under sub-section (3) of section 30-B of the Act are not of a limited type like those which are given under section 35(1) of the Delhi Rent Act or under section 115 of the Code.

(18) For the reasons given above, we accept this appeal, set aside the order of the learned Single Judge and dismiss the writ petition, with no order as to costs.

Gurdev Singh, J.—I agree.

B.S.G.

CIVIL MISCELLANEOUS.

Before D. K. Mahajan and Gopal Singh, JJ.

THE KARNAL DISTILLERY COMPANY LIMITED, KARNAL.—*Petitioner*

versus.

THE STATE OF PUNJAB ETC.—*Respondents.*

Civil Writ No. 3060 of 1965.

May 20, 1971.

PUNJAB *Excise Act (I of 1914)—Sections 20, 21, 36 and 41—Punjab Distillery Rules (1952)—Rule 7 and Form D-2—Distillery licence issued under section 20(2) in Form D-2—Financial Commissioner—Whether competent to discontinue the licensed distillery—Condition 9 of such licence—Whether arbitrary or unreasonable—Restrictions imposed by section 36-G, rule 7 and condition 9 of the licence—Whether inconsistent with sections 20(2) and 21(c) and (d)—Financial Commissioner while issuing notice for determination of a distillery licence—Whether acts in a quasi-judicial manner—Rules of natural justice—Whether apply to the issue of notice terminating a distillery licence—Compliance with rules or natural justice—When arises—Constitution of India (1950)—Articles 19 and 226—Violation of the fundamental rights of property—Whether can be urged by a limited company in a writ petition—Determination of a distillery licence—Whether infringes the right of the licensee to carry on business.*

Held, that cumulative reading of Sections 20 and 21 of Punjab Excise Act, 1914, leaves no doubt that the authority, which is competent to discontinue distillery, in respect of which licence has been granted, is the Financial Commissioner. Clause (b) of Section 21 confers power in general upon the Financial Commissioner to discontinue any distillery

which has been established under a licence granted by him. The expression, 'discontinue any distillery' implies the determination or cancellation of the licence granted by the Financial Commissioner enabling the licensee to work the distillery. Various grounds, on the basis of which a licence can be cancelled are provided in section 36 of the Act. Under clause (g) of Section 36, it is the authority issuing the licence, which has been empowered to cancel it. A licence having been issued by the Financial Commissioner, it is he, who is authorised to determine under clause (g) of the Section. Moreover, under condition 9 of the licence issued in Form D. 2 attached to the Punjab Distillery Rules, 1932, also it is the Financial Commissioner, who is competent to determine the licence.

(Paras 25, 26 and 27)

Held, that the restriction placed by the provisions of section 36(g) of the Act and Rule 7 of the Rules read in conjunction with condition No. 9 of the licence issued in Form D, is not arbitrary or unreasonable. The power of the licensing authority to cancel a licence 'at will' as provided, in clause (g) of Section 36 of the Act is not an absolute power. It is subject to the over-rider that that power of cancellation at will by the licensing authority can be exercised only if the conditions of the licence provide for such cancellation. In other words, a licence can be cancelled under clause (g) if the licensee has agreed to abide by a condition incorporated in the licence to the effect that his licence can be cancelled under that clause. The power can be struck down as arbitrary and uncontrolled, if after the expression, 'at will', the legislature would not have further provided that that is subject to the conditions of the licence as mutually agreed upon between the licensee and the licensing authority. By so providing, the legislature has taken out of the provision, the sting of arbitrainees or exercise of unfettered power to avoid the power becoming exerciseable at will and being abused. (Para 53).

Held, that the restrictions imposed by section 36(g) of the Act, Rule 7 of the Rules and condition No. 9 of the licence are not inconsistent with sections 20(2) and 21(c) and (d) of the Act. Section 36(g) says that the licensing authority can cancel a licence without assigning any reason, if the licensee so agrees. The agreement by licencee in terms of condition No. 9 of the licence undertaken to be complied with by him cannot be called a restriction imposed by section 36(g) of the Act. That condition exists in the body of the licence because of the licensee having so agreed and not because of any restriction having been imposed against his will. Rule 7 confers power upon the Financial Commissioner to determine a licence and puts a fetter upon his power by making it obligatory upon him to determine the licence after he has served the licensee with a notice for a priod not less than one year. The scope of section 36(g) and Rule 7 of the Rules read along with condition No. 9 of the licence shows that there is no inconsistency between them and Section 20(2). Section 20(2) deals with the power to grant licence and it is after the licence has been issued by the licensing authority that the question of its cancellation in

terms of section 36(g) read with Rule 7 and condition No. 9 arises. The section deals with a different subject and is independent of the subject dealt with by section 36(g), Rule 7 and condition No. 9. Similarly, there exists no inconsistency between Section 36(g) of the Act and Rule 7 of the Rules read along with condition No 9 of the licence and clauses (c) and (d) of Section 21. (Paras 54 and 56)

Held, that under clause (g) of section 36 of the Act, licence may be cancelled at will, if the conditions of the licence provide for such cancellation. This implies that if by a condition incorporated in a licence, the licensing authority and the licensee mutually agree that the licence can be cancelled without any reason being assigned by that authority, the licence will be liable to such cancellation. Condition No. 9 of the licence issued in Form D. 2. devised and mutually agreed upon by the licensing authority and the licensee provides that the licensing authority may give notice in writing to the licensee that the licence will be determined at the expiry of not less than one year from the date of the notice. It clearly emerges from this condition of the licence that as agreed to by the licensee, the licence is liable to determination without any reason being assigned as contemplated by clause (g) of Section 36, in pursuance of which this condition is inserted and accepted as contractual obligation by the licensee. The only limitation appended to the condition for determination of the licence is that the period of notice issued for determination of the licence should not be less than one year. Hence the issue of notice in terms of condition 9 of the contract of licence liable to termination thereunder is out and out an administrative act and the authority so acting acts in administrative capacity and not in quasi-judicial capacity. (Para 32)

Held, that considering the nature of condition No. 9 of the licence and want of any obligation statutory or otherwise on the authority issuing the notice to hear the licensee, the authority acts purely in administrative capacity. It has not to consider any evidence to enable it to decide whether licence should or should not be cancelled. It has only to look at condition No. 9 and to serve notice for determination of licence. The right of the licensee of being heard and its defence being considered is alien to the content of that condition. According to the scope of the condition, it is entirely within the discretion of the Financial Commissioner to issue or not to issue notice. While taking action under that condition, no decision on any dispute has to be given. There is no statutory provision in the Act or the Rules made thereunder controlling the exercise of power of the Financial Commissioner while taking action under that term of the contract. Licence with a condition 9 makes the licence a mere permission to work a distillery subject to one year's notice being given by the licensing authority for its termination. This condition makes the licence a privilege granted to work the distillery, the licensing authority retains the right and the power with him to withdraw the licence any time subject to the term as to notice provided therein. Hence rules of natural justice have no application to the issue of notice terminating a distillery license. (Paras 34 and 35)

Held, that the question of compliance with rules of natural justice arises only if there is indication in the statutory provisions that the issue of a show-cause notice is called for prior to any action being taken by the statutory authority. Rules of natural justice do not come into play and their applicability cannot be attracted unless the relevant statutory provisions point out in the direction of the necessity for their being invoked. It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principle of natural justice. But, if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules or principles of natural justice, then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power. (Para 40)

Held, that the fundamental rights embodied in clauses (a) to (g) of clause (1) of article 19 of the Constitution have been guaranteed to citizens only. Persons other than citizens cannot claim any protection against violation of those rights. A limited company being an incorporate body and not a citizen is not entitled to file writ petition complaining against their violation. Right to maintain such a petition is available only to the citizens and not to incorporate bodies. It is not open to a limited company to base its claim upon grounds of contravention of either sub-clause (f) or sub-clause (g) of clause (1) of article 19 of the Constitution.

(Paras 42 and 43)

Held, that no citizen of India can claim to posses any freedom or right to carry on manufacture or sale of liquor. A licence granted for this purpose is circumscribed by its conditions and the provisions of the Act and the Rules made thereunder, for compliance of which the licensee binds himself by those conditions and the provisions His right to manufacture liquor, if it can be called a right at all, is liable to termination under conditions of the licence. The restrictions placed by virtue of the relevant conditions of the licence, considering the nature of the commodity like liquor to be manufactured are reasonable restrictions and are in the interest of general public. Hence the determination of a distillery licence in accordance with its condition, does not infringe the right of the licencee to carry on business. (Para 46)

Case referred by the Hon'ble Mr. Justice Prem Chand Pandit to a Division Bench on 16th May. 1966, for decision of the important question of law involved in the case. The case was finally decided by the Division Bench consisting of the Hon'ble Mr. Justice D. K. Mahajan and the Hon'ble Mr. Justice Gopal Singh on 20th May, 1971.

Petition under Articles 226 and 227 of the Constitution of India praying that the respondents be restrained by an appropriate writ from interfering with the company's right to conduct and continue the business of distillation and manufacture of liquor as hither to and beyond 21st December, 1965, and also the notice dated 14th December, 1964, that the Distillery will be closed down and will not be allowed to function on its present premises after 21st December, 1965, and the licence in Form D. 2 shall also be determined from 21st December, 1965, be quashed as being illegal unenforceable beyond the competence of the Excise and Taxation Commissioner and further praying that pending the decision of the petition the status quo be maintained and the petitioning company be permitted to continue their business in the existing licenced premises at Karnal and the Respondents be directed to refrain from determining or revoking the licence.

M. L. SETHI, D. N. AWASTHY, SENIOR ADVOCATE WITH A. K. JAISWAL AND A. C. JAIN, ADVOCATES, for the petitioner.

D. S. NEHRA, AND K. S. NEHRA, ADVOCATES, for the respondents.

JUDGMENT

The judgment of this Court was delivered by :—

Gopal Singh, J.—This is a writ petition by the Karnal Distillery Co., Ltd., Karnal, against the State of Punjab now State of Haryana and the Financial Commissioner and the Excise and Taxation Commissioner, Punjab now Haryana, respectively impleaded as respondents Nos. 1 to 3 under articles 226 and 227 of the Constitution impugning the validity of notice dated December 14, 1964 served on the petitioner-company to determine its licence on December 21, 1965 after the expiry of period of one year commencing from the date of service of the notice under section 21(b) of the Punjab Excise Act, 1914 (hereinafter called the Act) read with Rule 7 of the Punjab Distillery Rules, 1932 framed thereunder (hereinafter called the Rules) and condition No. 9 of the licence issued under Secion 20(2) of the Act. Considering the impartance of the questions raised, the case has been referred by Pandit, J. to a Division Bench.

(2) Facts leading to the writ petition are as follows :—

(3) The petitioner-company is a limited company registered under the Indian Companies Act. Its Managing Director is Shri S. P. Jaiswal. Shri Kishori Lal Jaiswal, father of Shri S. P. Jaiswal set up in 1903 distillery in the town of Karnal at the site at which it is being worked now. Shri Kishori Lal Jaiswal died in 1928. His sons

have since his death been continuing to run the distillery under the name of the petitioner-company. On representations made by the residents of the locality, in which the distillery is situate, there was passed a resolution by the Municipal Committee of Karnal in 1939 saying that the distillery, which was situate in the heart of the town of Karnal, was nuisance to the inhabitants of the locality, in which it was situate and that it was not desirable on grounds of sanitation to continue the distillery in the town and it should be removed to some other distant and suitable site. In 1939, the petitioner-company was given a notice for as long a period of time as 5½ years to shift the distillery from the town of Karnal o some other place. A notice was also served on the petitioner-company that its licence would be determined, if it failed to comply with the direction of shifting of the distillery. The petitioner-company was granted on November 5, 1941, a fresh licence in Form D-2 under Section 20(2) of the Act now sought to be cancelled by the impugned notice. Having failed to shift the distillery within the period of time granted to the company, the company was again given period of three years to shift by letter dated November 5, 1947 addressed on behalf of the respondents to the petitioner but to no avail. The period of three years was further extended by one year.

