plaintiffs should succeed and reversing the decree of the Courts below the suit of the plaintiffs be decreed. Parties to bear their own costs throughout.

Mehar Singh, J.

B. R. T.

LETTER PATENT APPEAL

Before G. D. Khosla, Acting C.J. and S. S. Dulat, J.

THE PUNJAB STATE AND ANOTHER,—*Appellants*

versus

MESSRS SHAMBHU NATH AND SONS, LTD., AMRITSAR,—*Respondents.*

1959

Jan., 14th

Letters Patent Appeal No. 91 of 1958.

Dangerous Drugs Act (II of 1930)—Object of—Section (8)(2)—Rule 27.30 of the Punjab Excise Manual, Volume II, framed under—Whether ultra vires *as violating the right under Article 19(1)(g) of the Constitution—Matter left to the discretion of Licensing Officer—No appeal or revision provided—Whether sufficient to hold the rule to be* ultra vires.

Held, that the object of the Dangerous Drugs Act and of the rules framed thereunder is the professed object of vesting in the Central Government the control of dangerous drugs. It will not be denied by any right-thinking person that it is essential to have some kind of control over dangerous drugs. The question whether any particular impediment or control is or is not reasonable will depend upon the peculiar facts of each case. The kind of restriction which, when applied to, say, the manufacture of opium or some other poisonous drug, would be considered eminently reasonable, would not be reasonable when applied to a commodity of everyday use like cloth. In the same way restrictions may be placed upon the growth and cultivation of opium poppy or hemp. But to place such a restriction upon the growth or cultivation of food, cereals or vegetables would not be considered reasonable. Therefore, the question whether any particular restriction is or is not reasonable must depend upon the facts of each case.

Held, that Rule 27.30 of the Punjab Excise Manual, Volume II, framed under Section 8(2) of the Dangerous

Drugs Act is not *ultra vires* on the ground that it infringes the rights under Article 19(1)(g) of the Constitution. Free and unrestricted manufacture of the dangerous drugs is liable to the gravest risk and cannot be allowed some form of control is absolutely essential. While granting the necessary licence, the Licensing Officer has to apply his mind to the control of the drugs and to the suitability of the particular candidate. The suitability of a candidate is closely related to the control of drugs because, if a licence is issued to an unsuitable or undesirable person, the issue of such a licence will defeat the very object for which licences are issued. Nor can the said rule be declared *ultra vires* on the ground that the matter has been left to the discretion of the Licensing Officer and no appeal or revision has been provided against his decision. The law is quite clear that where in a certain particular matter absolute discretion has been granted to a certain authority to pass orders or issue licences, then the rule or Act will not be considered *ultra vires* the Constitution if in that particular case the restriction is considered reasonable.

Held, that the drugs for which these licences are granted are undoubtedly dangerous drugs and it is eminently desirable that very close control should be maintained over their manufacture and disposal. It is almost impossible to give reasons for refusal in every case. The matter must ultimately, to some extent, rest upon the discretion of the licensing officer. It cannot be presumed that the Licensing Officer will act arbitrarily or capriciously, and if in any particular instance he does so, the aggrieved party has a remedy open to it. The fact that there is no check of the superior authority in the form of appeal or revision, is scarcely enough for holding that a certain rule, or authority given to an authority is *ultra vires* and is liable to be condemned. Any abuse of power by a public servant can be redressed, if not by appeals or revisions, by other means such as moving a petition for a writ under Article 226 of the Constitution.

Apeal under clause 10 of the Letters Patent against the order of Hon'ble Mr. Justice Bishan Narain, dated 7th March, 1958, passed in Civil Writ No. 371 of 1957.

S. M. SIKRI, for Appellants.

H. R. SODHI, for Respondents.

JUDGMENT

Punjab State and another v. Messrs Shambbu Nath and Sons, Ltd., Amritsar

G. D. Khosla, A.C.J.

G. D. KHOSLA, A.C.J.—These are two appeals (Leters Patent Appeals Nos. 91 and 92 of 1958) by the State of Punjab under clause 10 of the Letters Patent against an order made by Bishan Narain, J., whereby he disposed of Civil Writs Nos. 371 and 416 of 1957. By this order the learned Single Judge held that rule 27.30 of the Punjab Excise Manual, Volume II, framed and notified by the Punjab Government under section 8(2) of the Dangerous Drugs Act (Act No. II of 1930) was *ultra vires* the Constitution, because it infringed the rights of citizens guaranteed by clause (g) of Article 19(1) of the Constitution.

