(1974) 12 SHI CK 0019

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 80 of 1974

Tiloksons Brewery and Distillery and Another APPELLANT

Vs

State of Himachal Pradesh etc. RESPONDENT

Date of Decision : 20-12-1974

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1), 19, 19(1), 19(6)
Punjab Excise Act, 1914 — Section 27, 27(1)

Citation : (1975) 4 ILR HP 1

Hon'ble Judges : R.S. Pathak, C.J;D.B. Lal, J;C.R. Thakur, J

Bench : Full Bench

Advocate : S. Malhotra, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, C.J.—This writ petition has come before me on a difference of opinion between D.B. Lal, J. and C.R. Thakur, J. on the following four questions framed by them:

1. Whether a fresh notice was required to be given to the Petitioners and others, inviting tenders from them for supply of liquor, before the Respondents 1 and 2 could accept the tender of the Respondent No. 3 ?

2. Whether the decision of the Respondents 1 and 2 rejecting the tender of the petitioners as against the tender of the Respondent No. 3 can be questioned in these proceedings on any ground alleged by the petitioners ?

3. When all the six tenders received were incomplete or deficient, were not the Respondent 1 and 2 at liberty to arrange for supply in any manner they deemed fit, including acceptance of the tender of the Respondent No. 3 ? Did they violate any statutory provision, or infringe any fundamental right of the petitioners, or disregard any rule of natural justice so that their action can be struck down ? and

4. Whether Articles 14 and 19 of the Constitution were violated, and if so, what

reliefs should be granted to the petitioners ?

2. The Excise and Taxation Commissioner, Himachal Pradesh, invited tenders for granting a lease for supplying country liquor, by his letter dated December 22, 1973, from a number of possible suppliers, including the petitioner. It was intimated that the quotations should reach on or before January 1, 1974, positively, failing which it would be presumed that the party was not interested in making supplies. One of the conditions for the grant of the lease was the willingness of the party to make a deposit of a security of Rs. 1,00,000/-. A number of persons offered quotations. The petitioner was one of them. Admittedly the petitioner did not offer to deposit Rs. 1,00,000/- in cash as security, but he intimated his willingness to deposit Rs. 20,000/- in cash and for the balance he was prepared to pledge immovable property situated at Nahan. The Respondents Nos. 1 and 2 say that the tenders made by the several parties, including the petitioner, were invalid. From a perusal of the official record placed before me it appears that the entire matter was under serious consideration with the Respondents Nos. 1 and 2 right upto March 1974. On March 11, 1974, the Respondent No. 3 informed the Government that it was prepared to make supplies and to deposit the security either in cash or by bank guarantee. The Government accepted the offer and granted the lease to Respondent No. 3. The petitioner is aggrieved by the rejection of his offer, and the grant of the lease to Respondent No. 3.

3. The case raises two questions in the main. One question is whether the petitioner''s offer was validly rejected. If the rejection is invalid, plainly the lease in favour of Respondent No. 3 must be quashed and the Government must be directed to consider the offer of the petitioner again. In case it is held that the offer of the petitioner has been validly rejected, the second question is whether before granting the lease in favour of Respondent No. 3 it was incumbent on the Respondents Nos. 1 and 2 to take fresh proceedings calling for tenders again from possible suppliers.

4. So far as the first question is concerned, it is clear that there were relevant reasons for rejecting the petitioner''s offer. In the first place, the petitioner did not agree to furnish the security of Rs. 1,00,000/-in cash. When the condition required a deposit of a security of Rs. 1,00,000/-, it necessarily referred to the deposit of cash security. To comply with the condition a supplier seeking the grant of the lease had to agree to making a deposit of Rs. 1,00,000/- in cash. Furnishing the security partly in the shape of immovable (property and partly in cash does not amount to compliance. The Respondents Nos. 1 and 2 arte right in the view that the petitioner should have ag reed to deposit a sum of Rs. 1,00,000/- in cash, and inasmuch as he did not express his willingness to do so he cannot be said to have made a valid offer. In the second place, the Government had received complaints in regard to the quality of the liquor supplied by the petitioner on other occasions when he had warehouse licenses. A lease for the supply of liquor is granted for ensuring a reliable supply to liquor

licensees for sale to the public. That requires that the quality of liquor supplied should be fit for human consumption. It cannot be denied that if liquor of inferior or doubtful quality is consumed, it presents a grave and dangerous hazard to human health. For this reason the greatest emphasis is laid on the quality of the liquor to be supplied. The official record produced before me shows that a number of complaints were made concerning the quality of liquor supplied by the petitioner. The quality of liquor supplied by the petitioner in the past is a legitimate factor for determining whether a lease should be granted to him for the future. Other factors taken into consideration by the Respondents Nos. 1 and 2 include the circumstance that the petitioner did not possess any brewery or distillery which could ensure an uninterrupted supply of quality liquor, as well as the circumstance that a case under the Excise Act had been registered against him. It seems to me, after considering the allegations contained in the return and the replies made thereto in rejoinder by the petitioner, that the material on the record could reasonably form the basis of a decision to reject the petitioner''s offer.

The next question is whether the Government is bound to invite fresh tenders before considering the offer made by the Respondent No. 3. Now, the Respondents Nos. 1 and 2 applied a process of elimination and first removed from consideration those who, like the petitioner, could not even on prima facie consideration be granted a lease. The field was narrowed down to those who constituted a real possibility for the grant. It was at this time, in March 1974, that the Respondent No. 3 made its offer. That offer was found to be most suitable and was accepted. Having regard to the material on the record, it cannot be said that the Respondents Nos. 1 and 2 acted unreasonably in accepting the offer.

5. It is apparent that the entire process, from the initial consideration of the tenders to the decision accepting the offer of the Respondent No. 3, formed a single continuous process. The only feature of note is that whereas the other parties made their offers by January 1, 1974, the Respondent No. 3 made his offer in March 1974. There was no change in. the mode adopted for granting the lease. The mode continued to be the inviting and consideration of tenders. Therefore, no question arises, in my opinion, of the Respondents Nos. 1 and 2 having first decided upon inviting tenders, and then abandoning that mode and entering into direct negotiation with a single party alone. The impression to the contrary has been created by the condition in the letter dated December 22, 1973, that the offers should reach by January 1, 1974, positively. The facts show that the offer made by Respondent No. 3 was considered along with the tenders submitted earlier. It was not a separate and distinct process. In as much as it was the same process, I am unable to see why fresh notice was necessary to the petitioner.

6. It is then contended for the petitioner that the offer made by Respondent No. 3 could not be considered as it was made after January 1, 1974. It is urged that

the date constituted a mandatory condition binding on the Respondents Nos. 1 and 2. I am unable to construe it so. Paragraph 5 of the letter, which sets out the requirement, does not say that an offer made after January 1, 1974, will not be considered. It merely emphasised for the purpose of conveniently considering the offers that they should be made by January 1, 1974. In my opinion, it was open to the Respondents Nos. 1 and 2 to entertain and consider the offer made by the Respondent No. 3 in March 1974.

