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ASHOK LENKA
v.
RISHI DIKSHIT AND ORS.

APRIL 21, 2006

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[S.B. SINHA AND P.K. BALASUBRAMANYAN, JJ.]

Chattisgarh Excise Act, 1915—Chattisgarh Excise Settlement of Licences for Retail Sale of Country/Foreign Liquor Rules, 2002.

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Rules 9 and 11—District Level Selection Committees undertaking process of selection of persons to be granted licences—Challenge to grant—Writ petition making some licensees parties, while leaving out many others—High Court cancelling entire set of licences—On appeal, held—In writ petition private respondents were not impleaded in representative capacity; no leave in terms

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of Order 1, Rule 8 of the Code of Civil Procedure was obtained, and no public notice was given regarding pendency of petition—In that view, cancellation of licences of all private respondents was wrong—Inadequacies of fulfillment of eligibility criteria should have been decided by taking up individual matters—It was more so as selection process was undertaken not by one but several

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District Level Committees, and it was not a case of gross irregularity which could lead to cancellation of entire process—All licensees whose licences had been cancelled and against whom allegations were made were necessary parties to writ petition and in their absence it could not be decided.

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Interpretation of—As there was no provision for relaxing any condition for grant of licence, provisions thereof are to be construed strictly.

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Shortcomings of—Act and the Rules found to deal with only control and regulations—No discretion given to authorities for relaxation of provisions of Rules—In that behalf, Rules directed to be framed again—Also, processing of applications for grant of licences found to be unsatisfactory and improvements suggested for future.

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Constitution of India, 1950—Article 47—Grant of licence for selling of liquor—Rules and policy decisions—Held: Their formulation must be guided by public interest, strictly conform to public good, and not be otherwise derogative of public health—Not only eligibility criteria should be laid down,

but having regard to past experience as to how and in what manner licensees find means and methods to circumvent the provisions, all endeavours should be made to plug all loopholes—All information supplied by applicants for licences must undergo and satisfy 'strict scrutiny test'—State should not treat its right of parting with its privilege only a means of earning more and more revenue. A

Licences—Grant of—Satisfaction of eligibility criteria—Burden of proof—Held—Initially it is on applicants—Wherever objections are raised to grant of licence, satisfaction was required to be arrived at by competent authority upon their consideration, but that does not mean that burden was upon objector to prove same. B

Pleadings—Rejoinder and sur-rejoinder—No new plea is ordinarily permitted in a rejoinder without the leave of Court—However, if new facts are brought on record for first time in it, opposite party is entitled to file a sur-rejoinder controverting them. C

Interpretation of statutes—Subordinate legislation or notification—Retrospective effect—Ordinarily, it cannot be given—However, if it is clarificatory, such effect can be given. D

Interpretation of statutes—Relaxation of statutory provisions—It can be granted provided there exists a specific provision therefor—It cannot be granted by exclusion, when there does not exist any provision. E

Words and phrases—Public health—In context of Article 47 of Constitution of India, 1950.

Appellants were granted excise licences by co-appellant, the State. Grant of the licences was governed by the Chattisgarh Excise Act, 1915, whereunder, by a notification dated 15-3-2002, the State Government had mad Chattisgarh Excise Settlement of Licences for Retail Sale of Cournty/ Foreign Liquor Rules, 2002. However, notification dated 5-7-2005, with retrospective effect, omitted from Rule 9(3)(d) requirement of certificate regarding criminal antecedents of family members of selected licensee. Respondents opposed grant of licences to appellants by filing objections before District Level Selection Committees. On rejection of their objections, they filed writ petition before High Court, making sixty five licensees parties, while leaving out one hundred and twenty six others. In pleadings, in response to rejoinder of respondents, State filed an additional F
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A affidavit also. High Court held that (i) District Level Committees had committed several irregularities, (ii) the burden of proof to prove that the applicants for grant of licences did not possess the prescribed eligibility was wrongly placed on the objectors like respondents, as they were not supposed to prove the negative facts by producing evidence, (iii) there was no conflict between the English and Hindi versions of Rule 9(3)(d), and

B English version would prevail over Hindi version, rejection contention of State that notification dated 5-7-2005 merely corrected error in English version which was absent in its Hindi version, (iv) a sur-rejoinder to rejoinder was impermissible without permission of the court, and hence

C did not consider it. On the aforementioned premises, the High Court allowed the writ petition and cancelled entire set of licences. Hence the present appeal.

Appellant contended that the High Court having not held the whole selection process to be bad in law, no situation arose requiring cancellation of the entire set of licences, it should have identified the cases where

D requirements of law had not been complied with and only in such cases, the licensees could have been directed to be revoked.

Allowing the appeal, the Court

E HELD 1. It was not a case where the writ petitioners had impleaded the private respondents in their representative capacity. In the writ proceedings, no leave in terms of Order 1, Rule 8 of the Code of Civil Procedure or the principles analogous thereto had been obtained. No public notice had also been given as regard pendency of the said writ petition. Therefore, the High Court committed an error in directing

F cancellation of licences of all the private respondents of the writ petition. The inadequacies or otherwise of fulfillment of eligibility criteria or the violation of the statute should have been decided by taking up individual matters and upon proper scrutiny of the case. [164-F; 165-C, D]

G 2.1. In law it is permissible to cancel the entire selection process if it is held that the same is tainted to such an extent that it may not be possible to separate the innocent from the tainted ones. When selections, however, are carried out not by one agency but by several ones, the principles of en masse cancellation may not apply. [163-B]

H *Benny T.D. and Ors. v. Registry of Co-operative Societies and Anrs.*, [1998] 5 SCC 269, *Onkar Lal Bajaj and Ors. v. Union of India and Anrs.*,

[2003] 2 SCC 673, *Union of India and Ors. v. Rajesh P.U. Puthuvalnikathu and Anr.*, [2003] 7 SCC 285, *Bihar School Board v. S.C. Sinha*, AIR (1970) SC 1269, *Union of India v. Anand Kumar Pandey*, [1994] 5 SCC 663, *Hanuman Prasad and Ors. v. Union of India Anr.*, [1996] 10 SCC 742 and *Union of India and Ors. v. O. Chakradhar*, [2002] 3 SCC 146, relied on. A

2.2. Admittedly, several District Level Committees have carried out the selection process and in that view of the matter it was obligatory on the part of the High Court to consider the mode or manner of selection made by each one of them individually. It was not a case of mass cheating in an examination or illegality or gross irregularity in the selection process which would lead to cancellation of the entire selection process. [163-C, D] B C

3.1. The licensees whose licences were necessary parties to the writ petition. In the absence of any opportunity of hearing given to them, their right to continue their business has been violated. It is not a case where the State, for one reason or the other, did not intend to part with its exclusive privilege to deal in liquor. It is also not a case where the State acted in such an arbitrary manner which would attract the wrath of Article 14 of the Constitution of India. All licensees in relation to whom allegations had been made, thus, were necessary parties in the writ petition and in their absence the same could not have been decided. [162-E, F] D

3.2. Furthermore, it would be travesty of justice if the parties against whom serious allegations were made and are said to have been found had not been made the parties to the writ petition as by reason thereof they in terms of the High Court judgment were not allowed to carry on their business in terms of the licences granted in their favour. All such persons whose licences had been cancelled were, thus, necessary parties. [162-G, H; 163-A] E F

4.1. The writ petitioners have not disclosed as to how each one of the licensees who had appeared as respondents therein were ineligible or otherwise disqualified and/or not fulfill the conditions therefor. Had such opportunities been given, the State as also the said respondents could have met the said allegations. Such allegations were made only in the rejoinder. No new plea ordinarily could have been permitted in the rejoinder without the leave of the Court. [163-D-E] G

4.2. The High Court did not place reliance upon the additional affidavit filed by the State *inter alia* on the ground that the same being H

A sur-rejoinder could not have been filed. The High Court's attention was evidently not drawn to the fact that writ petitioners brought on record new facts for the first time in the rejoinder and, thus, the State was entitled to file a sur-rejoinder controverting the allegations made therein.

[163-E, F]

B 5. The contention of the appellant that burden of proof was placed on the objector may not be entirely correct. The initial burden was on the applicants themselves for grant of licences to satisfy the members of the District Level Committees that they fulfil the eligibility and other criteria. In such matters, the satisfaction was required to be arrived at by the competent authority upon considering the objections raised by the writ petitioners. It did not mean that whenever an objection was raised, the burden thereof would be upon the objector to prove the same.

