the localities for which particular licences are sanctioned. It will be obligatory on the part of the licensees to get the premises and the name of the salesman approved before starting the shops. The premises will be within specific locality or Revenue Estate where the location is not further specified for which such licences are auctioned/ sanctioned, but licensees cannot claim that the new premises should remain restricted within the area and premises in which the shops had been functioning previously. In case the licensee/bidder fails to arrange premises for the shops to the satisfaction of the Deputy Excise and Taxation Commissioner of the zone, he shall be liable to pay the entire amount of bid money and any other loss of Government revenue, even if the business is not carried on.

23. The licensed vendors shall at no time advertise sale of liquor by its exhibition to public or by announcing it on loud-speakers, or in any other manner. The display of liquor bottles or their containers in the sale windows is also prohibited.

24. The liquor shops in Simla Town will have to be located in the premises which may be provided by the Municipal Corporation for the purposes subject to the approval of the Deputy Excise and Taxation Commissioner (Collector) of the zone failing which the liquor licensees will make their own arrangement for housing the liquor shops. In case the premises/stalls are provided by the local bodies/ panchayats in other places, the liquor vends will have to be housed in same premises/stalls subject to the approval of the respective Deputy Excise and Taxation Commissioner (Collector). No compensation or any kind of relief for shifting such premises will be allowed to liquor licensees. The orders/directions of the Excise and Taxation Commissioner, and the Deputy Excise and Taxation Commissioner (Collector) of the zone concerned will be binding on the liquor

licensees. It will be obligatory on the licensees to get the premises approved in writing from the respective Deputy Excise and Taxation Commissioner (Collector) of the zone concerned.

77. All licensed premises of country liquor, foreign liquor and country fermented liquor shall be located at a distance of 200 yards from the places of worship, educational institutions, hospitals, defined labour and harijan colonies, development industrial and irrigation projects. If for exceptional reasons it is not found feasible to adhere to the distance of 200 yards, a certificate should be obtained in the case of .educational institutions both from the Deputy Commissioner and the District Education Officer and in other cases from the Deputy Commissioner. The Excise and Taxation Commissioner/Deputy Excise and Taxation Commissioner of the zone may within his discretion, order the shifting of any liquor shop from the existing places to reasonably distant place(s) in the locality and/or revenue estate and in such cases the liquor licensees shall be bound to arrange for shifting the liquor vend(s) within a period as may be fixed by the Excise and Taxation Commissioner or the Deputy Excise and. Taxation Commissioner of the zone. No claim for compensation of this account will be entertained in any case. Failure to comply with such orders will render the licensee liable for cancellation of the licence and its reauction at his risk.

78. The liquor vends situated on the National Highways may be shifted away from the National Highways. However, the vends shall not in any way be conspicuous from the National Highway in any case.

(emphasis supplied).

8. It is not disputed before us that the vends which are less than 200 yards from educational institutions, places of worship?, hospitals, recognised labour or harijan colonies, etc., have not been granted any certificate by the Deputy Commissioner, and the District Education Officer (in case of educational institutions). In other words, admittedly all such vends have been opened and are being run at places in contravention of Clause 77.

9. We may straightaway dispose of one of the contentions advanced on behalf of the vendees contravening clauses 77 and 7$. It is,contended that some of the dafauiting vends are located ia the premises in which the vends were run previously, and, therefore, axe not bound to comply with clauses 77 and 78. It has been pointed out that these vendees have got an approval of the Deputy Excise and Taxation Commissioner. It is contended that this approval in terms of Clause 24 is sufficient compliance. It is submitted that such approval amounts to either the necessary sanction under Clause 77 or because of this approval no certificate under Clause 77 is necessary.

10. It may be recalled that vends are auctioned with respect to locality or Revenue Estate and licensees cannot claim that the new premises should be restricted within the area and premises in which the shops had been functioninp. Previously (Clause 21). In other words, simply because a vend was being run in

a premises or in a locality in contravention of the Announcements, does not mean that a licensee has a right to run the vend at the same premises. It is not disputed that the policy may change every year and the vends which are auctioned for one year have to comply with the conditions of auction for the year concerned. Moreover, a licensee is not bound to run the end at the premises in which it was being run in a previous year. Therefore, a licensee cannot be heard to say that he is not bound with the conditions of auction contained in the Announcements since all licences have been granted under these Announcements (Clause 1).