7. Learned Counsel for the petitioner relies on Krishna Kumar Narula etc. Vs. The State of Jammu and Kashmir and Others, in support of the proposition that a citizen has a right under Article 19(1)(g) to do business in liquor. As in my opinion the rejection of the petitioner''s offer and the acceptance of the offer of the Respondent No. 3 is not contrary to law, this case can be of no assistance to the petitioner.

8. My attention has been invited to the observations of the Supreme Court in Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others, where it has been held that the only method by which liquor trade can be regulated is by inviting members of the public to make bids. Those observations were made in the contest of the statutory rules under consideration in that case. The rules required that the contract must be thrown open to public auction. In the present case Section 27(1) of the Punjab Excise Act does not impose any such restriction, In any event, it is not open to the petitioner to raise this contention, because he rests his case on the tender submitted by him and not on the need for a public auction.

9. Reference was also made to K.N. Guruswamy Vs. The State of Mysore and Others, The facts of that case are clearly distinguishable. While in the present case, upon the construction put by me, it was open to the Respondents Nos. 1 and 2 to entertain offers even after January 1, 1974, that was not the case in K. N. Guruswamy (supra). The facts there show that the auction had been held and the contract was knocked down in favour of Guruswamy. All that remained was formal confirmation by the Deputy Commissioner. The latter, however, entertained a bid from Thimmappa behind the back of Guruswamy and granted the contract to him. The invalidity was occasioned by the circumstance that although Thimmappa was present at the autcion and did not bid, the Excise Commissioner entertained his offer without notice to those who had bid at the auction , and by doing so nulified the auction itself.

10. The petitioner then relies on Rashbihari Panda etc. Vs. State of Orissa, That was a case where the sale or disposal of Kendu leaves by the Government was in question and the Supreme Court held that the schemes adopted by the Government gave rise to monopolies in the trade in Kendu leaves to certain traders and signled out other traders and new en rants for discriminatory treatment. In the present case, the mode adopted was the invitation of tenders. As has been held by the Supreme Court in State of Orissa and Others Vs. Harinarayan Jaiswal and Others, this is a valid basis for granting a lease or

licence in the liquor business. Section 27(1) of the Punjab Excise Act leaves a wide amplitude of discretion in the State Government in the matter of deciding what mode to adopt for granting a lease for supplying country liquor. The State Government may adopt such mode as it deems fit.

11. Learned Counsel for the petitioner has attempted to show that the rejection of the offer made by the petitioner and the acceptance of the offer made by he Respondent No. 3 was vitiated by mala fide, and that the Government did not observe the rule of fair play in taking its decision in the matter. I have given careful consideration to the facts and circumstances of the case and it seems to me that the record does not make out a case of mala fide against Respondents Nos. 1 and 2.

12. On the aforesaid considerations the questions referred are answered as follows:-

1. No fresh notice was required to the petitioner and others inviting tenders from them for supply of liquor before re-pondents Nos. 1 and 2 could accept the tender of Respondent No. 3.

2. The decision of the Respondents Nos. 1 and 2 rejecting the tender of the petitioner as against the tender of Respondent No. 3 cannot be questioned in these proceedings on the grounds alleged by the petitioner.

3. On the view taken by me, this question does not arise.

4. The Respondents Nos. 1 and 2 have not violated Articles 14 and 19 of the Constitution. The petitioner is not entitled to any relief. The papers of this case will now be laid before the Division Bench for disposing of the case.

D.B. Lal, J.

13. The petitioners are brewers and distillers, established at Nahan. Their grievance is that the State Government has not accepted their tender for supply of country liquor to retail vends, for which an auction took place on March 19, 1974. In their petition under Articles 226 and 227 of the Constitution, they have alleged that they already held L-13, L-15 and L-16 licenses for several districts in Himachal Pradesh. They were supplying country liquor to retail vends during the years 1967-68, 1968-69 and 1969-70, and according to them there was no complaint against them. The Excise and Taxation Commissioner addressed a letter to as many as 22 distillers on December 22, 1973, asking them to give quotations for the supply of country liquor. The petitioners accordingly sent their offer by supplying quotation containing, inter alia the rates at which they could supply the country liquor. In his letter the Excise and Taxation Commissioner had fixed January 1, 1974, as the date up to when the quotation or tender complete in every respect was to be received. Beyond that date, a presumption was to be made that any particular distiller not submitting the quotation was not interested to make the supply. The Respondent No. 3 are M/s Shaharanpur Co-operative Co. Ltd., and they had not submitted the quotation within the prescribed date.

Subsequently on March 10, 1974, the Respondent No. 3, however, furnished a cash security of Rs. 20,000/- and on the following day submitted their quotation. This quotation was accepted by Respondents 1 and 2 and order of supply was placed with the Respondent No. 3. According to petitioners, the tender or quotation of the Respondent No. 3 could not even be considered, what to say accepted, for the reason, that they had not submitted their tender upto the prescribed date. If the Respondent No. 2 wanted to extend the date, fresh notice should have been sent to all the interested suppliers and only thereafter the tender of the Respondent No. 3 could be accepted. In this manner the petitioners were deprived of their right to compete with the Respondent No. 3. According to them, the Government could not do so without asking for fresh quotations. It is also stated that the Excise and Taxation Commissioner was "interested intimately" in the Respondent No. 3 and wanted to give them "undue benefit". It is averred that the country liquor required was 50 per cent under-proof and there could be no difference in quality from one country liquor to another supplied by any distiller. In other words, the petitioners'' liquor was as much good in quality as the liquor to be supplied by the Respondent No. 3 could be.

14. The auction took place on March 19, 1974, and while the conditions of the auction were announced, the petitioners came to know, that the retail vends were to be supplied liquor from the Respondent No. 3. Immediately thereafter they rushed to file the present writ petition. According to petitioners, as a result to the acceptance of tender submitted by Respondent No. 3 and by excluding the petitioners from competition, the Respondents 1 and 2 have violated Articles 14 and 19 of the Constitution. In fact the rates quoted by the petitioners were lower than the rates quoted by the Respondent No. 3 and that speaks for itself. The terms of the tender which according to petitioners had "statutory basis" could not be violated. There was even a scheme with the Government for giving preference to industries of Himachal Pradesh in small scale sectors. The petitioners have undertaken such an industry. They were granted a certificate from the Industries Department. As such the petitioners deserved to be given the order for the disputed supply of liquor. There was thus a negation of a certain Rule 6 made for the grant of incentives to industries in Himachal Pradesh . In this manner, the fundamental rights of the petitioners were impeached and the relief prayed for is, that the entire action of acceptance of tender of the Respondent No. 3 be quashed and that the Respondents 1 and 2 be issued a mandamus to consider the quotation submitted by the petitioners and be further directed to give contract of supply in accordance with law.

15. The Respondents 1 and 2 have alleged in reply, that the two petitioners are neither brewers nor distillers. They were no doubt keeping some warehouse from which they supplied liquor during the years 1967-70 and at any rate they are not in a position to supply double distilled country liquor to which the tender related. On the other hand, the Respondent No. 3 is a reliable distillery. The Respondents 1 and 2 expect uninterrupted supply of liquor from them. There were complaints against the petitioners as to the quality of liquor supplied during previous years.

