

(2001) 11 AP CK 0063
In the Andhra Pradesh High Court
Case No : Writ Petition No. 2679 of 2001

Vishwanatha Ravi Kumar

APPELLANT

Vs

Government of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 27-11-2001

Acts Referred:

Andhra Pradesh (Indian Liquor and Foreign Liquor) Rules, 1970 — Rule 23, 26, 26A, 31(1), 31(4)
Andhra Pradesh Excise (Appeal and Revision) Rules, 1969 — Rule 4
Andhra Pradesh Excise (IL and FL Retail Sale Conditions of Licences) Rules, 1993 — Rule 6
Andhra Pradesh Excise Act, 1968 — Section 15, 15(2), 17, 28, 33
Constitution of India, 1950 — Article 136, 14, 19, 19(1), 226

Citation : (2002) 2 ALD 29 : (2001) 6 ALT 406

Hon'ble Judges : Goda Raghuram, J

Bench : Single Bench

Advocate : O. Manohar Reddy, T. Lakshminarayana, A. Jaggannatha Rao, A. Giridhar Rao and G. Janshi, for the Appellant; Government Pleader, for Excise and Prohibition, Taddi Nageswara Rao, E. Madan Mohan Rao, B. Adinarayana Rao, C.V. Mohan Reddy and P.V. Narayana Rao, for the Respondent

Final Decision : Allowed

Judgement

Goda Raghuram, J.—Brief factual over view of the writ petitions :

All these writ petitions involve common question of law and fact and are thus considered and disposed of by this common judgment.

2. Writ petitioners herein are either residents of the locality or existing IL-24 licensees, who are aggrieved by the revisional orders of the State Government, by which, orders of cancellation of particular licences during the year 1998-99 by the concerned Excise Superintendents, have been invalidated. Some of the writ petitions are against revisional orders directed against no orders of cancellation, but against non-grant of licences for the current Excise Year, to such of those licensees who have surrendered their licences and have also withdrawn the

proportionate licence fee for and during the year 1998-99. All these orders of the State Government are passed in purported exercise of the revisional power available u/s 64 of the A.P. Excise Act, 1968 (for short "the Act").

WP. 2679 of 2001:

3. The writ petitioner is an existing IL-24 licensee of L. Kota village, Vizianagaram District. The 4th respondent's licence was cancelled by the Excise Superintendent, Vizianagaram, by the order dated 26-5-1998 on the ground that the licensee included in loose sales contrary to the conditions of licence. This order was challenged in a writ petition in this Court. After disposal of the said writ petition an enquiry was conducted and the cancellation of licence confirmed by the order dated 31-10-1998. The 4th respondent filed a representation dated 12-12-2000. This representation was considered as a revision petition and allowed setting aside the order of the Excise Superintendent, Vizianagaram, in G.O.Rt. No. 371 Revenue (Excise III) Department, dated 14-2-2001. The reason recorded by the 1st respondent in the said G.O. is---

"Government, after careful examination of the matter and by giving a benefit of doubt, allowed the Revision Petition by setting aside the orders of Excise Superintendent, Vizianagaram."

WP 10413 of 2001:

4. The petitioner is an Ex-Councillor claiming to be a social worker of Parvathipuram Municipality, Vizianagaram District. The order of the 1st respondent in G.O.Rt No. 789 Revenue (Excise-III) Department, dated 14-2-2001 is challenged. It is alleged that 4th respondent's husband, was an IL licensee for the Excise year 1998-99. Despite having a licence only to sell liquor in bottles, he was running a bar in the licensed premises. After number of representations including by the petitioner, in a raid conducted on 20-7-1998 the licensed premises was inspected, licence suspended on 23-7-1998 and eventually cancelled by the orders dated 18-8-1998. The laboratory analysis of the liquor sold in the licensed premises showed adulteration. Appeals were thereafter filed to the Deputy Commissioner and Commissioner, which were rejected by the orders dated 14-9-1998 and 31-1-1999.

Thereafter WP 4161 of 2000 was filed by the licensee alleging that his representation dated 7-2-2000 was pending before the 2nd respondent. This writ petition was disposed of directing consideration of the representation. Though no representation was pending, in compliance with the order of this Court, the 2nd respondent called for a representation from the 4th respondent and disposed of the same by the order dated 25-10-2000, declining the request of compounding the offence, on the ground that the appeals were already dismissed and the offence committed too serious to justify compounded. Thereafter, the licensee (husband of R4) preferred a representation dated 2-11-2000, which having been treated as a revision petition, was allowed by the impugned order. It is seen that more than 2 1/2 years after the cancellation of the licence by the Excise

Superintendent, after the orders of cancellation have been confirmed by the Deputy Commissioner of Prohibition and Excise, Visakhapatnam on appeal and by the Commissioner of Prohibition and Excise in a further appeal by the orders dated 14-9-1998 and 13-1-1999, and even after the dismissal of the representation seeking compounding of the offences on the ground that the offences found proved were of a very serious nature, by the impugned order the State Government has allowed the revision of the 4th respondent, who claims to be the wife of the licensee and who was brought on record as a legal representative of the licensee. In allowing the revision by the impugned order, the Government recorded as under -

"Government, after careful examination of the matter and by giving a benefit of doubt to the licensee, allowed the Revision Petition by setting aside the orders of Excise Superintendent, Vizianagaram. The Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad is directed to restore the licence in the name of Smt M. Laxmi, w/o late M. Subba Rao, by following rules in force."

WP 10638 of 2001:

5. The petitioner is an existing IL-24 licensee at Somasila, Nellore District. He challenged the order of the 1st respondent in G.O. Rt. No. 952 Revenue (Excise-III) Department, dated 3-5-2001. The 4th respondent had an IL 24 licence for the Excise year 1997-98. His premises was inspected and a case registered alleging loose sales in contravention of the terms of licence. The licence was suspended on 16-5-1998. The 4th respondent filed WP 14479 of 1998 challenging the cancellation. This and other connected writ petitions were disposed of on 28-5-1998 directing conduct of enquiry under the provisions of the Act. An enquiry was conducted and confirming the charge of indulging in loose sale, the licence of the 4th respondent was cancelled by the order dated 4-11-1998. This order was confirmed in an appeal and further appeal, by the appellate orders dated 10-3-1999 and 25-6-1999. More than two years after the order of cancellation and its confirmation in the appeal and further appeal, the 4th respondent preferred a revision in April 2001, which was allowed by the impugned order. Consequently the 3rd respondent issued an order dated 5-5-2001.

6. The revision was allowed by the Government recording a benefit of doubt to the 4th respondent.

WP 10911 of 2001:

7. The petitioner is a Member of Kothavalasa Gram Panchayat, Vizianagaram District. The orders of the 1st respondent in G.O.Rt.No. 992 Revenue (Excise-III) Department, dated 9-5-2001, allowing the revision of the 4th respondent is challenged. 4th respondent's IL 24 licence for the year 1998-99 was cancelled by the order of the Excise Superintendent dated 24-6-1998 after notice and opportunity, on the ground that it was located at a prohibited distance from the Government Hospital. An undated representation appears to have been filed by

the 4th respondent in the year 2001, which was considered as a revision petition and allowed by the impugned order. The reason recorded by the Government for allowing the revision is --

"Government, after careful examination of the matter and by taking a lenient view allowed the revision petition by setting aside the orders of Excise Superintendent, Vizianagaram, duly permitting the petitioner to establish the shop in a location subject to fulfilling the conditions laid down in Rule 6 of A.P. Excise (IL and FL Retail Sale Conditions of Licences) Rules, 1993."