11. It is true that the Deputy Excise and Taxation Commissioner has been invested with the powers of Collector Excise under the Punjab Excise Act. However, by no stretch of imagination he becomes a Deputy Commissioner from whom the requisite certificate is required in terms of Clause 77. The Himachal Pradesh General Clauses Act by Section 2(12) defines ''Deputy Commissioner'' to mean "the Chief officer-in-charge of the general administration of a District." Therefore, this contention has to be rejected straightaway. We find that Clauses 24 and 77 are independent of each other. The purpose of Clause 77 is obviously public welfare by keeping the vends away from the places mentioned therein. This clause is imperative in its nature. The only exception, of course, is that with the certificates of the Deputy Commissioner and also of the District Education Officer in the case of vends which are within 200 yards from the educational institutions, and in other cases of the Deputy Commissioner, the vends can be run within 200 yards of such places. These certificates are neither mere formalities nor to be granted in routine. Exceptional reasons have to be given by these authorities while granting certificates keeping in view the public welfare. It may be noticed that what is required is not only the reasons but it is essential that these have to be exceptional also. Needless to say that these will be open to judicial review since these authorities, who are part and parcel of the State executive may not start doling out the certificates in furtherance of the policy of the State to raise the maximum revenue at all costs. The functions of the Deputy Excise and Taxation Commissioner, under Clause 22, and those of the Deputy Commissioner as well as the District Education Officer are entirely different. It is possible that even if the certificates are given under Clause 77, the Deputy Excise and Taxation Commissioner may not approve of the premises. Approval of a premises is one thing! but the location of a premises is entirely a different matter. Clause 77 deals with the location of a premises whereas Clause 22 deals with the approval of a premises.

12. As regards the vends situated on the national highways, the only defence put forward in respect of some of the vends is that the highway ceases to be a highway when it passes through a municipal area. Under the National Highways Act, 1956, the national highway No. 22 is mentioned at serial No. 14 of the Schedule to Section 2 of the Act. The description of this highway is "the highway connecting Ambala, Kalka, Simla, Narkanda, Rampur and Kalpa and proceeding to the border between India and Tibet (now China), near Shipkila." We are

concerned only with this highway since the information given to us is only in respect of this highway. Section 2 of this Act relates to declaration of certain highways to be national highways. Sub-section (1) (with which we are concerned) reads:

"Each of the highways specified in the Schedule except such parts thereof as are situated within any municipal area is hereby declared to be national highway."

Section 3 defines "municipal area" to mean "any municipal area with a population of twenty thousand or more the control or management of which is entrusted to a municipal committee, a town area committee, a town committee or any other authority." The return of the State showing the vends situated on the national highway has to be accepted since it is not enough that the highway is passing through a municipal committee or a town area committee since the population of that particular area has to be twenty thousand or more. There is nothing on the record before us to show that the return of the State showing these vends as being on the national highway is incorrect in any manner.

13. Mr. Inder Singh, learned Advocate-General, contends that by granting licence to the owners of the vends, the State had entered into a contract; conditions contained in the Announcements of excise auctions are only conditions of contract, and, therefore, this Court cannot enforce the contractual obligations on the owners of the vends. It is submitted that the citizens have no right to challenge the validity of the contract or its breach and, therefore, have no remedy. The only remedy, according to the learned Adv. General, is the public opinion which is expressed at the time of the Elections. He refers to various decisions which we will now refer.

14. In Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, the liquor contractors and hoteliers challenged the demands made upon them by the Department of Excise and Revenue, Government of Punjab. They were the retail vendors of the country liquor holding licenses for the sale of liquor in specified vends. The licences were granted to them on acceptance of their bids in the auctions held by the Excise Department. The Court ruled that the bids given by the Petitioners constituted offers and upon their acceptance by the Government a binding agreement came into existence between the parties; the conditions of auction became the terms of the contracts; and it is on those terms that the licences were granted to the successful bidders. It was further ruled that a writ petition is not a remedy for impeaching contractual obligations. In our opinion the State cannot derive any help from this judgment. As is obvious from the facts narrated above, one party to the contract had invoked the extraordinary jurisdiction of the Court under Article 226 of the Constitution to wriggle out of the terms of the contract. In the case before us, the Petitioners are not parties to the contract. Indeed the contracting parties, as we will presently discuss, do not want to enforce the obligations under the contract and both are opposing the present petition.

