

(2003) 03 AP CK 0080

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 18877 and 18878 of 2002

Toddy Tappers Co-operative Society

APPELLANT

Vs

Commissioner of Prohibition and Excise and Others

RESPONDENT

Date of Decision : 12-03-2003

Acts Referred:

Andhra Pradesh Excise (Arrack and Toddy Licences General Conditions) Rules, 1969 — Rule 24

Andhra Pradesh Excise Act, 1968 — Section 3, 37, 4, 5, 5(4)

Citation : (2003) 3 ALD 36

Hon'ble Judges : J. Chelameswar, J

Bench : Single Bench

Advocate : Srinivasa Rao Badduluri, for the Appellant; Advocate-General and Government Pleader, for the Respondent

Judgement

J. Chelameswar, J.—These two writ petitions are filed by the petitioners aggrieved by the decision of the 2nd respondent dated 17.9.2002 by two separate proceedings of the abovementioned date. The 2nd respondent in each of these writ petitions who is the Superintendent of Prohibition and Excise, Hyderabad District, Hyderabad, suspended the licence of each of the petitioner-societies. The license to the petitioners were issued to these societies under the provisions of Excise Act to run a toddy shop each.

2. On 26.8.2002, officers of the Excise Department inspected the licensed premises of each of the petitioners herein and drew samples of the toddy that was offered for sale. In the counter-affidavits filed in these two writ petitions, it is stated that such inspection was conducted pursuant to the fact that it had come to the notice of the respondents that some of the licensees were selling adulterated toddy. Thereafter, criminal cases were registered against each of the petitioners as per the provisions of the Andhra Pradesh Excise Act, 1968 and the bottles of samples drawn from each of the societies were deposited with the concerned Magistrate's Courts having Jurisdiction over the licensee. Thereafter, the concerned Magistrates were requested to send one of the samples to the

Indian Institute of Chemical Technology (for short "IICT"), Tarnaka, at Hyderabad and another to the Andhra Pradesh Forensic Science Laboratories (for short "APFSL"), Red Hills, Nampally, Hyderabad to find out by scientific analysis whether the samples contained any adulterants. In due course, the IICT reported that the samples contained an adulterant known as Alprazolam. In view of such reports, the 2nd respondent opined that there is a violation of Rule 5 of A.P. Excise (Tapping of Trees and Toddy Shops special conditions of Licences) Rules, 1969 and also Rule 11 of the A.P. Excise (Arrack and Toddy Licences General Conditions) Rules, 1969 and the consumption of such adulterated toddy is injurious and dangerous to the health of the consumers. The 2nd respondent, therefore, in exercise of the powers conferred u/s 31 (1)(b) of the A.P. Excise Act, 1968, passed orders keeping the licence of each of the petitioners herein under suspension pending further enquiry into the matter. Challenging the said orders, these two writ petitions are filed. There are two petitioners in each of the writ petitions, the first of them being a cooperative society which is the licensee and the 2nd petitioner in each of the writ petitions is a Member of the 1st petitioner society in each of the cases.

3. The impugned order in each of the cases indicates that the inspection dated 26.8.2002 was conducted by an officer other than the officers who had jurisdiction over the area in which the licensee was permitted to run the toddy shop. In fact, both the licensees are within the territorial jurisdiction of the 2nd respondent i.e., Superintendent of Prohibition and Excise, Hyderabad District, Hyderabad, whereas the inspection was conducted by the Assistant Commissioner of Prohibition and Excise, Kakinada and Assistant Commissioner of Prohibition and Excise (Distilleries), Vijayawada, whereas in the 2nd case, it was Assistant Commissioner of Prohibition and Excise (Enforcement), Kurnool who conducted the inspection. Both the impugned orders recite that such inspections were conducted by the abovementioned officers as per the directions of the 1st respondent i.e., Commissioner of Prohibition and Excise, Andhra Pradesh. These facts are relevant as one of the grounds on which the impugned orders were challenged is that that the searches themselves were illegal as they were conducted by the officers who are not authorised under the provisions of the A.P. Excise Act or the Rules made thereunder and therefore all consequential action pursuant to such alleged illegal search is also illegal.