WP 15598 of 2001:

8. An existing IL 24 licensee assails the order of the 1st respondent in G.O.Rt. No. 1510 Revenue (Excise-III) Department, dated 27-7-2001, allowing the representation of the 4th respondent dated 30-1-2001, treating it as a revision petition. The 4th respondent was an JL-24 licensee during the Excise year 1998-99, He surrendered the licence in terms of G.O. Ms. No. 282 Revenue Department dated 24-4-1998 and requested for refund of proportionate licence fee. Consequent on the 4th respondent's request, the shop was withdrawn by the Excise Superintendent, Kakinada by the order dated 15-5-1998 and an amount of Rs. 49,000/- and bank guarantee of Rs. 2 Lakhs for the period for which the 4th respondent did not conduct the business was also refunded to him.

9. 4th respondent on 30-1-2001 submitted a representation seeking restoration of his licence for the current Excise year, which having been considered as a revision petition, was allowed. It was urged by the 4th respondent, as apparent from the impugned order, that the authorities have withdrawn his licence without calling for objections. It is apparent that such a contention is wholly misconceived. The withdrawal of the licence was consequent on the surrender of licence by the 4th respondent on the ground that he has suspended his business, as the shop was unviable. He had also received the proportionate licence fee and bank guarantee. In any event by the reason recorded by the State Government for allowing the revision is instructive:

"Government, after careful examination of the matter and by giving a benefit of doubt to the licensee allowed the revision petition by setting aside the orders of Excise Superintendent, Kakinada, with permission to locate the Shop at D. No. 9-47, Razole, East Godavari District."

10. It is seen from the above order that not only the revision has been allowed but the 4th respondent was permitted to relocate his business premises for the current year.

WP 16042 of 2001:

11. A resident of CCC Township, Manchiryala Mandal, challenges the order of the 1st respondent in G.O.Rt. No. 1496 Revenue (Excise-III) Department, dated 24-7-2001, allowing the representation of the 3rd respondent treating it as revision petition.

12. The 3rd respondent was an IL-24 licensee for the year 1998-99 running his business as M/s. Sai Wines at Naspur. On an inspection of the licensed premises on 30-4-1998 loose sales were recorded and a case registered. The licence was suspended pending enquiry by the order dated 15-5-1998. After show-cause notice and due enquiry a notice for cancellation of licence was issued on 16-5-1998. The 3rd respondent, by way of Writ Petition 17439 of 1998 challenged this order. Eventually the writ petition was dismissed along with a batch of similar writ petitions, by the order dated 4-9-1998. Thereafter a fresh show-cause was issued, 3rd respondent's explanation considered and the licence cancelled by the Excise Superintendent, Adilabad, by the order dated 25-11-1998. After nearly 2 1/2 years the 3rd respondent preferred a representation dated 12-3-2001 challenging the order of cancellation dated 25-11-1998. In allowing the revision by the impugned order, the State Government recorded the following:

"Government, after careful examination of the matter and by giving a benefit of doubt to the licensee allowed the revision petition by setting aside the orders of Excise Superintendent, Adilabad."

WP 19314 of 2001:

13. An existing IL 24 licensee assails the order of the 1st respondent in G.O.Rt No. 1779, Revenue (Excise-111) Department, dated 14-9-2001, allowing the representation of the 4th respondent dated nil, treating it as a revision petition.

14. The 4th respondent was an IL 24 licensee at Sivakonda, E.G. District. He had not paid the licensee fees for the next year 1999-2000. His licence was not therefore renewed. He preferred a representation dated nil, presumably in the year 2001. Before the Government, the 4th respondent contended that for the Excise year 1998-99 a syndicate was formed in that area who brought pressure on the Excise officials to conduct raids on the 4th respondent's shop and consequently several raids were conducted on his shop. As a result of the said alleged harassment, he suffered losses and could not renew licences in the next Excise year and in the circumstances he requested restoration of licence. Despite the absence of any order adverse to the 4th respondent that could have been the subject of a revision, the State Government allowed his representation recording the following:

"Government, after careful examination of the matter and in view of the foregoing paras allowed the revision petition by setting aside the orders of Excise Superintendent, Kakinada, East Godavari District."

WP 19492 of 2001:

15. A resident of Parvathipuram, a Member of Municipal Council of Parvathipuram Municipality and President of the Town Congress, challenges the order of the 1st respondent in G.O.Rt.No. 1739, Revenue (Excise-III) Department, dated 10-9-2001. The 4th respondent was an IL licensee for the year 1998-99. AS his

licensed premises was located within 100 Mts, of a temple, the license was suspended on 24-5-1998 and a show-cause notice issued. Eventually after due process the licence was cancelled on 24-6-1998 and the proportionate licence fee refunded to the licensee at his request. A representation of the 4th respondent dated 22-3-2001 was treated as a revision petition and the 1st respondent by the impugned order allowed the revision recording the following reasons:

"Government, after careful examination of the matter and by taking a lenient view allowed the revision petition by setting aside the orders of Excise Superintendent, Vizianagaram, duly permitting the petitioner to establish the shop at Door No. 17-161/3, Rajiv Marg, Parvathipuram, subject to fulfilling the conditions laid down in Rule 6 of A.P. Excise (IL and FL Retail Sale Conditions of Licences) Rules, 1993."

WP 20525 of 2001:

16. An existing IL 24 licensee of Kandikuppa village, E.G. District, challenges the order of the 1st respondent in G.O. Rt No. 1873 Revenue (Excise-III) Department, dated 28-9-2001. The 4th respondent was an IL 24 licensee during the year 1998-99 at Kandikuppa. His premises were raided on 3-10-1998 and possession of non-duty paid liquor was found. A case was booked and the licence suspended on 4-10-1998. Eventually after due process his licence was cancelled by the order dated 7-12-1998. The appeal against this order was rejected by the 2nd respondent on 7-7-1999.

Thereafter, the 4th respondent preferred a representation dated nil to the 1st respondent, which was treated as a revision petition and allowed by the impugned order. The reason recorded by the 1st respondent in the impugned order is--

"After careful examination of the matter and by giving a benefit of doubt to the licensee the revision petition is allowed by setting aside the orders of Prohibition and Excise Superintendent, Kakinada."

WP 20805 of 2001:

17. An existing licensee of Devaguptam village, E.G. District, challenges the order of the 1st respondent in G.O.Rt No. 1895 Revenue (Excise-III) Department, dated 29-9-2001. The 4th respondent was an IL 24 licensee for the year 1998-99 at Devaguptam village. The said respondent did not pay the licence fee for the next Excise year i.e., 1999-2000. There was thus no renewal of his licence. He is seen to have preferred a representation dated nil to the 1st respondent, which having been treated as a revision petition was allowed by the impugned order. The 4th respondent urged before the 1st respondent, as is apparent from the impugned order, that his shop was closed due to his illness, that he was advised continuous bed rest and that due to above reasons he could not approach the Excise officials in time for renewal of the shop, also that after recovery he several times approached the authorities for renewal, which was not

considered and that in the circumstances he seeks renewal. For allowing the revision by the impugned order, the Government recorded the following:

"Government, after careful examination of the matter by taking a lenient view allowed the revision petition duly permitting the petitioner to establish the shop in location subject to fulfilling the conditions laid down in Rule 6 of A.P. Excise (IL and FL Retail Sale Conditions of Licences) Rules 1993."