[178-A, B]

D *Ashok Lenka and Anr. v. Rishi Dixit and Ors.*, [2005] 5 SCC 598, held applicable.

E 6. Ordinarily, a subordinate legislation cannot be given a retrospective effect. The Notification dated 15-3-2005, however, is said to be clarificatory in nature. A clarificatory notification can be given retrospective effect. Such a clarification, according to the State, was necessary to be issued as there was an apparent conflict between the Hindi and the English version of the Notification. It may be true that before the High Court such a contention has not been raised but the *bona fide* of the State in this behalf are not in doubt. In that view of the matter, it was not necessary for the District Level Committee or the State to verify the criminal background of the family members of the applicants.

F [179-A, B, C]

G 7. The Act and the Rules deal only with control and regulations. There was no provision which gives any discretion to the authorities concerned to relax provisions of the Rules. The Rules in this behalf again must be framed upon taking into consideration all relevant factors. The State in making the rules and formulating the policy decisions must be guided by public interest. In such matters, the State has a positive obligation to ensure that any activity contemplated, strictly conforms to the requirements of public good and is not otherwise derogative of public health. The State parts with its exclusive privilege on certain statutory conditions such as payment of excise fee. When it lays down criteria for

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selection of persons who would become qualified for grant of licence under the Act, not only the eligibility criteria therefor should be laid down, but having regard to its past experience as to how and in what manner, the licensees find means and methods to circumvent the said provisions, all endeavors should be made to plug all loopholes. The State has extremely solemn obligation to fulfil in that behalf. All information supplied by the applicants for licences, thus, must undergo and satisfy the 'strict scrutiny test'. The State should not treat its right of parting with its privilege only a means of earning more and more revenue. It may certainly earn revenue but only upon fulfilment of its constitutional and statutory obligations. There exists a strong underlying action of public health and welfare when the matter comes to retention of the exclusive privilege and/or parting therewith either in whole or in part. [158-F, G, H; 159-A, B]

Consumer Action Group and Anr. v. State of T.N. and Ors., Tata Iron & Steel Co. Ltd. v. State of Jharkhand and Ors., [2005] 4 SCC 272, Government of India and Ors. v. Indian Tobacco Association, [2005] 7 SCC 396 and Commnr. of Central Excise, Raipur v. Hira Cement, JT (2006) 2 SC 369, relied on.

Archana Reddy v. State of A.P., (2005) 6 ALT 6, approved.

R. v. Hughes (2002) UKPC 12, Bugdaycay v. Secy. of State for Home Department [1987] 1 All ER 940, R. v. Secy of State for Home Department, ex. p. Brind (1991) 1 AA ER 720, R. v. Ministry of Defence, ex. p. Smith [1996] 1 All ER 257, referred to.

CAD Vol. VII No. 9 pp 496 to 498; *Constitutional Law of India*, by H.M. Seervai Vol II 4th Ed, p 2012, referred to.

The Law and the Public Health: A Study of Infections Disease Law in the United States, Columbia Law Review, Vol. 99 No. 1, January, 1999; Public Health and Human Rights, American Bar Association Journal on Human Rights, Fall 1998, Vol. 25 No 1; Halsbury's Laws of England, 4th Ed Vol. 26 p5, referred to.

7.2. Relaxation can be granted by the authorities provided there exists a specific provision therefor, Relaxation cannot be granted by exclusion, when there does not exist any provision. The provisions of the Act therefore, deserve strict construction. [161-H; 162-A, B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2152 of 2006.

From the Judgment and Final Order dated 6.3.2006 of the High Court

A of Judicature, Chhattisgarh Bilaspur in W.P. No. 2820/2005.

WITH

C.A. No. 2161/06, 2160/06, 2159/06, 2158/06, 2156/06, 2155/06, 2157/06, 2154/06.

B

Prashant Mishra, Addl. A.G. Mukul Rohtagi, C.A. Sundram, Ranjit Kumar, Ashok H. Desai, C.S. Vaidyanathan, Indu Malhotra, Abhishek Sinha, Liz Mathew, Savita Sinha, Vikas Niehta, P.C. Sen, Binu Tamta, Rani Chhabra, Rajeev Srivastava, Gauri Chhabra, Sudha Pal, Suparna Srivastava, Deepti Singh, Rajesh Srivastava, Jatin Zaveri, Rohit Singh and Dharmendra Kumar

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Sinha for the Appellant.

Soli J. Sorabjee and Prakash Srivastava for the Respondents.

The Judgment of the Court was delivered by

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S.B. SINHA, J. Leave granted.

INTRODUCTION

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The Appellants are before us in the second round. They, except the State of Chhattisgarh, were granted excise licences. Grant of such licences indisputably is governed by the Chhattisgarh Excise Act, 1915 (for short “the Act”). On or about 15.3.2002, the State Government under ‘the Act’ made rules known as Chhattisgarh Excise Settlement of Licences for Retail Sale of Country/Foreign Liquor Rules, 2002 (for short “the Rules”).

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The State issued notices inviting tenders for grant of licences under the Rules. Pursuant to or in furtherance of the said notices inviting tenders about 2,64,703 applications were filed. The grant of licences in favour of the Appellants in some of the appeals came to be questioned before the Chhattisgarh High Court. By reason of a judgment dated 31.3.2005, a Division Bench of the said Court allowed the writ petition and directed cancellation

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of the licences. Appeals thereagainst were filed before this Court. Interim orders were passed therein as a result whereof licensees continued to carry on their business. This Court, however, while refraining itself from setting aside the entire selection process thought it fit to ask the respective District Level Committees to consider the matter relating to grant of such licences afresh. Having regard to the actions of the statutory functionaries, the exercises

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as regard scrutiny so as to arrive at a satisfaction that the requirement of the Rules *vis-a-vis* selection process were required to be undertaken by the Selection Committees. They were directed to do so afresh. A

We would advert to the said directions a little later. However, we at this juncture, may notice that, according to the State, in terms of the directions of this Court, the District Level Committee under the strict supervision of the Chief Secretary as also the Commissioner of Excise went into the said exercise over again and found that the licensees were not only eligible therefor but also fulfilled other conditions laid down in the Rules. It is not in dispute that the writ petitioners-Respondents, filed objections before the District Level Committee. The said objections were rejected. Aggrieved by and dissatisfied therewith, the writ petitioners-Respondents filed a writ petition before the Chhattisgarh High Court. The State in the meanwhile issued a notification effecting an amendment in Rule 9 of the Rules in terms of a notification dated 22.3.2005. B C

PROCEEDINGS BEFORE THE HIGH COURT D

In the writ petition, the following reliefs were prayed for:

“7.1. That, this Hon’ble Court may be pleased to send for the entire records from the respondents and district committees in regard to the compliance of the directions of the Hon’ble Supreme Court and observance of the statutory rules and all such other relevant and complete record as are in their possession leading to the affirmation of the selection of the select candidates. E

7.2. The respondents 1 to 12 be directed to satisfy this Hon’ble Court regarding the compliance of the mandatory directions as given by the Hon’ble Apex Court in the case of *Ashok Lanka v. Rishi Dikshit*. F

7.3. That the Hon’ble Court may be pleased to issue a writ in the nature of *mandamus* quashing and annulling the entire selection of respondents 13 to 89 and also quashing the temporary licences by issuing a writ in the nature of *certiorari*. G

That, the Hon’ble Court may be pleased to issue a writ in the nature of *mandamus* commanding the respondents 1 to 12 to make selection strictly in accordance with law, rules and the directions of the Hon’ble Supreme Court, afresh. H

A 7.4. That the contempt' proceedings be initiated against the respondents 2 to 12 for the non-compliance of the order of the Hon'ble Apex Court."

Before the High Court, the questions raised by the parties *inter alia* were:

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- (i) The permanent addresses of the persons in whose favour licences were granted were not property verified.
 - (ii) The temporary addresses given by them were wrong and in that view of the matter scrutiny of their applications could not be
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- (iii) Provisions of Rule 9(d)(iii) in terms whereof criminal antecedents not only of the applicants but also of their family members were required to be verified, had not been complied with. According to the State, however, there was no necessity to verify the criminal
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- background of the family members of the licensees as a mere error had crept in the English version of the notification which stood clarified by issuing another notification dated 5.7.2005.

Before the High Court, the parties produced a large number of documents. It is not in dispute that 191 persons had been granted licences.

