

B.R.T.

CIVIL MISCELLANEOUS

*Before Inder Dev Dua and Daya Krishan Mahajan, JJ.*

KANS RAJ,—*Petitioner*

*versus*

THE DEPUTY EXCISE & TAXATION COMMISSIONER

AND OTHERS,—*Respondents.*

Civil Writ No. 611 of 1964

*Punjab Excise Act (1 of 1914)—Ss.35, 58 and 59—Punjab Liquor Licence Rules (1932)—Rules 36-A and 36-B promulgated by Notification in the Punjab Gazette, dated 20th March, 1964—Whether ultra vires—Power to grant licences conferred on certain authority—Whether*

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*can be exercised by that authority alone—Constitution of India (1950)—Art. 226—High Court—Whether can set aside the grant of licence as being against the law or Rules.*

Under section 59 of the Punjab Excise Act, 1914, the Punjab Liquor Licence Rules were framed by the Financial Commissioner in 1932. Rules 5.37 and 5.38 of the said Rules provided that L-14 licences (country liquor vend licences) were to be auctioned. By notification No. G.S.R. 87/P,A,I./14/S-59/Amd. (2)/64, dated 7th March, 1964, published in the *Punjab Gazette*, dated 20th March, 1964, Rules 36-A and 36-B were promulgated providing for allotment of the country liquor vends and the question arose whether these rules were ultra vires section 35 of the Act.

*Held*, that Rules 36-A and 36-B are ultra vires section 35 of the Punjab Excise Act, 1914. Section 35 provides that the grant has to be made by the collector subject to rules made by the Financial Commissioner. Therefore, any rule made by the Financial Commissioner cannot derogate in any manner from the statutory power vested in the Collector in the matter of the grant of licences. The power to grant licences vests in the Collector and he alone can exercise it. The rules can only regulate the manner in which and the circumstances under which it can be exercised. The rules cannot in any way whittle down or take away that power. What Rule 36-B has done is this that it provides for the making of an application for grant to the Deputy Commissioner who nowhere figures as an authority under the Excise Act. Not only that, the applications have to be scrutinized by the Deputy Commissioner of the district who has to forward them to the Government with his recommendations, keeping in view the past experience, reputation and suitability of the applicants. It appears that the rule-making authority was not oblivious to the provisions of section 35 of the Act because in sub-clause (6) of rule 36-B, it is provided that the allotment of vends has to be made by the Collector. The sum total of Rule 36-B is that the discretion vested in the Collector by the statute in the matter of grant has been virtually put at naught. This is obvious from the provisions of Rule 36-B (1) and (5). Otherwise sending of the applications to the Deputy Commissioner of the district concerned, their scrutiny by him and their transmission to Government by him with his recommendations have no meaning. The matter of grant, though technically left with the Collector, is in fact and in substance taken away from him and he is left to the position of a rubber stamp. Along with Rule 36-B, Rule 36-A also falls as invalid because both the Rules are an integral part of each other.

*Held*, that it is settled law that if any authority has been vested with the power to grant a licence, it is that authority which must exercise that power, and if power is exercised by some other authority, the exercise of that power will be wholly void.

*Held*, that in a petition under Article 226 of the Constitution, the High Court is required to see whether the grant of the licence is in accordance with law. If it is not, the High Court will certainly step in and direct the authorities to give effect to the rule or law.

*Petition under Article 226 of the Constitution of India praying that an appropriate writ, order or direction in the nature of Mandamus, Certiorari, and prohibition for quashing the licence granted to or order passed in respect thereof in favour of respondent No. 7 and declaring the new rules under Notification, dated 7th March, 1964, as unconstitutional, illegal, void and inoperative and directing respondents Nos. 1 to 6 not to enforce and give effect to them.*

R. SACHAR AND S. S. DHINGRA, ADVOCATES, for the Petitioner.

H. L. SONI AND H. L. SIBAL, ADVOCATES, for the Respondents.

### ORDER

The judgment of the Court was delivered by:—

MAHAJAN, J.—The only grievance of the petitioner in this petition under Article 226 of the Constitution of India is that the liquor licence for the vend of country liquor at Pathankot has been granted to respondent 7 Maghar Mal and not to the petitioner though in the recommendation sent by the Deputy Commissioner to the Collector, the petitioner was placed at No. 1.

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On the surface the grievance is innocuous because out of the two rival applicants only one has to be chosen for the grant of licence. If the choice was according to rules, no grievance could be made by the petitioner. In a petition under Article 226 of the Constitution, this court is required to see whether the grant of the licence is in accordance with law. If it is not, this Court will certainly step in and direct the authorities to give effect to the rule of law. In the return filed by the State, it has been maintained all through that the grant of the licence was in accordance with the rules. On the other hand, the contention of the petitioner before us was that the rules have been given a go-by. It is also maintained that the rules were altered for an ulterior purpose.