WP 21288 of 2001:

18. The 4th respondent was an IL 24 licensee for the Excise year 1998-99 at Teegalapahad village, Adilabad District. His licensed premises was inspected on 27-4-1998 and alleging loose sales of liquor in the premises contrary to the conditions of licence and the provisions of the relevant rules, a case was registered. On the basis of another inspection on 30-4-1998, the shop was found open before the schedule time and yet another case registered on 16-5-1998. The licence was suspended pending enquiry, by the order dated 16-5-1998 and thereafter a show-cause notice dated 16-5-1998 for cancellation of the licence was issued. Against the said show-cause notice the 4th respondent preferred WP 14530 of 1998. Eventually, the writ petition along with a batch of writ petitions was dismissed by the order of this Court dated 4-9-1998. Thereafter, a fresh show-cause notice was issued, the explanation of the 4th respondent considered and the licence cancelled by the order dated 25-11-1998. Having kept quiet for over two years, the 4th respondent preferred a representation some time in the year 2001 seeking invalidation of the order of cancellation of his licence. By the impugned order in G.O. Rt. No. 1495, Revenue (Ex.-III) Department, dated 24-7-2001, the 1st respondent entertained the representation as a revision petition and allowed the same. In support of the conclusions for allowing the revision, the 1st respondent recorded the following:

"7. Liquor might have been consumed outside the business premises i.e., either on the road or public place and on seeing the Excise Department Officers, they have fled leaving behind empty glasses/half empty bottles etc. There is some evidence to prove that loose sales of liquor took place but that evidence was not clinching and conclusive. Hence benefit of doubt is given to the licensee.

8. Government, after careful examination of the matter and by giving a benefit of doubt to the licensee allowed the revision petition by setting aside the orders of Excise Superintendent, Adilabad."

19. An existing IL 24 licensee of Srirampur, Adilabad District challenges the above revisional order of the 1st respondent.

WPNo. 21357 of 2001:

20. An existing IL 24 licensee of Kothota, Mogaltur Mandal, WG District, Having his business premises at Mutyalpalli, challenges the order of the 1st respondent in G.O.Rt.No. 1872, Revenue (Excise III) Department, dated 28-9-2001. The 4th respondent was an IL 24 licensee during the Excise year 1998-99. His licensed

premises were inspected and alleging loose sales of liquor in the premises and therefore violation of the provisions of the Act and the relevant rules, a case was registered and his licence suspended on 8-5-1998. Aggrieved, the 4th respondent filed WP 14068 of 1998. Eventually, by the judgment of this Court in WA 920 of 1998 and batch, while upholding the suspension orders, the departmental officials were directed to complete the enquiry within a specified time. After a due notice and opportunity to the 4th respondent, his licence was cancelled by an order dated 16-11-1998. The 4th respondent having taking no steps thereafter for over two years, appears to have preferred a representation some time in the year 2001, seeking renewal of the licence for the current excise year. This representation was treated as a revision petition and allowed by the 1st respondent, recording the following reason:

"Government, after careful examination of the matter and by giving a benefit of doubt to the licensee allowed the revision petition by setting aside the orders of Prohibition and Excise Superintendent. Eluru."

21. As is apparent from the brief factual profile of each of the writ petitions above, the revisional orders of the State Government are in respect of four classes of cases - (a) Cancellation of licences on account of violation of the conditions of licence viz., indulging in loose sales or possession of non-duty paid liquor in the business premises; (b) Location of the licensed premises within a prohibited distance of a hospital or a place of worship or school etc.; (c) Non-renewal of the licences for the succeeding Excise year 1999-2000 or (d) Surrender of licences with concomitant receipt of the proportionate licence fee for the unexpired portion of the excise year, pursuant to an application for such refund.

22. In respect of classes (a) and (b), there are formal orders of cancellation of licence by the concerned Excise Superintendents passed on various dates in the year 1998, cancelling the licences. In classes (c) and (d) there are no such orders and the licences for the ensuing year either not been renewed or the representations of the licensees for surrender having been considered and accepted, the proportionate licence fee for the unexpired portion of the year was refunded together with the bank guarantee, as per the request of the licensees, i.e., licences have been consciously abandoned.

23. It is apparent that the challenge to the revisional orders of the State are either by the licensees of the area or by persons of that locality, who assert to be having an interest in resisting an arbitrary and irrational increase in the number of licensed retail shops in their locality, which are asserted to be detrimental to the interest of themselves and other residents of the area.

24. Heard learned Counsel for the respective petitioners, learned Counsel for the affected licensees and the learned Government Pleader for Prohibition and Excise. The following issues arise for the consideration of this Court:

(A) Whether the State's exclusive privilege in the matter of intoxicating

beverages is a licence for uncanalised and unregulated power and discretion to choose the persons on whom it desires to bestow the largesse of licences to vend liquor, behind a facade of exercising revisional power, contrary to the statutory environment of the A.P. Excise Act 1968 and the relevant rules thereunder?

(B) Whether the State has a discretion and power to grant licences contrary to the provisions of the A.P. Excise Act, 1968?

(C) Whether the existing IL 24 licensees have locus standi to question the orders of the State Government impugned herein?

25. It has been strenuously contended by the learned Government Pleader for Prohibition and Excise on behalf of the State that in view of the settled position that trade or business in alcoholic beverages is an exclusive privilege vesting in the State, there can be no limits on the exercise of State power and that the impugned orders passed under the rubric of revisional power, in substance granting licences to those whose licences have been cancelled in the excise year 1998-99 or even in respect of those whose licences have been surrendered or not renewed, cannot be questioned on any ground whatsoever. The query by the Court whether such exclusive privilege amounts to an uncanalised prerogative that liberates the State from conforming even to the statutory frame work enjoined by the A.P. Excise Act, 1968 and the rules thereunder, the learned Government Pleader respondent in the affirmative. This claim of the State needs to be examined.

