

## CIVIL WRIT

Before Bishan Narain, J.

MESSRS SHAMBU NATH AND SONS, LTD.,—Petitioner

*versus*

THE PUNJAB STATE (1) THE EXCISE AND TAXATION  
COMMISSIONER, PUNJAB, JULLUNDUR;—Respondents

Civil Writ No. 371 of 1957

*Dangerous Drugs Act (II of 1930)—Section 8(2)—Rules framed under—Rule 27.30—Power to refuse the renewal of license given under—Whether arbitrary—Rule, whether ultra vires of Article 19(1)(g) of the Constitution—Constitution of India, 1950—Article 19(6)—Reasonableness of restrictions—Test of.*

1958

March, 7th

*Held*, that under Rule 27.30(2) framed under section 8(2) of Dangerous Drugs Act, 1930, the refusal of licence depends only on the subjective determination of an excise officer who can refuse to renew the same at his pleasure. What is more objectionable is that the persons whose licence is not renewed is not entitled to be informed of the reasons upon which such refusal is based. The Officer is not only not bound to record reasons for such refusal, but also is under no obligation to inform the applicant or any authority—may be his superior authority—of these reasons. Such a decision is not subject to any kind of check by superior

authorities. It is doubtful if an appeal or revision lies against refusal to renew a licence. But, in any case, this right is wholly illusory as the aggrieved trader cannot effectively appeal or endeavour to get the decision revised when he does not and cannot know the reasons of this refusal. Further, the decision does not rest with the Government nor exclusively with the highest officer in the department. In these circumstances it cannot be said that this power is to be exercised to effectuate the policy underlying the Dangerous Drugs Act when this policy is safeguarded by the conditions incorporated in the licence and which conditions a holder of the licence must observe. An officer under Rule 27.30 has been given arbitrary power to control a citizen's freedom of occupation and trade and as this power far exceeds the ambit of Article 19(6) of the Constitution, the Rule violates the fundamental right guaranteed to every citizen of India under Article 19(1)(g) and hence it is *ultra vires* so far as it relates to the renewal of the licences.

*Held further*, that to determine the reasonableness of the restrictions under Article 19(6) of the Constitution, it is desirable to consider the substantive aspect of the restrictions and the mode of putting these restrictions into practice. If the restrictions imposed depend on the mere pleasure and discretion of an executive officer and on his subjective determination, then such restrictions can not be considered reasonable .

*State of Madras v. G. Row* (1), *Dr. N. B. Khare v. The State of Delhi* (2), *Raghubir Singh v. Court of Wards, Ajmer* (3), *Messrs Dwarka Prasad-Laxmi Narain v. State of Uttar Pradesh and others* (4), *Cooverjee v. Excise Commissioner, Ajmer* (5), *Crowley v. Christensen* (6), referred to.

*Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of mandamus be issued to the respondents directing them not to deprive the petitioning-company of its lawful business of the manufacture of acids, etc., and further praying that the order of the*

(1) A.I.R. 1952 S.C. 196, 200.

(2) A.I.R. 1950 S.C. 211.

(3) A.I.R. 1953 S.C. 373.

(4) A.I.R. 1954 S.C. 224.

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

(6) (1890) 34 Law Ed. 620. (A).

*Excise and Taxation Commissioner, refusing to renew the licences of the petitioning-company be quashed.*

H. R. SODHI, for Petitioner.

L. D. KAUSHAL, Deputy Advocate-General, for Respondents.

### ORDER

BISHAN NARAIN, J.—Messrs Shambhu Nath and Bishan Narain, J. Sons, Limited, and Firm Sri Ram-Ganga Ram of Amritsar carry on the business of chemists and druggists. In the course of business these concerns have to deal in dangerous drugs as defined in the Dangerous Drugs Act, 1930. Under the Act no person can carry on business in such dangerous drugs without a licence. These licences are of various types and are renewable year to year on payment of the prescribed licence fee. These two concerns have admittedly been getting licences in Forms DD5 and DD6 since a long time to enable them to possess and sell dangerous drugs. These two concerns along with others applied for renewal of their licences in Forms DD5 and DD6 for the year 1956-57. The Excise and Taxation Commissioner, Punjab, issued a list on 21st March, 1956; containing the names of the concerns whose licences had been renewed. This list did not contain the names of the petitioning concerns and they have filed in this Court separate writ applications Nos. 371 of 1957, and 416 of 1957 challenging the validity of the rules which authorise and empower the Excise and Taxation Commissioner to grant or refuse these licences. As the point involved in these two writ petitions is the same, it will be convenient to decide both these petitions by this judgment.