This Court directed the Department a number of times to produce the records and if the records had not

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been produced, things which have now come to light would have remained in obscurity and the course of justice would have been defeated. It is in this background that the order of this Bench dated the 21st July, 1964, assumes significance. As the records were not forthcoming, this Bench on the 28th July, 1964, passed the following order:—

“It is alleged that the whole of the record has not been produced. The required “affidavit as ordered by this Bench on 21st July, 1964, is also not forthcoming. We are not satisfied with the explanation given at the bar that because of the learned Commissioner being on tour the needful could not be done during all these days. Orders of this Court have to be obeyed and they should not be treated with indifference. This case has to be adjourned because of the non-compliance of this Court's order by respondents 1 to 6. We adjourn this case to 3rd August, 1964 on payment of Rs. 100 as costs by the State to the petitioner. On 3rd August, 1964 the Excise and Taxation Commissioner should appear in this Court in person to explain the position regarding the non-production of the files and other relevant questions, which the Court may have to ask. He must be here at 10 o'clock.”

On the 3rd August, 1964, the Excise and Taxation Commissioner appeared along with a number of officers and the records; and a number of affidavits were also filed on that date. The following order was passed on that date:

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It is in these circumstances that today we have before us a number of affidavits and also a statement from the bar by Shri Soni, the learned counsel for the State, that all the relevant records have now been produced in this Court. The records will have to be seen by Shri Tirath Singh Munjral and after he has done so this Court would advert to their contents.

We have an affidavit by the learned Excise Commissioner, Punjab, swearing that orders of this Court dated 21st July, 1964, were not placed before him up to 28th July, 1964 and that there was no desire to disobey this Court's directions. It is unfortunate that the orders of this Court, extremely urgent as they were, were not brought to his notice for seven days and the staff in his department should have failed to attach to these orders the importance they deserve; it betrays a lack of realisation of the urgent nature of the orders and absence of the requisite genuine anxiety to comply with them promptly. Without repeating what the learned Chief Justice of India observed in *Messrs. Ghaio Mal and Sons v. State of Delhi and others* (1), we would only record that this Court is not impressed by the efficiency of this department in dealing with the production of the record in the case in hand. The full record should have been produced or made available to the court initially with the return or at least on subsequent dates of hearing; they were, however, not produced in spite of specific orders till today. We have also before us affidavits from the Deputy Excise and Taxation Commissioner, the Assistant District Attorney, Excise and Taxation Commissioner's office, Punjab Patiala, and the Excise and Taxation Officer, Gurdaspur. Almost all of them, so far as relevant to the non-production of the record, betray an attitude on the part of the officers which this Court is unable to appreciate; it is an attitude of indifference towards this Court's orders and discloses absence of requisite anxiety to comply with them with due promptitude and sense of responsibility. It may be recalled that on 21st July, 1964 this Court had expressly suggested that, if necessary, a special messenger be sent to get the relevant records. Why this was not done is not explained.

Without saying anything more on this occasion, we do hope and trust that in future the department

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(1) A.I.R. 1959 S.C. 65.

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would pay due regard to the orders of this Court and see that they are complied with effectively, and not adopt casual attitude of leaving the matter to routine, particularly when they relate to adjudication of serious allegations against the department itself.

We are informed by Shri Soni that all the officers who have filed affidavits are present in Court; so also is the learned Excise and Taxation Commissioner who was holding the office at the relevant time of granting the impugned licence, presumably suggesting thereby that the department is fully alive to the seriousness of the situation which has arisen. This awareness is gratifying."

This case has some very unusual features and, therefore, it will be proper to deal with the matter in some detail.

The dispute in this petition relates to the licence for the vend of country liquor. This licence is known as L-14. The procedure, according to the rules, before the 20th March, 1964, was that such licences were offered for sale at an open auction. The highest bidder who had good financial position and was otherwise suitable for the grant in accordance with the rules was granted the licence. The relevant rules are known as the Punjab Liquor Licence Rules—hereinafter referred to as the rules. These rules were published under Financial Commissioner's notification No. 5586-R & S., dated the 21st September, 1932, and have been modified from time to time. These rules were framed under section 59 of the Act. It is common ground that under these rules, licence L-14 (country liquor vend licence) was to be issued by auction (See rules 5.37 and 5.38). The issuing authority under the Act is the Collector whose present designation is District Excise and Taxation Officer.