(4) By letter dated January 21, 1949 addressed by respondent No. 3 to the Deputy Excise and Taxation Commissioner, Ambala with a copy to the petitioner, it was communicated that the management of the petitioner-company be directed to shift the distillery outside the municipal limits of Karnal to some suitable site to be suggested by them and that they be informed that the notice for determination of the licence already issued would expire on September 30, 1950. The petitioner-company proposed a site but it was not approved by the Collector, Karnal. The company was intimated that the site selected for approval should be at least 10 miles away from the municipal limits of Karnal and should be one, which is not likely to develop into residential area in the near future. In response to a suggestion made on behalf of the petitioner-company for acquisition of land by respondent No. 1, it was communicated to the petitioner-company by respondent No. 3, by letter dated September 18, 1952 that land could not be acquired by respondent No. 1 for a private purpose and that the petitioner-company should itself procure land for the purpose. Finding that the petitioner-company had not made available suitable site for approval, respondent No. 3, by letter dated March 7, 1955 intimated to the Deputy Excise and

Taxation Commissioner that the petitioner-company should shift the distillery by November 16, 1955 and that no further extension would be granted. The petitioner-company having taken no action to comply with the above direction, respondent No. 3 addressed another letter to it on June 23, 1956 suggesting that the petitioner-company should purchase a new site for shifting the distillery from Karnal and apply for a fresh licence for the factory to be established there.

(5) In 1958, there having been asked a question marked as Unstarred Question No. 348 by Chowdhri Dharam Singh, M.L.A. on the floor of the Punjab Legislative Assembly as to why the distillery of the petitioner-company was not being shifted from the heart of the town when there had been persistent agitation by the public and in particular by the inhabitants of the locality, in which it was being worked, a letter dated December 12, 1958 was addressed by respondent No. 3 to the Deputy Secretary, Revenue intimating that the existence of distillery of the petitioner-company in the heart of the town was a nuisance to the public and consequently notice had to be issued to the petitioner-company to shift the distillery to some suitable site and that the matter be examined afresh.

(6) By resolution dated February 2, 1959, it was resolved by the Assembly that the distillery of the petitioner-company was a nuisance and that the same be shifted from the present site. In reply to the above letter of respondent No. 3, the Deputy Secretary, by letter dated February 25, 1959 communicated to respondent No. 3 that the Government has decided that the distillery should not be allowed to continue at its present site and that the action called for be taken. In April, 1959, there was again raised a question in the Assembly as to why the distillery was not being removed from the town of Karnal and demand was made for removal of the distillery without further delay. Respondent No. 3 through the Distillery Inspector, Karnal served notice with letter dated May 5, 1959 under Section 21(b) of the Act read with condition No. 9 of the licence saying that the licence would be determined on May 15, 1960. Instead of complying with the notice to shift the distillery from its site, the petitioner-company, by letter dated May 26, 1959 wrote by way of enquiry to respondent No. 3 as follows :—

"... and let us know if the conditions pertaining to

(1) suitable distance from residential area likely to develop in future, and

(2) hygienic disposal of the spent-wash.

have since been waived or they still stand."

(7) In reply to that letter, respondent No. 3 communicated to the petitioner-company by letter dated July 4, 1959 that the above conditions could not be waived.

(8) In response to the proposal made by the petitioner-company that there existed area of 18½ acres in Rathdhana, to which the petitioner-company was willing to shift the distillery, respondent No. 3, by letter dated August 18, 1959 addressed to the Deputy Excise and Taxation Commissioner with copy endorsed to the petitioner-company communicated that the Department could give its opinion as to suitability after a specific site had been indicated. Then there followed a letter from the Deputy Secretary that if 200 acres of land as represented on its behalf are to be acquired for the distillery of the petitioner-company at Rathdhana costing Rs. 2,76,000 that amount be deposited by the petitioner-company or else the petitioner-company might arrange for purchase of land by private negotiations. By letter dated July 28, 1960, the petitioner intimated to the Deputy Secretary that there is no facility available at Railway Station, Rathdhana for loading and unloading of goods, that railway siding be provided to the petitioner-company at Government or Railway expense, that further reasonable time be given to the company for construction of the new distillery there, that price of Rs. 2,76,000 sought to be deposited by the petitioner-company for acquisition of 200 acres of land was very high and that the area sought to be acquired be raised from 200 acres to 400 acres. Thereafter, there was addressed letter dated August 13, 1960 by respondent No. 3 to the Deputy Excise and Taxation Commissioner with a copy to the petitioner-company intimating that the period of notice for determination of the licence of the petitioner-company, which expired on May 15, 1960, be extended to January 25, 1961 to enable the company to shift the distillery by that date. There followed another communication from respondent No. 3 to the petitioner-company intimating that the notice for determination of the licence of the distillery on January 25, 1961 had been kept in abeyance till further orders. By letter dated May 17, 1961 addressed by respondent No. 3 to the petitioner-company enquiring from the latter as to whether the company was willing to defray the expenses for railway siding and to deposit a portion of the amount to be so spent

as the Railway had on enquiry meanwhile refused to bear the expenses for construction of railway siding. The company in reply wrote back by letter dated May 19, 1961, that the company was not prepared to meet the expenses for construction of railway siding and that the same be met by the Railway and that the land as required by the petitioner-company be acquired. By letter dated October 28, 1961, the Deputy Secretary communicated to the petitioner-company that the land would be acquired by respondent No. 1 for public purpose and thereafter transferred to the petitioner-company and that the company had to give security in the form of bank guarantee or had to make deposit in cash and that the company should intimate whether it would be convenient for it to give bank guarantee or to make deposit in cash. It was added that in case of failure of the petitioner-company to do so, respondent No. 1 would be unable to render assistance to the petitioner-company for acquisition of land.

(9) There was addressed a representation by the Municipal Committee of Karnal to the Governor of Punjab for removal of the distillery from the town of Karnal on the ground of its being nuisance to the inhabitants of the locality, in which the distillery was being worked. The representation was referred to the Director of Health Services, Punjab for report. By letter dated January 16, 1962, the Director with reference to the representation wrote to respondent No. 3 that the distillery was a nuisance on account of offensive smell and obnoxious odour it emitted and consequently its presence at the present site in the town of Karnal was injurious to the health of those living around and thus its removal from that site was necessary. By letter dated November 3, 1962, respondent No. 3 communicated to the petitioner that the shifting of the distillery had been held in abeyance till the phased programme of prohibition had been worked out.

(10) There was addressed a letter dated February 23, 1963 by the Managing Director of the petitioner-company to respondent No. 2 communicating to him that cheque for Rs. 5,000 towards the Defence Fund as desired by the latter on an earlier occasion was being sent. In reply to the above letter, respondent No. 2 acknowledged the receipt of the cheque for Rs. 5,000 and told him that the remaining amount of Rs. 5,000 as agreed may also be remitted. By letter dated March 14, 1963, there was issued a reminder by the Personal Assistant to respondent No. 3 to the Managing Director of the petitioner-company requesting that the payment of second instalment of donation of Rs. 5,000 be expedited. This reminder was

followed by another reminder dated April, 1963 to the Managing Director sent again by the Personal Assistant to respondent No. 3 impressing upon the addressee the necessity of early payment of the remaining amount of Rs. 5,000. The Managing Director, by letter dated May 11, 1963 addressed to respondent No. 2 complained against respondent No. 3 about the allotment of diminished quota of molasses to the petitioner-company. The Managing Director of the company addressed another letter dated May 17, 1963 to the Personal Assistant to respondent No. 3 pointing out that lack of courtesy had been shown by the head of the Excise and Taxation Department in his not personally writing to him and that on account of that lack of regard on his part, the petitioner-company will not be prepared to pay through the Department by way of donation any amount for any cause.

(11) By letter dated August 19, 1963 addressed by respondent No. 3 to the petitioner, it was communicated that the last notice for determination of the licence, which had been kept in abeyance, had been revived and that the petitioner-company should shift by March 31, 1964, failing which the licence would stand determined with effect from April 1, 1964. By letter dated November 14, 1963, the petitioner-company communicated to respondent No. 2 that it was arranging for payment of price of land sought to be acquired, that the petitioner-company was also making arrangements for the requisite guarantee of bank, that for the time being only 60 acres of land are required to be acquired in addition to 18½ acres of land already purchased by the petitioner-company, that the distillery would start functioning within 4 or 5 months of its shifting from Karnal and that meanwhile the distillery be allowed to continue at its present site. By letter dated November 18, 1963 addressed on behalf of the petitioner-company to respondent No. 2, it was communicated that the petitioner-company was willing to furnish forthwith bank guarantee for Rs. 50,000 towards the price of 60 acres of land to be acquired and bank guarantee for the acquisition of land in excess of that area would be arranged within 6 months, that the company undertakes to commence construction work of the new distillery within 60 days of the date of delivery of possession of the acquired land to them, that the factory building to be set up would be completed within 12 months thereof and that the plant and machinery would be installed within 60 days from the date the railway siding is constructed by the Railway.

(12) From June 5, 1963 to November, 1963, there were imposed penalties on the petition-company to the tune of Rs. 17,000 by respondent No. 3 on the ground of certain irregularities said to have been committed by the petitioner-company. Civil writs Nos. 232, 235, 326 and 2212 to 2214 of 1964 were filed by the petitioner-company challenging the validity of the orders of imposition of penalties. All these orders were quashed on the ground that as the irregularities alleged fell within the scope of clauses (a) to (f) of Section 36 of the Act and reasonable opportunity had not been afforded to the petitioner-company to defend themselves against those orders, orders were bad in law and were quashed. In Civil Writ No. 315 of 1964, order of imposition of penalty was held to be a valid order but the proceedings pertaining to the recovery of the penalty were held to be invalid.

(13) In pursuance of the intimation received by the petitioner-company from the Deputy Secretary, the petitioner-company, by its letter dated January 10, 1964, forwarded cheque for Rs. 50,000 to the Collector, Rohtak for a deposit towards payment of the price of the land to be acquired. Then, there followed letter dated August 13, 1964 from the Deputy Secretary to the petitioner-company intimating to the latter that area of 60 acres of land was being acquired in village Rathdhana and the petitioner-company was to give an undertaking to the effect that it would abide by the award for the price of the land acquired to be given by the Collector.

(14) There was filed in the High Court on March 19, 1964 Civil Writ No. 472 of 1964 challenging the validity of notice dated August 19, 1963 referred to above on the ground, *inter alia*, that the period of notice being less than one year; the notice was invalid and consequently the licence could not be determined.