In Civil Writ No. 371 of 1957, the petitioners are Messrs Shambhu Nath and Sons, who claim to be manufacturers of acids, chemicals and pharmaceuticals. They have five different licences for the manufacture and sale of different commodities. Among these, the fifth item is licences D.D. 5 and D.D. 6 granted under rule 27.30 entitling them to manufacture and sell certain dangerous drugs. They made an application for the renewal of these licences for the year 1956-57, but the licences were not renewed and in a list of licences published on the 21st of March, 1956, their name did not appear. It is nowhere averred in the petition that the petitioners did, in fact, avail themselves of the rights given under these licences, and on behalf of the Department it was alleged that for a number of years preceding the non-renewal of their licences, they had not made use of these licence and had not been manufacturing the drugs to which these licences related. This allegation of the Government Department was not denied by the petitioners.

In petition No. 416 of 1957, the petitioners are Messrs Siri Ram Ganga Ram. They, too, held

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licences in Forms D.D. 5 and D.D. 6. Notice was issued to them for the cancellation of these licences towards of the end of the year 1955-56. This notice was, however, later withdrawn, but their application for the renewal of these licences during the year 1956-57, was not granted and in the list of licensees issued on the 21st of March, 1956, their name did not appear. Their allegation is that the non-renewal of their licences was *mala fide* and illegal. The reply of the Government Department to this petition was that the petitioners had been guilty of certain irregularities and upon the discovery of these irregularities notice for the cancellation of the previous licences was issued to them. This notice was, however, withdrawn apparently because only a short time remained before these licences would automatically expire. As the Department considered that the petitioners were not suitable persons for being granted these licences, their application for a further renewal during the year 1956-57 was not granted.

Rule 27.30 is in the following terms :—

> "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 bay 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."

The learned Judge, after referring to two Supreme Court cases, *The State of Madras,* v.

V. G. Row (1), and *Messrs Dwarka Prasad Laxmi Narain* v. *State of Uttar Pradesh and others,* (2) came to the conclusion that the rule was bad for four reasons. In the first place he observed that the officer empowered to grant these licences need not apply his mind to the control of drugs and that all he was required to see was whether a certain person was or was not a fit person to be granted a licence. In the second place he observed that the rule merely gave him the prerogative of subjective determination and he was not required to apply any standards apart from his own judgment before deciding to whom the licence should be issued. In the third place he observed that there was no check upon the authority of the issuing officer and that if any right of appeal or revision existed, it was wholly illusory. In the fourth place he observed that the trade controlled by these licences was a beneficial trade and could not be said to affect adversely the public health or morals.

In order to consider the validity of the rule it is necessary to make a reference to some of the relevant parts of the Act and the rules framed thereunder. The Dangerous Drugs Act of 1930 was intended to vest in the Central Government the control over certain operations relating to dangerous drugs. The preamble of this Act is important and may be quoted in its entirety:—

> "Whereas India participated in the Second International Opium Conference, which was convoked in accordance with the resolution of the Assembly of the League of Nations, dated the 27th day of September, 1923, met at Geneva on the 17th

(1) A.I.R. 1952 S.C. 196
(2) A.I.R. 1954 S.C. 224

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daw of November, 1924, and on the 19th day of February, 1925, adopted the Convention relating to Dangerous Drugs (hereinafter referred to as the Geneva Convention) ;

And whereas India was a State signatory to the said Geneva Convention ;

And whereas the Contracting Parties to the said Geneva Convention resolved to take further measures to supress the contraband traffic in the abuse of Dangerous Drugs, especially those derived from opium, Indian hemp and coca leaf, such measures being more particularly set forth in the Articles of the said Geneva Convention ;

And whereas for the effective carrying out of the said measures it is expedient that the control of certain operations relating to Dangerous Drugs should be centralised and vested in the Central Government ;

And wheras it is also expedient that the penalties for certain offences relating to Dangerous Drugs should be increased, and that all penalties relating to certain operations should be rendered uniform;

It is hereby enacted as follows :—

The relevant portion of section 8 of the Act is in the following terms :—

"8. (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 sub-section (2) and with the conditions of any licence for that purpose which he may be required to obtain under those rules.