Some cases are still pending against the petitioners for irregularities committed by them. Besides all this, the petitioners were not willing to comply with a specific term in the tender, that rupees one lakh security in cash was to be deposited. The Respondent No. 3 has actually deposited so much security. As such the Respondents 1 and 2 considered the tender of the petitioners on merit along with other tenders including that of the Respondent No. 3. They did not accept the tender of the petitioners for good reasons. In response to the letter issued by the Excise and Taxation Commissioner, only six quotations were received but none of the tenders was complete and as such was liable to be rejected by the Respondents 1 and 2.

16. After waiting upto March 10, 1974, the Respondents 1 and 2 received the quotation from Respondent No. 3. The said quotation satisfied their requirement. After deciding the case on merit along with the six tenders, the Respondents 1 and 2 accepted the tender submitted by Respondent No. 3. In fact u/s 27 of the Punjab Excise Act, 1914 (which is applicable to Himachal Pradesh), the Government was not in any manner circumscribed with the condition of demanding tenders in any prescribed form. All alegations regarding mala fide are denied by the Respondents 1 and 2. According to them, no date was fixed for giving a decision over the tenders. The Respondents 1 and 2 in fact decided about all the tenders on 11-3-1974 and not before. As evident the Government was left without any valid tender on January 1, 1974. Thereafter the Government could evolve its own procedure and in all fairness to the petitioners, they considered their tender on merit and rejected it while preferring the tender of the Respondent No. 3. In this manner the petitioners were not discriminated and hence there was no violation of Articles 14 or 19.

17. According to Respondents, there was no bar against receiving quotations even after January 1, 1974. The only condition attached to the clause was, a presumption, that a person not submitting quotation, was not interested in making the supply. This presumption could not be interpreted in a manner so as to debar the Government from considering the quotation of Respondent No 3. According to Respondents 1 and 2, there was great deal of difference of quality from one country liquor to the other and the past experience indicated that the liquor supplied by the petitioners was on an inferior quality. The quality depended upon the standard quality of spices mixed and essences added to the liquor. The Financial Commissioner had the exclusive right in public interest to reject any tender. The rate was not the sole criterion and so many factors were to be considered by the Government. In fact the Government earned sufficient return in auction because the retail vends were assured supply from a reputed firm like Respondent No. 3. Therefore, it was in public interest to have accepted the tender of the Respondent No. 3. Their quality of liquor was good. They possessed sound financial position and decidedly had the capacity to give uninterrupted supply of double distilled liquor. The petitioners had in fact no arrangement to supply a double distilled liquor as they were not running any brewery or distillery. They do not even possess a licence for running a brewery or distillery. Regarding

Rule 6 of a certain scheme for giving incentive to industries, it is submitted that the said rule is not relevant and does not help the petitioners. On these grounds it was submitted that the petition deserves to be rejected.

18. Before adverting to the various points urged by the parties, it would be appropriate to refer to Section 27 and also to the letter calling for tenders as well as the terms of the tender submitted by the petitioners. The relevant part of Section 27 is reproduced below:

27. Grant of lease of manufacture etc.-

(1) The State Government may lease to any man not below the age of 25 years, on such conditions and for such period as it may deem fit, the right-

(i) of manufacturing or of supplying by wholesale or of both or .... any country liquor or intoxicating drug within any specified local area.

The words "as it may deem fit" give ample latitude to the State Government in the matter of giving lease to any person for the supply of liquor. It may, however, be stated that this latitude prescribed under law cannot be exercised to take away any fundamental right reposed in any person.

The letter of the Excise and Taxation Commissioner dated December 22, 1973, may be quoted in part as below:-

ANNEXURE C EXPRESS DELIVERY

No. 7-80/73-E.& T.

EXCISE AND TAXATION DEPARTMENT, HIMACHAL PRADESH

From

The Excise and Taxation Commissioner, Himachal Pradesh, Simla-4.

To .... 16. Shri K. C. Narula, Narula Concern, Nahan (H.P.).

Dated Simla-4, the 22nd December, 1973

Subject.-Supply of Country Liquor (ordinary spiced) to Himachal Pradesh Excise Licensees for the year 1974-75.

Dear Sir,

The matter regarding supply of country liquor (ordinary spiced) to the Himachal Pradesh Liquor Licensees during the year 1974-75, either through Distilleries or through Warehouses is under consideration. The degree of the country liquor to be supplied would be 50 under-proof. The sizes of the bottles, in which the supplies are to be made, would be as under and the words ''H.P. Excise'' are to be sandblasted on the bottles:-

Quarts Pints Nips 750 ml. 875 ml. 180 ml. 2. You are, therefore, requested to. offer your quotations, immediately so as to reach this office by the 1st January, 1974 positively. The quotation should be furnished in the following form:-

SI. No

Description of Rate per dozen Rate per dozen of the bottles (Single distilled) (double distilled) (whether new or old)

Nips Quarts Pints Nips

1

2 3 4 5 6 7 8

1

2. 3.

New Bottles

Old Bottles

The details of the calculations in respect of the above rates should

also be intimated separately in the following form:

Rate per dozen

Quarts Pints Nips Rs. P. Rs, P. Rs. P.

(1) to (11) ... (12) Whether agreeable to deposit a security of Rupees one lac. ...

4. The quantity of country liquor (ordinary spiced) required for the year 1974-75 would be between 8 to 10 lacs Proof Litres.

5. Your quotation complete in all respects together with the details in the prescribed proforma should be received in this office on or before the 1st January, 1974, positively, failing which it will be presumed that you are not interested in making supplies to Himachal Pradesh Liquor Licensees. The quotations should further be furnished in a sealed cover marked as ''Confidential'', addressed to the Excise and Taxation Commissioner, Himachal Pradesh, Simla-4 (By name).

Yours faithfully, Sd/- (JIT RAM THAKUR), Excise and Taxation Commissioner, Himachal Pradesh.

It is to be noticed tha t rates were asked also for double distilled liquor. The quantity to be supplied was to be 8 to 10 lacs proof litres, and in case a tender was not submitted only a presumption arose that "you are not interested in making supplies to Himachal Pradesh Liquor Licensees".

19. The list of distilleries from whom the tenders were invited is Annexure D, and serial Nos. 7 and 16 are relevant which are indicated below:-

ANNEXURE D

LIST OF DISTILLERIES/AUTHORITIES FROM WHOM THE QUOTATIONS HAVE BEEN CALLED FOR

7. The General Manager, Co-operative Distillery, Saharanpur (U.P.). ....

16. Shri K. C. Narula, Narula Concern, Nahan (H.P.).

The tender submitted by the petitioners is Annexure E of which the relevant extract may be noticed as below:

ANNEXURE E

M/S TILOKSONS BREWERY AND DISTILLERY, NARULA NAGAR, NAHAN Dated 27-12-1973.

Rate per dozen single distilled grade ''A''

Quarts Pints Mips 11.50 7.99 5.95 1. Price of liquor content and other charges. ...