E Before the High Court, however, 65 licensees were made parties and 126 were not. The private respondents also filed their counter affidavits contending that the allegations made in the writ petition were incorrect. Several instances of alleged irregularities on the part of the District Level Committee in the matter of proper scrutiny of the contents of the applications filed by the

F licensees had been brought on record. The State appears to have filed documents containing approximately 3000 pages in order to show that the directions of this Court had been complied with, in letter and spirit. In reply to the said counter affidavit, the writ petitioners filed a rejoinder to which we shall refer to hereinafter. We may, however, notice that the State in purported response to the said rejoinder affidavit filed by the writ petitioners filed an

G additional affidavit dealing with the contentions raised therein.

The High Court in its impugned judgment has noticed some of the purported irregularities committed by the District Level Committees. Several instances were brought to the notice of the High Court to show as to how and in what manner the purported irregularities in the matter of selection of the

H licensees had been effected, allegedly as a result whereof the directions

contained in this court's decision in *Ashok Lanka and Anr. v. Rishi Dixit and Ors.*, [2005] 5 SCC 598 (Ashok Lanka - I) were flouted. A

The High Court held:

"Thus, it is quite clear that respondents 1 to 12 have failed to carry out the directions issued by the Supreme Court in the manner expected of them and in conformity with the mandatory Rules 9 and 11 of the Rules..." B

The High Court noticed the contents of the additional return filed by the State on 23.02.2006 but apparently the contents thereof had not been taken into consideration on the ground that the same was by way of sur-rejoinder to the rejoinder filed by the writ petitioners and, as such, such pleadings are impermissible without permission of the court. It was furthermore held that in the said additional return, untenable defences were set up covering up serious lapses committed by Respondent Nos. 1 to 12. C

The High Court thereafter proceeded to cite examples in support of its findings. It was noticed that the official respondents wrongly placed the burden of proof on the objectors like the writ petitioners to prove that the applicants for grant of licences did not possess the prescribed eligibility, as the writ petitioners objectors were not supposed to prove the negative facts by producing evidence. The responsibility cast on the statutory authorities has, thus, been sought to be placed on the objectors which constituted a serious flaw in the enquiry vitiating the selection process. D E

Before the High Court, a chart was produced by the writ petitioners showing common addresses of a number of licensees. The High Court in detail noticed the findings of this Court and opined that the State and its officers failed to comply therewith and, furthermore, flouted the mandatory provisions of Rules 9 and 11. F

As regards the purported clarification made by the State in respect of the variation in the Hindi version of Rule 3 and the English version thereof, it was held: G

- (i) The State and its officers were bound by the decisions of this Court.
- (ii) The English version shall prevail over the Hindi version, and H

- A (iii) In any event, there is no conflict between the English version and the Hindi version.

On the aforementioned premise, holding that licences were illegally granted to the Respondent Nos. 13 to 89 of the writ petition, it was directed:

- B “...The respondents 13 to 89 who has the beneficiaries of the illegal acts of respondent No. 1 to 12 cannot be allowed to have the continued benefits of wrong-doing of respondents 1 to 12 till the term of the licences comes to an end.”

- C On the aforementioned premise, the writ petitions filed by the contesting respondents herein were allowed.

SUBMISSIONS

We have heard a large number of counsel in support of these appeals. Mr. Ashok Desai, Mr. Sunderam, Mr. Dushyant Dave, Mr. Mukul Rohtagi, D Mr. C.S. Vaidyanathan and Mr. Ranjit Kumar appearing on behalf of successful licensees submitted:

- (i) The High Court committed a manifest error insofar as it failed to take into consideration that the compliance of this Court’s order was not carried out with utmost diligence.
- E (ii) Rule 8 does not envisage that a resident of a State other than the State of Chhattisgarh was not eligible for filing application for grant of licence and only in some cases temporary addresses had been given only for the purpose of postal communications.
- F (iii) As regards compliance of Rules 9 and 11, the age of the candidates was verified from documents such as driving licence, election ID Card, PAN Card, telephone bills, electricity bills, ration cards, residence certificates issued by competent authorities, birth certificates, school certificate, etc.
- G (iv) In cases where more than one document had been submitted, the Selection Committee satisfied itself as regards the correctness thereof from any of the said documents. As, for example, when a certificate in proof of residence had not been issued by an authority competent therefor, other documents such as driving licence, PAN Card, Election ID Card were taken into consideration.
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- (v) The High Court, in arriving at the conclusion as regards purported non-compliance of the rules, failed to notice various documents and drew inferences which were contrary to the records. A
- (vi) So far as the alleged non-compliance of Rule 9(c) of the Rules is concerned, a consolidated list of defaulters along with their complete addresses was available with all the licensing authorities and the same had been relied upon while scrutinizing the various applications. B
- (vii) As regards, alleged compliance of Rule 9(d) of the Rules, it was submitted that the Superintendent of Police of the respective districts where the applicant was a resident of more than one district and one State had issued character certificates. C
- (viii) In terms of Rule 12, in the case where there had been multiplicity of applications, a lottery was held which was completely above board being a computer generated programme operated by a Central Government organization, viz. National Informatics Centre. D
- (ix) The High Court had wrongly held that certificates were to be granted only by the Revenue Authorities of Chhattisgarh inasmuch as nothing in the excise rules or the decision of this Court precluded a person who is resident of another State from applying for and obtaining a liquor licence. E
- (x) The requirements of the Rules being that the applicant should be a citizen of India and above the age of 21, the certificates granted, as also character certificates, issued by the Superintendents of Police of their respective Districts met the requirements of the Rules. F
- (xi) Licences of some of the licensees could not have been directed to be cancelled on the basis of purported irregularities committed by the District Level Committee in respect of those who were not parties to the writ petition. G
- (xii) Since many of the applicants were not permanent residents of the State they had merely given a temporary address along with the permanent address and only for that reason there had been overlapping of addresses.
- (xiii) The High Court having not held the whole selection process to H

- A be bad in law, no situation arose requiring cancellation of the entire set of licenses. The High Court was required to identify the cases whose requirements of law had not been complied with and only in such cases, the licensees could have been directed to be revoked.
- B (xiv) In view of the directions contained in Para 40 of this Court's judgment in *Ashok Lanka - I* (supra), the onus of proof, being on the writ petitioners, the High Court committed a mistake in holding that the burden of proof had been wrongly thrown on the objectors.
- C (xv) The findings of the High Court as regards purported non-compliance of the directions of this Court by the State is based on a wrong premise as for example, in the case of *Abhay Singh*, although the High Court proceeded on the basis that he is a fake person, no objection in this behalf was taken by the writ petitioners before the District Level Committees.

D Mr. Srivastava, learned counsel appearing on behalf of the writ petitioners, however, has drawn our attention to several instances showing how the age of some of the applicants for grant of licences had been verified only on the basis of the certificate issued by a doctor or a dental surgeon which could not be held to be valid proof therefor. In some cases, only dwelling certificates had been produced by way of proof of residence which again could not have been considered to be valid proof having not been certified by any statutory or public authority. In view of the admitted fact that several persons have shown the same addresses, fictitious persons might have been granted licences.

F *STATUTORY PROVISIONS*

G The Act was enacted to consolidate and amend the Excise Law in the State of Chhattisgarh. Section 7(e) of the Act provides that the State Government may, by notification, for the whole or for any specified part of the State, delegate to the Chief Revenue Authority or the Excise Commissioner all or any of its powers under the said Act except the power conferred by Section 62 to make rules.

H Rule 4 provides for formation of groups of liquor shops; clause (iii) whereof prohibits an applicant/firm/company from obtaining licences for more

than two groups of shops. Rule 5 provides for the period of licence which would be for an excise year or part thereof. A

Rules 6 and 7 of the Rules read as under:

“6. Application fee with application

The application fee with the application for licence of groups of liquor shops shall be as shown in the table below B

S.No.	Reserve Price of the group	Prescribed application fee
1.	For group of shops of Rs. 5 lakh to 1 crore	Rs. 1,000/- C
2.	For group of shops of Rs. 1 crore to 2 crore	Rs. 3,000/-
3.	For group of shops of Rs. 2 crore to 8 crore	Rs. 5,000/- D

The amount of application fee will neither be adjustable in licence fee nor the amount will be refundable in case of not granting the licence.

7. Issue of licence for liquor shops -

The licences for liquor shops shall be issued by the licensing authority on deposit of the security amount and licence fee for the month of advance by the licensee.” E

Rule 8 provides for procedure for grant of licence, which reads as under: F

“8. Procedure for grant of licence -

(a) Whenever a new licence is proposed to be granted in an area or locality, the licensing authority shall invite the applications for this purpose after giving wide publicity through daily newspapers having circulation in that area. G

(b) A list of shops of country/foreign liquor for which the licensing authority proposes to grant licence shall be exhibited along with shopwise licence fee minimum monthwise guaranteed quantity, security amount, and annual quantity in office of Collector, Tehsil, H

A District Excise Officer/Assistant Commissioner, Excise and Deputy Commissioner, Excise (Flying Squad).