The petitioners' case is that the rules framed under section 8(2) of the Dangerous Drugs Act so

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far as they relate to refusal and renewal of licences violate the petitioners fundamental rights guaranteed under Article 19(1)(g) of the Constitution.

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Now the Dangerous Drugs Act has been enacted to suppress contraband traffic in and abuse of dangerous drugs and to control certain operations relating to them. Section 8, so far as it is relevant for the present purpose, reads:—

“(1) No one shall—

(a) import or export inter-provincially, transport, possess or sell any manufactured drug, other than prepared opium, or coca leaf, or

(b) manufacture medicinal opium or any preparation containing morphine diacetyl-morphine or cocaine, save in accordance with rules made under subsection (2) and with the conditions of any licence for that purpose which he may be required to obtain under these rules.

(2) The Provincial Government may make rules permitting and regulating—

(a) the inter-provincial import and export into and from the territories under its administration, the transport, possession and sale of manufactured drugs, other than prepared opium, and of coca leaf; and

(b) the manufacture of medicinal opium or of any preparation containing morphine, diacetylmorphine or

cocaine from materials which the maker is lawfully entitled to possess.

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Rules made under section 8(2) provide for the issue of licences in various forms including Forms DD5 and DD6 which are issued subject to conditions detailed in rule 28.7 and rule 28.8, respectively. A person holding a DD5 licence is authorised to sell for medicinal purposes only to any adult person the following drugs:—

- (1) medicinal hemp,
- (2) medicinal opium,
- (3) preparations containing medicinal hemp or medicinal opium.

The holder of DD6 licence is authorised to sell the following drugs:—

- (i) coca derivatives,
- (ii) morphine,
- (iii) diacetyl-morphine,
- (iv) all preparations containing more than 0.2 per cent of morphia or containing diacetyl-morphine to the under-mentioned persons, referred to in rule 27.19 of the Punjab Manufactured Drugs Rules, 1932, in such quantities as they are entitled to possess the drugs—

- (1) a medical practitioner,
- (2) licensed chemist,

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- (3) medical practitioners in managing or supervising charge of a hospital or dispensary who have the necessary permission of the Collector under rule 27.21, and
- (4) any person holding the prescription of a medical practitioner.

There are other stringent conditions attached to these licences to safeguard against abuse of the rights given by the licences, but it is not necessary to describe them in this judgment. The rules under section 8(2) also provide the procedure which must be observed for grant, refusal or revocation of licences. Rule 27.24 authorises an officer empowered by the Financial Commissioner to grant to any person a druggist's licence in Form DD5 permitting him to manufacture articles mentioned in rule 28.7. Rule 27.24(b), similarly provides for grant of a chemist's licence in Form DD6 permitting manufacture and preparation of the items mentioned in rule 28.8 Rule 27.30 reads—

“27.30. (1) Any officer empowered under any of these rules to grant a licence, permit or pass thereunder, may in his discretion either grant the licence, permit or pass (as the case may be) applied for, or by an order in writing refuse to grant such a licence, permit or pass.

(2) A person whose application for any licence, permit or pass has been refused shall not be entitled to be informed of the reasons upon which such refusal is based.”

Rule 27.34 provides an appeal from the order of the Excise Officer, or of the Collector or of the Commissioner. Under Rule 27.36 the Financial Commissioner or a Collector may revise any order passed by any Excise Officer subordinate to him.

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It is clear from these provisions that the Dangerous Drugs Act as well as the rules framed thereunder, so far as this case is concerned, regulate and control possession, manufacture and sale of medicines which contain dangerous drugs. Article 19(1)(g) guarantees freedom inter alia to carry on any occupation, trade or business. This guarantee, however, is subject to reasonable restrictions as laid down in Article 19(6) of the Constitution. The question arises whether the restrictions imposed by the Act and its rules in the present case fall within the ambit of Article 19(6) of the Constitution or are in excess of it, i.e., whether or not these restrictions are reasonable. The test of reasonableness has been laid down by the Supreme Court in a number of decisions. It has been observed in the *State of Madras v. G. Row* (1):—

“It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict.”

(1) A.I.R. 1952 S.C. 196, 200.