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

(a) * * * * *

(b) the manufacture of medicinal opium or of any preparation containing morphine, diacetye-morphine or cocaine from materials which the maker is lawfully entitled to possess.

Such rules may prescribe the form and conditions of licences for such import, export, transport, possession, sale and manufacture, the authorities by which such licences may be granted and the fees that may be charged, therefore, and any other *matters requisite to render effective the control of the State Government over such import, export, transport, possession, sale and manufacture.*

I have underlined the phrase which is of material importance in the present case. Uuder

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Section 8(2) the Punjab Government framed rules which are published in the Punjab Excise Manual. Rure 27.2 deals with the manufacture and preparation of morphine and other dangerous drugs. Rule 27.24 empowers an officer to grant a druggist's licence in Form D.D. 5 and D.D. 6. Rule 27.30, which has been quoted above, is the rule which is now being impugned before us.

It will be seen at once that the object of the Act and of the rules is indeed the professed object of vesting in the Central Government the control of dangerous drugs. It will not be denied by any right-thinking person that it is essential to have some kind of control over dangerous drugs. The question whether any particular impediment or control is or is not reasonable will depend upon the peculiar facts of each case. The kind of restriction, which when applied to, say the manufacture of opium or some other poisonous drug, would be considered eminently reasonable would not be reasonable when applied to a commodity of everyday use like cloth. In the same way restrictions may be placed upon the growth and cultivation of opium poppy or hemp. But to place such a restriction upon the growth or cultivation of food cereals or vegetables would not be considered reasonable. Therefore, the question whether any particular restriction is or is not reasonable must depend upon the facts of that case. To say that a certain type of restriction was considered unreasonable by the Court in one instance would scarcely be a good argument to hold the same type of restriction unreasonable in another case. This matter was considered by the Supreme Court in *Cooverjee B. Bharucha* v. *The Excise Commissioner and the Chief Commissioner, Ajmer, and others,* (1), and I

(1) 1954 S.C.R. 873

cannot do better than quote a passage from the judgment of Chief Justice Mahajan where the nature of restrictions is set out very clearly:—

> "It cannot 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 conditions 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 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, manufacture or sold, require also special qualifications in the parties permitted to use, manufacture or sell them".

The Supreme Court in this case was considering the *vires* of sections 13 and 14 of the Excise Regulations I of 1915 of Ajmer-Merwara. Section 27 of this Regulation dealt with the grant of licences, permits and passes, and the Supreme Court

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held that this section was good and did not infringe the Constitution. A similar matter was considered by the Supreme Court in *Harishankar Bagla and another* v. *The State of Madhya Pradesh* (1). In this case the provisions of the Cotton Textile (Control of Movement) Order, 1948, were being considered. This order empowered the Textile Commissioner to give permits for the removal and transport of cotton textiles. It was argued before the Court that clause 3 of the Order infringed the rights of the citizens guaranteed in sub-clauses (f) and (g) of Article 19(1) of the Constitution. This argument was repelled and Chief Justice Mahajan, observed—

> "The policy underlying the Order is to regulate the transport of cotton textile in a manner that will ensure an even distribution of the commodity in the country and make it available at a fair price to all. The grant or refusal of a permit is thus to be governed by this policy and the discretion given to the Textile Commissioner is to be exercised in such a way as to effectuate this policy. The conferment of such a discretion cannot be called invalid and if there is an abuse of the power, there is ample power in the Courts to undo the mischief."

The learned Chief Justice referred to the previous decision in *Messrs Dwaraka Prasad Laxmi Narain* v. *State of Uttar Pradesh and others* (2), upon which Bishan Narain, J., has placed so much reliance. Mahajan, C.J., distinguished that case and took the view that the restriction relating

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(1) (1955) 1 S.C.R. 380
(2) A.I.R. 1954 S.C. 224

to any particular trade or matter must be considered in reference to the circumstances obtaining in that particular case.