For what reason the procedure of auctioning L-14 licences was departed from is hard to find. The allegation of the counsel for the petitioner is that a go-by was given to this mode of licensing with a view to exercise more patronage and show favour to people whom the authorities wanted to favour. It is also alleged that there has been a considerable loss of revenue to the State exchequer by the departure from the mode of auction, and by switching over to the mode of allotment. However, it is

not for this Court to go into the motives of the authorities, unless the motives are *mala fide*, to judge the switching over from one method of grant to another, so long as that method of grant of licence is in accordance with law. It is well known that licencing and controls not only avoid healthy competition but also lead to favouritism, nepotism and corruption, but again that is a matter which relates to the administrative and the legislative field. So far as the Courts are concerned, they are merely to see that the law of the land is carried out and that rule of law is not given a go-by by the executive.

The Punjab Government had taken a decision that L-14 licences were not to be auctioned in future but were to be allotted. A notice was published on the 21st February, 1964, by the District Excise and Taxation Officer inviting applications for retail vend of country spirit in the district with a direction that such application should reach the Deputy Commissioner of the district by the 24th February, 1964, which date was later on extended to 7th March, 1964. It may be pertinently pointed out that no change in the rules had been brought about by this date or by the extended date. It will be proper at this stage to notice the allegations of the petitioner in paragraph 7 and the State's reply to that paragraph. For facility of reference, paragraph 7 of the petition and State's reply thereto are set out below side by side :—

<p>"7. That afterwards respondents 2 to 5 constituted committees consisting of Deputy Excise and Taxation Commissioner (Collector under the extinct rules), District Excise and Taxation Officer and Deputy Commissioner of the District for the purpose of scrutinising such applications and secret instructions were circularised to them to make their recommendations to respondent No. 2 in the light of these instructions. At the same time similar secret (C.I.D.), Punjab, to report on such instructions were sent to D.I.G. applications after making verifications of the antecedents etc. of the applicants."</p>	<p>"7. Admitted to the extent that the applications were received by the Deputy Commissioners who made the recommendations, keeping in view the particulars of the applicant."</p>
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The petitioner made his application for the grant of L-14 licence in pursuance of the notice issued in the press. In the meantime Labh Singh and Ujagar Singh filed Civil Writs Nos. 97 and 98 of 1964 against the change in the procedure of grant of L-14 licences. These petitions came up for hearing before me and on the statement of the Additional Advocate-General I passed the following order:—

“The learned Additional Advocate-General has stated that the practice of registering contractors is being given up and the country liquor licences will be sold in open auction and the petitioners can make a bid at the open auction. In this view of the matter these petitions have become infructuous and are accordingly dismissed.

Mr. H. S. Gujral, learned counsel for the petitioners in Civil Writ petitions Nos. 97 and 98 of 1964, however, contended that the petitioners' names have been brought on register No. 10 maintained by the police and this action on the part of the police should also be quashed. This matter was raised incidentally. The only grievance in the petition was that the petitioners were not being registered as country liquor contractors. As the system of registration is being abolished and will not stand in the way of the petitioners at the time of the auction of the licences, it hardly matters if they are on register No. 10. In any case there is no prayer in the petitions that it be directed that their names be removed from register No. 10. The Department concerned was not, therefore, required to meet this case. With regard to the grievance that their names should be removed from register No. 10 the petitioners can file a separate petition, if so advised. They cannot ventilate their grievance in that connection when the grievance for the redress of which they came to this Court has disappeared.”

It appears that the Additional Advocate-General made this concession because on the date when I entertained these

petitions, the rules had not been amended so as to provide for allotment instead of auction with regard to L-14 licences.

Resuming the story of the present allotments, the position was that the petitioner was placed at No. 1 by the Deputy Commissioner and respondent No. 7 at No. 4 in the recommendations that were made for the grant of licence. The relevant note against each of the applicants—and here we are only concerned with Nos. 1 and 4—is as follows:—

“1. Shri Kans Raj son of Shri Nathu Ram of Dala Chak, tehsil Batala.”

“He is in the trade for the last 10 years and is also a sitting licensee at Pathankot. He has no interest in excise vends (L-2) for the year 1964-65. His financial position is sound as reported by the Excise Sub-Inspector. Nothing against him in the police record.”

“4. Shri Maghar Mal son of Nihal Chand of Mukerian.”

“He is not a sitting licensee for the year 1963-64. He held the country liquor vend, Pathankot, in the partnership of Shri Jagan Nath, for years 1960-61 and 1961-62. His financial position is sound as reported by the Excise Sub-Inspector. Nothing against him in the police record.”

These recommendations of the Deputy Commissioner have some additions in ink. They are set out below. Against the recommendation of the Deputy Commissioner with regard to Kans Raj in remarks column it is stated—

“He is father of Tilak Raj and father-in-law of Roop Lal.”