15. The next cases cited by Radhakrishna Agarwal and Others Vs. State of Bihar and Others, and the The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others, Again these decisions also have no relevance to the present case. In the first case the State had entered into a contract with the Petitioner. The latter came to the court complaining breach of a term of the contract. It was held that no writ or order could be issued under Article 226 of the Constitution to compel the authorities to remedy the breach of a contract pure and simple. In the second case the Petitioner was also asking for a writ of mandamus to direct the Government to execute the lease in his favour in respect of the fishery rights. It was observed that in order that a writ of mandamus may be issued to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. It was further observed, "ail that is sought to be enforced is an obligation following from a contract which, as already indicated, is also not binding and enforceable."

16. It is also contended by Mr. Inder Singh that before a writ of mandamus can be issued, it is the duty of the persons asking for the writ to call upon the authorities concerned to discharge its legal functions. He cites State of Haryana and Another Vs. Chanan Mal and Others, We find that in this case it was observed that "any Petitioner who applies for a. writ or order in the nature of a mandamus should, in compliance with a well-known rule of practice, ordinarily, first call upon the authority concerned to discharge its legal obligation and show that it has refused or neglected to carry it out within a reasonable time before applying to a court for such an order even where the alleged obligation is established." It is obvious that the above is not a hard and fast rule but it will depend on the facts and circumstances of each case where the Petitioners must call upon the authorities concerned to discharge its legal obligation.

17. Now, the Supreme Court in the case of Har Shankar (supra), after reviewing all the existing decisions, ruled that there is no fundamental right to do trade or business in intoxicants, and that the rights in regard to intoxicants belong to the State which it can part for a consideration and on such terms as the State deems expedient. The governmental control was described thus; "This power of control is an incident of the society''s right to self-protection and it rests upon the right of the State to care for the health, morals and welfare of the people." It was also observed that by Article 298 of the Constitution, the executive power of the State extends to carrying of any trade or business and to making of contracts for any purpose.

18. Rule 36 of the Punjab Liquor Licence Rules lays down the procedure for grant of licences by auction. The Collector (as we have already noticed the Deputy Excise and Taxation Commissioner have been appointed to discharge the functions of the Collector under the Punjab Excise Act), under Sub-rule (3) of Rule 36, is required to give timely notice of the date and place of auction. Sub-rule (4) requires the Presiding Officer to read out the notice and conditions to

which the auction shall be subject. It is not disputed before us that the Announcements were read nut at the time of auction and the licences issued to the licensees. On the acceptance of their bids, are subject to the conditions of the Announcements. Though these amount to conditions of a contract between the State and the licensees, these also have a statutory force as having been made in exercise of the powers given by the statute. The citizens, who are not a party to the contracts, are directly affected by the abuse of the powers of the executive in refusing to enforce these conditions.

19. A Division Bench of this Court in Percy Chauhan v. State and Anr. ILR 1979 H.P. 35, held that Nautor Rules, which were only executive instructions, could not be ignored and that the breach thereof would create a right to get redress from the corrt under Article 226 of the Constitution.

20. In Anil Nag v. State of H.P. and Ors. ILR 1978 H.P. 667, a Division Bench of this Court held that the rules published in the prospectus of the Medical College are binding in nature and a breach thereof would be the subject-matter of a petition under Article 226 of the Constitution.

21. It is common to ask relief against the doings and misdoings of the executive. But its n on-doings can also give rise to action. These are as much actionable as their positive acts. These can also cause injury. The State cannot take shelter under the plea that the matter is between it and the owners of the vends. It. cannot say that it is its sweet will to enforce its policy or refuse to do so. It cannot say that as long as the end is fair, the means do not matter. For a responsible Government means should be as important as the end. While the Announcements for the excise auction declare the State policy to save the students and others by insisting on the vends being at least two hundred yards away, and no vend being conspicuous on the national highways, it cannot thereafter throw its policy to the winds and shut its eyes to the licensees committing flagrant violation of the terms of the licences. We have no reason to suspect that such a laudable policy for the good of society was merely an eye wash and was meant to fool the public. The policy of keeping the vends away from the national highways was to ensure the safety of the public from motor vehicle accidents. This State has admittedly the highest rate of motor vehicle accidents in the country. The alcohol is suspected to be one of the main causes of these accidents. It is intriguing indeed to find the State conniving at the breach of its own rules. It seems that the lust for money has over-clouded all reasons.