(15) Thereafter, there appeared notification in Punjab Gazette under Section 4 of the Land Acquisition Act, 1894 on April 14, 1964 notifying that 60 acres of land were sought to be acquired in village Rathdhana. That notification was published over the signature of Shri B. S. Grewal, Secretary to Government, Punjab, Excise and Taxation Department. There followed in its wake another notification dated April 14, 1964 under Section 6 read with Section 17(2) of the Land Acquisition Act for acquisition and for possession of the land sought to be acquired as provided in these Sections.

(16) By judgment dated October 26, 1964 given in Civil Writ No. 472 of 1964, Falshaw, C.J. and Grover J. held that the notice

dated August 19, 1963 served on the petitioner-company under condition 9 of the licence being for a period of less than one year was invalid and quashed the same.

(17) The Deputy Secretary recorded an order on October 29, 1964 noting that as a result of discussion between respondent No. 2 and the Minister for the Excise and Taxation Department, it had been decided that the Karnal Distillery be shifted from Karnal to an outside area without any obligation on the part of the Government to acquire land, that notice as required be given to shift it from there, that the proceedings for acquisition started be dropped and that the Government should give all reasonable assistance to the Managing Director of the company to enable him to shift the distillery. The Deputy Secretary, by letter dated November 6, 1964 intimated to respondent No. 3 that a fresh and clear one year's notice be given to the petitioner-company to shift the distillery from Karnal to some other place without any obligation on the part of the Government to acquire land for the company. Then there followed the service of the impugned notice dated December 14, 1964 on the petitioner-company. Feeling aggrieved of that notice, the petitioner-company moved the High Court by writ petition filed on December 20, 1965, a day prior to the date of expiry of the period of notice served. It has been pleaded in the writ petition on behalf of the petitioner that the authority serving the notice for cancellation of the licence was not competent to do so, that the notice determining the licence is vague, is not a speaking order and the condition precedent of reasonable opportunity being afforded to the petitioner-company against cancellation of licence had not been complied with as the order had been made by an authority functioning in quasi-judicial capacity, that the order adversely affected the freedom of the rights of the petitioner in property and violated freedom to carry on business, that the restrictions imposed by Section 36(g) of the Act and conditions Nos. 7 and 9 of the licence are arbitrary and unreasonable and violative of article 19(1)(f) and (g) of the Constitution, that the licence could not be cancelled except under Sections 36 and 41 of the Act, that the power of cancellation of licence exercised is not bonafide and that same has been exercised not to effectuate the underlying purpose and policy of the Act but for a collateral purpose. In their return filed on behalf of the respondents, it was pleaded that the writ petition was not competent inasmuch as decision for cancellation of the licence was an act administrative in character and discretionary and hence unchallengeable in writ proceedings, that the

authority issuing the notice for cancellation of the licence was competent to cancel the same, that the decision to cancel the licence taken was not at all quasi-judicial in nature and that no notice to show cause was required to be served on behalf of the respondents prior to the service of notice for cancellation of the licence, that the notice served is not vague and is a valid notice, that considering that the Act is regulatory of maufacture and sale of liquor, the restrictions devised by the legislature in the provisions of the Act and the rules framed thereunder as assailed are neither violative of article 19(1)(f) nor of 19(1)(g) of the Constitution as the petitioner-company could after shifting carry on business of manufacture of liquor under the terms of a licence, if issued in pursuance of those statutory provisions, that the conditions, the authority of which was challenged, were within the scope of Sections 20(2) and 22(c) and (d) of the Act, that the plea that the licence could not be cancelled except under Sections 36 and 41 of the Act was misconceived, that notice of cancellation was according to law and that the power of cancellation had been exercised in a bonafide manner and for the purpose, for which it was meant to be exercised. It was averred on behalf of the respondents that the conduct of the petitioner-company was not honest inasmuch as the company persisted to squat on the site, from which it was obligatory on its part to shift by arranging for its own site, that the company went on gaining time by dilatory tactics and thereby continued to function at the site in the heart of the town of Karnal, the situation of which is injurious to the health of the inhabitants of its locality.

(18)) The above referred to copies of letters and other documents were either filed by the parties prior to the commencement of arguments or those copies of the originals forming part of the official files produced in Court and pertaining to the case were placed on the record either at the instance of the Court or on permission granted to the Counsel as mutually agreed to by them. There have been filed some letters constituting the course of correspondence between the parties after the impugned notice had been served on the petitioner-company and the writ-petition challenging its validity had been filed. These letters have been filed to reinforce the plea of malafide urged against the respondents. Considering that these letters are not material or relevant to the facts pointing out to the existence of malafide on the part of the respondents, which could actuate them to serve the impugned notice for cancellation of licence of the petitioner-company, they have not been adverted to in the narration of the above facts. In order to obviate the raising of the objection of prejudice being caused to one party or the other to this course adopted

for determination of the points inolved in the case, copies of subsequently filed letters were taken on the record after the mutual consent of the counsel for both the parties was forthcoming.

(19) The pleas raised by the petitioner-company in its petition and controverted on behalf of the respondents gave rise to the following points for determination.

(1) The authority, which issued the impugned notice, was not competent to do so.

(2) The licence could not be determined in the absence of notice to the petitioner-company to show cause against its determination. The notice issued for cancellation of the licence violates rules of natural justice and no speaking order has been passed.

(3) The cancellation of the licence affects the rights in property of the petitioner-company and is violative of article 19(1)(f) and contravenes its right of freedom to carry on business guaranteed under article 19(1)(g) of the Constitution. The restrictions imposed by Section 36(g) of the Act, Rule 7 of the Rules and Condition No. 9 of the licence are arbitrary and unreasonable restrictions and are inconsistent with Section 20(2) and 21(c) and (d) of the Act.

(4) The licence could not be cancelled except under Sections 36 and 41 of the Act.

(5) In any case, the power of cancellation of licence has been exercised in a malafide manner and for a collateral purpose rendering the cancellation of the licence void.

(20) Arguments on behalf of the petitioner-company were addressed on point No. 1 and partly on point No. 2 by Shri M. L. Sethi and arguments on points 2 to 5 by Shri D. N. Awasthy, Shri Nehra addressed the Court on behalf of the respondents.

(21) In order to determine the first point about the competency of the authority entitled to issue notice for cancellation of licence, we have to first fix the authority empowered to issue notice and then to determine whether the person issuing the notice was holding the office of that authority. The licence in Form D. 2 was granted to the petitioner-company under Section 20(2) of the Act. It was issued over the signature of the Financial Commissioner. It is this

licence, which has been sought to be cancelled by the impugned notice dated December 14, 1964. The impugned notice runs as follows :—

> "In exercise of the powers conferred by Section 21(b) of the Punjab Excise Act, 1914, read with Rule 7 of the Punjab Distillery Rules, 1932 and condition No. 9 of the licence dated the 5th November, 1941 issued in Form D-2 appended to the said rules, in favour of the Karnal Distillery Company Limited, Karnal for the premises known as the Karnal Distillery situated in Karnal town, I, S. C. Chhabra, Excise Commissioner, Punjab exercising the powers of the Financial Commissioner by virtue of Punjab Government Notification No. 3779-ET(VI)-64/3583, dated the 23rd May, 1964, herbey give notice that the aforesaid licence will determine on 21st day of December, 1965 (Twenty-first day of December, one thousand nine hundred and sixty five) unless the same is cancelled earlier for breach of any of its terms under Rule 7 of the aforesaid Rules".

(22) Notice for determination of licence has been issued by Shri S. C. Chhabra while exercising powers as Financial Commissioner. The relevant provisions and the condition of the licence enabling him to do so in that capacity are set out hereafter.

(23) Section 20(2) of the Act specifies the authority competent to grant a licence. That provision runs as follows :—

> "No distillery or brewery shall be constructed or worked except under the authority and subject to the terms and conditions of a licence granted in that behalf by the Financial Commissioner under Section 21."

(24) According to the language of Section 20(2), there is provided a sweeping prohibition against the construction of a distillery or brewery and against its working unless the Financial Commissioner has granted a licence authorising the licensee to construct and work a distillery or the brewery subject to the terms and conditions as provided in the licence. It is the licence issued under the authority of the Financial Commissioner that enabled the licensee to construct and work the distillery. Sub-section (2) of Section 20 has to be read in conjunction with Section 21. Under Section 21, the Financial Commissioner is not only empowered to grant a licence to establish a distillery but also has the authority to discontinue any distillery, in respect of which licence has been granted and to make rules in

connection therewith. The relevant provisions of Section 21 of the Act are reproduced below :—

"The Financial Commissioner, subject to such restrictions or conditions as the State Government may impose, may——

(a) establish a distillery, in which spirit may be manufactured under a licence granted under Section 20.

(b) discontinue any distillery so established.

(c) licence the construction and working of a distillery or brewery.

(d) make rules regarding—

(1) the granting of licences for distilleries, stills or breweries ;

(3) the period for which the licence shall be granted ;

(9) the manufacture, storing and passing out of spirit and contents of passes ;

(11) any other matters connected with the working of distilleries or breweries.

(25) Under clause (d) of Section 21, it is the Financial Commissioner, who can frame rules regarding the granting of licences for distilleries, the period for which a licence can be granted, manufacture, storing and passing out of spirit and other matters connected with the working of distilleries. The cumulative reading of Sections 20 and 21 leaves no doubt that the authority, which is competent to discontinue distillery, in respect of which licence has been granted, is the Financial Commissioner.

(26) Clause (b) of Section 21 confers power in general upon the Financial Commissioner to discontinue any distillery which has been established under a licence granted by him. This clause refers to discontinuance of any distillery established under a licence granted by him. The expression, 'discontinue any distillery' implies the determination or cancellation of the licence granted by the Financial Commissioner enabling the licensee to work the distillery. Various

grounds, on the basis of which a licence can be cancelled are provided in Section 36 of the Act. That Section runs as follows :—

"Subject to such restrictions as the State Government may prescribe, the authority granting any licence, permit or pass under this Act may cancel or suspend it—

(a) if it is transferred or sublet by the holder thereof without the permission of the said authority; or

(b) if any duty of fee payable by the holder thereof be not duly paid; or

(c) in the event of any breach by the holder of such licence, permit or pass or by his servants, or by any one acting on his behalf with his express or implied permission of any of the terms or conditions of such licence, permit or pass; or

(d) if the holder thereof is convicted of any other law for the time being in force relating to revenue, or of any cognizable and non-bailable offence or of any offence punishable under the Dangerous Drugs Act, 1930 or under the Merchandise Marks Act, 1889, or of any offence punishable under Sections 482 to 489 (both inclusive) of the Indian Penal Code; or

(e) if the holder thereof is punished for any offence referred to in clause (8) of Section 167 of the Sea Customs Act, 1878; or

(f) where a licence, permit or pass has been granted on the application of the grantee of a lease under this Act, on the requisition in writing of such grantee; or

(g) *at will, if the conditions of the licence or permit provide for such cancellation or suspension.*

(27) It is in pursuance of clause (g) of Section 36 that the license has been determined. Under that Section, it is the authority issuing the licence, which has been empowered to cancel it. The licence having been issued by the Financial Commissioner, it is he, who is authorised to determine it under clause (g) of that section.

(28) Power for determination of the licence as mentioned in the notice is also exerciseable under Rule 7 of the Rules. That Rule runs as under :—

> "Licences are granted without limit of the period, for which they are in force, but can be cancelled for branch of the terms, or can be determined by the Financial Commissioner after one year's notice."