(c) Application for grant of licence with application fee shall be submitted in the prescribed form as appended to these Rules as Annexure 4.

B (d) The last date to be fixed for the receipt of application shall not be earlier than ten days with effect from the date of publication of the advertisement in the newspapers.”

C Rule 9 provides that the applicant shall affirm an affidavit as regards the matters specified therein. It reads as under:

“9. Eligibility conditions for applicant—The applicant has to fulfill the following conditions for obtaining the licence for shop/ group of shops of Country/foreign liquor.

D (a) Should be a citizen of India or a partnership firm whose partners are citizen of India. No change in partnership shall be allowed after settlement of shop(s) groups of shops except with the permission of the Excise Commissioner.

(b) Should be above 21 years of age.

E (c) Should not be defaulter/ blacklisted or debarred from holding an excise licence under the provisions of any rules made under the Act.

(d) Has to submit an affidavit duly verified by public notary as proof of the following, namely -

F (1) That he possessed or has an arrangement for taking on rent suitable premises in that locality for opening the shops in accordance with the rules.

G (2) That he possess good moral character and have no criminal background and have not been convicted of any offence punishable under the Act or Narcotic Drugs and Psychotropic Substances Act, 1985 or any other law for the time being in force or any other cognizable and non-bailable offence.

H (3) That in case he is selected as licensee, he will furnish a certificate issued by Superintendent of Police of the district

of which he is the resident, showing that he as well as his family members possess good moral character and have no criminal background or criminal record, within thirty days of grant of licence. A

(4) That he shall not employ any salesmen or representative who has criminal background as mentioned in clause (iii) or who suffer from any infectious or contagious disease or is below 21 years of age or a woman. B

(5) That no government dues are outstanding against him.”

Rule 10 envisages formation of a district-level committee; whereas Rule 11 provides for selection of licensees, clauses (b) and (c) whereof read thus: C

“(b) The said Committee shall select licensees from the list of applicants. In case more than one applicants are found suitable for any particular group of shops the Committee shall select the licensee for such group of shops by lottery. In case the selected applicant does not deposit the required amount according to Rule 13 and does not fulfil the prescribed formalities or is unable to arrange suitable premises for the shops within stipulated period, the licensing authority shall cancel the allotment and take steps for resettlement of the shops/group of shops. D E

(c) In case there is no application for a particular group of shops or no applicant is found suitable for a group of shops the licensing authority shall take immediate steps for resettlement as per procedure laid down in Rule 8.” F

Rule 12 reads as under:

“12. Statement of settled shops—A statement of the settled shops alongwith names and address of the licensees, shop wise annual quantity, details of security amount and licence fee deposited shall be sent by the District Excise Officer/ Assistant Commissioner Excise to the Excise Commissioner within 15 days of the settlement.” G

Rule 13 provides for payment of licence fee and security amount, which reads as under:

“13. Payment of licence fee and security amount.—In case an applicant H

A is selected as licensee, he shall deposit one month's amount of licence fee and the security amount within three days of being informed of his selection. If he fails to deposit the amount of one-month licence fee and security amount within prescribed period, his selection shall stand cancelled and the said licensee shall be debarred from holding any excise licence in future, anywhere in the State and his application fee shall also stand forfeited. A consolidated list of such defaulters under this rule, along with their complete addresses shall be forwarded by the District Excise Officer/Assistant Commissioner to the Excise Commissioner, who will circulate the consolidated list of the State to all the licensing authorities of the State."

C *CONSTITUTIONAL SCHEME*

When a law is made, having regard to the phraseology used in Part IV of the Constitution of India, it is expected that law made or actions taken would be in furtherance thereof. In terms of the Directive Principles of State Policy, the State is bound to make endeavours to promote public health which is one of its primary duties of the State. One important component of the said directions was regulation and control over the trade in intoxicating drinks so as to enable the State to curb or minimize, as far as possible, the consumption thereof. The State may or may not prohibit manufacture, sale or consumption of liquor but it is vital that while parting with its exclusive privilege to deal with intoxicating liquor, the provisions of the Act and the Rules for which the same had been enacted must be strictly complied with.

The Act and the Rules deal only with control and regulations. There was no provision which gives any discretion to the authorities concerned to relax the provisions of the Rules. The Rules in this behalf again must be framed upon taking into consideration of all relevant factors. The State in making the rules and formulating the policy decisions must be guided by public interest. In such matters, the State has a positive obligation to ensure that any activity contemplated, strictly conforms to the requirements of public good and is not otherwise derogative of public health. The State parts with its exclusive privilege on certain statutory conditions such as payment of excise fee. When it lays down criteria for selection of persons who would become qualified for grant of licence under the Act, not only the eligibility criteria therefor should be laid down, but having regard to its past experience as to how and in what manner, the licensees find means and methods to circumvent the said provisions, all endeavours should be made to plug all

loopholes. The State has an extremely solemn obligation to fulfil in that behalf. All information supplied by the applicants for licences, thus, must undergo and satisfy the 'strict scrutiny test'. The State should not treat its right of parting with its privilege only as a means of earning more and more revenue. It may certainly earn revenue but only upon fulfillment of its constitutional and statutory obligations. There exists a strong underlying notion of public health and welfare when the matter comes to retention of the exclusive privilege and/ or parting therewith either in whole or in part.

Inception of Article 47

Article 47 of the Constitution of India reads as under:

“The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

The importance of Article 47 of the Constitution of India may have to be noticed tracing the history back from the date of constitutional debate. With a view to find out the intent and purport for which the said provision was inserted, Shri H.M. Seervai in his treatise, *Constitutional Law of India*, Vol.II, 4th Ed. p.2012 noticed that all sections of the society including the Mohammadan community, whose social habits were reinforced by the Koranic injunction in relation to intoxicating liquor, supported the insertion of such a provision. The learned Author stated:

“The prohibition of intoxicating liquor had long been a part of the policy of the Indian National Congress; and its inclusion in Art. 47 received support from the Mohammedan community whose social habits were reinforced by the Koranic injunction against intoxicating liquor. In considering the directive in Art. 47, it may be observed that alcohol (the intoxicating ingredient of liquor) is a “narcotic”, a word replaced by the word “depressant” to describe the same effects contrary to the popular belief that it is a stimulant. It is not mere accident that intoxicating liquor and dangerous drugs have been clubbed together in entry 8, List II.”

Article 47 has a unique feature in the sense that the first part refers to

- A public health, whereas the second part specifically refers to prohibition of liquor. Similar provisions are found in the Constitution of U.S. and Lithuania as well. It is of some significance to note that Section 70 was inserted in the draft Constitution after the first part was suggested by Shri B.N. Rau derived from the recommendations of the U.N. Conference on Food and Agriculture, 1943 as several members, including Seth Govind Das and Shri Bishwanath Das specifically wanted that prohibition should find specific mention at a suitable place in the Constitution. One of the members, Kazi Sayed Karimuddin expressed his desire that such a provision should be included in a separate Article having regard to the preachings of Mahatma Gandhi and also having regard to the fact that the same has been approved by all communities. In Article 47, however, only liquor was specifically mentioned at the instance of Shri Bishwanath Das who opined that if prohibition of liquor is to be included in a separate Article, other harmful articles like opium, tobacco and like products should also find mention in Article 47. (See CAD Vol. VII No.9, pp. 496 to 498.)

D Regulation of liquor *vis-a-vis* Public Health

Having noticed the parliamentary debate, we may also notice the importance of regulation of liquor *vis-a-vis* public health.

- E In common parlance, public health tends to refer only to aspects of medical care and prevention of disease. However, a true interpretation of the term 'public health' will include not only this traditional notion but several other aspects that promote healthy living.