22. It is true that the Directive Principles of the State Policy, enshrined in Part-IV of the Constitution of India are not enforceable by any court. However, these principles have been declared to be fundamental in the governance of the country and a duty has been cast on the State to apply these principles in making laws (Article 37). It is Article 47 which enjoins upon the State to bring about prohibition of the consumption of intoxicating drinks. This State in its wisdom has continued to increase the number of vends and make the intoxicating drinks more popular. It appears that the aforementioned restrictions

contained in the Announcements are not being enforced with the same end in view. It may be that the revenues of the State have to have predominance over the Directive Principles.

23. In the instant case there has been an abuse of the executive power. The Deputy Excise and Taxation Commissioner has proceeded to approve the premises at places in violation of the declared policy of the State contained in condition No. 77 of the Announcements. It was his duty to ensure that the location of the premises does not violate the conditions of the Announcements. Only after he had ensured compliance of other conditions of the Announcements, he should have proceeded to apply his mind whether the premises should be approved in terms of condition No. 24 of the Announcements. It was also the duty of the Excise and Taxation Commissioner and others to take action against the vends which were not abiding by the conditions of the Announcements. The failure of these authorities to perform their duties properly has affected the public morality. Not only the students, who are of impressionable ages and have been exposed to the temptation of liquor, have been harmed, but the religious sentiments of the public at large have also been injured by allowing these vends near to the places of worship. The presence of the vends on the national highways has already been suspected to be the cause of the motor vehicle accidents which have already taken lives of many innocent persons.

24. We may, at this stage, also notice a grievance. It is this. The excise officials have allowed the vends to violate with impunity condition No. 23 of the Announcements by allowing the vendors to display liquor bottles in the show windows. We may take judicial notice of the fact that the vends on The Mall openly display the liquor bottles in their show windows. The Mali of Simla is a place where all the officers of the State are likely to walk and no one can miss the shops. It may be that the excise officials do not see any evil (if the evil is the bottles) or do not see any evil in the display of these bottles.

25. Mr. Inder Singh has vehemently contended that the Petitioners have no locus standi and we should, throw out the petition on this simple ground. It is also contended that no mandamus can be issued because no duly has been cast by the statute on the excise authorities

26. S.A. de Smith in "Judicial Review of Administrative Action", third edition, on page 480 under the heading ''The Order of Mandamus'' writes:

"The dramatic evolution of the prerogative writ of mandamus as a device for securing judicial enforcement of public duties is outlined in an Appendix. Speaking in 1762, Mansfield observed that within the past century it had been ''liberally interposed for the benefit of the subject and advancement of justice.'' It was introduced, to prevent disorder from, a failure of justice, and defect of police. Therefore it ought to be used upon all occasions where the law has established no specific remedy, and wherein justice and good government there ought to be one.

X X X X X To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract.

X X X X X Again distinctions between duties to act lawfully and duties not to act unlawfully may be very fine. It is probable, for example, that the Minister of Posts and Tele-communications would be able to obtain a mandamus to compel the Independent Broadcasting Authority to comply with a notice issued by him, requiring it to refrain from broadcasting matter specified therein. Lines can doubtless be drawn, but it is unsatisfactory that mandamus may be refused on the basis of narrow technicalities when the merits of a case demand the award of a remedy."

27. H.W.R. Wade in "Administrative Law", fourth edition, on page 597 describes the nature of the remedy by a mandamus. He writes:

"The prerogative remedy of mandamus has long provided the normal means of enforcing the performance of public duties by public authorities of all kinds. Like the other prerogative remedies, it is normally granted on the application of a private litigant, though it may equally well be used by one public authority against another. The commonest employment of mandamus is as a weapon in the hands of the ordinary citizen, when a public authority fails to do its duty by him. Certiorari and prohibition deal with wrongful action mandamus deals with wrongful inaction. The prerogative remedies thus together cover the field of governmental powers and duties.

X X X X X Within the field of public law the scope of mandamus is still wide and the court may use it freely to prevent breach of duty and injustice:

''Instead of being astute to discover reasons for not applying this great constitutional remedy for error and misgovernment, we think it our duty to be vigilant to apply it in every case to which, by any reasonable construction, it can be made applicable.''

R.V. Hanley Revising Barrister (1912) 3 K.B. 518 at 529. For the sake of this principle technical difficulties may be overcome. The court can, for example, order the fulfilment of a duty even though a statutory time limit for its performance has expired; and if the defaulting officer has been replaced by a successor, the latter may be order to make good his predecessor''s default."