(29) According to this Rule, the authority to determine a licence granted without limit as to the period of time, for which it is operative, vests in the Financial Commissioner. As the terms and conditions of the licence determined by the notice show, it was issued for an unspecified period of time on November 5, 1941. Thus, under this Rule as well, it is the Financial Commissioner, who is competent to determine the licence. Power to determine licence has also been exercised under condition No. 9 of the licence. That condition runs as under :—

Condition No. 9.

> "The Financial Commissioner may give the licensee notice in writing that his licence will determine at the expiry of not less than one year from the date of the notice."

(30) This condition has been incorporated in the licence in pursuance of clause (g) of Section 36 of the Act. That condition again empowers the Financial Commissioner to determine the licence. The provisions of Sections 20, 21 and 36 of the Act read in conjunction with Rule 7 of the Rules and condition No. 9 of the licence leave no doubt that it is the Financial Commissioner, who is empowered to determine licence issued to the petitioner.

(31) The second question that arises under point No. 1 is as to whether Shri S. C. Chhabra, who served notice dated December 14, 1964, upon the petitioner-company and was at that time working as Excise and Taxation Commissioner, was entitled to issue the notice. In that notice, it is specifically mentioned that Shri Chhabra issued it in his capacity as Financial Commissioner being entitled to exercise power in that capacity by virtue of Punjab Government Notification No. 3779-ET(VI)-64/3583 dated May 23, 1964. Thus, there did

inhere power in Shri Chhabra to act as Financial Commissioner. It is immaterial and inconsequential that he also happened to be Excise and Taxation Commissioner under the Act. It has not been challenged that by virtue of that notification, Shri Chhabra could exercise powers of the office of Financial Commissioner. Thus, the contention that Shri Chhabra acted in his capacity as Excise and Taxation Commissioner and not as Financial Commissioner, in which capacity he was competent to determine the licence, has no force.

(32) The second point raised is that the impugned notice having been served on the petitioner-company by a quasi-judicial tribunal must have been preceded by a notice calling upon the company to show cause against the determination of the licence and there must have been passed a speaking order. In order to decide whether such a show-cause notice was necessary, we have to determine whether the Financial Commissioner while issuing the notice acted in a quasi-judicial or in an administrative capacity. If he acted in an administrative capacity, whether the action taken by him in issuing the notice is of such a character that issue to show cause notice to the petitioner-company and hearing the company was necessary. The answer to these questions will depend upon the nature and scope of the power for determination of the licence exercised by him. As is given in the impugned notice itself, he exercised power for determination of the licence under Section 21(b) of the Act read with Rule 7 of the Rules and condition No. 9 of the licence. Section 21(b) as reproduced in course of discussion of the first point provides that distillery established to manufacture spirit under Section 20 of the Act may be discontinued. Various grounds, on which a distillery may be discontinued or in other words its licence may be suspended, cancelled or determined are given in the provisions of Section 36 of the Act as reproduced earlier. The relevant clause is clause (g) of that Section. As given in that clause, a licence may be cancelled at will, if the conditions of the licence provide for such cancellation. This implies that if by a condition incorporated in a licence, the licensing authority and the licensee mutually agree that the licence could be cancelled without any reason being assigned by that authority, the licence would be liable to such cancellation. Condition No. 9 of the licence referred to earlier, devised and mutually agreed upon by the licensing authority and the licensee provides that the licensing authority may give notice in writing to the licensee that the licence will determine at the expiry of not less than one year

from the date of the notice. It clearly emerges from this condition of the licence that as agreed to by the petitioner-company, the licence is liable to determination without any reason being assigned as contemplated by clause (g) of Section 36, in purscance of which this condition was inserted and accepted as contractual obligation by the company. The only limitation appended to the condition for determination of the licence is that the period of notice issued for determination of the licence should not be less than one year. Admittedly, the notice given is for the period stipulated. Condition No. 9 of the licence is a term of contract. It is not the case of the petitioner-company that it was agreed under undue influence or coercion or on any fradulent misrepresentation on behalf of the licensing authority. It is a voluntarily agreed term. The company has accepted that term with eyes open as to the consequence of termination of licence to follow on action at any time being taken thereunder by the licensing authority. This term of contract has been existent in the licence for the last thirty years. As a party to contract, the petitioner-company is bound by it.

(33) The petitioner-company was not bound to accept this term as laid down in clause (g) of Section 36 of the Act. It was entirely in its discretion and its sweet choice to agree or not to agree to such a term. Having accepted it and having agreed to abide by it, the petitioner-company cannot turn round and say that it is not bound by it. This condition being a term of contract, the petitioner-company cannot wriggle out by raising pleas aliunde to it. It is under this mutually agreed term of the contract of the licence that respondent No. 2 served notice to determine the licence as provided therein. Issue of notice to the petitioner-company in terms of condition No. 9 of the contract of licence liable to termination thereunder is out and out an administrative act and the authority so acting acts in administrative capacity and not in quasi-judicial capacity. Thus, this notice was issued by the licensing authority in administrative capacity and not in quasi-judicial capacity.

(34) The petitioner-company being a party to condition No. 9 of the licence was aware of the fact that the licence could be terminated without assigning any reason. Considering the nature of the term, it could offer no defence by way of explanation as it was bound by it. Neither in clause (g) of Section 36 of the Act nor

in the Rules made thereunder nor in condition No. 9 or even in any other condition of the licence, there is any obligation express or implied on respondent No. 2 to issue a notice or to afford any opportunity to the petitioner-company to hear it before the notice under condition No. 9 could be issued. The counsel for the petitioner-company was asked while arguing this point as to whether he could point out to any such provision or condition even remotely suggestive of the company being heard before the notice under condition No. 9 could be issued. He conceded that he could not refer to any such provision. He, however, contended that the rules of natural justice require that before issue of the impugned notice, the petitioner-company should have been heard and that in order to afford that opportunity, show-cause notice should have preceded the issue of the impugned notice. The question of application of rules of natural justice arises in cases where in exercise of statutory power on a matter in dispute, a decision has to be taken against a party adversely affected by that decision and the statutory provisions are silent for such party being heard before the dispute is determined. An authority acting under a statute charged with a statutory obligation to determine a dispute affecting the rights of the parties and requiring consideration of certain evidence would be acting in a quasi-judicial capacity. If a decision is given by such an authority without giving notice to and hearing the parties affected thereby, the violation of rules of natural justice will follow, even if there is no provision for opportunity of hearing being afforded and notice for such hearing being issued. Considering the nature of condition No. 9 of the licence and want of any obligation statutory or otherwise to hear, the authority issuing the notice has acted purely in administrative capacity. It has not to consider any evidence to enable it to decide whether licence should or should not be cancelled. It had only to look at condition No. 9 and to serve notice for determination of licence. The right of the petitioner-company being heard and its defence being considered is alien to the content of that condition. According to scope of condition No. 9, it is entirely within the discretion of the Financial Commissioner to issue or not to issue notice under condition No. 9. While taking action under that condition, no decision on any dispute had to be given. Giving of impugned notice thereunder is taking action in an administrative capacity without involving any violation of rules of natural justice. In an agreement of lease or licence, say in respect of immovable property, entered into between the State as a lessor

or licensor and the other party as a lessee or licensee incorporating a term of termination of lease or licence by issue of notice for stipulated period of time, it is not open to such a lessee or licensee to legitimately contend that before such a notice for termination of lease or licence could be issued, that other party should be served with a show cause notice. There is no statutory provision in the Act or the Rules made thereunder controlling the exercise of power of the Financial Commissioner while taking action under that term of the contract. The demand of the petitioner-company for being heard ignores to take into consideration the nature of the power exercised. The power of termination of licence having been exercised in administrative capacity without any obligation to issue notice to the petitioner company prior to its issue, the validity of the notice cannot be impugned for want of show-cause notice.

(35) With condition No. 9 existing in the licence, the right of the petitioner-company to continue as a licensee, if it can be described any right at all, is a defeasible right. It can be defeated at any time. Licence with this condition intact makes the licence a mere permission to work the distillery subject to one year's notice being given by the licensing authority for its termination. Condition No. 9 has made the licence a privilege granted to work the distillery. By that condition, the licensing authority has retained the right and the power with him to withdraw the licence any time subject to the term as to notice provided therein. The petitioner-company cannot resist its withdrawal or cancellation. For the purpose of acting for issue of notice under condition No. 9, there is no need for the Financial Commissioner to record separate or formal order. He is only to issue notice in terms of that condition. Having not acted in a quasi-judicial capacity, and even while acting in administrative capacity, it being not necessary for the Financial Commissioner to serve show cause notice on the party concerned, the issue of notice under condition No. 9 need not be preceded by a formal order, much less by a reasoned or speaking order. If a licence is cancelled under clauses (a) to (f) of Section 36 of the Act for a default or violation committed by a licensee on any of the grounds referred to in those clauses or there is failure to comply with any one of the conditions of the licence as given in condition No. 7 of the licence, show cause notice is necessary. In the present case, the notice issued for cancellation of licence is governed by

clause (g) of Section 36 read with condition No. 9 and not by any of the clauses (a) to (f) or by any other condition of the licence.

(36) In support of the contention that the licensing authority, respondent No. 2 while issuing notice for determination of the licence, acted as quasi-judicial tribunal and should have afforded reasonable opportunity to the petitioner-company prior to the issue of that notice, reliance was placed on *Sukhlal Sen* v. *Collector, District Satna and others* (1). In that case, the notice for cancellation of licence was issued by the licensing authority under Section 31(1)(b) of the Central Provinces Excises Act, No. II of 1915. Clause (b) of sub-section (1) of Section 31 of that Act is in the same terms as clause (c) of Section 36 of the Punjab Excise Act, No. XIV of 1914. As observed above, failure to comply with any of the clauses (a) to (f) of Section 36 of the Act results in commission of default on the part of the licensee and the licensee has to be charged for the default and consequently there does arise the necessity of issue of notice with a view to afford the licensee an opportunity to explain that default. It is by virtue of the nature of default committed by a licensee under clauses (a) to (f) of Section 36 of the Act that respondent No. 2 acts in a quasi-judicial capacity and consequently show-cause notice has been held to be necessary. The present case has nothing to do with any of those clauses of Section 36. The notice was issued under condition No. 9 in pursuance of clause (g) of Section 36, which does not deal with any default on the part of the licensee but deals with the right of the licensing authority to cancel the licence within the scope of that condition. This decision of Madhya Pradesh High Court holding the licensing authority to be quasi-judicial tribunal is in no way analogous to the present case and is obviously distinguishable.

(37) The next case in support of the plea that the petitioner-company is entitled to the issue of notice prior to the service of notice for determination of licence cited before us is *The D.F.O. South Kheri and others* v. *Ram Sanehi Singh* (2). This case pertains to an auction held by the District Forest Officer. The bid of Ram Sanehi Singh respondent was accepted at the auction of the right to cut timber of forest for certain period. The respondent cut timber beyond that period. The District Forest Officer allowed

(1) A.I.R. 1969 M.P. 176.