- F Public health refers to both a goal for the health of a population and to professional practices aimed at its attainment. In both senses, the term tends to be broadly defined. The Constitution of the WHO defines the goal as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. The Institute of Medicine defines it as the fulfillment of society's interest in assuring the conditions in which people can be healthy. Public health, as the practice that pursues the goal of a healthy population, also has a broad definition, including the development of the social machinery, which will ensure to every individual in the community a standard of living adequate for the maintenance of health. [See *Lawrence O. Gosten, Scott Burris and Zita Lazzarini, The Law and the Public's Health: A Study of Infectious Disease Law in the United States*, Columbia Law Review, Vol 99 No. 1, January 1999, pp. 61 and 69]

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The relationships among medicine, public health, ethics and human rights are now evolving rapidly, in response to a series of events, experiences and struggles. In general people equate medical care with health, but the vast majority of research into the health of populations identifies so called 'societal factors' as the major determinants of health status. Public health, although starting as a social movement, has at least in recent years, responded relatively little to this profound knowledge about the dominant impact of society on health, such as behaviour like excess alcohol. Given that the major determinants are societal in nature, it seems evident that only a framework that expresses fundamental values in societal terms, and a vocabulary of values that links directly with societal structure and function, can be useful to the work of public health. [See *Jonathan M. Mann, Public Health and Human Rights, American Bar Association Journal on Human Rights, Fall 1998, Vol. 25 No.1, pp. 2, 3 and 4.*]

Grant of licence as a measure of control of intoxicating liquor is an age-old phenomenon. Even in England several statutes have been enacted therefor including the current one which was enacted in 2003. (See *Halsbury's Laws of England, 4th Ed. Volume 26 p.5.*)

Regulation of liquor under the Act

The Chhattisgarh Act provides for a unified regulation of sale and supply of alcohol. It seeks to promote fundamental licencing objectives. It enjoins several duties upon the licensing authorities, namely, (i) prevention of crime and disorder, (ii) public safety; (iii) prevention of public nuisance; and (iv) the protection of children from harm.

In view of Article 47 of the Constitution, indisputably, public health in society plays a vital role. By the said expression, the makers of the Constitution refer both to the goal of health of the public and the attending promotion of healthy practices.

Prohibition of liquor was, thus, inserted as part of public health. Strict control was contemplated and it was made necessary. This in turn would require that while granting licence the statutory committees and other authorities must resort to strict scrutiny of the applications. For the purpose of grant of licence, the law as contained in the rules, do not contain any provision for relaxing any condition. The legislative policy, therefore, was not to grant any relaxation therein. Relaxation, it is trite, can be granted by the authorities provided there exists a specific provision therefor. Relaxation

A cannot be granted by exclusion, when there does not exist any provision. This aspect of the matter has recently been considered by this Court wherein it was held that if an exemption notification is to be issued, the same must be done within the four-corners of the legislative policy. (See *Consumer Action Group and Anr. v. State of T.N. and Ors, Tata Iron & Steel Co. Ltd. v. State of Jharkhand and Ors.*, [2005] 4 SCC 272, *Government of India and Ors. v. Indian Tobacco Association*, [2005] 7 SCC 396 and *Commnr. of Central Excise, Raipur v. Hira Cement*, JT (2006) 2 SC 369].

C The provisions of the Act therefore deserve strict construction. We may in passing notice that whereas in cases of suspect legislation or where the statute *ex facie* is arbitrary requiring the burden of proof of the State to be shifted, the strict scrutiny test would apply whereas in a case where the provision is not so arbitrary, intermediate construction, the doctrine of proportionality would apply. [See *R. v. Hughes*, (2002) UKPC 12 : 12 BHRC 243 (P.C.)]

D We may also notice that the English Courts while departing from the Wednesbury principle developed the 'anxious scrutiny' test which was later modified by the Court of Appeal into the strict scrutiny test. (See *Bugdaycay v. Secy of State for Home Department*, [1987] 1 All ER 940 at 952, *R. v. Secy of State for Home Department, ex p. Brind*, (1991) 1 AA ER 720, *R. v. Ministry of Defence, ex p Smith*, [1996] 1 All ER 257 and *B. Archana Reddy v. State of AP*, (2005) 6 ALT 6).

NECESSARY PARTIES

F The licensees whose licences were directed to be cancelled were necessary parties to the writ petition. In the absence of any opportunity of hearing given to them, their right to continue their businesses has been violated. It is not a case where the State, for one reason or the other, did not intend to part with its exclusive privilege to deal in liquor. It is also not a case where the State has acted in such an arbitrary manner which would attract the wrath of Article 14 of the Constitution of India. All the licensees in relation to whom allegations had been made, thus, were necessary parties in the writ petition and in their absence the same could not have been decided.

H Furthermore, it would be a travesty of justice if the parties against whom serious allegations were made and are said to have been found had not been made the parties to the writ petition as by reason thereof they in terms of the High Court judgment were not allowed to carry on their businesses in terms of the licences granted in their favour.

All such persons whose licences had been cancelled were, thus, necessary parties. A

EN-MASSE CANCELLATION—PRINCIPLES OF

In law it is permissible to cancel the entire selection process if it is held that the same is tainted to such an extent that it may not be possible to separate the innocent from the tainted ones. As, for example, in a case of mass cheating adopted by the students in a Board Examination, it may be permissible to cancel the entire examination. When selections, however, are carried out not by one agency but by several ones, the principle of *en masse* cancellation may not apply. In this case, admittedly, several District Level Committees have carried out the selection process and in that view of the matter it was obligatory on the part of the High Court to consider the mode of manner of selection made by each one of them individually. It was not a case of mass cheating in an examination or an illegality or gross irregularity in the selection process which would lead to cancellation of the entire selection process. B C D

In the writ petition, the writ petitioners have not disclosed as to how each one of the licensees who had appeared as respondents therein were ineligible or otherwise disqualified and/ or did not fulfil the conditions therefor. Had such opportunities been given, the State as also the said respondents could have met the said allegations. Such allegations were made only in the rejoinder. No new plea ordinarily could have been permitted in the rejoinder without the leave of the court. We would not have commented upon this as the High Court does not appear to have placed reliance upon the additional affidavit filed by the State *inter alia* on the ground that the same being a sur-rejoinder could not have been filed. The High Court's attention was evidently not drawn to the fact that writ petitioners brought on record new facts for the first time in the rejoinder and, thus, the State was entitled to file a sur-rejoinder controverting the allegations made therein. E F

In *Benny T.D. and Ors. v. Registrar of Cooperative Societies and Anr.*, [1998] 5 SCC 269, this Court repelled a contention raised therein that in view of the findings of the Public Inquiry Commission that there has been tampering of marks in respect of several candidates and as such there has been no fair and objective selection, public interest demanded annulment of the entire selection. This Court held that the same could not be done as the same would tantamount to gross violation of principles of natural justice which cannot be G H

A brushed aside on the ground that public interest demands annulment of the selection.

B Yet again in *Onkar Lal Bajaj and Ors. v. Union of India and Anr.*, [2003] 2 SCC 673, this Court while dealing with a case of *en masse* cancellation of the licences granted to the LPG Distributors as a result whereof unequals were said to have been clubbed by reason of arbitrary exercise of executive power, the same was held to be impermissible stating:

C “The solution by resorting to cancellation of all was worse than the problem. Cure was worse than the disease. Equal treatment to unequals is nothing but inequality. To put both the categories—tainted and the rest—on a par is wholly unjustified, arbitrary, unconstitutional being violative of Article 14 of the Constitution....”

It was further held:

D “The aforesaid observations would apply with equal if not more force to DSBs if media exposure that the allotments were made either to the high political functionaries themselves or their near and dear ones is correct, the authorities would not only be justified in examining such cases but it would be their duty to do so. Instead of fulfilling that duty and obligation, the executive cannot unjustly resort to cancellation of all the allotments *en masse* by treating unequals as equals without even *prima facie* examining any cases exposed by the media....”

F It was also not a case where the writ petitioners had impleaded the private respondents in their representative capacity. In the writ proceedings, no leave in terms of Order 1, Rule 8 of the Code of Civil Procedure or the principles analogous thereto had been obtained. No public notice had also been given as regard pendency of the said writ petition.

G In *Union of India and Ors. v. Rajesh P.U., Puthuvalnikathu and Anr.*, [2003] 7 SCC 285], this Court observed:

H “...Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving

a complete go-by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably to meet the situation. In short, the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational.”

We are, therefore, of the opinion that the High Court committed an error in directing cancellation of licences of all the private respondents of the writ petition without arriving at a finding as to how and in what manner licence granted to each one of them was either in violation of the provisions of the statute or the directions of this Court.

To put it shortly, the inadequacies or otherwise of fulfillment of eligibility criteria or the violation of the statute should have been decided by taking up individual matters and upon proper scrutiny of the case. To the aforementioned extent, the judgment of the High Court cannot be sustained.

It was also not a case wherein *en masse* cancellation was warranted as enunciated in *Bihar School Examination Board v. S.C. Sinha*, AIR (1970) SC 1269, *Union of India v. Anand Kumar Pandey*, [1994] 5 SCC 663, *Hanuman Prasad and Ors. v. Union of India and Anr.*, [1996] 10 SCC 742 and *Union of India and Ors. v. O. Chakradhar*, [2002] 3 SCC 146.