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Below his name, in brackets which are prefixed with 'P.S.' are the words "(his son and son-in-law are undesirable)." This *pro forma* is initialled by Daljeet Singh, the Excise and Taxation Commissioner, and the signatures of the Collector, whose present designation is District Excise and Taxation Officer, appear against the name of the person to whom the allotment has been made. There is no order with regard to each of the allottees why that allottee has been preferred *vis-a-vis* his co-applicants. The suggestion by the learned counsel for the petitioner is that the granting authority did not bring its mind to bear upon the matter of allotment of licences. A decision re. allotments was conveyed to it from the high authorities and it merely gave effect to that decision. It is in this context that I have set out the allegations in para 9 of the petition and the reply to it by the State—

"9. That the petitioner thus felt assured that no action would be taken on his application or/and the applications of the rival applicants. However, in spite of this statement made in that behalf by the learned Advocate-General, the respondents went on pushing and pursuing their original plan of granting these licences at their sweet will and pleasure to their own favourites and in pursuance of this plan sent further confidential instructions to all the Deputy Commissioners in the State and to the D.I.G. (C.I.D.), Punjab, for taking action on the applications submitted in response to notices referred to above. After the receipt of recommendations from the committees constituted for each District which, as already stated, included the Deputy Excise and Taxation Commissioner (Collector under the rule), the Commissioner made his own recommendations. The committee assigned the petitioner first place, whereas the partner of the petitioner Shri Chaman Lal who, as mentioned above, held

"9. The allotments have been made under the rules as amended,—*vide* notification No. G.S.R. 87/P.A. 1/14/S.-59/Amd. (2)/64, dated the 7th March, 1964, and published in the Gazette of March 20, 1964, and are thus in accordance with the rules. The petitioner was not given licence as he was found not suitable. The licences were to start functioning from 1st April, 1964, and the rules governing their grant were notified well before that date. Other allegations are denied."

with him the licence in question for the previous financial year (1st March, 1963 to 31st March, 1964) was placed at No. 2. The other applicants, including respondent No. 7, were not assigned any place whatsoever and were thus placed below. It may be mentioned that Shri Harbeant Singh, who was also the partner of the petitioner in this very licence for the previous year, did not apply. Later on, the lists of applications of all the Districts were discussed by respondents 2 to 4 with the advice of D.I.G. (C.I.D.) and then with the Chief Minister. These deliberations and discussions went on long after the conclusion of the auctions of foreign liquor shops in the State which auctions, as stated above, went on until the 16th March, 1964. Eventually when the whole picture and the position with respect to all the applicants of the country liquor shops, the recommendations of the committees referred to above, the successful bidders in the foreign liquor auction was before them, a decision appears to have been taken to lay down some basis for the grant of country liquor shops. A notification was then published in *Punjab Government Gazette*, dated the 20th March, 1964, whereby the Punjab Liquor Licence Rules, 1956, which, except for a few minor changes, were substantially the same as those referred to in the foregoing paragraphs were amended. The amendment goes even beyond the terms and conditions laid down in the prescribed application referred to above and in material particulars so as to benefit and give facilities to the favourite

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applicants. This notification is No. G.S.R. 87/P.A.I/14/S-59/Amd. (2)/64 and is dated the 7th March, 1964. Presumably it has been so dated for the purpose of validating the action already taken or proposed to be taken. It is submitted that this is tantamount to stultifying and evading the consequences of decisions of this Hon'ble Court and this amendment not only violates the rules of natural justice but has been made without legal authority and *mala fide* and for collateral and extraneous considerations. Apart from this notification some confidential instructions were circulated to the competent authorities in the State, which have neither been notified nor announced in any other manner."

At this stage, it will also be instructive to set out the allegations of the petitioner in paragraphs 10 and 11 of the petition and the reply of the State thereto:—

"10. That in accordance with the policy and rule as modified and referred to above, the Excise and Taxation Commissioner (Respondent No. 2) has been going round the State and making the Deputy Excise and Taxation Commissioners (competent authorities) to pass orders in respect of these liquor licences in accordance with either the aforesaid confidential instructions and/or his own or his superiors' sweet will and pleasure even though some of these orders are directly opposed to the views previously expressed by the competent authorities in their recommendations to him, while sitting with the Deputy Commissioner and the District Excise and Taxation Officers

"10. It is denied. Allotment of liquor vendis has been made according to the rules on the subject. Other allegations have been relied to above."

of the Districts concerned. This has also happened in the present case, for although the name of the petitioner had been placed by the committees consisting of the Deputy Excise and Taxation Commissioner (Respondent No. 1), Deputy Commissioner (Respondent No. 6) and Excise and Taxation Officer, Gurdaspur, at No. 1, that of Shri Chaman Lal at No. 2 and that of Shri Maghar Mal, respondent No. 7, at the lowest position, yet Respondent No. 1 on the 27th March, 1964, is said to have announced at Amritsar (where Respondent No. 2 had called him and also the Excise and Taxation Officer, Gurdaspur) that the licence in question is granted to the said Shri Maghar Mal, Respondent No. 7."