(2) 1970 (1) S.C.W.R. 194.

the respondent to remove the timber cut beyond the period of contract. The Divisional Forest Officer passed an order that the timber cut by the respondent having been cut beyond the period of contract could not be appropriated by him but could be appropriated for the following period of contract. The respondent invoked the writ jurisdiction of the Allahabad High Court seeking writ of prohibition restraining the Divisional Forest Officer from giving effect to his order. A single Judge of the Allahabad High Court dismissed the writ petition. On appeal, a Division Bench of the Allahabad High Court allowed the writ petition of the respondent. On these facts, the Supreme Court took the view that the respondent was sought to be deprived of his valuable right in the timber cut and removed and after the subordinate officer had made the order in his favour, the Divisional Forest Officer should have passed the order after giving the respondent opportunity of being heard prior to the order of the subordinate Officer being set aside and that the order should not have been passed without calling for explanation from the respondent. In that case, the respondent was sought to be deprived of property in cut timber, which he had removed and the impugned order was passed without his being heard. It was held that even if the Divisional Forest Officer was acting in administrative and not in quasi-judicial capacity, the order of restoration of timber could not have been passed to the prejudice of the respondent without giving him opportunity for explanation against cancellation of the earlier order. In the present case, question of cancellation of an earlier order passed by an authority subordinate to the licensing authority is not at all involved. It is on the terms of the condition of the contract that a notice, which is purely administrative notice without requiring any explanation from the petitioner-company was issued admittedly in terms of that condition. By service of notice under condition No. 9, the question of any right to property of the petitioner-company being adversely affected does not arise. The licence issued to the petitioner-company to enable it to work out distillery is subject to certain terms and conditions of the licence as agreed to by it. The petitioner-company is bound by various terms including the term of condition No. 9. The right to run the distillery is subject to that condition. Whatever the property lying on the premises of the distillery and the premises themselves continue to belong to the petitioner-company. By issue of the impugned notice, respondent No. 2 did not in any way act

in contravention of any provision of the Act, the Rules made thereunder or the terms and conditions of the licence. Subject to those provisions, the property still continues to vest in the petitioner-company as it otherwise did.

(38) The next judgment relied upon on behalf of the petitioner-company for claim of show-cause notice being issued to it is *Messrs Mahabir Prasad Santosh Kumar* v. *State of U.P. and others* (3). In this case, the appellants held two licences, one under the U.P. Sugar Dealers' Licensing Order, 1962 to deal in sugar and the other under the U.P. Foodgrains Dealers' Licensing Order, 1964 to deal in foodgrains. On June 5, 1967, the appellants were called upon to explain certain irregularities detected on inspection of their shop. On the following day, they were directed to hand over all their stocks of sugar and flour to the Bindki Co-operative Marketing Society and were compelled to so surrender stocks of sugar and flour. By letter dated June 28, 1967, the appellants were communicated that the District Magistrate had cancelled both the licences. They challenged the validity of that order. The order of cancellation and the surrender of the stocks was passed under clause 7 of the U.P. Sugar Dealers' Licensing Order and under clause 11 of the U.P. Foodgrains Dealers' Licensing Order. Clauses 8 and 12, respectively of these two Orders provided for appeals against the orders of cancellation and surrender of stocks. Not only the orders of cancellation did not disclose any reasons but also the appeals were dismissed without any reasons being assigned. As the provisions of these clauses show, these orders could not be made unless the appellants were charged with irregularities leading to the passing of those orders and hence were heard in reply to those charges and their explanations considered. The provisions of appeals show that the orders were being made by the District Magistrate in his capacity as quasi-judicial tribunal. This case is also distinguishable and is in no way parallel to the present one. This is a case in which the statutory provisions pertaining to the power of cancellation of licence and deprivation of the appellants of their stocks cast an obligation upon the District Magistrate to hear the appellants before they could be condemned for certain irregularities said to have been committed by them. The terms of the clauses of these Control Orders correspond in nature and scope to clauses (a) to (f) of Section 36 rather than having anything to do with the type of term of contract provided in condition No. 9 of the licence agreed in pursuance of clause (g) of that section.

(3) 1970 (1) S.C.W.R. 713.

(39) On behalf of the respondents reliance was placed on a Full Bench judgment in *Prem Nath Bhalla* v. *State of Haryana and others* (4), for the proposition that the impugned notice served on the petitioner-company is administrative in character and no show-cause notice is called for. Prem Nath Bhalla, writ-petitioner was appointed under section 3 of the Punjab Municipal (Executive Officer) Act, No. 11 of 1931 for five years with the condition that he could be removed at any time by the Government. When so removed, he contended that he must have been afforded reasonable opportunity of being heard and consequently in its absence the order of his removal was without jurisdiction. The appointment was made under sub-section (7) of Section 3 of that Act. By virtue of sub-sections (1) and (4) of Section 3 of that Act, he could be removed at any time by the Government. It was held that when an Executive Officer accepts appointment, even though the Municipal Committee is appointing him for a fixed period, yet the Government is entitled to remove him at any time even after 15 days of his appointment, that under these circumstances, he cannot complain that he has a right to the post for the full period, that he knows that his services can be dispensed with at any time, that he cannot have any grievance if action is taken against him under sub-section (7) by the State Government without giving him any show-cause notice, that he cannot say as to why and on what ground he is being removed and precisely for what reason and that he cannot claim any show-cause notice before he is removed from his office and has no right to hold the post for the full period fixed at the time of his appointment. It was further observed that principles of natural justice come into play only when somebody has got a right to a post and even though the terms of his appointment do not say that he will be given a show-cause notice before his services are terminated, still he should be given such a notice before he is asked to go out of his office. The scope of sub-sections (1) and (4) of Section 3 of the Punjab Municipal (Executive Officer) Act is the same as of condition No. 9 read in conjunction with clause (g) of Section 36 of the Act. Both provide for giving of notice without assigning any reason and the termination coming off after notice for certain stipulated period is given. The point involved in the present case is identical in scope and nature with the one arising in that above cited case. The nature of condition No. 9 of the licence is not at all germane to the idea of any

(4) I.L.R. (1970) II Pb. and Hr. 772.

obligation to issue show-cause notice on the part of the licensing authority prior to the notice for determination of the licence being served on the licensee.

(40) The question of compliance with rules of natural justice arises only if there is indication in the statutory provisions that the issue of a show-cause notice is called for prior to any action being taken by the statutory authority. Rules of natural justice do not come into play and their applicability cannot be attracted unless the relevant statutory provisions point out in the direction of the necessity for their being invoked. Condition No. 9 which is a term of contract deals with service of notice for determination of licence does not even remotely suggest any idea of any such obligation being cast upon the licensing authority. While considering for continuity the claim of a Government servant, whose tenure of office was not extended beyond 55, when he completed the age of superannuation, their Lordships of the Supreme Court in *Union of India* v. *J. N. Sinha and another* (5), repelled that claim in the following terms :—

> "Fundamental Rule 56(j) (Civil Services Fundamental Rules) in terms does not require that any opportunity should be given to the concerned Government servant to show-cause against his compulsory retirement. A Government servant serving under the Union of India holds his office at the pleasure of the President as provided in Article 310 of the Constitution. But this 'pleasure' doctrine is subject to the rules or law made under Article 309 as well as to the conditions prescribed under Article 311. Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in *Kraipak* v. *Union of India* (6), 'the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law but supplement it'. It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures and

(5) A.I.R. 1971 S.C. 40.

(6) A.I.R. 1970 S.C. 150.

> the statutory authorities intend to act in accordance with the principles of natural justice. But, if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules or principles of natural justice, then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power. .....

Now coming to the express words of Fundamental Rule 56(j) it says that the appropriate authority has the absolute right to retire a Government servant if it is of the opinion that it is in the public interest to do so. The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority *bona-fide* forms that opinion, the correctness of that opinion cannot be challenged before Courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision."

(41) To the extent, to which argument has been raised under point No. 3 by the petitioner-company that the cancellation of the licence of the company affects its right to hold and dispose of property and the right to carry on its business in the manufacture and sale of liquor as respectively incorporated in sub-clauses (f) and (g) of clause (1) of Article 19 of the Constitution, the petitioner-company has no *locus standi* to maintain the writ petition. The fundamental rights embodied in clauses (a) to (g) of clause (1) of Article 19 of the Constitution have been guaranteed to citizens only. Persons other than citizens cannot claim any protection against violation of those rights. The petitioner-company being a limited company and an incorporate body and not a citizen is not entitled to file writ petition complaining against their violation. Right to maintain such a petition is available only to the citizens and not

to incorporate bodies like the petitioner-company. This point was considered by a Bench of nine Judges of the Supreme Court in *State Trading Corporation of India Ltd.* v. *The Commercial Tax Officer and others* (7). Their Lordships observed as follows :—

> "It seems to us, in view of what we have said already as to the distinction between citizenship, and nationality, that corporations may have nationality in accordance with the country of their incorporation; but that does not necessarily confer citizenship on them. There is also no doubt in our mind that Part II of the Constitution when it deals with citizenship refers to natural persons only. This is further made absolutely clear by the Citizenship Act which deals with citizenship after the Constitution came into force and confines it only to natural persons. We cannot accept the argument that there can be citizens of this country, who are neither to be found within the four-corners of Part II of the Constitution or within the four-corners of the Citizenship Act. We are of opinion that these two provisions must be exhaustive of the citizens of this country, Part II dealing with citizens on the date the Constitution came into force and the Citizenship Act dealing with citizens thereafter. We must, therefore, hold that these two provisions are completely exhaustive of the citizens of this country and these citizens can only be natural persons. The fact that corporations may be nationals of the country for purposes of international law will not make them citizens of this country for purposes of municipal law or the Constitution. Nor do we think that the word 'citizen' used in Article 19 of the Constitution was used in a different sense from that in which it was used in Part II of the Constitution."

(42) In the face of the above authoritative dictum of the Supreme Court, it is not open to the petitioner-company to base its claim upon grounds of contravention of either sub-clause (f) or sub-clause (g) of clause (1) of Article 19 of the Constitution.

(43) Even on merits, the point raised in relation to the violation of the rights of the petitioner-company under these two sub-clauses

(7) A.I.R. 1963 S.C. 1811.

has no force. By service of notice of cancellation of licence of the petitioner-company, the licensing authority in terms of condition No. 9 of the licence which, as earlier discussed, is a term of contract between the licensee and the licensing authority, has discontinued the right of the petitioner- company to manufacture liquor. The respondents are in no way depriving the petitioner of his property in spite of the cancellation of the licence in pursuance of the notice served upon the petitioner-company. The petitioner-company continues to hold the premises of the distillery including super-structure as its own and is entitled to dispose of the same as it likes. By virtue of condition No. 1 of the licence, the petitioner-company undertook to observe the provisions of the Punjab Excise Act and all the Rules made thereunder. By virtue of condition No. 5, the petitioner-company agreed to comply with all the directions of the Financial Commissioner regarding the stock of spirit or material to be maintained and all other matters, in which compliance is prescribed by Rules made under the Act. Condition No. 11 of the licence provides as follows :—

> "Under the revocation, cancellation or determination of the licence under the preceding conditions, the licensee or his representative shall forthwith cease distilling and shall cease to use the buildings and plant for the purpose for which they were licensed. Neither the licensee nor any person shall be entitled to any compensation or damage whatever in respect of revocation, cancellation or determination of the licence."

(44) After the termination of the licence, the building and the plant of the distillery continued to be the property of the petitioner-company. The Rule which is relevant to the point of argument pertaining to sub-clause (f) of clause (1) of Article 19 of the Constitution is Rule 10 of the Rules. That Rule runs as follows :—

> "If a licence be revoked, cancelled or determined, the licensee shall dispose, under the conditions of his licence, of his stock of spirit, apparatus, storage vessels and other distilling plant in such manner as the Financial Commissioner may direct."