ASHOK LENKA - I

Analysing the provisions of the Act and the Rules, this Court opined that the Rules contemplated strict compliance of the Rules as also the terms and conditions of the licences. Eligibility clause contained in the advertisement was, therefore, required to be considered applying a rigorous standard. Emphasising the necessity to verify the requisite documents by the District Level Committees and the mode and manner in which the selection processes were to be adverted to in terms of Rule 11 of the Rules, it was held that the Scrutiny Committee was entrusted with the duties to oversee as to whether the conditions have been complied with or not. The expression “has to submit an affidavit” contained in Rule 9 *ex facie* was found to be mandatory in nature. It was opined:

“Furthermore, filing of an affidavit in the prescribed format is a

A statutory requirement under the Rules. Filing of such an affidavit is necessary as in the event the same on verification is found to be incorrect, not only the deponent can be proceeded against but his licence would also be liable to be cancelled. Filing of an affidavit under the Rules is, therefore, mandatory in character.”

B This Court noticed from the chart filed on behalf of the writ petitioners that different persons belonging to different communities had filed different applications showing the same addresses and even the persons with same names have filed more than one application. It was held:

C “...The authorities of the State cannot raise a plea that they would not even notice the inherent defects contained in the application. They could not proceed on a presupposition, for which there is no legal sanction, that contents of the affidavit would be correct. No summary report required to be prepared by the Member-Secretary for its placement before the Committee appears to have not been prepared. The Rules postulate that each and every application must be examined carefully. Mere fact that a large number of applications have been filed, as a result whereof the State had been able to obtain crores and crores of rupees by itself did not entitle the State to dispense with the statutory requirements. The application fees were not meant to be utilised for the purpose of earning revenue but to meet the administrative charges required therefor. Application fee cannot be equated with tax.”

In the aforementioned situation, it was directed:

F “Keeping in view the peculiar facts and circumstances of this case, we intend to issue the following directions:

(i) The Member-Secretary shall scrutinise all the applications of the successful candidates afresh and prepare a summary report within one week from date.

G (ii) Irrespective of the format prescribed by the Commissioner of Excise, each of the selected candidates must file an appropriate affidavit, which would be in strict compliance with the requirement of Rule 9.

H (iii) Such affidavits must be filed before the respective Committees within one week from date, the contents whereof would be verified in terms of Order 6 Rule 15 of the Civil Procedure Code. The said

affidavits shall be scrutinised by the Committee so as to enable them to arrive at a finding as to whether the applicants fulfil the eligibility criteria and are otherwise suitable for grant of licence under the Act and the Rules. A

(iv) The writ petitioners or any other person in the locality may file appropriate applications before the said Committee with a view to show that the selected candidates do not fulfil the eligibility criteria or are debarred or are otherwise unsuitable for obtaining a licence under the Act. B

(v) Such objections may also be filed within two weeks from date. The Committee may consider the said objections and, if necessary, may call for further or better particulars from the selected candidates so as to satisfy themselves about their eligibility, etc. C

(vi) The respective district-level committees shall strictly verify and scrutinise the affidavits as also other documents furnished by the said applicants so as to arrive at a decision that the statutory requirements have been complied with upon application of their mind. D

(vii) The members of the Committee are made personally liable to see that all statutory requirements are complied with. They would strictly apply the statutory provisions as regards eligibility and suitability of the candidates.

(viii) The aforementioned exercise by the Committee should be completed within one month. In the event, any affidavit filed by a selected candidate either pursuant to this order or filed earlier in the format prescribed by the Commissioner of Excise is found to be incorrect, strict action in accordance with law shall be taken against him. E

(ix) The Superintendent of Police of each district within whose jurisdiction the selected candidates ordinarily reside shall verify the antecedents and other relevant particulars of the selected candidates *vis-a-vis* their eligibility/suitability to obtain a licence and submit a report to the Committee by 12-6-2005 which would be strictly in terms of sub-rule (3) of Rule 9. While issuing such a certificate in favour of the selected candidates by 12-6-2005, he shall also file a copy of the report before the Committee. F

(x) We direct the Chief Secretary of the State and the Commissioner of Excise to act strictly in accordance with law and oversee the G H

A functioning of the Scrutiny Committees.

(xi) If the State and the Commissioner of Excise come across misconduct on the part of any of the officers including the members of the Committee, strict action must be taken against the officer concerned.

B (xii) The selected candidates in the meanwhile may carry on the trade in liquor pursuant to the licence granted in their favour but the same shall be subject to this order as also the decision of the Scrutiny Committee.”

C *WERE THE DIRECTIONS COMPLIED WITH ?*

We may notice in the following chart some of the cases, by way of sample as to the mode and manner in which the Committees dealt with the applications in respect of the private respondents both who were parties and who were not parties:

D Private Respondents who were parties

S. No.	No. and name of respondent	Direction No. 6	Direction No. 9	Direction No. 10	
E		Details of records received in regard to examination of the affidavit and page No.	Photocopy of the report submitted by the Supdt. of Police regarding character verification	Details of the supervision conducted by the Chief Secretary and Excise Commissioner	
F	1	2	8	11	12
G	1. Shri Amit Singhal, Ganjpara, Respondent No. 3	1. Domicile Certificate, 2. Higher Sec. Certificate, 3. Telephone Bill 32-34	Enclosed 35-36	Directions issued for time bound proceedings on 14.05.2005, meeting held by the Excise Commissioner on 16.05.2005. Video Conferencing held by the Chief Secretary	
H					

				on 26.05.2005, letter issued to the Suptd. of Police by Chief Secretary, Chhattisgarh on 26.05.2005, letter issued to the General Director, Police, Chhattisgarh by Chief Secretary on 07.06.2005 Page No. 37 to 130	A
45.	Shri Vikram Vishwal, Sarsiva, respondents No. 61 and 80.	1. Dwelling Certificate, 2. Age Certificate by Doctor 1391-1392	Enclosed 1393	As above	B
47.	Shri Manish Upadhyaya, Bhanwarpur Respondent No. 66	1. Dwelling Certificate, 2. Voter List, 3. Rent Deed, 4. PAN Card, Age Certificate, 1433-1441	Enclosed 1442-1445	As above	C
65.	Shri Pawan Singh, Fingeshwar, Respondent No. 88	1. Dwelling Certificate, 2. Age Certificate by Doctor 1990-1991	Enclosed 1992	As above	D
					E

Private Respondents who were not parties

S. No.	No. and name of respondent	Direction No. 6	Direction No. 9	Direction No. 10	F
		Details of records received in regard to examination of the affidavit and page No.	Photocopy of the report submitted by the Supdt. of Police regarding character verification	Details of the supervision conducted by the Chief Secretary and Excise Commissioner	G
1	2	8	11	12	
1.	Rameshwar Prasad Dhimar, Tikarapara,	1. Age Certificate by Doctor, 2. Family Card 6-8	Enclosed 9	Directions issued for time bound	H

A	Group, Raipur			proceedings on 14.05.2005, meeting held by the Excise Commissioner on 16.05.2005. Video Conferencing held by the Chief Secretary on 26.05.2005, letter issued to the Suptd. of Police by Chief Secretary. Chhattisgarh on 26.05.2005, letter issued to the General Director. Police, Chhattisgarh by Chief Secretary on 07.06.2005 Page No. 10 to 103
B				
C				
D				
E	19. Maheshbar Dass. Basna Group. Mahasamund	1. Domicile Certificate. 2. Rent Deed, 3. PAN Card, 4. Age Certificate 278-283	Enclosed 284-287	As above
F	36. Ajay Singh Choteekoni group, Bilaspur	1. Inquiry Report of the Committee constituted by Revenue Officials 2. Rent Deed 3. PAN Number 608-624	Enclosed 625-628	As above
G	125. Pintu Singh, Chanderpur group, Janjgir	1. Bank Pass Book, 2. Medical Certificate. 3. Domicile Certificate 2106-2110	Enclosed 2111-2117	As above

A tabular statement has also been placed before us indicating how each of the directions issued by this Court in para 90 are said to have been complied with, which is as under:

H

"Srl. No.	DIRECTION	COMPLIANCE
i.	The Member-Secretary shall scrutinise all the applications of the successful candidates afresh and prepare a summary report within one week from date.	<ul style="list-style-type: none"> • On 16.05.2005 the Excise Commissioner convened a meeting of all the Assistant Commissioner Excise and District Excise Officers for instructing them to comply with the Order passed by the Hon'ble Supreme Court within the prescribed time. In this meeting the officers were also appraised as to how the scrutiny is to be conducted, the affidavits are to be obtained and the eligibility criteria have to be checked and further as to how the objections are to be dealt with. • The Member - Secretary, who is the District Excise Officer scrutinized all the applications of the successful candidates afresh and prepared a summary report within one week.
ii	Irrespective of the format prescribed by the Commissioner of Excise, each of the selected candidates must file an appropriate affidavit, which would be in strict compliance with the requirement of Rule 9.	<ul style="list-style-type: none"> • Each of the selected candidates filed appropriate affidavits, in strict compliance of the requirement of Rule 9.
iii	Such affidavits must be filed before the respective Committees within one week from date, the contents whereof would be verified in terms of Order 6 Rule 15 of	<ul style="list-style-type: none"> • It is submitted that the Scrutiny Committees have scrutinized the Affidavits submitted by the successful candidates, the contents of which were verified in terms of Order 6 Rule 15. It

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A		<p>the Civil Procedure Code. The said affidavits shall be scrutinised by the Committee so as to enable them to arrive at a finding as to whether the applicants fulfill the eligibility criteria and are otherwise suitable for grant of licence under the Act and the Rules.</p>	<p>is submitted that the Scrutiny Committee consisting of the District Collector, Assistant Commissioner, Excise and the District Excise Officer have personally interviewed each of the successful Applicants before the Licenses were confirmed.</p>
B			
C	iv	<p>The writ petitioners or any other person in the locality may file appropriate applications before the said Committee with a view to show that the selected candidates do not fulfil the eligibility criteria or are debarred or are otherwise unsuitable for obtaining a licence under the Act.</p>	<ul style="list-style-type: none"> • Respondents merely sought to raise general and omnibus objections that the addresses of some of the other successful candidates seem to be incomplete or duplicated.
D			
E	v	<p>Such objections may also be filed within two weeks from date. The Committee may consider the said objections and, if necessary, may call for further or better particulars from the selected candidates so as to satisfy themselves about their eligibility, etc.</p>	<ul style="list-style-type: none"> • The objectors were given an opportunity for making representations before the Committee. • The Committee decided the objections raised by the objectors after considering the objections with the documents that had been submitted by the successful Applicants. • However, the objectors did not point out a single instance where Applicant was ineligible as not fulfilling the eligibility criteria as prescribed in Rule 9 of the Excise Rules.
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vi	The respective district-level committees shall strictly verify and scrutinise the affidavits as also other documents furnished by the said applicants so as to arrive at a decision that the statutory requirements have been complied with upon application of their mind.	<ul style="list-style-type: none"> • The District Level Committees strictly verified and scrutinized the affidavits and supporting documents furnished by the said applicants so as to arrive at a decision that the statutory requirements have been complied. • The Committee also personally interviewed each of the successful Applicants before the Licenses were confirmed.
vii	The members of the Committee are made personally liable to see that all statutory requirements are complied with. They would strictly apply the statutory provisions as regards eligibility and suitability of the candidates.	
viii	The aforementioned exercise by the Committee should be completed within one month. In the event, any affidavit filed by a selected candidate either pursuant to this order or filed earlier in the format prescribed by the Commissioner of Excise is found to be incorrect, strict action in accordance with law shall be taken against him.	<ul style="list-style-type: none"> • The Scrutiny Committees completed the exercise within one month.
ix	The Superintendent of Police of each district within whose jurisdiction the selected candidates ordinarily reside	<ul style="list-style-type: none"> • That immediately after the passing of the Order dated 11.05.2005, by letter dated 16.05.2005, the Excise

(continued)

<p>A</p> <p>B</p> <p>C</p> <p>D</p> <p>E</p> <p>F</p>	<p>shall verify the antecedents and other relevant particulars of the selected candidates <i>vis-à-vis</i> their eligibility/suitability to obtain a licence and submit a report to the Committee by 12-6-2005 which would be strictly in terms of sub-rule (3) of Rule 9. While issuing such a certificate in favour of the selected candidates by 12-6-2005, he shall also file a copy of the report before the Committee.</p>	<p>Commissioner requested Director General of Police Chhattisgarh to submit character verification report of successful applicants within the time allowed by the Hon'ble Supreme Court i.e. by 12th June, 2005.</p> <ul style="list-style-type: none"> • By letter dated 26.05.2005 the Excise Commissioner requested the Superintendent of Police of the concerned District of other States in such cases where the successful applicants have shown their permanent resident, to verify the antecedents of such candidates. It is submitted that report from Superintendent of Police of concerned districts of other States were also received in the concerned Excise Office of the concerned district. • It is submitted that all the character verification reports were received in the office of District Level Committee by 12th June, 2005.
<p>G</p> <p>H</p>	<p>x We direct the Chief Secretary of the State and the Commissioner of Excise to act strictly in accordance with law and oversee the functioning of the Scrutiny Committees.</p>	<ul style="list-style-type: none"> • The Chief Secretary, Government of Chhattisgarh convened several meeting with Collectors/Assistant Commissioner Excise/District Excise Officers through Video Conferencing and took stock of stage of compliance of the Order passed by the Hon'ble Supreme Court."

Before we advert to the rival contentions of the parties, we may also notice the following chart showing licence holders against whom findings have been recorded in the impugned judgment and subsequently the licences were cancelled:

NAME OF PARTIES	REASONS FOR CANCELLATION	ADDRESS I	ADDRESS II	AGE/CERTIFIED BY
Satyendra Singh	(i) Discrepancies in certificates with respect to addresses; (ii) Age certified by private practitioner	In character certificate by police authority- Vialleg Karhara, Post Jaipur, Police Station Mali, District Aurangabad	In letter by SP, Bilaspur- Village Mali, Police Station Nabinagar, Aurangabad.	47 years- certified by private practitioner Dr. H.S. Hura
Abhay Singh	(i) Certificate issues by Tahsildar does not bear revenue case number or seal of office of Tahsildar; (ii) Age certified by private practitioner.	—	—	27 years- certified by private practitioner Dr. H.S. Hura
Arvind Singh	(i) Residential certificate issued by the Sarpanch does not mention the revenue case number or the authority of the Sarpanch to issue the Certificate; (ii) Age certified by a dental surgeon; (iii) Discrepancies in addresses.	Certificate suggesting that he is a resident of Batha.	Certificate suggesting that he is residing at Baya Kasdol, District Raipur	Certificate by Dr. N.L. Upadhyay, a dental surgeon.
Anil Pal	(i) Discrepancies in addresses.	Certificate indicating him to be a resident of village Jhapla, P.O. Jhapla, district Palamou (Jharkhand)	Police verification report suggests that he is a resident of village Bankat, Police Station Husainabad, district	

(continued)

A			Palamou (Jharkhand)	
B	Pradeep Gupta	(i) He is not an independent person: (ii) His financial condition indicates that he could not undertake the financial burden of liquor trade.	---	---
C	Anil Kumar Gupta	(i) Not residing within the territorial jurisdiction of the police station issuing the certificate.	---	---

From the aforementioned chart, it would appear that although various instances have been cited in respect of the persons against whom findings have been recorded in the impugned judgment, their licences remained valid whereas licences have been directed to be annulled in respect of Satyendra Singh, Abhay Singh, Arvind Singh, Anil Pal, Pradeep Gupta and Anil Kumar Gupta. We have hereinbefore dealt with the consequences of not implementing some successful licensees in the writ petition.

E *SOME INDIVIDUAL CASES*

Before us, various instances had been shown as to how the provisions of the mandatory rules have been flouted in the selection process. The eligibility of the candidates was also questioned.

F Rule 9 provides for affirmation of an affidavit by the applicant categorically stating that in the event he is selected, he shall furnish the information specified therein within 30 days from the date of grant of licence including a certificate issued by the Superintendent of Police of the district of which he is the resident.

G The learned counsel for the Appellant has placed before us a chart, as noticed hereinbefore, showing the mode and manner in which the directions of this Court had been purportedly complied with. From the said chart, it would appear that there are several cases where only residence certificate of some incompetent person was produced in support of residence and certificate by a doctor in support of age were produced as proof without producing any

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other document to prove those two facts. Thus, there was no proper proof of residence or age produced by these applicants. The record of scrutiny produced by the State shows that, those applicants who had submitted aforesaid improper documents were not even asked by the State at the scrutiny, to submit proper documents such as residence certificate by Revenue Authority, etc. or proper proof of age such as School Certificate or Birth Certificate, etc.