"11. That the reason attributed for the grant or allotment of the country liquor shop in question to respondent No. 7 contrary to the previous orders of the competent authority embodied in his recommendation to Respondent No. 2 is that he is not only a partner and person interested in the foreign liquor shop of Pathankot auctioned in the name of Ram Lal, son of Ghansham Das, but also the father-in-law of Ved Kumar, who is a partner of Shri Kidar Nath in Simla foreign liquor and country liquor shops. The said Shri Kidar Nath, it may be mentioned, has obtained these licences in this manner in almost all the districts of this State."

11. it is denied."

According to the petitioner he came to know that he had been passed over in the matter of grant of licence in

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form L-14 on the 31st March, 1964, when he was asked by the inspectorate staff of the Excise Department to hand over the balance stock of liquor in the shop, if any, to the new allottee. It may be mentioned that the petitioner was a licensee for the country liquor vend for the year 1963-64 in partnership with Sarvshri Chaman Lal and Harbeant Singh. It is in these circumstances that the present petition has been filed.

In paragraph 16 of the petition the following 11 grounds of attack are set out against the grant of licence to respondent No. 7:—

- (1) Because the new rules have been made for collateral and extraneous considerations.
- (2) Because new rules have been made with a view to stultifying and evading the consequences of decisions of this Hon'ble Court.
- (3) Because the new rules are in excess of the rule-making power of respondent No. 2.
- (4) Because the new rules are illegal and unconstitutional by reason of excessive delegation and vesting the licensing authority with naked, arbitrary and capricious discretion without any sound guides, criteria or principles.
- (5) Because the rules have been published after the date fixed for inviting applications for allotment and after a solemn assurance had been given before this Hon'ble Court that the licences in question would be auctioned and not allotted, thereby leaving a large number of persons under the impression that the new system had been abandoned for good.
- (6) Because the new rule had been framed *mala fide* and at a time when the entire picture of the applicants and their particulars was before Respondents Nos. 1 to 5 and thus a policy which benefitted their favourites was devised.
- (7) Because besides the above rule, secret and confidential instructions (both written and oral) were

given to the competent authorities which instructions had no legal authority or force.

(8) Because the new rules do not provide for any redress or remedy against the illegal or unjust allotments.

(9) Because the petitioner has decidedly superior claims to allotment of the licence in question and the discretion properly exercised by the competent authority could not be interfered with in the circumstances of this case.

(10) Because Respondent No. 1 had exercised his power of allotment in favour of the petitioner and could not review his own order under the law so as to allot the licence to an absolute outsider with no merits and claim.

(11) Because under the Act and the rules respondent No. 1 is the only authority empowered to grant licences and as such his subsequent decision being not independent and having been taken under the directions and influence of his superiors could not be sustained in law."

The learned counsel for the petitioner has not urged all of them before us but has only raised the following contentions—

(1) that rules 36-A and 36-B are *ultra vires* the Act;

(2) that the allotment could only be made by the District Excise and Taxation Officer, who is the competent authority under the Act, but in the present case the competent authority has not exercised its independent mind in the matter but has made the allotments in accordance with the directions issued to it by the higher authorities and, therefore, the grant is not in accordance with law;

(3) that the order of grant is not a speaking order and, therefore, also is not in accordance with the rules;

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(4) that the recommendations, on the basis of which grants were made, were not made under the new rules 36-A and 36-B because the recommendations were made on the 14th of March, 1964, whereas the rules were published on the 20th of March, 1964, and thus there has been no compliance with the rules;

(5) that the rules are made under section 59 of the Act, whereas they could only be made under section 58 of the Act; and

(6) that the grant has been made to persons who are disqualified under rule 14 on the very basis which is hit by rule 14 and is, therefore, illegal.

Besides the aforesaid contentions no other contention has been raised before us. We, however, propose to deal with the first two contentions only, because in our view both these contentions have merit and their decision would set at rest the present controversy.

In order to appreciate the first contention, it will be proper to set out the various provisions of the statute and the rules. Section 3 of the Punjab Excise Act, 1914 (Punjab Act 1 of 1913), defines 'Collector' and the 'Financial Commissioner' as follows:—

"3(3) 'Collector' includes any revenue officer in independent charge of a district and any official appointed by the State Government to discharge throughout any specified local area, the function of a collector under this Act.