4. The 2nd ground of attack of the impugned order is that that there was a procedural violation and breach of Rule 24 of A.P. Excise (Arrack and Toddy Licences General Conditions) Rules, 1969. According to the learned Counsel for the petitioners that the abovementioned Rule requires that one of the samples of toddy drawn from any licensee is required to be sent to "the chemical examiner of Excise Department having jurisdiction in the region" in which the licensed premises are situated. But, in the instant case, the samples were in fact sent to IICT, Tarnaka, Hyderabad and another sample was sent to APFSL at Red Hills, Nampally, Hyderabad. Admittedly, the impugned orders came to be passed on the basis of the report furnished by the IICT, Tarnaka, Hyderabad. Neither the

impugned order nor the counter-affidavits filed in these writ petitions give any information whether any report was received from the APFSL, Red Hills, Hyderabad and if received what is the substance of the report.

5. Both these writ petitions were admitted on 30.9.2002 and notice was ordered on the Miscellaneous Petitions. Upon service of notice on the respondents, when the miscellaneous petitions appeared in the Motion List on 1.11.2002, at the request of learned Counsel for the petitioners as well as the learned Government Pleader, the matters were heard finally and reserved for Judgment on 22.11.2002. Subsequently, on a mention by the learned Counsel for the petitioner that the issues involved in the writ petitions are no more *res Integra* and in fact covered by a Division Bench judgment of this Court rendered on 10.1.2003 in W.P.No. 19186 and 21096 of 2002 and therefore, required to be disposed of in accordance with law laid down in the same judgment, the matters were directed to be listed again on 31.01.2003. Accordingly, the matters appeared in the list "for orders" on which date the learned Government Pleader appeared and represented before the Court that a review application filed by the State against the order of the Division Bench in the abovementioned writ petitions was pending consideration and therefore the matters were once again adjourned. Finally, on 27.2.2003, the matters were once again listed on which date the learned Advocate General appeared for the State and made his submissions, the details of which will be adverted to, at an appropriate place in the judgment.

6. Section 31 of the A.P. Excise Act, 1968, hereinafter referred to as the Act, authorises the cancellation or suspension of licences or permits granted under the Act in the various circumstances mentioned in the said Section. A Full Bench of this Court in a judgment reported in *State Bank of Hyderabad v. Advath Sakru* 1994 (2) APLJ 1 (HC) held that the power u/s 31 of the Act not only enable the State to suspend the licences as a measure of punishment, but also as an interim measure pending further enquiry into the allegations of violations of the law such as the sale of adulterated liquor. Section 52 of the Act authorises the various officers enumerated therein to enter and inspect the various premises referred to therein and also examine and test the intoxicant found there. Section 72 of the Act empowers the State Government to make rules for carrying out all or any other purposes of the Act.

7. A.P. Excise (Arrack and Toddy Licences General Conditions) Rules, 1969 is one set of such Rules made in exercise of the power u/s 72 of the Act. Rule 24 thereof, provides for the drawal of samples of arrack and toddy in possession of the licensee or any other person for the purpose of analyses. The said Rule 24 as it stood on the date of the inspection in the present case read as follows :