The petitioner-company having undertaken to abide by Rule 10, it is not open to it to contend that respondent No. 2 in terms of that Rule has no power to dispose of its stock of spirit, apparatus,

storage, vessels and other distilling plant of the petitioner-company in such a manner as respondent No. 2 thinks necessary. In any case, the stage for such an order being passed has not as yet arisen. The petitioner being a company and not being a citizen has no right to maintain the present petition. The petitioner-company may seek such remedy as may be open to it consequent upon the passage of an order by respondent No. 2 regarding the disposal of what is covered by Rule 10 of the Rules. The petitioner-company having undertaken to abide by Rule 10 is bound by the manner in which respondent No. 2 disposes of all that is covered by Rule 10.

(45) Similarly, the petitioner-company cannot legitimately contend that by virtue of notice for determination of its licence issued by respondent No. 2, its freedom to carry on business has been infringed. The petitioner-company cannot claim to possess any freedom or right to carry on manufacture or sale of liquor. Its licence is circumscribed by its conditions and the provisions of the Act and the Rules made thereunder, for the compliance of which the petitioner-company bound itself by those conditions and the provisions. Its right to manufacture liquor, if it can be called a right at all, is liable to termination under condition No. 9 of the licence. It is in terms of this condition that the impugned notice has been served upon the petitioner-company. It can carry on the work of manufacture of liquor so long as that right is not taken away from it under condition No. 9 of the licence. It is a condition or a restriction which the petitioner voluntarily agreed to be imposed upon it and it must respect it. To manufacture liquor is not an absolute right of the petitioner-company. It is subject to the restrictions, to which the petitioner-company subjected itself including the condition of the licence being determined upon a notice, as agreed, being served by the licensing authority upon it. The restrictions placed by virtue of condition No. 9 and other relevant conditions of the licence and Rule 7 of the Rules are, considering the nature of the commodity like liquor to be manufactured, reasonable restrictions and are in the interest of general public. It is not open to the petitioner-company to take exception to them after having agreed to abide by them.

(46) The question about the validity of imposition of restrictions by legislative regulation pertaining to the administration of excise as provided in Ajmer Excise Regulation, 1915, came up for hearing before their Lordships of the Supreme Court in *Cooverjee B. Bharucha,*

petitioner v. *Excise Commissioner and others, respondents* (8). That was a case in which at a public auction, a vend shop was leased out to the highest bidder. That bidder failed to deposit the license-fee within the stipulated time. The petitioner applied for his case being considered for grant of licence to him for vend shop. The respondent Excise Commissioner, however, rejected his application and confirmed the sale in favour of the bidder in spite of failure on the part of that bidder to deposit the amount within time. The petitioner contended that he had fundamental right by virtue of the provisions of article 19(1)(g) to carry on business of sale of liquor and that the restrictions placed by the statutory provisions of the Act and the Rules framed thereunder in not granting the licence to the petitioner were *ultra vires* article 19(1)(g). Repelling that contention, their Lordships of the Supreme Court observed as follows:—

> "Article 19(1)(g) of the Constitution guarantees that all citizens have the right to practice any profession or to carry on any occupation or trade or business and clause (6) of the article authorises legislation which imposes reasonable restrictions on this right in the interests of the general public. It was not disputed that in order to determine the reasonableness of the restriction regard must be had to the nature of the business and the conditions prevailing in that trade. It is obvious that these factors must differ from trade to trade and no hard and fast rules concerning all trades can be laid. It can also not be denied that the State has the power to prohibit trades, which are illegal or immoral or injurious to the health and welfare of the public."

> "Laws prohibiting trades in noxious or dangerous goods or trafficking in women cannot be held to be illegal as enacting a prohibition and not a mere regulation. The nature of the business is, therefore, an important element in deciding the reasonableness of the restrictions. The right of every citizen to pursue any lawful trade or business is obviously subject to such reasonable considerations as may be deemed by the governing authority of the country essential to the safety, health, peace, order and morals of the community. Some occupations by the noise made in

(8) A.I.R. 1954 S.C. 220.

their pursuit, some by the odours they engender, and some by the dangers accompanying them, require regulations as to the locality in which they may be conducted. Some, by the dangerous character of the articles used, manufactured or sold, require also special qualifications in the parties permitted to use, manufacture or sell them."

(47) While considering the power of the legislative restrictions in connection with freedom to carry on business in respect of intoxicating substances like liquor, their Lordships reproduced with approval the following passages from *Crowley* v. *Christensen* (9):—

"The sale of such liquor in this way has, therefore, been, at all times, by the courts of every State, considered as the proper subject of legislative regulation. Not only may a licence be exacted from the keeper of the saloon before a glass of his liquors can be thus disposed of, but restrictions may be imposed as to the class of persons to whom they may be sold and the hours of the day and the days of the week, on which the saloons may be opened. Their sale in that form may be absolutely prohibited. It is a question of public expediency and public morality and not of federal law."

"The police power of the State is fully competent to regulate business—to mitigate its evils or to suppress it entirely. There is no inherent right in a citizen to thus sell intoxicating liquors by retail; it is not a privilege of a citizen of the State or of a citizen of the United States. As it is a business attended with danger to the community, it may, as already said, be entirely prohibited or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority. That authority may vest in such officers as it may deem proper the power of passing upon applications for permission to carry it on and to issue licences for that purpose. It is a matter of legislative will only."

(9) (1890) 34 Law Edition 620.

(48) After referring to the above passages, it was observed:—

> "These observations have our entire concurrence and they completely negative the contention raised on behalf of the petitioner. The provisions of the regulation purport to regulate trade in liquor in all its different spheres and are valid."

At the end, in conclusion, their Lordships observed as follows:—

> "We are of the opinion that the contention that the provisions of the regulation are unconstitutional as they abridge the rights of the petitioner to carry on liquor trade freely cannot be sustained."

(49) A question as to whether the legislature, by the provisions of the Eastern Bengal and Assam Excise Act, 1910 and the Rules made thereunder, could provide for control and restrictions in the interest of public health and morals received the attention of their Lordships of the Supreme Court again in the *State of Assam* v. *Sristikar Dowereh and others* (10). Their Lordships observed as follows:—

> 'In exercise of the powers conferred on it by Section 36, the Provincial Government of Assam have made elaborate rules. Part IV of the Rules deals with licenses, settlements and fees, duration and number of licenses, location of shops, ascertainment of local public opinion, the procedure for settlement, prohibition on grant of retail license to certain persons, grant of licence and so on and so forth. A perusal of the Act and Rules will make it clear that no person has any absolute right to sell liquor and that the purpose of the Act and the Rules is to control and restrict the consumption of intoxicating liquors, such control and restriction being obviously necessary for the preservation of public health and morals, and to raise revenue."

(50) While considering the exercise of discretionary power conferred on Commissioner of Excise and Taxation under section 20 of the Jammu and Kashmir Excise Act. 1958, vis-a-vis article 19(1)(g)

(10) A.I.R. 1957 S.C. 414.

and 19(6) of the Constitution, their Lordships of the Supreme Court examined the question of legislative restrictions imposable on sale of liquor in *Krishan Kumar Narula* v. *State of Jammu and Kashmir and others* (11). This case arose out of a petition filed under article 226 of the Constitution by the two petitioners claiming renewal of their licences granted under Section 20 of that Act. The Commissioner of Excise and Taxation refused to renew their licences on the ground that the petitioners had refused to shift from the localities, in which they had their vend shops, as directed by the Excise and Taxation Commissioner on complaints received from the inhabitants of those localities against the vend shops being continued there. The petitioners were refused renewal of the licences because of their refusal to shift elsewhere. It was contended on behalf of the petitioners that they had a fundamental right in carrying on business to sell liquor at the places of their choice and consequently the refusal to renew their licences was in contravention of article 19(1)(g) of the Constitution. While considering the legislative power to regulate business in connection with sale of liquor under the statutory provisions pertaining to regulation on such sale, their Lordships of the Supreme Court observed as follows:—

> "A legislature can impose restrictions on, or even prohibit the carrying on of a particular trade or business and the Court, having regard to the circumstances obtaining at particular time or place may hold the restrictions or prohibition reasonable.....Liquor can be manufactured, brought or sold like any other commodity. It is consumed throughout the world, though some countries restrict or prohibit the same on economic or moral grounds. The morality or otherwise of a deal does not affect the quality of the activity though it may be a ground for imposing a restriction on the said activity. The illegality of an activity does not affect the character of the activity but operates as a restriction on it. If a law prohibits dealing in liquor, the dealing does not cease to be business, but the said law imposes a restriction on the said dealing."

> "There is no fundamental right in a citizen to carry on business wherever he chooses and his right must be subject to any reasonable restriction imposed by the executive authority in the interest of public convenience."

(11) A.I.R. 1967 S.C. 1368.

(51) Their Lordships after reproducing the relevant passages from *Cooverjee B. Bharucha's case* (8), as already adverted to, held at the end as follows:—

> "We, therefore, hold that dealing in liquor is business and a citizen has a right to do business in that commodity; but the State can make a law imposing reasonable restrictions on the said right in public interest."

(52) The restriction placed by the provisions of Section 36(g) of the Act and Rule 7 of the Rules read in conjunction with condition No. 9 of the licence is not arbitrary or unreasonable. The power of the licensing authority to cancel a licence 'at will' as provided in clause (g) of Section 36 of the Act is not an absolute power. It is subject to the over-rider that that power of cancellation at will by the licensing authority could be exercised only if the conditions of the licence provide for such cancellation. In other words, a licence could be cancelled under clause (g) if the licensee has agreed to abide by a condition incorporated in the licence to the effect that his licence could be cancelled under that clause. The power could be struck down as arbitrary and uncontrolled, if after the expression, 'at will', the legislature would not have further provided that that is subject to the conditions of the licence as mutually agreed upon between the licensee and the licensing authority. By so providing. the legislature has taken out of the provision, the sting of arbitrariness or exercise of unfettered power to avoid the power becoming exercise-able at will and being abused. According to Rule 7 of the Rules, licences granted without limit of the period, for which they are in force, can be cancelled for breach of the terms or can be determined by the Financial Commissioner after one year's notice. The impugned notice for determination of licence in the present case is not for breach of any terms of the licence under first part of that Rule but it is being determined under second part of that Rule. That part of the Rule provides that if the licence is sought to be determined by the Financial Commissioner as is being done in the present case by virtue of clause (g) of Section 36 of the Act, period of notice for determination of licence must be not less than one year. Condition No. 9 of the licence specifically says that respondent No. 2 can give notice to the petitioner-company in writing that its licence will be

determined on the expiry of not less than one year from the date of the notice. Condition No. 9 fully incorporates the statutory obligation laid upon respondent No. 2 by incorporating a condition in the licence as to the petitioner-company having agreed to have its licence cancelled without any reason being assigned by respondent No. 2 as provided in clause (g) of Section 36 of the Act on giving not less than one year's notice as devised by Rule 7 of the Rules. The legislature has taken abundant precaution in making it discretionary for the licensing authority to exercise power for determination of licence only if the licensee has so agreed in one of the conditions and the rule-making authority has also provided for a notice for determination of licence, if such determination is sought to be effected, after giving notice for a period not less than one year. The petitioner-company itself agreed with consent to have the licence revoked in terms of conditions No. 9. It has been served with notice as provided in that condition. Having agreed to abide by the terms of condition No. 9, which is a term of contract, the petitioner cannot turn round and say that that term is unreasonable. It is the result of choice of the petitioner-company. It cannot avoid to accept it simply because it will harshly operate against it.