3(11) 'Financial Commissioner' shall, when there are more Financial Commissioners than one, be construed as meaning one or more of the Financial Commissioners."

Chapter VI deals with Licences, Permits and Passes. Section 35 in this Chapter deals with grant of licences for sale of liquor and is in these terms—

"35(1) *Grant of licenses for sale.*—Subject to the rules made by the Financial Commissioner under the

powers conferred by this Act, the Collector may grant licenses for the sale of any intoxicant within his district;

- (2) *Ascertainment of public opinion.*—Before any licence is granted in any year for the retail sale of liquor for consumption on any premises which have not been so licensed in the preceding year, the Collector shall take such measures, in accordance with rules to be made by the State Government in this behalf, as may best enable him to ascertain local public opinion in regard to the licensing of such premises;

- (3) A license for sale in more than one district of the Punjab shall be granted by the Financial Commissioner only.”

Section 58 deals with the powers of the State Government to make rules, whereas section 59 deals with the powers of Financial Commissioner to make rules. At one time the learned counsel for the petitioner sought to contend that rules 36-A and 36-B—the impugned rules—were framed by the State Government under section 58 of the Act, but later on this position was given up and it was accepted that the impugned rules could only be made by the Financial Commissioner under section 59 of the Act. It is also apparent from the opening words of the notification wherein it is clearly specified that the amended rules have been framed under section 59 of the Act. Therefore, it is not necessary to further dilate on this matter. Rules 36-A and 36-B, which were added by a notification published on the 20th of March, 1964, are in these terms—

“36-A. The following licences are granted by allotment:—

- (i) A license in form L. 14 for the retail vend of country spirit for consumption ‘on’ and ‘off’ the premises.
- (ii) A license in form L. 14-A for the retail vend of country spirit for consumption ‘off’ the premises.

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(iii) A license in form L 14-B for the retail vend of country spirit on special occasions.

36-B. The following procedure is prescribed for the grant of licenses by allotment:—

(1) Applications for the grant of licenses specified in rule 36-A shall be sent to the Deputy Commissioner of the district concerned.

(2) The applicant shall indicate in the application his complete address and the name or names of the vends which he desires to be allotted to him. He shall also give the details of his total experience in the liquor trade showing the date or month and year of joining the trade.

(3) The application shall be accompanied by an affidavit of the applicant to the effect that he is not a black-listed person and a convict of any non-bailable offence by a Criminal Court or of any offence under the following Acts:—

(i) The Punjab Excise Act, 1914 (1 of 1914) or the Opium Act (1 of 1878);

(ii) The East Punjab Opium Smoking Act, 1948;

(iii) The Pepsu Opium Smoking Act, 1954;

(iv) The East Punjab Molasses (Control) Act, 1948;

(v) The Power Alcohol Act, 1948;

(vi) The Dangerous Drugs Act, 1930.

(4) No application from any person, whose name is on the list of persons debarred from holding licences in Punjab, shall be considered.

(5) The applications received in respect of all vends in a district shall be scrutinized by the Deputy Commissioner of the District concerned who shall forward them to Government with his recommendation, keeping in view the past experience, reputation and suitability of the applicant.

(6) The allotment of vends to the various applicants shall be made by the Collector.

(7) (i) The successful allottee shall pay by way of security an amount equal to one-sixth of the amount of still-head duty realizable on the minimum annual quota fixed for the vend within seven days of the allotment of the vend(s) to him. This amount shall be refundable at the end of the year unless it is forfeited, lapsed or adjusted against any dues earlier. If any person, whom a licence/licences has/have been allotted, fails to make the deposit of the amount of security equal to one-sixth of the still-head duty on the annual minimum quota fixed for the vend or vends allotted to him or if he refuses to accept the licence or in the event of cancellation/suspension of license subsequently, the Collector may allot the vend or vends in question to any one, and any deficiency in the still-head duty, and all expenses shall be recoverable from the defaulting allottee in the manner laid down in section 60 of the Punjab Excise Act, 1914 (1 of 1914).

(ii) The Collector may for any violation of the rules or conditions of the licence, particularly about the sale price and the deposit of the security or monthly lifting of quota or payment of still-head duty thereon, forfeit the security or any part of it.

(8) The licensee shall lift each month the proportionate quota for the month fixed for his vend(s) or deposit still-head duty realizable thereon. In the event of any deficiency in

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the amount of still-head duty realizable from the lifting of the full proportionate quota due to the short lifting of the quota by the licensee or non-deposit of the full amount of still-head duty, the said deficiency may be realized from the amount of security deposited by him at the time of grant of licence. The resulting deficiency in the amount of security shall be made good by the licensee within 7 days of such realization. In case the short lifting of proportionate quota or short deposit of still-head duty continues for two consecutive months or the licensee fails to make up the deficiency in the amount of security within a period of seven days, his license may be cancelled."