"24, Drawal of Samples :--Any Excise Officer, not below the rank of Sub-Inspector of Excise or Food Inspector appointed under the Prevention of Food Adulteration Act, 1954 shall be competent, at any time, to take sample of arrack or toddy, in the possession of the licensee or any other person storing arrack or

toddy, for the purpose of analysis. Such Officer shall take three samples in the presence of the licensee or his agent or other person in-charge of the licensed premises or who is found selling toddy in the said premises, after conducting a Panchanama, The samples shall be sent to the Court with a requisition to send, one of the samples expeditiously to the Chemical Examiner of the Excise Department having jurisdiction in the region, in which licensed premises are situated, for chemical examination. If the sample sent to the Chemical Examiner is damaged, in transit or otherwise before the completion of the analysis, the Court may be requested by the concerned Officer to send a second sample to the Chemical Examiner. If the licensee desires that the sample should be sent for analysis to an independent laboratory, he may apply to the Excise Superintendent within three days of the drawal of the sample. In cases where the licensee or one of his Nowkarnama holders was not present at the time of taking of sample, the licensee should apply within 7 days. The application should be accompanied by a demand draft for an amount sufficient to cover the analysis charges. If no such application is filed within the requisite time limit, the licensee shall not be entitled to seek analysis by an independent laboratory thereafter. On receipt of the application within time and with requisite demand draft, the concerned officer shall request the Court to send a sample to the independent Laboratory chosen by licensee."

It is also relevant here to mention that subsequently, the Rule underwent an amendment under G.O. Ms. No.973, Revenue (Excise-II) Department, dated 21.11.2002. As can be seen from the above extracted unamended rule, one of the samples drawn was required to be sent to the "Chemical Examiner of the Excise Department having jurisdiction in the region, in which licensed premises are situated, for chemical examination." The abovementioned amendment authorises the sending of the sample not only to the Chemical Examiner of the Excise Department but also to "any independent laboratory as instructed by the Commissioner of Prohibition and Excise."

8. Therefore, as on the date of the drawing of the samples in the instant cases from the premises of the licensees/ petitioners herein i.e., 26.8.2002, it was the unamended Rule 24 which was in operation.

9. The additional clause brought in by the Amendment which is referred to above is relevant for the purpose of examining the second submission made by the petitioner and I shall examine it later.

10. Coming to the first submission of the petitioners, an analysis of the 1st para of the Rule 24 is required. As can be seen from the language of the above extracted Rule, it authorises any Excise Officer not below the rank of Sub-Inspector of Excise to take samples of arrack or toddy, in the possession of the licensee or any other person storing arrack or toddy, for the purpose of analysis. The expression "Excise Officer" is defined u/s 2(11) of the Act to mean "the Commissioner, the Collector or any officer or other person lawfully appointed or invested with the powers under the relevant provisions of this Act". Section 3 of

the Act contemplates the appointment of the Commissioner of Excise for the State by the Government by a notification who is to be the chief controlling authority in all matters connected with the administration of the Act, subject of course to the general or special orders of the Government in that behalf. Section 5 of the Act contemplates the appointment of Additional, Deputy and Assistant Commissioners of Excise and such other officers as thought fit by the Government for the purpose of performing the functions respectively conferred on them by or under the Act. Sub-section (4) of Section 5 is required to be extracted, as heavy reliance is placed on this Sub-section by the learned Counsel for the petitioners in the context of the first ground of attack of the impugned order. Sub-section (4) of Section 5 reads as follows :

"5. Appointment of certain officers and staff:-

(1) xxxx

(2) xxxx

(3) xxxx

(4) All such officers shall perform the said functions within such area or areas or in the whole of the State as the Government or the Commissioner may assign to them."

11. In view of the scheme of Sections 3 and 5 of the Act, the Commissioner appointed u/s 3, the Collector defined to be the Collector of a District u/s 2(5) of the Act and any other officer appointed by the Government in exercise of the power u/s 5 of the Act is an "Excise Officer". Therefore, under Rule 24 referred to earlier, all such excise officers are entitled to draw samples, however, with the limitation that such an excise officer shall not be below the rank of Sub-Inspector of Excise in view of the express language of that Rule. It is not the objection of even the petitioners that the officers who conducted the search are not the Excise Officers as defined under the Act or such officers are below the rank of Sub-Inspector of Excise, but the objection of the petitioners is that they lack the territorial jurisdiction to draw the samples from the shops of the petitioners herein. In support of this submission, the learned Counsel for the petitioners relied upon Sub-section (4) of Section 5 which is already extracted and argued that the Commissioner being the overall controlling authority for all matters connected with the administration of the Act as stipulated u/s 3 of the Act only could draw samples from any premises in the entire State whereas other officers appointed u/s 5 of the Act are authorised to draw samples only within the respective territories over which they are authorised to discharge the functions entrusted to them by law.