12. Whether agreeable Cash security Rs. 20,000/- and balance to deposit a security immovable property will be pledged of rupees one lac in Himachal at Nahan.

13. Remarks Open delivery.

Rates per dozen grade ''A'' double Rate per dozen of selence spirit distilled double distilled

Qts. Pints Nips Qts. Pints Nips 12/10 8/10 6/- 13/10 9/- 6/50. FOR THE TILOKSONS BREWERY AND DISTILLERY. Sd/- PROP.

The feature to be noticed is that the petitioners were not agreeable to deposit cash security of rupees one lac. They were willing to deposit Rs. 20,000/- in cash and for the rest they wanted to give security of immovable property, which was not obviously acceptable to the Government. That apart, the petitioners did quote the rates for double distilled liquor.

20. Annexure A is a copy of an extract of rules regarding grant of incentives to industries in Himachal Pradesh, 1971, as given below:-

ANNEXURE A COPY OF AN EXTRACT OF RULES REGARDING GRANT OF INCENTIVES TO INDUSTRIES IN HIMACHAL PRADESH, 1971

1. Short title and commencement.-These rules shall be called the Rules for grant of Incentives to New and Already Established Industries in Himachal Pradesh.

6. Preferential treatment in Government purchase programme.-With a view to giving a fillip to the industries in respect of marketing of their products, 17-1/2% price preference will be given by Government departments on products of local industries purchased from the industrial units located in small scale sector in the

Pradesh. A similar price preference of 5% will be given to medium and large scale industrial products.

21. Annexure B is a certificate dated March 16, 1974, granted to the petitioners by the District Industries Officer, Nahan, that they were registered as a small scale industries unit. The registration certificate, however, contained the following conditions:

The registration is, however, subject to the condition that this department will not in any manner be bound to supply the raw materials required for the scheme or provide other facilities referred to in the scheme.

22. It may also be worthwhile to notice certain facts which either stand admitted or for which no controversy impliedly exists. The tenders were asked for and the last date fixed was January 1, 1974. Six tenders were received and one of the tenders was of the petitioners. The Respondent No. 3 was also addressed the letter (Annexure C), but he did not submit any quotation or tender before January 1, 1974. No doubt he submitted his quotation or tender on March 11, 1974. The Respondents 1 and 2 never extended the date beyond January 1, 1974, so as to give a right to any person to submit his tender at a later date. It is a different question that the embargo was not. placed upon the right of the Government to receive any tender beyond that date. No date was obviously fixed for giving a decision over the tenders. In fact the decision was made on March 11, 1974, when a 11 the tenders were considered and the tender of the Respondent No. 3 although received late was accepted.

23. It is also beyond controversy that certain excise cases are pending against the petitioners. The Government is also complaining that the previous liquor supplied by them was inferior in quality. Besides that, they also committed irregularities for which cases are pending. It is admitted that the petitioners possessed a warehouse from where they supplied country liquor during three years beginning from 1967. It is also beyond the pale of controversy that none of the tenders was valid and hence could be rejected. The petitioners did not satisfy the security clause. They did not possess any licence for brewery or distillery and hence in the opinion of the Government were not in a position to supply double distilled liquor. It is also admitted that rates were demanded in the tender for supply of double distilled liqour. The petitioners did quote such rates. From this the implication was that the Government could have also asked for the supply of double distilled liquor. It is also admitted that the Respondent No. 3 deposited the entire security in cash. The rates of the petitioners were no doubt lower than the rates quoted by the Respondent No. 3. Nevertheless the Excise Commissioner or the Financial Commissioner accepted the tender of the Respondent No. 3.

24. The pre-eminent feature of the plea taken up by the petitioners relates to the submission of the tender by Respondent No. 3 on a date beyond January 1, 1974, and its acceptance by the Government. Thereby, contend the petitioners, a

right accrued to them of compelling the Government to ask for fresh tenders. Then alone the petitioners could have given a fresh tender and they could have perhaps competed with the Respondent No. 3. In order to spell out a case in their favour, the petitioners have to make out a legal right reposed in them. I have been unable to spell out any such legal right in their favour. As evident, no date was prescribed for giving a decision over the tenders. None of the tenders was complete in every respect and so the Government was in a fix. They waited for more than 3 months. Thereafter the tender was received from the Respondent No. 3, and along with it the other tenders were considered on merit. The petitioners'' tender was defective because the security clause was not complied with. That apart, their case was weak on merit due to the previous complaints. The petitioners were not even brewers or distillers and only maintained a warehouse. Their case was considered on merit along with Respondent No. 3. The decision was given against them and the Court cannot take exception unless any statutory rule was violated or any principle of natural justice was involved. If any tender was not received upto January 1, 1974, the only presumption that arose was that any person not giving tender upto that date, was not inerested in making the supply. This presumption could be displaced easily by the Government in favour of any person who came forward later on. They could very well decide to excuse his previous "disinterestedness" and unless some legal right was infringed being conferred upon a third party, there was no difficulty in accepting the tender of any late-comer. The circumstances of the case have to be seen. There was no question of mala fide and only pubhc interest was involved. January 1, 1974, was not a stop date. The Respondent No. 3 was more reliable a firm. Their reputation was established. According to Respondents, they were more likely to give uninterrupted supply of double distilled liquor. The petitioners were at liberty to supplement their tender and they could have very well written to the Government, that they were willing to deposit rupees one lac in. cash for the security,. It cannot be stated that they were denied any opportunity of making up the deficiency of their tender. This they never did and when the Government accepts the tender of another, person which is approved on merit, the petitioners come to Court and complain against that.

24. The petitioners submit that no sample of liquor was asked for and hence they were deprived of the opportunity of satisfying the Government in that regard. That may be so, but it is an innocuous circumstance "because the decision rested upon the past experience and upon the present need of supply of double distilled liquor. The petitioners were not even brewers and distillers and hence they were not able to supply double distilled liquor in so much quantity. There was no law which enjoined upon the Respondents to call for fresh tenders in such a contingency. As such there was no violation of any statutory rule or law. One cannot venture to think that publicity was required to be given once again, even though all of the six tenders were defective and the Government considered them on merit on a date convenient to them along with a fresh tender received

by that time. The petitioners were undoubtedly given a right to compete along with others. Their tender was considered on merit and was rejected. What more the petitioners demand from the Government ? The mere fact that the rates of the petitioners were lower would again be a circumstance of no consequence. It cannot be alluded to, that the Government was to decide merely with reference to the rates quoted by any respective party. Several other considerations were there and the tender of the Respondent No. 3 could very well be preferred over that of the petitioners. Since the Respondent No. 3 quoted higher rates, the presumption would be that no information regarding fates was divulged to them because otherwise they would have quoted lower rates. According to petitioners, the intention was to oust them. But that feature is not there and to me it appears the entire deal was settled in a very fair manner.