We may in this connection notice some findings of the High Court. Before the High Court, it had been conceded that the residential certificates issued by the Councillors of Municipal Council or Sapranches or other persons who had no legal authority and/ or otherwise incompetent to issue the same, had been taken into consideration. It may be true that residence certificates granted in favour of the applicants who are not ordinarily inhabitants of the State of Chhattisgarh, cannot be procured from the Revenue Department of the State. The applicants, however, could procure such certificates from the competent authorities of the respective States where the applicant was a resident and who hold similar status in their State, particularly, when it is one of the eligible criteria. The High Court in paragraph 21 of its judgment has noticed the example of residence certificate of Abhay Singh, which does not even bear the revenue case number or seal of the office of the Tehsildar which are mandatory requirements. The High Court has also noticed that the certificates relating to age had been issued by Dental Surgeons and Orthopaedic Surgeons. The High Court furthermore noticed the report of the Station House Officer, Chirmiri to S.P. Koria mentioning about one licensee Pradeep Gupta that he is an employee of liquor contractor Amolak Singh Bhatia and financial condition of Pradeep Gupta is not such that he could take the financial burden of liquor trade. In spite of it, liquor licence was granted to him.

Furthermore, the High Court in paragraph 22 of its judgment found that the Official Respondents have failed to carry out the directions issued by this Court in the manner expected of them and in conformity with the mandatory rule 9 and 11 of the Rules. The High Court in paragraph 23 also found that the burden was wrongly shifted on objectors to prove the negative facts by evidence which was a serious flaw in enquiry. In paragraph 24, it also took notice of a chart and found that vague and incomplete address such as 'resident of Raipur' and 'resident of Saja' which is an assembly constituency, has been accepted by the authorities.

The aforesaid findings of the High Court establish that the licences might have been issued in fake names and to the ineligible applicants. Our

A attention has furthermore been drawn to the fact that some of the applicants are facing criminal trials, veracity whereof is not established.

B The contention of the learned counsel appearing on behalf of the Appellant that this Court has placed burden of proof on the objector may not be entirely correct. The initial burden was on the applicants themselves for grant of licences to satisfy the members of the District Level Committees that they fulfill the eligibility and other criteria. This Court merely opined that even in such matters, the satisfaction was required to be arrived at by the competent authority upon considering the objections raised by the writ petitioners. This Court, thereby, did not mean that whenever an objection was raised, the burden thereof would be upon the objector to prove the same. Sub para (iv) of Paragraph 90 of the judgment in *Ashok Lanka I* (supra) merely gave the objectors an additional opportunity to place materials before the District Level Committees to show that some of the applicants might be ineligible.

C Our attention has further been drawn to the fact that certificates issued by the doctors or dental surgeons, orthopaedics as regards proof of age of the applicants had been taken into consideration. The same was wholly illegal. But, it does not appear that such a contention had been raised before the High Court. It is expected that in future the competent authority shall consider the desirability of verification of age for arriving at the satisfaction that a person below the age of 21 years is not granted a licence.

E

NOTIFICATION

F Before us the Hindi version of the notification has been read wherefrom it appeared that the requirement of providing the certificate as regards the alleged criminal background of the family members of the licensees had inadvertently appeared in the English version of the notification, but were absent in the Hindi version.

G It is true that this Court had delivered the judgment in *Ashok Lanka - I* (supra) on 11th May, 2005. A clarificatory notification was issued on 5.7.2005 by deleting the words “as well as his family members” from the notification dated 15.3.2005. The relevant portion of the said notification reads as under:

“.....In the said rules, -

H (1) In sub rule 3 of clause (d) of rule 9 the words “as well as his

family members” shall be omitted.”

The said notification was given a retrospective effect.

Ordinarily a subordinate legislation cannot be given a retrospective effect. The Notification dated 15.3.2005, however, is said to be clarificatory in nature. A clarificatory Notification can be given retrospective effect. Such a clarification, according to the State, was necessary to be issued as there was an apparent conflict between the Hindi version and the English version of the Notification.

It may be true that before the High Court such a contention has not been raised but we are satisfied about the *bona fide* of the State in this behalf. In that view of the matter, it was not necessary for the District Level Committee or the State to verify the criminal background of the family members of the applicants.

Presumably, character certificates were required to be issued by the respective Superintendents of Police in respect of the candidates concerned. Of course, if they had been residing at different places at different points of time, such character certificates were required to be issued by the Superintendent of Police of each such place. But the same would not mean that character certificates were required to be produced by the candidates in respect of their family members also particularly when it was not certain as to who would come within the purview of the said term. It was in that sense the Notification dated 15.3.2005 was a clarificatory one, and, therefore, could be given a retrospective effect.

CHARACTER CERTIFICATES

In view of the directions contained in sub-paragraph (xi) of Paragraph 90, we do not accept the contention of Mr. Desai that only certificate issued by the Superintendent of Police of the place of his permanent residence is to be filed. It, however, appears that the Commissioner of Excise had issued letters to the concerned Superintendents of Police as regard requirement to comply with the provisions of Rule 9 of the Rules. The reason why we say so is that if a person is resident of any district for a year, the certificate which may be issued by the Superintendent of Police of that place may remain valid only for that year. He would not be in a position to vouchsafe about the conduct of the person concerned or as to whether he has any criminal antecedents prior or subsequent thereto.

A It may, therefore, be necessary that the applicant should state the details of the places where he had stayed or carried on business and produce a certificate from the concerned authorities from each such place.

ADDRESS OF THE APPLICANT

B No case, however, has been pointed out before us where such certificates had been given by the Superintendent of Police other than from the place wherein the applicant is a permanent resident. Terms and conditions of the advertisement did not mandate that a person residing outside the State of Chhattisgarh would be ineligible for filing an application. If that be so, then those who were residents of places other than the State of Chhattisgarh would also be eligible therefor. They may have a temporary address in Chhattisgarh or they may not have a permanent address within the said State but by way of temporary address, they cannot give an address which is not their residence even for temporary purpose. Even in paragraph 71 of the judgment in *Ashok Lanka - I* (supra), this Court pointed out the said fact. No serious dispute has been raised that the said contention of the writ petitioners was not correct. But, even if they had no temporary address but they had been able to file their character certificates and proof of permanent address, they cannot be held to be ineligible for the grant of licences. Furthermore, there is nothing to indicate that the District Level Committees had information as to whether the applicants were defaulters in respect of some other State. Such mechanism of scrutiny is not available in the statutory scheme and in our opinion should be provided.

F We hope and trust that in future, i.e., for the following excise year, appropriate steps shall be taken to make the position clear that if the applicants are not residents of the State of Jharkhand either on a temporary or permanent basis, they would not be shown to be residents of such places wherefrom their antecedents cannot be verified. Such applicants, therefore, should not be allowed to furnish an address only for the purpose of communication and if so, the same should clearly be stated in the application.

G In the Act or the Rules, again no particular authority had been mentioned as having been authorized to issue certificate. No particular method of verification of proof of address and identity had also been shown to exist. It will be appropriate if a clarification is issued in this behalf.

H The Scrutiny Committee appears to have relied upon certificates issued

by Tahsildars, Municipal Counsellors, etc. which had not been objected to by the writ petitioners. It is stated that most of the applicants are income tax payees. They have been granted a PAN Card. In future, however, the authorities should insist that the applicants must enclose Xeroxed copies of their PAN Cards along with their applications.

CONCLUSION

The period for which licences had been granted is over. For all practical purposes, the State and the licensees have succeeded in their attempts to defeat the purpose for which the writ petitions were filed by the writ petitioners - Respondents. We must express our dismay that despite our directions, the applications filed by the Appellants had not been scrutinized minutely which should have been done. The State of Chhattisgarh, we are not very sure, whether was aware of its constitutional duties and functions. It seems to have been more concerned with raising of revenue. To that extent it had succeeded, as the High Court in the first round of litigation despite directing a fresh scrutiny of the applications did not direct refund of the huge amount collected by it by way of application fees. We would, however, expect the State and its officers to scrupulously follow the constitutional mandate in future. It was with this intention we have dealt with these matters at some detail.

We hope and trust that the State of Chhattisgarh and its authorities would not commit the same mistakes in the coming years keeping in mind the mandate of Article 47 of the Constitution of India and scrupulously observe the rules for disposal of liquor shops.

With the aforementioned observations and directions, these appeals are allowed. The parties, however, are directed to pay and bear their own costs.

V.S:

Appeal allowed.