12. Admittedly, the officers who conducted the inspection are not the officers within whose territorial jurisdiction the searches were conducted which is obvious from the impugned order. But, the impugned order also makes it clear that the inspection or the searches were conducted as per the directions of the

"Commissioner of Prohibition and Excise, Andhra Pradesh" in which case the last clause of Sub-section (4) of Section 5, in my view supplies the necessary authority of law for the inspections in question. It is clear from the language of Section 4 that all the officers appointed by virtue of the powers conferred u/s 5 of the Act are required to perform their functions within such area or areas or in the whole of the State assigned to them either by the Government or the Commissioner. In the present case, the Commissioner authorised the search/inspection by the officers who actually conducted the inspection. Therefore, I do not see any illegality in the inspections conducted in the instant case.

13. Assuming for the sake of argument, that the law did not authorise the inspecting officers in the instant cases and therefore the inspection is illegal, that does not per se invalidate all the subsequent steps. It is settled law of the land that the incriminating material obtained during an illegal search or inspection can form the basis of a valid legal proceeding. All that the law requires in such a situation is that such illegally secured material must be scrutinised with caution. In *Pooran Mal Vs. The Director of Inspection (Investigation), New Delhi and Others*, a Constitution Bench of the Supreme Court dealing with the question of material obtained by the Income Tax Department during the course of a search held at para (24) as follows:

".... It, therefore, follows that neither by invoking the spirit of our Constitution nor by a strained construction of any of the fundamental rights can we spell out the exclusion of evidence obtained on an illegal search."

It was held in *Dr Partap Singh and Another Vs. Director of Enforcement, Foreign Exchange Regulation Act and Others*, that evidence secured by an illegal search must be scrutinised with greater caution.

"15. Assuming that it is obligatory upon the officer proceeding to take search or directing a search to record in writing the grounds of his belief and also to specify in such writing, so far as possible, the thing for which the search is to be made, is mandatory and that non-recording of his reasons would result in the search being condemned as illegal, what consequence it would have on the seizure of the documents during such illegal search. The view taken by a learned single Judge of the Calcutta High Court in *New Central Jute Mills Co. Ltd. Vs. T.N. Kaul and Others*, that once the authorisation for carrying out the search is found to be illegal on account of the absence of recording of reasons in the formation of a reasonable belief, the officer who has seized documents during such search must return the documents seized as a result of the illegal search is against the weight of judicial opinion on the subject and does not commend to us. In fact this decision should not detain us at all because virtually for all practical purposes, it can be said to have been overruled by the decision of the Constitution Bench in *Pooran Mal Vs. The Director of Inspection (Investigation), New Delhi and Others*. This Court held that "Courts in India and even in England have consistently refused to exclude relevant evidence merely on the ground that it is obtained by illegal search or seizure". If therefore, the view of the learned single

Judge of the Calcutta High Court were to be accepted meaning thereby that if the search is shown to be illegal, anything seized during such illegal search will have to be returned to the person from whose premises the same was seized. It would tantamount to saying that evidence collected during illegal search must be excluded on that ground alone. This was in terms negated by the Constitution Bench, It has been often held that the legality in the method, manner or initiation of a search does not necessarily mean that anything seized during the search has to be returned. After all in the course of a search, things or documents are required to be seized and such things and documents when seized may furnish evidence. Illegality of the search does not vitiate the evidence collected during such illegal search, The only requirement is that the Court or the authority before which such material or evidence seized during the search shows to be illegal, is placed has to be cautious and circumspect in dealing with such evidence or material. This is too well-established to necessitate its substantiation by a precedent. However, one can profitably refer to *Radhakishan Vs. State of U.P.*, wherein the Court held that assuming that the search was illegal the seizure of the articles is not vitiated. It may be that because of the illegality of the search the Court may be inclined to examine carefully the evidence regarding seizure, but no other consequence ensues. See *State of Maharashtra Vs. Natwarlal Damodardas Soni*, ."