25. The Respondents also meet the plea of the petitioners by referring to relief (b) sought to be secured in the petition. In that relief, the petitioners want their tender or quotation (Annexure C) to be considered on merit by the Respondents, 1 and 2. That relief cannot be granted for the simple reason that the quotation or tender (Annexure C) has already been considered on merit and rejected by Respondents 1 and 2. No mala fide is proved against the Respondents and the bare allegation that the Respondent No. 2 is interested intimately in Respondent No. 3, or. that Respondent No. 2 "wanted to give undue benefit to Respondent No. 3" is a,vei;y weak allegation. At another place, the averment in the petition is, that the, Minister-in-charge also acted malafidely. That allegation is again neither here nor there. It is conceded that the Financial Commissioner was the ultimate authority to reject any tender.

26. For these reasons the only inference to which one can arrive is that no fundamental right has been abridged, not any principle of natural justice has been violated. Besides that, no statutory rule or law has been disregarded and the petitioners did not deserve any relief.

27. Yet another important aspect has to be borne in mind. As evident all the six tenders were defective. In the result the Government was left with no .tender and as such they could evolve their own procedure to. select a supplier. Section 27 of the Punjab Excise Act, 1914, enabled them to give a lease in any manner they deemed-fit. They came across the tender of the Respondent No. 8 which was'' complete in, every, respect. The party, was also reliable. On these grounds the tender was accepted and the supplier was chdsen. Neither any statutory, rule was violated nor any right existed in the petitioners to get revived their tender which was already defective. It is difficult to resist the.contention that the Government was not to remain a silent spectator after January 1, 1974. After all they had to appoint a supplier and a lease was to be granted u/s 27. There is no circumstance to indicate that the petitioners were ousted or were not given opportunity to compete with, the Respondent No. 3.

28. The learned Counsel or the petitioners relied on two decisions of the Supreme Court, which are: K.N. Guruswamy Vs. The State of Mysore and Others,

and Rashbihari Panda etc. Vs. State of Orissa, . The.ratio of these. two cases has no bearing on the question presented for determination in this case. In K.N. Guruswamy (supra) the facts were that a liquor . contract was knocked down in favour of A who was the highest bidder. B who was present at the auction.but did not bid, saw the Excise Commissioner and offered Rs. 5000/- in excess of A''s bid. Accordingly,. A''s bid was cancelled and B''s offer was accepted, The decision was struck down by the Supreme Court and the, observation was that it ran counter to the policy of the legislature which is, that matters of such consequence to the State revenue cannot be dealt with arbitrarily and in the secrecy of ah office. In that case Rule I-1 of the Mysore Excise Act was not followed as a Government notification was required calling for fresh auction. As there was a violation of a statutory rule, the action was struck down as ultra vires. The following observation of their Lordships is material: -

In the present case, there has not been any notification in the Gazette to bring the ''otherwise'' portion of Rule I.1, into play, nor have tenders been called for in the only way which Rule 1.2 permits. We are therefore left with the normal mode of sale contemplated by the rules, namely public, auction.

Had, in the present case, the petitioners'' tender been complete and as such accepted, by the Government, any subsequent rejection of the same by acceptance of the tender of Respondent No. 3 may have attracted this decision. With all respects, therefore, to their Lordships, in my opinion, the facts of this case are distinguishable. Similarly the next case Rashbihari Panda (supra) would be of no avail to the petitioners. As the facts of the case reveal, a scheme was evolved by the Government whereby Kendu leaves contracts were invited only from those who were the contractors during previous years and whose conduct was found satisfactory. Other contractors were thus excluded. The scheme was agitated for on the ground that it unreasonably excluded traders in Kendu leaves from carrying on their business. As such there was violation of Articles 14 and 19(1)(g). In fact under Sections 3 and 10 of the Orissa Kendu Leaves (Control of Trade) Act (28 of 1961) a monopoly was created in that trade, but under the aforesaid scheme the Government created monopoly in favour of third parties from their own monopoly. That was again found to be ultra vires. With all respects to their Lordships; the case with which we are concerned is entirely on a different footing. There has not been ah exclusion of anybody, what to say of petitioners'' who intended to make supplies of liquor. In fact the tender of the petitioners was considered on merit and was found deficient in several respects. There could be no violation of Articles 14 or 19(1)(g).

29. The Respondents also relied on two cases: V. Punnen Thomas Vs. State of Kerala, and M/s Vijay Rosin and Turpentine Factory, Hoshiarpur v. Union of India and Anr. 1971 HLR 74. Tire followidg observation of the Full Bench of Kerala High Court is pertinent to our enquiry:-

Although every citizen has a fundamental right to carry on a trade or business, he has no right fundamental or otherwise to insist upon the Government to enter in business with him. The Government, like any private individual, has got the right to enter or not into a contract with a particular ''person. In case there is a law regularing the conduct of business by the Government, such a law might imply a right in others to insist on their translations with the Government being dealt with in accordance with that law, and consequently, a right to complain against a breach of the law., But when a person is excluded or rejected from entering in business with the Government in accordance with the law, there is no question of an invasion of his civil rights, and the rules of natural justice or Article 14 cannot, therefore, be invoked.

As in that case, and so in the present case, no rule of law has been violated. Besides that neither any fundamental right has been impeached nor any rule of natural justice has been violated. The petitioners seem to have claimed a fundamental right to carry on trade or business with the Government, although nobody has prohibited them from carrying on their trade or business with anybody else. There is no Such fundamental right reposed in them which needs protection. In fact, no civil right has been infringed and the refusal by the Government to deal with them, considering their previous conduct, will not attract the principle that no one should be condemned without being heard. It was not even necessary for the Government to hear them before forming that opinion. The refusal by the Government to enter into contract with any person unless a civil right is infringed, does not confer any right upon him, much less a right to claim relief under Article 226. The second case M/s Vijay Rosin and Turpentine Factory, Hoshiarpur (supra) is of this very High Court. That case related to a contract of sale of raw resin from Government forests. The only thing that had happened was that the Government was denying the petitioners the chance of purchasing raw resin from them and the petitioners failed to establish any civil right in their favour. It was held that there was no question of any encroachment on any fundamental right of the petitioners under Article 19(1)(g). I am in respectful agreement with these two decisions and hold that no civil right is spelled out in favour of the petitioners and if their tender was rejected on merit and for valid reasons and thereby no opportunity was given to them to trade with the Government, no infringement'' of any fundamental right was committed calling for any relief by this Court.

30. The Respondent No. 3 did not file any return but a statement was given on their behalf that the supplementary affidavit filed by the Respondents 1 and 2 should be treated as their return. We have gone through the supplementary affidavit and in our opinion there was every reason to accept it. The main contention of the petitioners has been that the supplementary affidavit contains some new pleas which in fact it does not contain. The averments made in the rejoinder-affidavit chiefly relating to the complaints etc. found to exist against the petitioners for, previous contracts and the refund of security deposited by them, needed further clarification as these were new facts submitted in the rejoinder. That is why the supplementary affidavit was filed by the learned Advocate-General.