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To determine reasonableness of restrictions, it is desirable to consider the substantive aspect of the restrictions and the mode of putting those restrictions into practice. It has been laid down in *Dr. N. B. Khare v. The State of Delhi* (1), that the question of reasonableness of the restrictions imposed by a law may arise as much as from the substantive part of the law as from its procedural portion. The Supreme Court has also laid down that if restrictions imposed depend on the mere pleasure and discretion of an executive officer and on his subjective determination, then such restrictions cannot be considered to be reasonable *Raghubir Singh v. Court of Wards, Ajmer* (2). The observations of the Supreme Court in *Messrs Dwarka Prasad Laxmi Narain v. State of Uttar Pradesh and others* (3, are—

“\* \* \* but the mischief arises when the power conferred on such officers is an arbitrary power unregulated by any rule or principle and it is left entirely to the discretion of particular persons to do anything they like without any check or control by any higher authority. A law or order, which confers arbitrary and uncontrolled power upon the executive in the matter of regulating trade or business in normally available commodities cannot but be held to be unreasonable. As has been held by this Court in *Chintaman Rao v. State of Madhya Pradesh* (4), (a) the phrase ‘reasonable restriction’ connotes that the limitation imposed upon a person in enjoyment of a right should not be

- (1) A.I.R. 1950 S.C. 211.  
 (2) A.I.R. 1953 S.C. 373.  
 (3) A.I.R. 1954 S.C. 224.  
 (4) A.I.R. 1951 S.C. 118.



arbitrary or of an excessive nature beyond what is required in the interest of the public.

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Legislation, which arbitrarily or excessively invades the right, cannot be said to contain the quality of reasonableness, and unless it strikes a proper balance between the freedom guaranteed under Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in reasonableness."

While dealing with a particular trade, i.e., liquor trade, their Lordships in *Cooverjee v. Excise Commissioner, Ajmer* (1), laid down this principle—

"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 facts must differ from trade to trade and no hard and fast rules concerning all trades can be laid down. 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."

In that judgment the observation of Field, J., in *Crowley v. Christensen* (2), was approved and it was held that there was no inherent right in a citizen to sell intoxicating liquors and that as it was a business attended with danger to the community, it may be entirely prohibited or be permitted under such conditions as will limit to the utmost

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

(2) (1890) 34 Law Ed. 620 (A).

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its evils. Accordingly it was held in that decision that the nature of the business is an important element in deciding the reasonableness of the restrictions.

The learned counsel for the petitioners have argued that the principles applicable to ordinary trade are applicable to the present case as restrictions imposed relate essentially to manufacture and sale of medicines although some of these medicines contain dangerous drugs and it may be necessary to control the possession, manufacture and sale of these drugs. It was conceded that as some of the ingredients of these medicines consist of dangerous drugs, it is reasonable that certain conditions should be laid down to prevent these dangerous drugs falling in undesirable hands and under the control of unauthorised persons and also to prevent manufacture by incompetent hands, but it is urged that the rules made under the Act travel far beyond such restrictions by giving arbitrary and unregulated power to the Financial Commissioner or his delegate to grant or refuse a licence to carry on this trade. On the other hand, the respondents' case is that the principles laid down in *Cooverjee v. Excise Commissioner, Ajmer* (1), are applicable to the present case and that in the nature of things the discretion conferred though wide is not necessarily arbitrary.

The reasonableness of these restrictions must be determined on the principles laid down by the Supreme Court in the above-mentioned decisions. The present case relates to renewal of druggists' and chemists' licences, and I have to determine whether the power given to the Financial Commissioner or his nominee in this respect is or is not within the ambit of Article 19(6) of the Constitution.

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

The petitioners require the drugs mentioned in licences DD5 and DD6 for purposes of medicines. The manufacture and possession of medicines is an ordinary trade which must be held to be beneficial to the public interest and cannot be said to be fraught with danger to public safety, health and morals, etc. Some medicines require drugs which are defined as dangerous drugs in the 1930 Act. Under the Geneva Convention to which India is a party, measures have to be taken to suppress not only the abuse of these drugs, but also contraband traffic in them. It cannot be said that the use of these drugs for medicinal purposes is something undesirable and that it is required to be suppressed. However, the supply of these drugs without any restriction or control to chemists and druggists may open a wide door to their misuse and contraband traffic in them. It is, therefore, necessary to control the supply and use of these commodities to these chemists and druggists. It is also necessary in the interest of the public health that in the process of manufacture these drugs are handled by competent persons. Under section 8 no person other than a licence-holder can manufacture medicinal opium or use specified drugs in any preparation. These licences are to be granted on conditions relating to possession, sale and manufacture, etc. These conditions are laid down in great details in rules 28.7 and 28.8, and it is common ground that these conditions in the circumstances are reasonable and also that they effectively carry out the object and purpose of the Act. The question arises whether the power given in rule 27.30 is reasonable in these circumstances. The officer granting the licence cannot add any condition or delete any condition from the conditions subject to which licences are granted. The Collector, in rules 27.18 and 27.19, is empowered to fix the maximum quantity of the drugs that a licence-holder can possess,