14. Coming to the 2nd submission of the petitioners, the learned Counsel for the petitioners argued that the amended Rule 24 which authorises the forwarding of the samples drawn from a licensee to any independent laboratory as instructed by the Commissioner of Prohibition and Excise did not govern the field as on the date of the drawing of the samples, but it was only the unamended Rule which governed the field and the same required that the sample be sent to "the Chemical Examiner of the Excise Department having jurisdiction in the region in which licensed premises are situated." It is the submission of the learned Counsel for the petitioners that the amended Rule 24 did not and in fact could not have retrospective operation as it was a piece of subordinate legislation. The learned Advocate-General did not join issue on this count and fairly conceded that the amended Rule 24 is only prospective in operation. But, the learned Advocate-General argued that even in the unamended Rule 24 was only directory, but not mandatory. He also submitted that there is nothing either in the Excise Act or the Rules framed therein which defined the expression or created a post of the "Chemical Examiner of the Excise Department" much less the establishment of any territorial limitations on such a Chemical Examiner. The learned Advocate General, however, stated across the Bar that by a practice whenever samples were drawn in exercise of the power under Rule 24, the samples had been referred in the past to the APFSL, Red Hills, Hyderabad. The learned Counsel for the petitioners did not dispute the statement of the learned Advocate-General.

15. The rationale behind the requirement to send one of the samples drawn to a Chemical Examiner whether statutorily identified or otherwise, is to obtain a

report about the contents of the sample on the basis of a scientific analysis for the purpose of deciding whether any further action is required to be taken against a licensee or other person who is in possession of toddy of which samples were drawn. Such an analysis report would be the basis on which further action would be initiated against the persons who were found to be in possession of adulterated toddy if at all. In fact the same Rule provides that if the licensee so desires one of the samples drawn in the same transaction is required to be sent for analysis to another independent laboratory. Obviously such a provision is made to ensure fair play and to avoid any probable objection on the part of the licensee to the effect that the report obtained by the department from its own internal analyst is a report obtained under influence from the officers of the department or that the chemical examiner himself being a member of the Excise Department is biased in favour of the department. In a given case, if the analysis report of the departmental analyst shows that the sample is adulterated, but if the analysis report of an independent chemical examiner chosen by the licensee is contradictory to the report of the departmental analyst, the licensee would necessarily be able to plead with considerable force that no action could be initiated on the basis of an adverse report given by the departmental analyst. However, it must be mentioned at this juncture that even in such a case, this Court in *Toddy Tappers Co-op. Society Group, Khammam Vs. Prohibition and Excise Superintendent, Khammam Dist. and Others*, , held that the State is not totally prohibited from initiating action u/s 31 of the Act on the strength of the report from its internal analyst. It is a different matter whether a prosecution could successfully be launched against the licensee in such a situation which I do not propose to examine the same in this case as I am not called upon.

16. In the absence of any material to establish that there exist a designated Chemical Examiner of the Excise Department if a strict construction of the Rule is to be adopted, there can never be a search and drawal of samples with any probable legal consequences even if the sample is utterly contaminated. A construction in my view which would generate a great public mischief, this Court can't close its eyes to the fact that no person has a fundamental right of trade in liquor, an obnoxious substance and also to the fact that periodically incidents take place where the lives of number of people are jeopardised by the consumption of adulterated liquor. Therefore, more pragmatic construction of the Rule is called for to enable the State to discharge its constitutional and statutory obligations under Excise Act. Chapter VII of the Act incorporates provisions for the penalty of adulteration u/s 37. It is already noticed that u/s 3, the licence may be suspended or cancelled under various circumstances enumerated therein. The State is bound by the legislative mandate in this regard. The interpretation such as the one sought to be placed by the petitioner would result in a situation of the State being left in a position of not being able to implement the mandate of Legislature, a mandate given in the larger public interest, having due regard to the disastrous consequences of consumption of adulterated liquor.