31. In the last, a passing reference need be made to Rule 6 (supra) made for grant of incentive to small scale industries. That rule by itself even if statutory (for which there is no proof) will not be of any help to the petitioners. The certificate Annexure B granted to the petitioners itself indicated that it would not be binding on the Government to supply raw materials required for the scheme or to provide them facilities thereto. As such there was no binding force attached to the so called Rule 6 and by no stretch of imagination it can be stated that the tender of the petitioners was to be preferred, howsoever defective it was, simply because the certificate was granted to them for having been registered as an industrialist.

32. In view of all that I have stated above, I am of firm opinion that no case, whatsoever made out in favour of the petitioners. No relief can be granted to them. The petition is, therefore, dismissed with costs to the Respondents 1 and 2.

33. Counsel fee to be assessed of Rs. 200.

Chet Ram Thakur, J.

34. This petition under Articles 226 and 227 of the Constitution of India has been filed by the petitioner for setting aside the auction including the contract, if any, of the Respondents 1 and 2 for taking supply of country liquor to Himachal Pradesh Exicse Licensees for the year 1974-75 from Respondent No, 3 and to consider the quotations submitted by the various distillers including the petitioners in pursuance of Annexure C. It was further prayed that a writ of mandamus be issued to give contract of supply of country liquor in accordance with law.

35. The circumstances leading to the filing of this writ petition are that the ''Excise and Taxation Commissioner, Himachal Pradesh, vide Annexure C, called for the tenders for supply of country liquor (ordinary spiced) to Himachal Pradesh liquor licensees for the year 1974-75 from the dealers mentioned in Annexure D. There are as many as 22. persons to whom the letter Annexure C was addressed and in this the name of Respondent No. 3 figures at No. 7 and the name of the petitioner No. 2 figures at No. 16. According to Annexure C, vide para 5, it was emphasised that the quotations complete in all respects together with the details in the prescribed proforma should be received in the office on or before the 1st January, 1974, positively, failing which it will be presumed that they were not interested in making supply to Himachal Pradesh liquor licensees. In pursuance of this circular, Shri K.C. Narula also submitted his quotation, Anncxure E, and this quotation bears the date 27th December, 1973. Thereafter no intimation about die acceptance or the rejection of the tenders was communicated to the petitioners. It appears that Respondent No. 3 had not submitted his quotation within the stipulated period. He submitted his quotation accompanied by a draft for Rs. 20,000/- and this quotation was accepted by the Excise and Taxation Commissioner on the 11th March, 1974. The petitioner learnt about this deal only on the 19th March 1974, when auction of retail vends was made at Simla.

The petitioners, therefore, filed this writ petition on the 21st March, 1974, and according to them this deal was entered into with the Respondent No. 3 by the Respondents 1 and 2 with a view to confer undue benefit on him and since this had been .done with a mala fide intention, the deal was illegal, void and arbitrary, and the contract, if any entered into, is bad and liable to be struck down on the grounds-that the Respondent No. 3 had not submitted any quotation on or before 1st January, 1974, the quotation was received only on 11th March, 1974 and by that time the petitioners had reasons to believe that the quotations of other owners of distilleries had been opened. The quotations received after the stipulated date could not be entertained and accepted. If at all the Respondents 1 and 2 wanted to received some more quotations, a fresh notice had to be given to all intending suppliers including the petitioners, but no such thing was done. This action of the Respondents is violative of Articles 14 and 19 of the Constitution. The rates submitted by the petitioners are much lower than the rates of Respondent No. 3. No samples were submitted by any of the distillery and as such it cannot be contended that the produce of Respondent No. 3 is better in any manner. The entire action smacks of illegalities and mala fides. The State cannot be permitted to deal and enter into transaction in a haphazard manner. There was a statutory basis in issuance of Annexure C and its terms could not be violated to the detriment of the petitioner. Further, the Respondent No. 3 was not eligible for consideration because he has no warehouse in the State of Himachal Pradesh. Further, the petitioners have reason to believe that their quotation has not been considered solely on the ground that the Respondents 1 and 2 have construed that the petitioners are not willing to make deposit of one lac rupees, as cash security. Under column 12 there was no such requirement. It was further contended, that the Respondent No. 3 gave security a day earlier than the submission of the quotation which shows that even before that some decision had been taken at a higher level. By accepting the, quotation of Respondent No. .3, the fundamental rights of the petitioner had been invaded. The Respondents 1 and 2 have acted in a haphazard manner.

36. Shri Jit Ram, Excise and Taxation Commissioner filed his affidavit on behalf of Respondents l and 2 by way of reply to the petition. It had been submitted in the preliminary objections that the Respondents 1 and 2 had already entered into a formal agreement with Respondent No. 3 arid it would not be iri''the ''fitness of things to order its breach. On merits it was admitted that tenders were invited and letters were addressed to the several persons including the petitioners but it was denied that there existed any Such brewery or distillery in Narula Nagar. Further, it was averred that in point of fact the department was interested in getting supplies of double distilled country liquor, which could only be possible from a reputed distillery. It was admitted that no tender quotation of Respondent No. 3 was received on or before 1-4-1974. It was further averred that the Respondents 1 and 2 were not debarred from receiving and considering the tenders received after 1-1-1974, particularly because none of the tenderers complie''d with all the conditions laid down. The non-fulfilment of condition

regarding deposit of security of one lac rupees-was riot''the onty''reason for rejecting the tender of the petitioners. Keeping in view the past experience of supplies of country liquor made by the petitioner and also the fact that the petitioner was not holding any licence for the manufacture of country liquor, it was felt that the petitioner was not in a position to give uninterrupted supplies 6f quality liquor. Further, the quotation given by the petitioner was hot accepted for the additional reasons that there were reports in Writing as Well as Verbal against the stuff of liquor supplied by him when he held Warehouse licences for supply of country liquor to the''fetail licensees of several'' 6ther districts. Some of the licensees had represented to the Respondents 1 and 2 against giving country liquor supply contract to the" petitioner. Further, a case under the Excise Act had been registered against the petitioner in Mandi district, where he was holding licences for the retail sale of country liquor. It was admitted that the rates quoted by the petitioner were tower When compared to the rates quoted by Respondent No. 3. But the rates were not the sole criterion for deciding the matter. Other factors, such as security and reliability and capacity to supply double distilled liquor continuously Were also to be kept in view. It was also averred that the terms of Annexure C had not been violated in any manner. Respondents 1 and 2 were within their right to accept tender given by Respondent No. 3. Annexure C had no statutory basis- It is only an administrative action. In view of this there was no violation of Articles 14 and 19 of the Constitution. The quotation given by the petitioner was deficient inasmuch as it did not satisfy condition No. 12 of the quotation notice regarding deposit''of one''lac rupees and further that the petitioners had no capacity to make supply of double distilled liquor. The bad reputation of the stuff supplied by him in the past also weighed against him.

37. Arguments have been heard. Annexure C is the circular issued by the Excise and Taxation Commissioner, Himachal Pradesh, on 22nd December, 1973, whereby the distilleries/authorities mentioned in Annexure D were required to submit their quotations regarding the supply of country liquor to the Himachal Pradesh liquor licensees, during the year 1974-75 so as to reach the office by 1-1-1974 positively and the distilleries/authorities were required to submit the quotations in the proforma given in the circular. The proforma is as under:

Sl.