(53) There is no force in the contention that the restrictions imposed by Section 36(g) of the Act, Rule 7 of the Rules and condition No. 9 of the licence are inconsistent with Sections 20(2) and 21(c) and (d) of the Act. Section 36(g) says that the licensing authority can cancel a licence without assigning any reason, if the licensee so agrees. The agreement by the petitioner-company in terms of condition No. 9 undertaken to be complied with by it could not be called a restriction imposed by Section 36(g) of the Act. That condition exists in the body of the licence because of the petitioner-company having so agreed and not because of any restriction having been imposed by respondent No. 2 against its will.

(54) The next question that arises is as to whether there is any inconsistency between Section 36(g) of the Act and Rule 7 of the Rules read with condition No. 9 on the one hand and the provisions of Sections 20(2) and 21(c) and (d) of the Act on the other Section 20(2) provides that no distillery could be constructed or worked except under the authority and subject to the terms and conditions of a licence granted by the Financial Commissioner under Section 21 of the Act. This provision points out that it is

under the authority of the licence issued by respondent No. 2 that the petitioner-company could construct or work the distillery and that too in terms and conditions provided in the licence granted to it. It was in exercise of the power conferred by this provision that respondent No. 2 issued licence to the petitioner-company to enable it to construct and work in terms and conditions of the licence issued to it.

(55) As referred to above, Rule 7 confers power upon the Financial Commissioner to determine a licence and puts a fetter upon his power by making it obligatory upon him to determine the licence after he has served the licensee with a notice for a period not less than one year. It is in terms of Section 36(g) and Rule 7 that the petitioner-company agreed to condition No. 9. As the scope of Section 36(g) and Rule 7 of the Rules read along with condition No. 9 of the licence shows, there is no inconsistency between them and Section 20(2). Section 20(2) deals with the power to grant licence and it is after the licence has been issued by the licensing authority that the question of its cancellation in terms of Section 36(g) read with Rule 7 and condition No. 9 has arisen. It cannot be legitimately contended that Section 20(2) of the Act conferring power for issue of licence upon respondent No. 2 is in any way irreconcilable with the provisions of Section 36(g) and Rule 7 read with condition No. 9 enabling respondent No. 2 to determine the licence. Section 20(2) deals with a different subject and is independent of the subject dealt with by Section 36(g), Rule 7 and condition No. 9. Similarly, there is no warrant for the argument that there exists any inconsistency between Section 36(g) of the Act and Rule 7 of the Rules read along with condition No. 9 of the licence and clauses (c) and (d) of Section 21. The subject of clause (c) of Section 21 of the Act as reproduced below is the same as the subject of sub-section (2) of Section 20 of the Act :—

> 21(c) "The Financial Commissioner, subject to such restrictions or conditions as the State Government may impose, may .....,.
>
> (c) licence the construction and working of a distillery or brewery."

(56) Thus, thee does not exist any irreconcilability between Section 21(c) of the Act vis-a-vis Section 36(g) of the Act, Rule 7

of the Rules or condition No. 9 of the licence. Clause (d) of Section 21 deals with the power of making rules regarding granting of licences, period for which licences may be granted, manufacture of spirit and other matters. There is nothing in the rule-making power conferred by clause (d) of Section 21 of the Act to show that the rule-making power is in any way counter to the provisions of Section 36(g), Rule 7 or condition No. 9. No rule framed in pursuance of clause (d) of Section 21 of the Act has been pointed out to show that that rule in any way goes counter to the rule-making power conferred by clause (d). It is in pursuance of that rule-making power that Rule 7 of the Rules has been framed and it is again in pursuance of the power existing in respondent No. 2 that notice for a period not less than one year has been served upon the petitioner-company. Thus, there is no substance in the argument that there are any unreasonable restrictions imposed by Section 36(g) of the Act, Rule 7 of the Rules and condition No. 9 of the licence and that the same are inconsistent with the provisions of Sections 20(2) and 21(c) and (d) of the Act.

(57) The licence has in the present case been cancelled under Section 36(g) of the Act read with condition No. 9 of the licence. There is no doubt that notice for determination of the licence has not been issued because of any irregularity committed by the petitioner-company under the clauses (a) to (f) of that Section but has been issued for cancellation of the licence under that Section specifically under its clause (g). Section 36 deals with the various circumstances as specified under clauses (a) to (g) under which a licence, permit or pass granted by the licensing authority could be cancelled or suspended. One of the circumstances, under which a licence without any reason being assigned by the licensing authority, could be cancelled, if the licensee has so agreed in conditions of its licence, is incorporated in clause (g) of Section 36 of the Act. It is Section 21, which confers power in general upon the Financial Commissioner. Under Section 21(b), it has the power to discontinue any distillery established to manufacture liquor under a licence granted under Section 20(2) of the Act. The notice having referred to the general power of cancellation of licence, which undoubtedly does vest in respondent No. 2 and also having referred to condition No. 9 incorporated in the licence in pursuance of clause (g) of Section 36 of the Act apart from the specific mention of Rule 7 of the Rules, it could not be held to be defective or invalid

simply because there is no specific mention of Section 36(g) in the body of the notice. Reference to condition No. 9 drawn up in pursuance of clause (g) of Section 36 and to Rule 7 of the Rules leaves no doubt that the notice had been served by virtue of clause (g) of Section 36 of the Act covered by the general and comprehensive power to cancellation of a licence provided in Section 21 of the Act. If Section 21(b) condition No. 9 and Rule 7 of the Rules are read together, no doubt is left that the notice for cancellation has been served upon the petitioner-company under Section 36 of the Act, more specifically under clause (g) of that Section.

(58) Before considering the question whether the licence, as pleaded on behalf of the petitioner-company, could be cancelled under section 41 of the Act, it is necessary to examine the language of that Section. Its relevant portion is sub-section (1). It runs as follows:—

> "41(1) Whenever the authority, which granted a licence, permit or pass under this Act considers that such licence, permit or pass should be withdrawn for any cause other than those specified in Section 36, it may, on remitting a sum equal to the amount of the fees payable in respect thereof for fifteen days, withdrawn the licence either.....
>
> (a) on the expiration of fifteen days' notice in writing of its intention to do so, or
>
> (b) forthwith without notice."

(59) As the above reproduced Section 41 shows, it does not at all deal with the subject of determination or cancellation of licence. It deals only with withdrawal of a licence. It is also provided in Section 41 that the withdrawal must be for any cause or reason other than those specified in Section 36. Thus, if a licence is sought to be cancelled under any of the clauses of Section 36, the provisions of Section 41(1) will not apply. In the present case, it is by virtue of the power conferred upon respondent No. 2 by clause (g) of Section 36 of the Act read in conjunction with condition No. 9 of the lience that notice for its determination has been served upon the petitioner-company. Thus, reference to Section 41 for the purpose of cancellation of a licence cancellable under Section 36(g) of the Act is completely misplaced and irrelevant. The language of Section 41 postulates a situation, in which the work or business in terms of the

licence is contemplated to be carried on and yet the licence is so far as the licensee is concerned is withdrawn from the licensee. Thus, the argument of the Counsel for the petitioner-company that the licence of the petitioner-company could not be cancelled except under section 41 of the Act is without substance.

(60) The fifth and the last point urged on behalf of the petitioner company is that the power of determination of licence has been exercised in a *mala fide* manner and for a collateral purpose rendering the cancellation of licence void.

(61) As the complaints made by the public and the resolution passed by the Municipal Committee of Karnal and the Punjab Legislative Assembly and the survey of course of correspondence that passed between the petitioner-company and the respondents show, right from 1939 up to the date of service of impugned notice at the end of 1964, the respondents have been endeavouring and repeatedly approaching the petitioner-company for the distillery being shifted from its present site in the heart of the town of Karnal as its situation there was source of nuisance and a health hazard to the inhabitants of its locality. The petitioner-company have in reply been putting off their obligation, under the circumstances, to shift the distillery from that site to a different place on one excuse or the other. It is as a result of the dilatory tactics adopted by them, as is clear from the reasons assigned by them against shifting of the distillery from that site that the distillery continues to remain there.

(62) As long ago as 1939, Municipal Committee of Karnal passed a resolution on the complaint of the inhabitants of the locality, in which the site of the distillery is situate, that it was not desirable to maintain the distillery at that site. Soon after the resolution was passed, there was served a notice by the respondents on the petitioner-company to shift the distillery from that site to some other suitable place. In that notice, the respondents were rather over-indulgent in giving as long a period of time as 5½ years to enable the petitioner-company to set up its distillery elsewhere. Instead of being responsive to the accommodation shown by the respondents, the petitioner-company paid no heed to it and did not at all care to arrange for some suitable site and to start construction of a distillery. As desired by the petitioner-company, there was given further time of three years followed by further extension of one year but to no avail. This shows that the respondents were not only anxious without any ill will or *mala fide* on their part towards the management

of the petitioner-company, but had been repeatedly extending time to avoid the drastic step of determination of the licence of the petitioner-company.

(63) On January 21, 1949, there was addressed another letter by respondent No. 3 to the Deputy Excise and Taxation Commissioner, Ambala with a copy to the petitioner-company communicating that the management be directed to shift the distillery outside the municipal limits of Karnal to some suitable site as suggested by its management. It was also pointed out in that letter that the notice for determination of the licence served on the petitioner-company consequent on their failure to shift would expire on September 30, 1950 and the licence would stand determined, if the petitioner-company did not shift prior to the expiry of that notice. In reply to that communication, a site close to the town of Karnal was suggested by the petitioner-company for approval of the respondents but it could not be approved as the site selected was in an area likely to develop in future for residential purposes and it was suggested to the petitioner-company that the site, taking into consideration the ever-expanding constructional activity around the urban area of Karnal, should not be less than 10 miles from the municipal limits of Karnal. Instead of making arrangement of its own for a suitable site, the petitioner-company made the suggestion that land should be acquired by respondent No. 1 for the site of the distillery. By letter dated September 18, 1952, addressed by respondent No. 3, it was communicated to the petitioner-company that rsepondent No. 1 did not think it expedient to acquire land for the petitioner-company and that the company should itself procure some suitable land for the purpose. No attempt was made by the petitioner-company to secure any site for the purpose till 1956. On June 23, 1956, respondent No. 3 addressed a letter to the petitioner-company that it should not lose any time in purchasing a suitable site and shifting the distillery there. The petitioner-company turned deaf ear to all these suggestions.