26. The power and privileges inhering in the State in the area of trade and business in liquor are constitutional presents, clearly delineated by a succession of judicial pronouncements. A judgment of this Court in WP 9199 of 2001 and batch, had occasion to summarise the principles in this area and for the sake of brevity they are reiterated:

"It is too well settled to require elaboration that the trade in alcoholic beverages or intoxicants is not protected under Article 19 of the Constitution of India; and having regard to the fact that this trade or business are *res extra commercium*, no person involved in the trade or business in intoxicants or alcoholic beverages can claim to have a fundamental right to such trade or business. What, however, follows is that wherever the State farms out its exclusive privilege in such trade in alcoholic beverages in favour of a citizen, such citizen has within a narrow spectrum, a right to be considered fairly *qua* other similarly circumstanced class of citizen viz., other dealers or traders in alcoholic beverages. The State may not under the rubric of uncanalised power, claim any prerogative to discriminate between different groups of citizens, who form one class *qua* the trade or business in alcoholic beverages vide *Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others*, , *The State of Assam Vs. A.N. Kidwai, Commissioner of Hills Division and Appeals, Shillong*, , *R.M.D. Chamarbaugwalla Vs. The Union of India (UOI)*, , *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and*

Others, , Nashirwar and Others Vs. State of Madhya Pradesh and Others, , Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, , State of M.P. and Others Vs. Nandlal Jaiswal and Others, , Government of Andhra Pradesh Vs. Anabeshahi Wine and Distilleries Pvt. Ltd., , Doongaji and Co. Vs. State of Madhya Pradesh and others, , Sana Liquors (P) Limited and others v. Union of India and Ors., 1993 ALT Supp (1)21, Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others, , M/s. Khoday Distilleries Ltd. etc. Vs. State of Karnataka and others, , and State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., ."

27. While the right to trade or business in intoxicating beverages has been broadly held to be not comprehended within the rights under Article 19(1)(g) of the Constitution, right to equality of treatment qua Article 14 of the Constitution has been hold applicable to a limited extent. Where the State has decided to part with its exclusive rights and privileges in favour of others, it could still regulate such farming out of the right and privilege, but consistent with the principles of equality enjoined upon it under Article 14. That the injunctions of Article 14 are not eclipsed when the State is operating in the area of liquor trade, in particular when it operates the trade through private persons or organisations, is clear from the principles enunciated in the following decisions of the Supreme Court:

28. In Doongaji and Co. Vs. State of Madhya Pradesh and others, , the Supreme Court delineated the principle thus--

".....When the State has decided to part with such right or privilege to the others, then State can regulate consistent with the principles of equality enshrined under Article 14 and any infraction in this behalf at its pleasure is arbitrary violating Article 14. Therefore, the exclusive right or privilege of manufacture, storage, sale, import and export of the liquor through any agency other than the State would be subject to rigour of Article 14."

29. Earlier too these principles have been stated in Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, , and State of M.P. and Others Vs. Nandlal Jaiswal and Others, .

30. In Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others, , the Supreme Court has again summarised the law on the subject. It has been reiterated that when the State permits trade or business in potable liquor with or without limitations, the citizens have a right to carry on the trade or business subject to the limitations, if any, and the State cannot discriminate between the citizens qualified to carry on trade or business. In M/s. Khoday Distilleries Ltd. etc. Vs. State of Karnataka and others, , the Supreme Court reiterated the principle that when the State decides to grant right or privilege inter alia to trade in liquor to others, the State cannot escape the rigour of Article 14.

31. What is the philosophy underlying entrustment of such vast privilege and discretion in the State? Is it for the purpose of conferring on the State a species of power wholly immune from constitutional scrutiny on any ground or is the

conferment, in all its breadth and amplitude for an avowed and discernible constitutional purpose?

32. The State's legislative and executive power in relation to intoxicating liquor, that is to say the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, is traceable to the legislative field enumerated in Entry 8 of List II of the VII Schedule to the Constitution. The extent of the executive power of the State is subject to the provisions of the Constitution and subject to any legislation covering the field. When a particular field is occupied by legislation, the plenitude of the executive power is pro tanto circumscribed, to the extent of such occupation, and is not available to be exercised contrary to the legislation. The executive no doubt, at times, feels the lack of power to act with complete, all embracing swiftly moving authority and feels constrained by the absence of an uncanalised power and discretion. No doubt a Government with distributed authority, subject to be challenged in the Courts of law, atleast long enough to consider and adjudicate the challenge, labours under restrictions from which other Governments are free. It has not been our tradition to envy such Governments. Under our constitutional scheme the Government was designed to have such restrictions. Our founding fathers did not consider the price too high in view of the safeguards which these restrictions afford. It is apt to recall the impressive words of Mr. Justice Brandies in *Myers v. United States* 71 L ed. 160.

"The doctrine of separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was, not to avoid fiction, but by means of the inevitable friction incident to the distribution of the Governmental powers among the three Departments, to save the people from autocracy."

33. On analysis of the text and structure of our constitutional architecture and various decisions which have enunciated the extent and reach of the State's power in the area of trade and business in liquor, it is apparent that the State has been consecrated the exclusive privilege to regulate this area of trade and business not with a view to carve out an exception to the transcendent constitutional principle that the Executive Government is a Government under the Constitution and the Laws, but to ensure effective exercise of control over this pernicious commodity and its trade which has always been considered to having a pejorative impact on the health, economy and well-being of the people. Every action of a public authority in any organised civil society has but a singular valid and permissible goal viz., public interest. No power is conferred on any public institution for the pleasure of its incumbent or as spoils of office. They very grant of exclusive privilege on the State in this area presupposes a concomitant and higher level of responsibility that it should be exercised with conscious sensitivity to the negative impacts of an abuse or irrational exercise of the broad privilege and the inherent discretion.

34. The area of trade and business in liquor is comprehensively occupied and

regulated by the A.P. Excise Act, 1968 (for short "the Excise Act") The canvass of regulation includes import and export, possession, use, manufacture, transport, sale and purchase. On accepted and settled principles of constitutional-law the executive has no powers in the area of sale of intoxicating liquors dehors those traceable to the Excise Act. Section 15 of the Excise Act prohibits any person intere alia from buying or selling an intoxicant except under the authority and in accordance with the terms of a licence granted in this behalf. Section 15(2) enumerates the authorities empowered to grant the licences. Section 17 of this Act sets out the power of the Government subject to the provisions of Section 28 and the rules made, to grant to any person the exclusive privilege infer alia of selling by wholesale or by retail any liquor or other intoxicant within a specified area. Section 28 specifies the forms and conditions of licences. To effectuate the purposes of the Excise Act, in particular in relation to the regulation of retail sale of liquor, various rules have been made including the A.P., (Indian Liquor and Foreign Liquor) Rules, 1970 (for short " 1970 Rules"), the A.P. Excise (Indian and Foreign Liquor Retail Sale Conditions of Licences) Rules, 1993 (for shot "1993 Rules") and the A.P. Excise (Lease of Right to Sell Indian Liquor, Foreign Liquor and Beer in Retain under IL 24 Licence) Rules, 1998 (for short "1998 Rules"). Rule 23 of the 1970 Rules sets out the various categories for which licences could be granted. Sub-rule (xiii) of Rule 23 defines retail licences (off licences) in Form IL 24, which is a licence permitting sale of Indian Liquor and Foreign Liquor in sealed or capsuled bottles in quantities not exceeding six quart bottles of all liquors other than Beer and 12 quart bottles Beer at any time or in any single transaction, but it shall not allow the consumption in the licensed premises.

35. In these cases we are concerned only with IL 24 licences. Rule 24 of the 1970 Rules states that every licence other than the occasional licence in Form IL 22 or Special licence shall be valid for a lease year commencing from the 1st April, ending with 31st March of the succeeding year, subject to payment of annual licence fee in one lumpsum. Rule 26 of these Rules enumerates the licensing authorities and read with Section 15(2) (a) of the Excise Act it is clear that the Prohibition and Excise Superintendent of a District is the competent licensing authority to grant a retail licence in Form IL 24.