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but the proviso to rule 27.24 lays down that no chemist is authorised to possess a greater quantity than four ounces of opium alkaloidal derivatives or 4 ounces of coca derivatives without special sanction of the Financial Commissioner. It is, therefore, clear that under rule 27.30 the officer empowered to grant a licence, which obviously includes its renewal also, has not to apply his mind in any way to the control of the drugs but has only to see if a particular applicant for licence is a person who can effectively observe and comply with the conditions of the licence. There is no indication in the rule as to the matters that may be taken into consideration when the officer is called upon to decide whether or not to grant a licence, nor is there any such indication for renewing a licence. It must be remembered that at the renewal stage he is dealing with persons who had already held the licence—and in the present case for a number of years—and had already satisfied the authorities that they were in a position to comply with the conditions of the licence. On the strength of the licences they have invested considerable amounts of money in the business and may have employed persons with technical knowledge in drugs, etc. Therefore, at this stage it is extremely important for the applicants for licences to carry on their business, otherwise they would suffer heavy pecuniary loss. Under rule 27.30(2), however, the refusal of licence depends only on the subjective determination of an excise officer who can refuse to renew the same at his pleasure. What appears to me far more objectionable is that under rule 27.30(2) the persons whose licence has not been renewed is not entitled to be informed of the reasons upon which such refusal is based. Therefore, the officer is not only bound to record reasons for such refusal but is also under no obligation to inform the applicant or any authority—may be his superior authority—of those reasons. Such a decision is not subject to any kind

of check by superior authorities also. It was argued on behalf of the State that such a decision is subject to appeal and revision under rules 27.34 and 27.36. One of the petitioners had admittedly appealed under rule 27.34 but it was dismissed on the ground that it was incompetent. It is doubtful if an appeal or revision lies against refusal to renew a licence. But, in any case, this right is wholly illusory as the aggrieved trader cannot effectively appeal or endeavour to get the decision revised when he does not and cannot know the reasons of this refusal. Further, the decision does not rest with the Government nor exclusively with the highest officer in the department. In these circumstances it cannot be said that this power is to be exercised to effectuate the policy underlying the Dangerous Drugs Act when this policy is safeguarded by the conditions incorporated in the licence and which conditions a holder of the licence must observe. The principle laid down in *Cooverjee v. Excise Commissioner, Ajmer* (1), does not apply to the case like the present one and the trade involved in the present case is a beneficial trade and cannot be said to affect adversely the public health or morals. In my view an officer under rule 27.30 has been given arbitrary power to control a citizen's freedom of occupation and trade, and this power far exceeds the ambit of Article 19(6) of the Constitution.

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It was argued by the learned counsel for the State that in the present case I should not interfere as the Excise and Taxation Commissioner has filed an affidavit giving reasons which persuaded him not to renew the licences of these petitioners. The reasons given are that the firm had not used the licences for a number of years (Civil Writ No. 371 of 1957) and that the Company was guilty of certain irregularities (Civil Writ No. 416 of 1957).

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

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These irregularities are, however, not specified in the affidavit or the reply. In my view this disclosure of the reasons does not affect the position at all. It is admitted that these grounds were not communicated to the petitioners and reliance has been placed on rule 27.30(2). It is, therefore, clear that the petitioners were not given any opportunity by the Commissioner to meet the allegations made against them before their applications for renewal of licences were dismissed. It is impossible in these proceedings to determine whether these are the grounds which really persuaded the learned Commissioner to refuse to renew their licences. These grounds involve questions of fact and it would not be appropriate in these proceedings to launch a detailed inquiry as to whether the facts on which the Commissioner states that he refused to renew the licences were in fact correct or not. It is not the respondents' case that these grounds were recorded anywhere, and it is too late now to say that the Commissioner had refused to renew the licences on grounds of irregularity, etc., when at the time of the refusal he neither informed the petitioners of those grounds nor does he say that he recorded them anywhere.

For all these reasons I hold that rule 27.30 violates the fundamental right guaranteed to every citizen of India by Article 19(1)(g) of the Constitution so far as the rule relates to the renewal of licences. Therefore, refusal to renew the licences for the year 1956-57 by the Excise and Taxation Commissioner is invalid and void. It is not possible for me to give any other relief in these proceedings to the petitioners.

The result is that these petitions succeed and I accept them, but in the circumstances leave the parties to bear their own costs.

K. S. K.