(64) In 1958, there was asked a question by Chowdhri Dharam Singh, M.L.A., on the floor of the Punjab Legislative Assembly as to why in spite of repeated complaints made by the public, the distillery of the petitioner-company situate in the heart of the town of Karnal had not been shifted. A demand was made by the members of the Assembly that taking into consideration the persistent

agitation going on by the public of Karnal and in particular of the inhabitants of the locality, in which the site of the distillery was situate, the distillery be shifted forthwith. Even the resolution of the Punjab Legislative Assembly failed to move the petitioner-company for taking the necessary action of shifting the distillery. On February 2, 1959, there followed another resolution by the Assembly to the effect that the existence of the distillery in the town of Karnal was a nuisance and it should be shifted from its present site without any further delay. In spite of one resolution of the Municipal Committee of Karnal and two resolutions of the Assembly, the petitioner-company continued to stick fast to its stand of retaining the distillery at the place where it existed. This invoked another question in the Assembly as to why the distillery was not being removed from the town of Karnal. On the floor of the house, a demand was made from the Government for its removal from its present site without any loss of time. Even this resolution did not produce any effect upon the petitioner-company and went in vain. Under these circumstances, notice under Section 21(b) of the Act read with condition No. 9 of the licence was served on the petitioner-company on May 5, 1959 intimating to the company that its licence would stand determined on May 15, 1960. Instead of complying with this notice, the petitioner-company in reply dated May 26, 1959, made frivolous and irrelevant enquiry from respondent No. 3 as to whether the conditions pertaining to the shifting of the distillery to a suitable site not likely to develop in future and the provision for hygienic disposal of spent wash being made had been waived or still applied. Although respondent No. 3 communicated to the petitioner-company by letter dated July 4, 1959, that these two conditions had to be complied with by the petitioner-company and had not been waived, the petitioner-company took no steps to shift the distillery.

(65) The above narrated facts referring to the resolutions of the Municipal Committee and the Assembly are vocal for the paramount necessity of the distillery being shifted without any delay from its present site to some other place. Instead of complying with the demand of the respondents for its being shifted, the petitioner-company has been dillying-dallying and evolving pretexts to delay and resist the legitimate demand of the respondents to remove the distillery from its present site. It is the dilatory tactics of the petitioner-company which have enabled it to persist with the continued existence of the distillery at an undesirable site.

(66) Instead of shifting the distillery, the petitioner-company made a proposal that the petitioner-company owned area of 18½ acres in the renewal estate of village Rathdhana in the district of Rohtak and that the company was willing to shift the distillery there provided in addition to that area possessed by the company, respondent No. 1 could acquire additional area of 200 acres. The respondents without realising about the propriety of acquisition of land for the petitioner-company and unmindful of the fact that the district of Rohtak, in which the land in the estate of village of Rathdhana was to be acquired was an area, in which prohibition had been inforce, wrote to the company because of the urgent necessity for the distillery being shifted to the petitioner-company that sum of Rs. 2,76,000 required for acquisition of the land be deposited or if the petitioner-company could not afford to deposit that amount or did not want to acquire the land at that price, the petitioner-company could arrange for land by private negotiation. Instead of either agreeing for the acquisition of the land and depositing the said amount subject to the price of the land being determined by award of the Collector or else making arrangement of land of its own, the petitioner-company raised the objection that as there was no facility available at the Railway Station of Rathdhana for loading or unloading of goods, it will be necessary that railway siding be provided to the petitioner-company at the expense of respondent No. 1 of the Railway Administration. Instead of complying with either of the alternatives suggested on behalf of the petitioner-company side-tracked that suggestion by raising the tenable plea of railway siding being provided either at the expense of respondent No. 1 or of Railway Administration. In reply, it was also added that price of Rs. 2,76,000, which obviously was approximate and an on account figure of the price of the land sought to be acquired, was exorbitant. In its devisive reply, it was further suggested that the area sought to be acquired for the petitioner-company be raised from 200 acres to 400 acres. This demand of the petitioner-company to acquire such a large tract of land is indicative of the extent, to which the petitioner-company has in replies been spinning out fanciful conditions and making extravagant claims of its own. Thinking that the petitioner-company meant business, though erroneously, and might eventually shift, earlier notice for determination of licence, which had been extended to January 25, 1961 to enable it to shift the distillery by that date, was kept in abeyance till further orders. In reply to an enquiry solicited by

respondent No. 3 as to whether the petitioner-company was prepared to defray the expenses to be incurred for railway siding, it was communicated by the company by its letter dated May 19, 1961, that the company was not prepared to incur any financial liability for construction of railway siding and that the acquisition of the land for the petitioner-company be proceeded with. Seeing that no effect had been given to the resolutions passed by the Municipal Committee and the Punjab Legislative Assembly, the Municipal Committee sent a representation to the Governor of Punjab for removal of distillery from the town of Karnal on the ground of its being nuisance to the inhabitants of its locality. The representation was referred to the Director of Health for report. On January 16, 1962, the Director sent report to respondent No. 3 to the effect that the distillery was a nuisance on account of the offensive smell and obnoxious odour it emitted and its existence in the town of Karnal was injurious to the health of those who lived around it. At the end, he recommended that it was necessary that it be removed from its present site. On August 19, 1963, respondent No. 3 communicated to the petitioner-company that notice for determination of the licence, which had been kept in abeyance, had been revived and that the petitioner-company should shift by March 31, 1964, failing which the licence would stand determined. In reply, by letter dated November 14, 1963, the petitioner-company requested respondent No. 2 that the company was prepared to slash down its earlier demand for acquisition of land measuring 400 acres to 60 acres and was prepared to give guarantee of bank for Rs. 50,000 towards the price of that area or deposit in cash the amount equal to the price of the land sought to be acquired with the catchy undertaking that the distillery would commence construction work within 60 days from the date of the delivery of possession of the acquired land and that the factory building would be completed within 12 months from that date. The petitioner-company forwarded cheque for Rs. 50,000 along with letter dated January 10, 1964, to the Collector of Rohtak towards the price of acquisition of land.

(67) The petitioner-company challenged the validity of notice dated May 4, 1959, which had been held in abeyance and later on revived on August 19, 1963, on the ground that it was entitled to clear one year's notice under condition 9 of the licence and consequently the notice for determination of the licence, on the basis of which respondent No. 2 wanted to determine its licence, was illegal,

by filing a writ petition on March 19, 1964. It bears Civil Writ No. 472 of 1964. The notice was obviously illegal. Having been served on May 5, 1959, it remained suspended from May 4, 1960 to August 19, 1963 and thus was no notice for one clear and continuous year. The anxiety on the part of the respondents to see that the distillery was shifted from its premises actuated them at the instance of the petitioner-company to issue notification under Section 4 of the Land Acquisition Act, 1894 on April 14, 1964, for acquisition of 60 acres of land in the estate of village Rathdhana. After that notification had been issued, there was issued another notification on April 14, 1964, under Sections 6 and 17(2) of the Land Acquisition Act. Civil Writ petition No. 472 of 1964, entitled as *Karnal Distillery Co. Ltd. Karnal* v. *State of Punjab and others* (12), was allowed on October 26, 1964, by a Division Bench of the High Court consisting of Falshaw C. J. and Grover J. holding that the notice, dated August 19, 1963 served on the petitioner-company being for a period less than one year was invalid and was quashed. The Deputy Secretary, Revenue recorded an order on October 29, 1964 noting that as a result of discussion by respondent No. 2 with the Minister for Excise and Taxation, it was decided that there was no obligation on the part of the Government to acquire land for the petitioner-company, that the distillery be shifted from Karnal to some other suitable place, that the proceedings for acquisition be dropped and that the Government should render all reasonable assistance to the Managing Director of the petitioner-company to enable him to shift the distillery. Then, there followed the service of notice, dated December 14, 1964 for determination of the licence of the petitioner-company. It is the validity of this notice, which has been impugned by the petitioner-company.

(68) The above discussion of the correspondence that passed between the parties shows that it is the management of the petitioner-company, who have been unfair to the respondents and have been assigning collateral reasons to resist the fully called for demand of the respondents for the distillery of the petitioner-company being shifted from its present site. It is the conduct of the petitioner-company which smacks of *mala-fide* and the respondents cannot be held to be guilty of the plea of want of *bona-fide* as suggested on behalf of the petitioner-company. There cannot be any doubt on the premises of the above facts that it is in the interest of public that the

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distillery should be shifted from its present site without any hitch or hesitation by the petitioner-company. This plea of *mala-fide* is an after thought in the present writ petition. It is on the other leg that the shoe pinches.

(69) Shri Awasthy appearing on behalf of the petitioner-company laid stress upon the dropping of acquisition proceedings by respondent No. 1 after they had commenced those proceedings at the instance of the petitioner-company and that the course of abandonment of the acquisition proceedings adopted by respondent No. 1 is suggestive of *mala-fide* on the part of the respondents. The proceedings for acquisition of land were initiated by respondent No. 1 at the instance of the petitioner-company. There was no obligation statutory or otherwise on respondent No. 1 to acquire land for the petitioner-company for the purpose of providing it with a site to construct a new distillery in place of the old one. It was an act of indulgence or a favour shown by respondent No. 1. If respondent No. 1 thought it inexpedient or otherwise did not think it proper to acquire land for the petitioner-company, the inference of *mala-fide* did not necessarily folliw from the act of discontinuance of acquisition proceedings. There has been stated on behalf of the respondents in their return a cogent reason that necessitated the dropping of those proceedings. It is stated that the land sought to be acquired in the estate of village Rathdhana is situate in the district of Rohtak and that acquisition of land for a distillery in that district will go counter to the settled policy carried into effect by respondent No. 1 in keeping that district dry for enforcing prohibition.

(70) It has been judicially noticed by the above referred to Division Bench in *Karnal Distillery Company Ltd.* v. *The State of Punjab and others* (12), that this distillery in its present site is a nuisance. The Division Bench observed as follows:—

> "There seems to be no doubt that the distillery, which is situate in the town of Karnal is a nuisance and for years the Government has been trying to have it removed to some place away from the town."

(71) It is specifically stated therein that no allegations of *mala-fide* against the respondents have been either made in the writ petition or in the rejoinder of the petitioner-company.

(72) Before concluding the judgment, we may mention that in course of arguments, the counsel for the State stated that it was not the intention of the Government to stop the business of the petitioner-company. He added that the Government would be prepared to grant the licence in case the distillery was shifted without any undue delay from its present site to another suitable site. This again reflects the *bona-fides* on the part of the Government in having the distillery shifted elsewhere.

(73) In the result, the writ petition is disallowed. There will. however, be no order as to costs.

K. S. K.

REVISIONAL CRIMINAL

Before S. S. Sandhawalia and B. S. Dhillon, JJ.

THE STATE OF PUNJAB.—*Petitioner.*

versus

NATHU, ETC.—*Respondents.*

Criminal Revision No. 48-R of 1968.

May 20, 1971.

Code of Criminal Procedure (V of 1898)—Sections 235 and 239—Indian Penal Code (XLV of 1860)—Sections 307/34 and 397—Arms Act (LIV of 1959)—Section 27—Joint trial of two offences—When permissible—Point of *time for determining the offences to have been committed in the same transaction—Whether when accusation is made or when trial is concluded—Accused-persons charged with substantive offences under the Indian Penal Code as well as under Section 27, Arms Act—Whether can be jointly tried—Recovery of the fire arm subsequent to the occurrence in which such arm is used—Whether warrants a finding that the offence under the Arms Act does not from part of the same transaction.*

Held, that in order to decide whether a joint trial of two offences is permissible or not, the provisions of section 235 of the Code of Criminal Procedure shall have to be applied to the facts of each case. If from the facts as alleged by the prosecution the Court comes to the conclusion that one series of acts are so connected together so as to form the same transaction, a joint trial would be permissible. The factors which will help the Court in examining whether the provisions of section 235 of the Code are