36. A conjoint analysis of the provisions of the Excise Act and the 1970, the 1993 and the 1998 Rules, shows that except where renewal of an IL 24 licence is implicated, the grant of the IL 24 licence shall only be after the calling for applications in the areas prescribed by the Government and by issuing a notification in the District Gazette atleast 7 days in advance of the date of selection (Rule 2 of the 1998 Rules). Rule 31(4) of the 1970 Rules sets out the procedure to be adopted for the selection of the applicants for grant of IL 24 licences in respect of shops notified under Rule 2 of the 1998 Rules. As per this procedure wherever there is only one applicant for a shop the procedure prescribed in Rule 31(1)(a) shall be followed and in case of plurality of applicants, the grant of licence shall be after drawal of lots by the Collector in the presence of the applicants who are available at the time of selection as notified

under Rule 2 of the 1998 Rules.

37. Renewals of applications are governed by Rule 26A of the 1970 Rules and the first proviso to Rule 2 of the 1998 Rules. Rule 26-A of the 1970 Rules is as under:

"26-A. (1)(a) An application for the renewal of the licence shall bear a Court fee stamp of the requisite value as per provisions of the Indian Stamp Act, 1899 and shall be submitted to the authority competent to renew the licence, one month in advance of its expiry together with a challan in original in support of having paid the required licence fee:

Provided that the Commissioner of Prohibition and Excise may, subject to such terms and conditions as he may deem fit to impose permit the licensee to submit application on such date as may be specified for renewal of licence before the expiry of the period of the licence and also to pay the licence fee in such manner as he deems fit;

Provided further that the Commissioner of Prohibition and Excise for the special reasons to be recorded therein (subject to such term and conditions as he deem fit to impose may consider to) entertain the application for renewal up to 30th April of every year with a rate of Rs. 100/- for each day of delay (and in accordance with the guidelines issued by the Government from time to time) after the expiry of the period of the licence.

(b) Before issue of a licence the licensee shall execute a counter part agreement in Form IL 28 (other than licences under IL-24)/ IL-28-A (Licenses under IL-24) as the case may be on the stamp paper of requisite value as per the provisions of the Indian Stamp Act, 1899.

(2) In case the application for renewal of licence is made as prescribed in Sub-rule (1) and if the licence is not duly renewed and returned before the licence expired, the licensee shall have the right to carry on business till its renewal is refused and the fact intimated. If the application is not made with time it shall not however be open to the licensee to continue the business on the expiry of the licence."

The first proviso to Rule 2 of 1998 Rules is as under:

"Provided that the existing retail licences shall be renewed for the year 2000-2001 on payment of requisite licence fee."

38. Having regard to the stand taken by the State it is required to analyse the content and scope of the appellate and revisional power available under the Excise Act including the rules regulating the exercise of such power.

39. Section 63 in Chapter IX of the Excise Act deals with the appeals:

Chapter IX

Appeals and Revision

63. Appeals :--(1) Any person aggrieved by an order passed by any officer, other than the Commissioner or Collector, under this Act, may within forty five days from the date of communication of such order, appeal to the Deputy Commissioner.

(2) Any person aggrieved by an order passed by the Deputy Commissioner or Collector under this Act, may, within sixty days from the date of communication of such order, appeal to the Commissioner."

Section 64 sets out the revisional power of the State:

"64. Revision :--The Government may, either suo motu or on an application called for and examine the records of any officer in respect of any decision, order or other proceedings made under this Act, including those relating to the grant, issue or refusal of a licence, or permit, for the purpose of satisfying themselves as to correctness, legality or propriety of any such decision or order or as to the regularity of such proceedings and if in any case, it appears, to them that such decision, order or proceedings should be modified, annulled, reversed or remitted for reconsideration they may pass order accordingly:

Provided that no order adversely affecting any part shall be passed under this section unless he has been given an opportunity of making his representation."

40. The A.P. Excise (Appeal and Revision) Rules, 1969 (for short "1969 Rules") have been made to regulate and structure the exercise of the appellate and revisional powers under Sections 63 and 64 of the Excise Act. These rules set out the form of appeal or revision applications. Rule 4 of these Rules requires that every application for revision u/s 64 of this Act shall be only within sixty days from the date of the order against which revision is filed. The proviso to Rule 4 enables the Government, for sufficient case, to entertain application at any time beyond the aforesaid period. Rule 7 of these Rules specifically mandates that if an appeal or revision application does not comply with any of the requirements of the 1969 Rules, the appeal or revision application is liable for summary rejection. It is settled law that rules validity made under legislation have the same force as the legislation itself and operate to regulate the area encompassed by the rules with the same vigour as the legislation, vide - State of Tamil Nadu Vs. Hind Stone and Others, and Bharatidasan University and another v. All India Council for Technical Education and Ors., 2001 (6) SCALE 429.

41. Thus the exercise of revisional power, be it on an application or even suo motu, will have to conform to the operative legal environment including the provisions of the 1969, 1970, 1993 and 1998 Rules and the provisions of the Excise Act. On this analysis, under the facade of exercising revisional power the State Government is not competent to grant renewal of licences contrary to the provisions of Rule 26-A of the 1970 Rules or the first proviso to Rule 2 of 1998 Rules. Having regard to the language of Section 64 which spells out the revisional power of the State, the revisional power cannot also be invoked unless it is in respect of any decision, order or other proceedings made under this Act including

those relating to the grant, issue or renewal of a licence or permit. Thus, no revision is available in a situation where the licensee has consciously failed to make an application for renewal of licence as provided in Rule 26-A of the 1970 Rules or where the licence was surrendered u/s 33 of the Excise Act. This is so since in these cases there is no decision, order or other proceeding, which requires to be revised on consideration of the correctness, legality or propriety of any such decision, order or other proceeding.

42. Insofar as the cases on hand are concerned, all the applications have been made admittedly and demonstrably beyond the period of sixty days from the date of the order against which revision is sought (even in cases where there is an order cancelling or revoking the licence). No application for condonation of delay is sought nor any reason adduced for the delay. None of the impugned orders of the State made in the purported exercise of revisional power set out any cause for the Government having entertained the applications filed beyond the time stipulated in Rule 4 of the 1969 Rules, let alone a sufficient cause. The impugned orders are therefore invalid as being ultra vires the mandate of Rule 4 of the 1969 Rules.

43. The learned Government Pleader sought to justify the impugned orders on the ground that no time limit is available where the exercise of revisional power is suo motu. In the considered view of this Court this contention is misconceived besides being woolly. All the orders disclose that they have been made pursuant to an application/ representation. In the circumstances they will have to be considered and tested qua the procedural discipline ordained by the 1969 Rules. Even if they were to be considered as having been made in exercise of the suo motu power of the State, the power of suo motu revision being a statutory power will have to conform to the requirements of reasonableness and public interest. Suo motu revisional power has been conferred on the State Government only for the purpose of efficient effectuation of public interest and not to licence selective benevolence. Unless special circumstances or overriding public injury considerations are recorded and demonstrated, mere availability of suo motu power cannot be urged a justification for its indiscriminate or capricious exercise. It is neither urged nor shown that all the cancelled, surrendered or non-renewed licences all over the State have been taken up for revisional scrutiny.