17. Even otherwise, the petitioners do not explain as to what exactly would be

the prejudice they would suffer if the State acts on the basis of a report which did not emanate from its departmental analyst, but from an independent agency. Though neither of the parties to the case was able to place the exact legal status of the IICT from where the reports were obtained in the present case, it is agreed by the Counsel appearing on either side that it is a Body under the control of the Government of India and not under the control of the State of Andhra Pradesh. Nor is there any allegation in the writ petitions, about the competence of the said Body or the integrity of the officer who conducted the analysis in the present case. In my view, it is an important consideration for coming to a conclusion whether a particular statutory provision or Rule is required to be construed to be mandatory or not, to examine that whether a departure from the rule of literal construction would in any way prejudice the rights of those persons against whom such a liberal construction is invoked.

18. It was held in *Montreal Street Railway v. Normandin* (1917) AC 170, as follows :

"When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those who are entrusted with the duty, and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only".

See also *Kerala State Electricity Board Vs. S.N. Govinda Prabhu and Bros. and Others*, .

The learned Counsel for the petitioners very vehemently urged that in view of the decision of the Division Bench dated 10.1.2003 in WP No.19186 and 21096 of 2002, it is neither open to the learned Advocate-General to raise the various issues raised by him nor would it be open to this Court to embark upon an enquiry into the submissions made by the learned Advocate-General. The learned Counsel argued that the judicial discipline requires that I should follow the Division Bench and allow the writ petitions in view of the fact as according to the learned Counsel for the petitioners, the issue involved in the cases before the Division Bench as well as these two writ petitions is one and the same.

19. There cannot be any second opinion that on an issue decided earlier by a Division Bench of this Court, would be binding upon single Judge's when they are confronted with an identical issue subsequently. But, this is not an invariable rule. The law permits a single Judge of this Court who is not able to persuade himself to accept an earlier decision by a Division Bench of the Court as a binding precedent. The philosophy behind the need to follow a precedent is expressed in the following words in now what is the celebrated case *Planned Parenthood v. Cassey* (1992) 120 LE 2d 674.

"The obligation to follow precedent begins with necessity, and a contrary necessity marks its outer limit. We recognise that no judicial system could do

society's work if it eyed each issue afresh in every case that raised it. Indeed the very concept of the rule of law underlying our constitution requires such continuity over time, that a respect for precedent is by definition indispensable. At the other extreme a different necessity would make itself felt of a prior judicial ruling should come to be seen so clearly as error that its enforcement was for that very reason doomed."

I am also conscious of the caution given by Justice Harlan in *Mapp v. Ohio* 367 US 643m : 6 L.Ed 2d 1081.

"A basic change in the law upon a ground no firmer than than a change in our membership invites the popular misconception that this institution is little different from the two political branches of the Government. No misconception could do more lasting injury to this Court and to the system of law which is our abiding mission to serve."

It therefore becomes necessary for me to go into the basic question "when it is said that a case is binding, what is it that binds ? The answer seems to be that "It is often said that a previous case is binding only as to its ratio decidendi,...." (George Whitecross Paton, *A Text-book of Jurisprudence - Fourth Edition*, Page 209). The learned author goes to say as to what is meant by ratio decidendi in the following words :

"It is also said that the ratio decidendi of a case is the underlying principle or legal reason on which the result of the case depends. This is deceptively simple, as will be seen, and if combined with the proposition that it is only the ratio decidendi which has binding effect, then it leads to confusion and error. The classical view was that the ratio was the principle of law which the judge declared in his judgment to justify and explain his decision of the case. But it has been objected to that view that the ratio is the principle of law which links the ultimate determination of the case with the essential or material facts of it, and that the statement by the judge may or may not do that, or may be framed too widely or too narrowly.