No.

Description of the bottles (whether new or old)

Rate per dozen (Single Distilled)

Rate per dozen (Double Distilled)

Quarts Pints Nips

Quarts Pints Nips

Then the further requirements were as mentioned against items 1 to 13. The petitioners submitted their quotation as contained in Annexure E. It is admitted by the Respondents 1 and 2 that the rates quoted by the petitioners were lower to those quoted by Respondent No. 3. Again, it is admitted that the quotations were required to be submitted by the 1st January, 1974. It is also admitted that Respondent No. 3, to whom a communication was addressed had not submitted his quotation till the 10th March, 1974. It is also admitted that his tender was accepted only on 11-3-1974. The contention raised by the Respondents 1 and 2 was that the tender of the petitioners did not fulfil the requirements of the circular inasmuch as the authorities were required to submit their quotations for supply of double distilled liquor. The petitioners failed to comply with that requirement. Their liquor was also not of good quality. Secondly, the deposit, as required, was also deficient. Therefore, the question in these circumstances arises that if prior to 11-3-1974 all the tenders were deficient, was it not necessary to call for fresh tenders. Section 27 of the Punjab Excise Act deals with the manner of granting licence for supply of liquor etc. and the expression used therein is "it may deem fit". Therefore, from this it would appear that it is undoubtedly left to the discretion of the State Government to devise the method. It was in accordance with this that the State Government issued a circular, Annexure C, requiring the authorities/distilleries to submit their quotations by 1-1-1974. Since, according to the return filed by the Respondents, the tenders filed by the petitioners were deficient, therefore, according to the Respondents, they entered into a deal with the Respondent No. 3 for supply of liquor. This, therefore, would go to show that the tenders submitted by the petitioners as also by the other distillers/authorities which were six in all were deficient or in other words there were no tenders in the eye of law and, therefore, it was all the more necessary for the Respondents 1 and 2 to have called for fresh tenders by taking resort to the manner already adopted in pursuance of Section 27 of the Punjab Excise Act, as applicable to Himachal Pradesh. If the tenders of the petitioners were not found in order or they were deficient and there were no tenders at all with the authorities till 1-1-1974, which was the dead date for the receipt of the tenders, then it was not open for the Respondents to accept the tender of Respondent No. 3, which was filed only on 10th March, 1974. He was one of the persons to whom the circular had also been issued earlier and this action on the part of the Respondents 1 and 2 cannot be said to be fair and equitable.

38. In Rashbihari Panda etc. Vs. State of Orissa, wherein exercise of the power conferred by Section 10 of Orissa Kendu Leaves (Control of Trade) Act, 1961, the State Government decided to invite offers for advance purchases from person who had purchased Kendu leaves from individual units during the year 1967 and had not committed default in payment of the dues and adopted the method of offering to enter into agreements for advance purchases of Kndu leaves by private offers in preference to open competition, the question that arose for decision was whether the machinery devised by the Government for sale of Kendu leaves in which they had acquired a monopoly to trade was violative of the fundamental rights guaranteed under Articles 14 and 19(1)(g) of the

Constitution. The High Court held that there was no violation of Articles 14 and 19 of the Constitition. On appeal to the Supreme Court:

Held, that both the schemes evolved by the Government were violative of fundamental rights under Articles 14 and 19(1)(g) because the schemes gave rise to a monopoly in the trade in Kendu leaves to certain traders and singled out other traders and new entrants for discriminatory treatment.

The scheme adopted by the Government fust offering to enter into'' contracts with certain named licensees and later inviting traders from licensees who had in the previous year carried out their contracts satisfactorily is liable to be adjudged void on the ground that it unreasonably excludes traders in Kendu leaves from carrying on their business. The scheme of selling Kendu leaves to selected purchasers or of accepting tenders only from a specified class of purchasers is not ''integrally and essentially'' connected with the creation of the monopoly and is not protected by Article 19(6)(ii). It has, therefore, to satisfy the requirement of reasonableness under the first part of Article 19(6).

Therefore, from this authority it would be quite apparent that the Respondents 1 and 2 could not prevent the petitioners, who were a licensee or a brewer, from making a bid or submitting a tender. They had a fundamental right to carry out business and this act on the part of the Respondents 1 and 2 was discriminatory, as held in the aforesaid authority, especially when the Respondents 1 and 2 had already sent a circular to the petitioners, requiring them to submit their quotation. The reply that their liquor was found not to be of good quality and that there had been complaints against them is an after-thought. However, if it were so it was not necessary for the Respondents 1 and 2 to have issued circular to the petitioners requiring them to submit their quotation. If the Respondents had elected to call for the quotation from the petitioners also then it had to consider their quotation along with the others and if all the quotations received till the dead date fixed for the receipt of the quotations were found wanting then the Respondents had to call for fresh tenders or quotations from all the intending brewers/distillers or authorities and it could not enter into a deal like the one with Respondent No. 3, who was also one of the persons to whom the circular was addressed.

39. In K.N. Guruswamy Vs. The State of Mysore and Others, which is a case quite nearer to the case in hand, a liquor contract was knocked down in an auction by the Deputy Commissioner in favour of A who was the highest bidder. B who was present at the auction but did not bid, saw the Excise Commissioner and offered Rs. 5,000/- in excess of A''s bid. B''s offer was accepted and A''s bid was cancelled. Subsequently the Deputy Commissioner informed A of the cancellation and accepted B''s bid under Excise Commissioner''s order. On appeal to the Excise Commissioner the order of the Deputy Commissioner was upheld. The Mysore Excise Act, 1901, and the rules made thereunder made it plain that liquor licencing in the State of Mysore can only be done in certain specified ways and such discretion as is left to the authorities is strictly controlled by statute and

rules. It was held by their Lordships of the Supreme Court:

The rules do not lie down the authorities to the method of auction and tender; nor are they bound to follow Rule 1.2 as an alternative. They have a discretion under Rule 1 and can act ''otherwise''. But if they wish to do that, then it is essential that due notice and publicity be given of the ''otherwise'' method in a Government notification as Rule I.1 directs. The matter cannot be left to the arbitrary discretion of some lessor authority.

In the instant case once it had been chosen to issue a circular and the tenders submitted by the authorities or the licensees by 1-1-1974, which was the last date for the receipt of the tenders and the tenders were found not valid which in other words meant that there were no tenders then the authorities or for the matter of that the Respondents 1 and 2 had to resort to issue a fresh circular inviting fresh tenders because the Respondent No. 3, as already stated, was one of the persons from whom tenders had been invited and who failed to submit his tender till the date fixed by the authorities for the receipt of the tenders. The Respondent submitted his tender along with a deposit of Rs. 20,000/-only on 10-3-1974 and which tender was accepted on 11-3-1974. This action on the part of the Respondents 1 and 2 was a shady one and could not be said to be a bona fide action. The authorities acted in a haphazard manner which was not in keeping with propriety and principle of natural justice. Therefore, in these circumstances, this act deserves to be struck down. In fact no samples were invited by the Respondents, nor the Respondent No. 3 did submit any sample so as to say that the double distilled liquor, for which tenders were required to be submitted were or were not of good quality or standard. The only requirement, as would be evident from the conditions, is that it sould be 50? under-proof. Since no samples were either submitted by the petitioner or by the Respondent No. 3, therefore, it is not understood how the Respondents 1 and 2 could say that the liquor of the petitioners was bad when the supply itself was to commence after 1-4-1974.