44. Further a suo motu revisional power, even in the absence of any period of limitation prescribed for its exercise, u/s 64 of the Excise Act, will have to be exercised within a reasonable time. The suo motu power is not a charter permitting its exercise at any distance of time and even after a long lapse of years from the date of the cancellation, surrender or non-renewal of licences, vide *The State of Gujarat Vs. Patil Raghav Natha and Others*, , *A. Kodanda Rao and Anr. v. Government of Andhra Pradesh* 1981 (2) ALT 280, *S.B. Dharma Reddy v. Director of Settlements, A.P., Hyderabad and Anr.* 1989 (1) ALT51 [SN] and *Smt. P. Mangamma and Others Vs. The Women's Co-operative Housing Society Ltd. and Others*, .

45. There is nothing in the impugned orders which expressly or by any necessary implication disclose the over-riding public interest involved in allowing the applications of IL 24 licensees who have violated the provisions of the Act and the rules; of persons whose licences have been cancelled on account of location of their business premises within a prohibited distance from places of public worship, educational institutions and the like; of persons who have failed to apply for renewal within time or within a reasonable time even after the expiry of time for making such an application or of persons who have volitionally and consciously surrendered their licences and have also received the proportionate licence fees for the unexpired period of the licences in the year 1998-99.

46. Further the suo motu revisional power of the State u/s 64 will have to be considered in the context of the equality injunctions of the Constitution, exemplified by the relevant provisions of the Excise Act and the rules thereunder. As has already been noticed grants of licences unless renewals are implicated, will have to be by a public notification in the District Gazette affording opportunity to all desirous of pursuing this trade or business. Trade in liquor may be *res extra commercium*. But whenever and to whatever extent, the State permits the trade, it does not cease to be State largesse, cease to be governed by the equality injunctions of the Constitution, nor does the State action enjoy immunity from judicial scrutiny.

47. Thus, wherever licences have been cancelled, renewals not made or surrendered long years ago, they are not eligible for renewal under Rule 26-A of the 1970 Rules. Any grant would in effect be a fresh grant of licence and such fresh grant can only be after the process of notification inviting general public to apply and in case of a plurality of applications, in conformity with the provisions of 1970 Rules i.e., by the drawal of lots. In this legal environment the revisional orders which have the clear and direct impact of and amount to grant of fresh licences, clearly violate Article 14, the specific provisions of the Excise Act, the 1970 and the 1998 Rules. The exercise of revisional power is, on the aforesaid analysis, a colourable and fraudulent exercise of power, a subterfuge on the governing legislative and legal environment under the Excise Act and the rules thereunder.

48. Having regard to the fact that the IL-24 licences operate for a period of one year and in view of Rule 26-A of the 1970 Rules an application for renewal of licences shall have to be made one month in advance of the expiry of the licence period (The Commissioner may entertain an application, subject to such terms and conditions as he may impose, by a date specified only before the expiry of the licence year or for special reasons to be recorded upto the 30th April of every year after the expiry of the period of licensee and only on payment of Rs. 100/- for each days delay). A 1998-99 licence who has not applied for renewal of his IL-24 licence in terms of Rule 26-A of the 1970 Rules for the Excise year 1999-2000 cannot, on any fair and reasonable construction of the Excise Act and the rules thereunder, be considered to be a licensee during the Excise year

1999-2000 or 2000-2001. If he is not such a licensee there is no question of renewal. No fresh grant of licence could be made either under the revisional power u/s 64, or without compliance with the mandatory requirement of public notification. Any other construction would be subversive of constitutional injunctions of equal treatment and would enable exercise of a despotic power by the Executive, of identifying particular persons for the grant of fresh licences under the facade of exercise of revisional power. Courts have not enunciated the principle that the State has exclusive privilege in the area of trade and business in liquor for the purpose of conferring such arbitrary uncanalised power on the State to the detriment of the legitimate expectation of all citizens, the expectation of equal opportunity to participate in every largesse of the State including in the area of IL-24 licences.

49. Allowing of revisions of such of those 1998-99 licensees who have surrendered their licences and have also applied and received the proportionate licence fee for the unexpired portions of the Excise year, presents a more acute picture of irrationality. In this case there is no cancellation of licence involved. The licensees had voluntarily surrendered their licences pleading inability to continue the business during the currency of the licence in the year 1998-99 on certain stated grounds. In the circumstances there is no decision, order or other proceeding which could be considered adverse to the licensee which required examination for its correctness, legality or propriety in exercise of revisional power u/s 64 of the Excise Act, be the exercise on an application or suo motu. WP 15595 of 2001 is one such case where the 4th respondent surrendered the licence and received the refund of the proportionate licence fee pursuant to an application made by him and therefore submitted a representation seeking restoration of his licence on 30-1-2001. The State Government allowed the revision by the order dated 27-7-2001 recording that the Government having carefully examined the matter, allows the revision petition giving the benefit of doubt to the licensee and has set aside the orders of the Excise Superintendent, Kakinada. Which orders of the Excise Superintendent, Kakinada has been set aside, is not mentioned. There is no order of cancellation of the licence for either violation of the terms and conditions of licence or for violation of the prohibited distance requirement, in a case where the licensee has surrendered his licence. Why a benefit of doubt has been given to the licensee and in what context is not specified.

50. Even in cases where licences were cancelled in the year 1998-99 on account of location of the shop within a prohibited distance of an educational institution or a place of public worship, representations made years after cancellation were entertained as revisions petitions which were allowed permitting shifting of the premises. Shifting of the premises cannot be permitted in the absence of a licence. The applicant for revision had no licence for two consecutive years subsequent to the year of cancellation. Even these fundamental principles were lost sight of in the frenzy of exercise of "revisional power". Rule 35(1) of the 1970 Rules mandates that the licensee shall sell the liquor only at the premises

specified in the licence. Sub-rule (2) of this rule states that no change or alteration of the licensed premises shall be made nor the licensed premises shifted elsewhere without the prior approval of the Commissioner of Prohibition and Excise. In some of the cases, while allowing the revisions, permission has been accorded for shifting of the premises. This is done even without an application having been made for shifting of the premises to the Commissioner of Prohibition and Excise and receiving an order of rejection of such permission from the Commissioner. When the rules grant the power to accord permission for shifting (with prior approval) to a specified authority, it is not clear as to how that requirement has been bypassed and the power usurped by the State Government under the colour of exercise of revisional power.

51. The State Government in a memo dated 18-5-2001 directed that 253 fresh licences should be granted. This direction was issued on the stated ground that these number of licences of the previous year have not been renewed for the current year 2001-2002. Consequent on this policy a gazette notification dated 24-5-2001 has been issued calling for applications Mandal-wise in each of the Districts specified in the notification. It is thus seen that the shortfall of IL-24 licences which had been identified in May, 2001, have been notified afresh. In fact the Government memo dated 18-5-2001 states that as per the feed back received by the Government the retail licensees in some areas have contrived to see that no renewal of IL-24 licences is made with a view to reduce the number of retail shop, later jack up the retail prices, that in order to discourage cartelistaion, the Commissioner of Prohibition and Excise has requested the Government to accord necessary permission to establish fresh retail licences in those places duly following the prescribed procedure and that the Government on consideration of the matter has accorded permission to establish 253 shops. AH the representations of the licensees of the year 1998-99 whose licences were either cancelled, who have not renewed their licences or who have surrendered their licences, were pending with the State Government as on the date of the issue of the memo dated 18-5-2001 and the notification dated 24-5-2001. In this factual matrix the need for filling up territorial lacuna in the location of IL-24 shops was not a factor that could rationally have justified the exercise of revisional power in these cases. The point of this analysis is to show that there is neither pleaded, urged, demonstrated or exist any public interest whatsoever in the illegal reactivation of licences which were cancelled or have ceased to exist in the year 1998-99. This is another vitiating circumstance that strikes at the exercise of revisional power by the State.