The contention of the learned counsel for the petitioner is that both these rules are *ultra vires* section 35 of the Act. Section 35 has already been set out above and its language indicates that the grant has to be made by the Collector subject to rules made by the Financial Commissioner. Therefore any rule made by the Financial Commissioner cannot derogate in any manner from the statutory power vested in the Collector in the matter of grant of licences. The power to grant licences vests in the Collector and he alone can exercise it. The rules can only regulate the manner in which and the circumstances under which it can be exercised. The rules cannot in any way whittle down or take away that power. What rule 36-B has done is this that it provides for the making of an application for grant to the Deputy Commissioner who nowhere figures as an authority under the Excise Act. Not only that, the applications have to be scrutinised by the Deputy Commissioner of the district who has to forward them to the Government with his recommendations, keeping in view the past experience, reputation and suitability of the applicants. It appears that the rule-making authority was not oblivious to the provisions of section 35 of the Act because in sub-clause (6) of rule 36-B it is provided that the allotment of vends has to be made by the Collector. The sum total of rule 36-B is that the discretion vested in the Collector by the statute in the matter of grant has been virtually put at naught. This is obvious from the provisions of rule 36-B(1) and (5). Otherwise sending of the

applications to the Deputy Commissioner of the district concerned, their scrutiny by him and their transmission to Government by him with his recommendations have no meaning. The matter of grant, though technically left with the Collector, is in fact and in substance taken away from him and he is left to the position of a rubber stamp. In this situation the learned counsel for the State frankly conceded that he could not, with any justification, argue that rule 36-B is *intra vires* section 35 of the Act. He further conceded that if rule 36-B is not *intra vires*, rule 36-A will also go along with it because both the rules are an integral part of each other. In this view of the matter it is not necessary to deal with the matter any further, particularly when this concession has been made after instructions from the State. Therefore, it is held that rules 36-A and 36-B are *ultra vires* section 35 of the Act.

This brings me to the consideration of the second contention which is more or less allied in some manner with the first contention. Before dealing with this contention it will be proper to set out how the allotment has been made of the country liquor vends in the instant case. Applications were invited by the District Excise and Taxation Officer by a notice published on the 21st of February, 1964. The applications were to be forwarded to the Deputy Commissioner. At the time this notice was published, licences for the vend of country liquor could only be sold by auction. No amendment in the rules had been made whereby instead of auctioning the licences a provision had been made for their allotment. In the Government file on the subject of "Allotment of country liquor vends for 1964-65" there is a letter, dated the 20th of February, 1964, from Shri M. M. Sahai Srivastava, I.A.S., Deputy Secretary to Government, Punjab, Excise and Taxation Department, to Shri Daljeet Singh, I.A.S., Excise and Taxation Commissioner, Punjab, wherein it is provided that as soon as the applications are received, they should be referred to the D.I.G. (C.I.D.) for ascertaining the antecedents, suitability and reliability of the applicants. After the applications have been received back by the Deputy Commissioner from the D.I.G. (C.I.D.) he was to scrutinise them in consultation with the Deputy Excise and Taxation Commissioner of the Division concerned. Thereafter the Deputy Commissioner and the Deputy Excise and Taxation Commissioner were to jointly make

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their recommendations to the Government on merits, keeping in view the reliability, financial suitability and experience in this trade of the applicants. These recommendations were required to reach the Government by the middle of March, 1964, at the latest for final approval. A copy of this letter was forwarded to all the Deputy Commissioners in the State and also to Shri Ajaib Singh, D.I.G. (C.I.D.). At page 41 of this very Government file there is a letter from the Excise and Taxation Commissioner, Punjab, to all the Deputy Commissioners in the State. It is provided in this letter that the Deputy Commissioner's recommendations about the country liquor vends should be made immediately without waiting for verification from the D.I.G. (C.I.D.) and that the verification would be done at the Government level. Then follow the joint recommendations of the Deputy Commissioner and the Deputy Excise and Taxation Commissioner, Jullundur Division,—*vide* letter, dated the 21st of March, 1964, page 107 of this very file, which have already been set out in an earlier part of this judgment. At page 89 of the file there is a letter, dated the 14th of March, 1964, from Shri Ajaib Singh, Deputy Inspector-General of Police, C.I.D., to the Deputy Commissioner of Gurdaspur, wherein with regard to the applicants of Gurdaspur District, it is stated—

“Nothing has been found on the local police record or the C.I.D. record against the persons mentioned in the list sent,—*vide* your letter under reference, except the following 16 persons who are considered undesirable for the grant of excise licences for the reasons as noted against their names.”