On page 611 he writes:

"Furthermore, the courts now seem to have prepared the way for allowing standing to an applicant whose interest is no greater than that of other people generally, and who may come before the court in the guise of a public-spirited citizen concerned to see that the law is obeyed in the interests of all. The court of Appeal showed itself clearly in favour of this use of mandamus in the proceedings brought against the police in which it was sought to compel them to take more effective action to enforce the law against gaming clubs and pornography."

28. As regards the question of locus standi, this is no more res Integra since the Suprerm Court in numerous cases has laid down the scope of public interest litigation. We need only to refer to the Supreme Court judgment in S.P. Gupta v. Union of India and Ors. 1981 SCC 87. On page 213 of the report, Bhagwati, J., observed:

"There is also another reason why the rule of locus standi needs to be liberalised. Today we find that law is being increasingly used as a device of organised social action for the purpose of bringing about socio-economic change. The task of national reconstruction upon which we are engaged has brought about enormous increase in developmental activities and law is being utilised for the purpose of development, social and economic. It is creating more and more a new category of rights in favour of large sections of people and imposing a new category of duties on the State and the public officials with a view to reaching social justice to the common man. Individual rights and duties are giving place to meta-individual, collective, social rights and duties of classes or groups of persons. This is not to say that individual rights have ceased to have a vital place in our society but it is recognised that these rights are practicably meaningless in today''s setting unless accompanied by the social rights necessary to make them effective and really accessible to all. The new social and economic rights which are sought to be created in pursuance of the Directive Principles of the State Policy essentially require active intervention of the State and other public authorities. Amongst these social and economic rights are freedom from indigency, ignorance and discrimination as well as the right to a healthy environment, to social security and to protection from financial, commercial, corporate or even governmental oppression. More and more frequently the conferment of these socio-economic rights and imposition of public duties on the State and other authorities for taking positive action generates situations in which a single human action can be beneficial or prejudicial to a large number of people, thus making entirely inadequate the traditional scheme of litigation as merely a two-party affair. For example, the discharge of effluent in a lake or river may harm all who want to enjoy its clean water; emission of noxious gas may cause injury to large numbers of people who inhale it along with the air; defective or unhealthy packaging may cause damage to all consumers of goods and so also illegal raising of railway or bus fares may affect the entire public which wants to use the railway or bus as a means of transport. In cases of this kind it would not be possible to say that any specific legal injury is caused to an individual or to a determinate class or group of individuals. What resultsn such cases is public injury and it is one of the characteristics of public injury that the act or acts complained of cannot necessarily be shown to affect the rights of determinate or identifiable class or group of persons; public injury is an injury to an indeterminate class of persons. In these cases the duty which is breached giving rise to the injury is owed by the State or a public authority not to any specific or determinate class or group of persons, but to the general public. In other words, the duty is one which is not correlative to any individual rights. Now if breach of such public duty were allowed to go unrepressed because there is no one who has received a specific legal injury or who was entitled to participate in the proceedings pertaining to the decision relating to such public duty, the failure to perform such public duty would go unchecked and it would promote disrespect for the rule of law. It would also open the door for corruption and inefficiency because there would be no check on exercise of public power except what may be provided by the political machinery, which at best would be able to exercise only a limited control and at worst, might become a participant in misuse or abuse of power. It would also make the new social collective rights and interests created for the benefit of the deprived sections of the community meaningless and ineffectual."

29. We have, therefore, no hesitation in rejecting the contention of the Adv. General that the present Petitioners have no locus standi. We have already dealt with the nature of the Announcements and the duties of the executive.

30. Since the Announcements are applicable to the auction of the vends, therefore, only these licensees have violated conditions Nos. 77 and 78 of the Announcements. In the case of licences granted to clubs, restaurants and hotels, the question of their violating the conditions of the Announcements does not arise. We, therefore, direct the closure forthwith of all the vends for ''which licences were granted as a result of their successfully bidding fat the excise auction, and which are violating conditions Nos. 77 and 78 of the Announcements as shown by Annexures R-1 to R-3 filed by the State. It is, of course, clarified that these vends can function at such premises which are located at a distance of more than 200 yards from the places of worship, educational institutions, hospitals, defined labour and harijan colonies, development industrial and irrigation projects; and are not conspicuous from the national highway.

31. While parting with the case, we must record our thanks to the lawyers who had willingly come forward to appear in support of this petition.