Recording of reasons:

52. In all the impugned orders the revisions have been allowed in purported exercise of revisional power by employing two stock phrases - (1) -"Giving a benefit of doubt" and (1) "Taking a lenient view." It is not apparent and nothing has been urged on behalf of the State, as to what standard of proof has been considered to be appropriate in the State action under the provisions of the

Excise Act and the rules thereunder, in adjudicating upon alleged violations of the Act and the rules including indulging in loose sales contrary to the terms and conditions of licence.

53. On even flexible judicial scrutiny standards employing the most beneficent construction upon the State action, it is not possible to gloss over the two phrases above to justify them as reasons for the decisions.

54. It has been faintly contended on behalf of the State that there is no rigid requirement that reasons should be recorded in exercise of the revisional power and that the statute is silent in this regard (Section 64 of the Excise Act). It is too late in the day and in the contemporaneous context of our public law jurisprudence to hold that recording of reasons, which is an essential element of the principles of natural justice would not be implicated when a statutory provision is silent. Unless a statute expressly or by necessary implication excludes any of the principle of natural justice, these principles are held to be implicated in a statutory framework more so in the context of exercise of quasi-judicial power.

55. Is the requirement of recording reasons for decisions, an essential element of administrative justice is the question?

56. With the expanding horizons of adjudication by quasi-judicial Tribunals and the right of the affected persons to seek a judicial review therefrom, the right to reasons in decision making by quasi-judicial Tribunals must be characterised as an indispensable part of a sound system of judicial review. The principles of natural justice provide the best rubric for this. The decision of a Tribunal is liable to be assailed in judicial review on any one or more of a plurality of grounds. Absence of or traversing outside jurisdiction, consideration of irrelevant material, eschewing of relevant material and aberrant conclusions are some of the grounds on which judicial review of a decision could be claimed. A quasi-judicial Tribunal being a creature of the statute that constitutes it, is an adjudicating body having a defined jurisdiction. It must thus confine its adjudication to the limitations upon its jurisdiction. Oftentimes analysis of jurisdictional facts determines the ambit of its jurisdiction including whether a particular fact and legal profile is within or outside its consecrated jurisdiction. Decisions that appear aberrant without reasons have to be explained, so that it may be judged whether the aberration is real or apparent.

57. An ipse dixit conclusion is not a substitute for a reason. Where a conclusion is recorded as a ritual incantation, it cannot be justified as a reason. The duty to record reasons is a responsible one and cannot be discharged by the use of vague general words. Proper and adequate reasons will have to be recorded being reasons that are intelligible and deal with substantial points that arise or which have been raised.

58. Modern Governmental exercise has been an exponential increase of functions. Administrative Tribunals and other executive authorities have come to

stay and they are armed with wide discretionary powers in crucial areas of public concern. This situation is pregnant with possibilities of abuse or irrational exercise of power by these authorities. To provide a safeguard against arbitrary exercise of power by these authorities the requirement of recording reasons has evolved as an essential requirement. As Subbarao J., (as he then was) stated in *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, .

"There is an essential distinction between a Court and an Administrative Tribunal. A Judge is constrained to look at things objectively, but, an executive officer generally looks at things from the standpoint of policy and expediency. The habit of mind of an executive officer so formed cannot be expected to change from function to function or from Act to Act. So it is essential that some restrictions shall be imposed on Tribunals in the matter of passing orders effecting the rights of parties; and the least they should do is to give reasons for their orders."

59. Even when the statute does not impose an obligation to record reasons, it is essential that quasi judicial authorities record reasons as it is the only visible safeguard against possible injustice and arbitrariness. As stated in *Union of India (UOI) Vs. Mohan Lal Capoor and Others*, .

"Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter of a decision, whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only by this way can opinions or decisions recorded be shown to be manifestly just and reasonable."

60. Bhagawati, J., (as he then was) in *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, , ruled that proper recording of reasons by quasi-judicial authority in respect of orders passed by them is a basic principle of natural justice. In the words of His Lordship --

"If Courts of law are to be replaced by administrative authorities and Tribunals, as indeed, in some kinds of cases, with the proliferation of administrative law, they may have to be replaced, it is essential that administrative authorities and the Tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and Tribunals exercising quasi-judicial functions will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicator/ process. The rule requiring reasons to be given in support of an order is, like the principle of *Audi Alterant Partem*, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

61. By merely keeping silence the executive cannot prevent the judiciary from

considering the whole question, stated Lord Pearce in *Padfield v. Minister of Agriculture* 1968 (1) A11.E.R 694. This principle was perceptively stated by Chandrachud, J., (as he then was) in *Mrs. Maneka Gandhi Vs. Union of India* (UOI) and Another, , as under:

"The reasons, if disclosed, being open to judicial scrutiny for ascertaining their nexus with the order impounding the passport, refusal to disclose the reasons would equally be open to the scrutiny of the Court, or else, the wholesome power of a dispassionate judicial examination of executive orders could with impunity be set at naught by obdurate determination to suppress the reasons. Law cannot permit exercise of power to keep the reasons undisclosed if the sole reason for doing so is to keep the reasons away from judicial scrutiny."

62. In *S.N. Mukherjee Vs. Union of India*, , our Supreme Court has ruled:

"Except in cases where the requirement of recording reasons has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions must record reasons in support of their decisions."

63. Of the many reasons that necessitate the obligation to record reasons, a few may be noticed:

(1) It guarantees consideration of the relevant facts and law and ensures conformity with the jurisdictional limitations, by the adjudicating authority.

(2) Such decisions being subject to appellate jurisdiction of the Supreme Court under Article 136 as well as supervisory jurisdiction of the High Court under Article 227 of the Constitution, reasons ensure effective check on the regularity of administrative adjudication and determination.

(3) The requirement introduces equality and fairness in the decision making process.

(4) It minimises chances of arbitrariness and ensures transparency in the decision making process.

(5) It disciplines the adjudicating authority within the contours of the legislative package under which it is constituted or qua which the adjudication is required to be measured.

(6) It promotes consistency of administrative and quasi-judicial determinations.

64. The impugned Revisional Orders record no reasons and are therefore illegal and inoperative.

Locus standi:

65. It has been urged and very strenuously, both by the learned Government Pleader for Excise and on behalf of those licensees (respondents) whose representations have been treated as revision petition and allowed, that such of

those writ petitioners herein who were existing licensees have no locus standi to question the exercise of revisional power by the State.