It is significant that the petitioner is not one of these 16 persons. At page 109 of the file is a memorandum, dated the 3rd of April, 1964, from the Deputy Excise and Taxation Commissioner, Jullundur Division, to all the Deputy Commissioners in Jullundur Division, wherein it is stated—

“In the meeting convened for the purpose (allotment of country liquor vends for the year 1964-65), the C.M., Excise, Taxation and Capital Minister and Financial Commissioner (Taxation) decided *inter alia* that where (a) no applications have been received;

(b) all the applicants have been disqualified;

(c) the security is not deposited by the person who is offered the licence; or

(d) for any reason the licence is cancelled, the Excise and Taxation Officer will invite the applications and the Deputy Excise and Taxation Commissioner and the Deputy Commissioner of the district will make the allotments in such cases. It was also decided by them that where there is a recommended person on the existing list and the person offered the licence does not deposit the security, the licence should go to the second acceptable man on the existing list."

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As I have already mentioned, there is no order by the District Excise and Taxation Officer deciding the respective merits of the applicants regarding each licence. These applications were processed as already set out and a decision was taken by the Excise and Taxation Commissioner in consultation with the C.M. and the Minister concerned. That decision was conveyed to the District Excise and Taxation Officer who merely gave effect to it by signing his name against the applicant's name to whom it had been decided to allot the licence. It is significant that this list is initialled by the Excise and Taxation Commissioner and the reason for this is obvious, i.e., that the District Excise and Taxation Officer does not perform his statutory function, under section 35, but merely carries out the decision arrived at by the higher authorities. It is settled law that if any authority has been vested with the power to grant a licence, it is that authority which must exercise that power, and if power is exercised by some other authority, the exercise of that power will be wholly void. In this connection reference may be made to the decision of the Supreme Court in *Commissioner of Police v. Gordhandas Bhanji* (2). In this case the authority to grant and cancel a licence for the erection of a building to be used for purposes of public amusement vested in the Commissioner of Police under the rules. The power did not vest in the State Government. The Commissioner of Police granted

(2) A.I.R. 1952 S.C. 16.

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the licence for the erection of a cinema house. This sanction was later cancelled by the Commissioner of Police at the instance of the State Government. The cancellation was questioned by the person who had been permitted to construct the cinema hall. His petition was allowed by the Bombay High Court and the appeal by the Commissioner of Police to the Supreme Court failed. While dealing with this matter the Supreme Court observed as follows:—

“(26) We have held that the Commissioner did not in fact exercise his discretion in this case and did not cancel the licence he granted. He merely forwarded to the respondent an order of cancellation which another authority had purported to pass. It is evident from these facts that the Commissioner had before him objections which called for the exercise of the discretion regarding cancellation specifically vested in him by Rule 250. He was, therefore, bound to exercise it and bring to bear on the matter his own independent and unfettered judgment and decide for himself whether to cancel the licence or reject the objections. That duty he can now be ordered to perform under section 45 (of the Specific Relief Act).

\* \* \* \* \*

(28) The discretion vested in the Commissioner of Police under Rule 250 has been conferred upon him for public reasons involving the convenience, safety, morality and welfare of the public at large. An enabling power of this kind conferred for public reasons and for the public benefit is, in our opinion, coupled with a duty to exercise it when the circumstances so demand. It is a duty which cannot be shirked or shelved nor can it be evaded ; performance of it can be compelled under section 45.”

Reference may also be made in this connection to *Chanan Singh v. The State of Punjab* (3), *Hari Kishan Sharma v. The Punjab State* (4), *The Novelty Talkies, Bhatinda v. The Punjab State* (5) and *Punjab State v. Mehr Chand* (6).

(3) 1963 Current Law Journal (Pb.) 248 at p. 250.

(4) I.L.R. (1961) 2 Punj. 831 at p. 845.

(5) I.L.R. (1960) 2 Punj. 276.

(6) A.I.R. 1959 Punj. 222.

In view of what has been stated above, it cannot but be held that there was no valid allotment of the country liquor vends in this case. The learned counsel for the State frankly conceded so. It was admitted by him that the District Excise and Taxation Officer, who was the granting authority, had not exercised his independent judgment in the matter of allotment and, therefore, he was not in a position to defend the impugned allotment.

For the reasons given above, we allow this petition, quash the impugned allotment and direct that the matter of grant of country liquor licence should be decided afresh in accordance with law. The petitioner would be entitled to his costs which are assessed at Rs. 250.

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