Ratio decidendi, literally, would refer to the "reason of decision" or to the "reason for deciding", but the use of the term to refer to the binding part of a case requires some attention to the actual terminology used in arguments about case law authority, for there has been much confusion. To begin with, ratio decidendi is almost always used in contra-distinction to obiter dictum. An obiter dictum, of course, is always something said by a judge. It is frequently easier to show that something said in a judgment is obiter and has no binding authority than it is to demonstrate that something said has binding authority. Clearly something said by a judge about the law in his judgment, which is not part of the course of reasoning leading to the decision of some question or issue presented to him for resolution, has no binding authority however persuasive it may be, and it will be described as an obiter dictum.

In *Re Hallett* (1879) 13 Ch.D. 696 Sir George Jessel said : "The only use of

authorities or decided cases, is the establishment of some principle which the Judge can follow out in deciding the case before him." And again in *Osborne v. Rowlett* (1880), 13 Ch.D. 774 he said : "The only thing in a Judge's decision binding as an authority upon a subsequent Judge is the principle upon which the case was decided".

20. Coming to the law on this aspect in this country, it was held in *The Regional Manager and Another Vs. Pawan Kumar Dubey*, as follows :

"... It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts."

The concepts of "precedent", "ratio decidendi", "sub silentio" and "obiter dicta" also came under consideration in the judgment of the Supreme Court in *Municipal Corporation of Delhi Vs. Gurnam Kaur*, .

"10. It is axiomatic that when a direction or order is made by consent of the parties, the Court does not adjudicate upon the rights of the parties nor lay down any principle. Quotability as "law" applies to the principle of a case, its ratio decidendi. The only thing in a Judge's decision binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative.....

11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who paid the order in *Jamna Das*" case and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court, because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the Court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P. J. Fitzgerald, editor of the *Salmond on Jurisprudence*, 12th edn., explains the concept of sub silentio at p. 153 in these words :

"A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind. The Court may consciously

decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the Court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the Court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio."

12. In *Gerard v. Worth of Paris Ltd. (K)* (1936) 2 All ER 905, the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the Court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in *Lancaster Motor Co. (London) Ltd. v. Bremith. Ltd.* (1941) 1 KB 675, the Court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by Counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier Court before it could make the order which it did; nevertheless, since it was decided "without arguments, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."

21. In the background of the above principles, I now proceed to enquire as to what is the principle laid down in the Division Bench decision referred to earlier. The factual background is almost identical in the cases before the Division Bench and the present cases. The questions of law raised are also identical. That the unamended Rule 24 did not enable the State to send one of the samples to an Analyst other than the internal analyst of the department, that the amended Rule 24 did not have retrospective operation and that the search of the premises of the licensees conducted by Excise Officers who lack the territorial jurisdiction to conduct such a search is an illegal search, with utmost respect to the members of the Division Bench, I must place it on record that I searched and researched in vain to find out any principle laid down by the Division Bench to come to the conclusion, "therefore, in our considered view that the suspension of licences and issuing show cause notices etc., for cancelling the licences are only illegal and arbitrary and any other action taken by the respondents against the petitioners under the A.P. Excise Act is also illegal and arbitrary in the present situation." Barring a declaration that amended Rule 24 did not have any retrospective

operation, the other issues involved in the case were neither examined or decided. Neither the relevant provisions of the law were discussed nor any legal principle was enunciated which prompted the conclusion reached by the Division Bench.

22. In the circumstances, I express my inability to follow the judgment of the Division Bench referred to above as a binding precedent. That leaves me in the last question as to what is the course open to me. I am of the opinion that the judicial discipline of this great institution compels me to record that the issues involved in the present case require a decision by a Bench of appropriate strength. The office is therefore directed to place the papers before the Hon''ble the Chief Justice for appropriate further orders in this regard.