66. The licensee-writ petitioners are not asserting a mere vague and generalised interest in the constitutional governance. They assert that by the arbitrary exercise of revisional power resulting in activation of licences for the current year, in favour of all those persons who are ineligible for such benefit, they are unlawfully deprived of fair business opportunity and it is further contended that such rabid and unplanned increase in the number of IL-24 licences would have the unwholesome effect of irrational competition resulting in undercutting of the prices, adulteration, violation of the terms and conditions of licence and also increased efforts to lure new consumers to the pernicious habit of imbibing intoxicants.

67. In support of the challenge to the locus standi of the licensees-writ petitioners, reliance has been placed on the observations contained in the following pronouncements:

The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others, , Union of India (UOI) Vs. Allied International Products Ltd. and Another, , State of Orissa and Others Vs. Rajasaheb Chandanmull Indrakumar (P) Ltd. and Others, , Dr. Satyanarayana Sinha Vs. S. Lal and Company (P) Ltd., , Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, ; V. Narayana Vs. S. Babu Rao and Others, , Rajappa Kawati Vs. G. Hanumantha Rao and Others, , and P. Nazeer Ahmed Vs. Joint Transport Commissioner and Secretary and others, .

68. The rigid view of locus standi which was hitherto applied has over the years undergone a paradigmatic shift, a shift the contours of which were recorded in a number of decisions on and from S.P. Gupta Vs. President of India and Others, . The licensee-writ petitioners have been issued licences under the provisions of the Excise Act. They have a legitimate and legal interest in claiming that no licences be issued except in accordance with the provisions of the Excise Act and the relevant rules thereunder and that more so when such unlawful grant of licences would adversely impact the viability or profitability of their business. When such writ petitioners are seen to urge not any general plea to scotch competition but a specific plea that the grant of licences is unlawful and ultra vires the provisions of the Excise Act, they could not be thrown out nor their plea of unlawful State conduct, declined to be examined on the jejune plea that they lack locus standi to question the State action. In fact an analogous fact situation had fallen for consideration in M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others, . In this case the Excise Commissioner of Kerala had permitted a liquor vendor, to locate a shop in a range other than that for which he had been granted licence. An existing liquor vendor of the other range challenged this by way of a writ petition. The respondent challenged the locus standi of the writ petitioner. The High Court declined the challenge to locus standi and set aside the order of the Excise Commissioner. The question of locus standi was considered in

the appeal and the following are the observations of the Supreme Court:

"14. In the light of the expanded concept of the locus standi and also in view of the finding of the Division Bench of the High Court that the order of the Excise Commissioner was passed in violation of law, we do not wish to nip the motion out solely on the ground of locus standi. If the Excise Commissioner has no authority to permit a liquor shop owner to move out of the range (for which auction was held) and have his business in another range it would be improper to allow such an order to remain alive and operative on the sole ground that the person who filed the writ petition has strictly no locus standi. So we proceed to consider the contentions on merits."

69. In the light of the principles enunciated by the Supreme Court in the aforementioned decision, I am not inclined to reject the writ petitions by existing licensees on the ground of locus standi.

70. I would record an additional justification for the Court's scrutiny of the State action. The revisional power of the State is exercised in the context of a power granted by the Excise Act. The Act itself is a legislative measure intended to regulate the trade and business in liquor, which is constitutionally considered to be *res extra commercium* particularly in the context of the exhortation to the State in Article 47 (Directive Principles, Part IV) of the Constitution that the State should endeavour to bring about prohibition of the consumption except for medicinal purposes, of intoxicating drinks. The Legislature has enacted, with a view to structure and delimit the otherwise plenitudinous privilege of the State, in recognition of the pernicious impact of the trade and business, in this area. It is thus the duty of this Court as the sentinel on the qui vive to ensure qua its judicial review and supervisory jurisdiction, the regularity of such decisions with the legislative mandate. The degree of constitutional scrutiny is proportional to the width of discretion asserted by the Executive Branch. In particular in areas where erroneous exercise of the discretion has potentially deleterious effects on the life and well-being of our people, strict scrutiny standards are apposite. The exclusive and broad privilege inhering in the State is contoured and structured within defined limits by the Excise Act and the rules thereunder. The discretion of the Executive Branch is delimited by the legislation. The privilege claimed is a grant of the Constitution intended for exercise by rational discretion in public interest and within the geography of power defined by the controlling legislation. The assertion of limitless power or of uncontrolled discretion is inconsistent with the character of a limited Government. It is, therefore, essential that such claims of uncanalised discretion should be examined by the constitutional Courts on strict scrutiny parameters instead of rejecting the challenge to State action (justified on such claims), on a restrictive view of locus standi.

71. It is trite to notice that as we have constituted this nation into a republic we have also constituted it into a republic of reason, of Government under law and bound by it. "A constitutional democracy like ours is perhaps the most difficult of man's social arrangements to manage successfully. Our scheme of society is

more dependent than any other form of Government on knowledge and wisdom and self-discipline for the achievement of its aims. For our democracy implies the reign of reason on the most extensive scale." - Frankfurter, J., in *Youngstown Sheet and Tube Company v. Charles Sawyer* 96 L ed 1153.

72. On the analysis above the conclusions of this Court are as under:

(A) The petitioners, including the existing IL-24 licensees, have locus standi to maintain these writ petitions.

(B) The State has no limitless discretion or power in the area of grant of IL,-24 licences, at any rate, discretion or power which enables State action contrary to the mandate of the A.P. Excise Act, 1968.

(C) The impugned State action being consequent upon applications by the Excise year 1998-99 IL-24 licensees, is not in exercise of suo motu power of revision. The impugned orders are violative of the A.P. Excise (Appeal and Revision) Rules, 1969, as no sufficient cause has been recorded for entertaining an application beyond the period specified in Rule 4, as required in the proviso to the said rule.

(D) Even if the impugned orders were to be considered as pursuant to suo motu exercise of revisional power, they are invalid on account of the fact that the power has not been exercised within a reasonable time or on the basis of an application/representation made within a reasonable time of the cessation of the licences during the Excise year 1998-99 and further for the reason that no public purpose is served by such exercise.

(E) The 1998-99 licensees who have either surrendered then licences and obtained refund of the proportionate licence fees or who have failed to get the licences renewed for the Excise year 1999-2000 within the permissible time, are not entitled to seek revision u/s 64 of the Excise Act as there was no decision, order or other proceeding in such cases, warranting correction in revision.

(F) The exercise of power u/s 64 of the A.P. Excise Act, 1968, being quasi-judicial in nature, the impugned orders are invalid for failure to record reasons in justification of the conclusions.

(G) The impugned orders are invalid as in effect and reality they amount of grant of fresh licences for the current year 2001-2002 in violation of the substantive and procedural requirements (including of notification and inviting applications), mandated in the A.P. (Indian Liquor and Foreign Liquor) Rules, 1970 read with the A.P. Excise (Lease of Right to sell Indian Liquor, Foreign Liquor and Beer in retail under IL-24 Licences) Rules, 1998.

(H) The various orders of the State Government, called into question in these writ petitions, are incompatible and inconsistent with the expressed and implied Will of the governing legislation - the A.P. Excise Act, 1968 and are therefore invalid and inoperative.

73. The writ petitions are accordingly allowed and the orders impugned in these

writ petitions quashed. No order as to costs.