40. Learned Counsel for the petitioner also relied upon A.K. Kraipak and Others Vs. Union of India (UOI) and Others, to show that the administrative authorities are required to exercise their functions in a just and a fair manner. Therefore, there can be no escape from the conclusion that the act on the part of the Respondents is arbitrary and is in contravention of Article 19 of the Constitution, in as much as the petitioners who also carry on trade of a brewer have been prevented from giving quotation and the Respondents 1 and 2, as stated before, acted in a shady manner so as to exclude the petitioners without any valid reasons. The public authority cannot act in a despotic and an arbitrary manner so as to exclude the people from competition in business which is one of the fundamental right of every citizen under the Constitution.

41. Learned Advocate-General has contended that it was the discretion of the State Government to enter into a deal with anybody so as to get the maximum income by way of a private deal. But this contention of his is untenable.

According to The The D.F.O., South Kheri and Others Vs. Ram Sanehi Singh, the Respondent purchased the right to cut timber for a certain period from forest lots. On a subsequent date the Divisional Forest Officer, South Kheri Division, passed an order that the sleepers "against the tally" in the allotment of 1965-66 season being "wrong" since they were cut in the month of November 1966, do stand cancelled and that the sleepers be "passed against" the tally after getting the hammer- marks cancelled and bere-inspected against the allotment for 1966-67 season. The Respondent moved a petition in the High Court of Allahabad for a writ restraining the Divisional Forest Officer and others from giving effect to the order cancelling his "sleeper tally" and for a writ of certiorari quashing the order and for incidental reliefs. The petition was dismissed by a single Judge holding that the Divisional Forest Officer had acted in exercise of authority conferred upon him by the terms of the contract, and that remedy of the Respondent was to claim relief in a regular suit for enforcement of the agreement or for damages and not in a petition under Article 226 of the Constitution. On appeal to the Division Bench following K.N. Guruswamy''s case (supra) it was held that where a party interested in a contract claims that he has not received the same treatment and he has not been given the same chance as any body else he is entitled to move a petition under Article 226 of the Constitution and it accordingly quashed the oder. On appeal to the Supreme Court it was held by their lordships:

The order is passed by a public authority modifying the order or proceeding of a subordinate forest authority. By that order he has deprived the Respondent of a valuable right.

Merely because the source of the right which the Respondent claims was initially in a contract, for obtaining relief against any arbitrary and unlawful action on the part of a public authority, it cannot be held that the act was not arbitrary and unlawful action on the part of a public authority and he must resort to a suit and not to a petition by way of a writ.

Granting that the order was administrative and not quasi-judicial, the order had still to be made in a manner consonant with the rules of natural justice when it affected the Respondent''s right to property.

It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers.

42. Learned Advocate-General has relied on V. Punnen Thomas Vs. State of Kerala, to show that the Government is not bound by any law to call for tenders from all the persons and it can debar certain persons from submitting tenders and if there is no infringement of the civil right the Government can refuse to deal with any person without giving reasons or for any reason that it thinks fit. But this authority is not applicable to the facts of the present case. In this case the petitioner who was a Government contractor had been black-listed because of certain irregularities in the forest contract and, therefore, the contractor was

deprived from taking any contract from the Government for the next 10 years. The petiti''oner''s grievance was that he was not heard before the order was made and he prayed for a writ of certiorari quashing the order and restraining the Respondent from giving effect to it because the order was violative of the principles of natural justice and Articles 14 and 16(1) and 19(1) of the Constitution. But in the instant case the petitioners have not been black-listed, they are carrying on their business as the retail licensee of liquor and even the circular requiring them to submit their tender or quotation was also addressed. Therefore, in these circumstances this authority is not attracted to the facts of the present case.

43. It was also contended that the petitioners are not brewers and that they could not be expected to make supply of liquor. But this is also a point which is not correct. Annexure B shows that the petitioners possess a certificate from the Department of Small Scale Industries and it has been certified that M/s Tiloksons Brewery and Distillery have, on firm basis, been registered with the Department as a small scale industries unit. This goes to show that they are running a brewery and distillery and the stand taken by the Respondents cannot be taken to be correct.

44. It had also been contended that the petitioners had not quoted the rates for double distilled liquor which were required to be supplied under the circular Annexure G. But this stands belied by a bare perusal of Annexure E which is a quotation submitted by the petitioners. Under item No. 13 they have quoted the rate per dozen grade A double distilled liquor as also the rates per dozen of science spirit double distilled. Therefore, I fail to understand how the learned Advocate-General has raised this point without looking to the quotation.

45. It has also been contended that the petitioners had failed to comply with the conditions inasmuch as they did not furnish the security of one lac rupees as required under condition No. 12 of the circular, Annexure C. Annexure E shows that the petitioners had stated therein that a cash security of Rs. 20,000/- was being offerrd to be deposited and for the balance, immovable property will be pledged in Himachal Pradesh at Nahan. Therefore, it is also wrong to say that the petitioners did not satisfy the requirement of the circular. Anyway, even if the tenders of all the six persons including the petitioners were deficient, as already stated, there was no tender or quotation at all, as the Respondent No. 3 had failed to submit his tender before the date stipulated in the circular. He waited till the 10th March for filing his tender and it is not known how and under what circumstances he sent his tender accompanied by a draft of Rs. 20,000/-. His tender was accepted on the 11th of March, 1974.

Therefore, it was a transaction which cannot be said to be entered into bona fide.

46. It had further been averred by the Respondents that the writ petition was not maintainable, inasmuch as the petitioner No. 2 was a sole proprietor of M/s Tilok sons and that a sole proprietor could not sue and be sued in the name of the

firm. But it may be stated here that this objection has been raised simply to be rejected on the ground that even if he is the sole proprietor, he has not sued in the name of the firm, rather, he has impleaded himself also as a party, i.e. he is petitioner No. 2. Therefore, this point also fails.

47. For the above, in my opinion, this petition deserves to be accepted and I, therefore, allow the same and quash the contract entered into by the Respondents 1 and 2 with Respondent No. 3, and direct that fresh tenders shall be invited so as to afford opportunity to the petitioners and other intending contractors.

48. The petitioners shall also get their costs, assessed at''Rs. 200/-from the Respondents 1 and 2.

BY THE COURT

The decision on points of difference between us was referred to a learned third Judge. His decisions are in conformity with the judgment pronounced by one of us. Accordingly the writ petition is to be decided in accordance with the opinion of the majority of the Judges.

The result is that no relief can be granted to the petitioners, and the petition is dismissed with costs to the Respondents Nos. 1 and 2.

Counsel fee to be assessed at Rs. 200/-.