The provisions of the Industrial Disputes Act were considered by the Supreme Court in *Niemla Textile Finishing Mills Ltd. and others* v. *The 2nd Punjab Tribunal and others* (1), Head -notes (a) and (c) sum up the decision of the Supreme Court accurately and I may here quote head-note (a)—

> "The different authorities which are constituted under the Act are set up with different ends in view and are invested with powers and duties necesasry for the achievement of the purposes for which they are set up. The appropriate Government is invested with a discretion to choose one or the other of the authorities for the purpose of investigation and settlement of industrial disputes and whether it sets up one authority or the other for the achievement of the desired ends, depends upon its appraisement of the situation as it obtains in a particular industry or establishment."

It will, therefore, be seen that the three more recent pronouncements of the Supreme Court upon the matter lay down the law quite clearly that where in a certain particular matter absolute discretion has been granted to a certain authority to pass orders or issue licences, then the rule or Act will not be considered *ultra vires* the Constitution if in that particular case the restriction is considered reasonable.

(1) A.I.R. 1957 S.C. 329

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In the present case the Excise and Taxation Commissioner has been given the power to grant or refuse licences in Forms D.D. 5 and D.D. 6. The Legislature thought it fit in its wisdom to give such power to such an official, and provided by rule 27.30 that the order refusing a licence must be in writing, but it also provided that the reason for refusal need not be communicated to the applicant, because it may not be in the public interest to do so. It will not be denied that rule 27.30 does profess to attain the objects of the Dangerous Drugs Act. The question is whether, although within the Act, it infringes any provision of the Constitution and this will depend upon whether the issue of licences is reasonable or not. The drugs for which these licences are granted are undoubtedly dangerous drugs and it is eminently desirable that very close control should be maintained over their manufacture and disposal. It is almost impossible to give reasons for refusal in every case, and to take a hypothetical instance, if a million applications for licences are made, then only a few licences can be issued and the other applications must be rejected for reasons which will not appear good to the disappointed applicants. It may simply be that for reasons which cannot be formulated into words the issuing authority considers a small minority of applicants more suitable because they have better means or because they have more experience or are considered more honest than the others. The disappointed applicants cannot have any possible grievance, because it is obvious that a million licences in Forms D.D. 5 and D.D. 6 cannot be granted.

I have taken a somewhat absurd instance in order to show that ultimately the matter must to some extent rest upon the discretion of the licens-

ing officer. It cannot be presumed that the licensing officer will act arbitrarily or capriciously, and if in any particular instance he does so, the aggrieved party has a remedy open to it. In the present case the reason given for the non-renewal of the licences of the applicants in Civil Writ No. 416 of 1957 was that they had committed certain irregularities. Notice for the cancellation of the previous licences, had, in fact, issued to them, but because only a short time remained before the automatic expiry of the licences, it was considered more convenient to allow the linces to lapse and then decline to renew them for the ensuing year. In the other case the licences had not been availed of for a number of years and it was considered that some other person could utilise the licences more properly.

With great respect to the learned Single Judge I find myself unable to agree with his observation that the manufacture of dangerous drugs is a beneficial trade. It is certainly beneficial if it is not abused, but it will not be denied that the free and unrestricted manufacture of these dangerous drugs is liable to the gravest risk and that some form of control is absolutely essential. The observation of the learned Judge that the matter depends upon the subjective determination of the licensing officer is not wholly justified, because it is to be expected that the officer will take all the circumstances of the case into consideration before coming to his decision. It is also not correct to say that the officer was not to apply his mind to the control of drugs but only to the suitability of a particular candidate. Surely, the suitability of a candidate is closely related to the control of drugs. because if a licence is issued to an unsuitable or undesirable person, the issue of such a licence will defeat the very object for which licences are issued. The fact that there is no check of the

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superior authority in the form of appeal or revision, is scarcely enough for holding that a certain rule, or authority given to an authority is *ultra vires* and is liable to be condemned. Any abuse of power by a public servant can be redressed, if not by appeals or revisions, by other means such as moving a petition for a writ under Article 226 of the Constitution.

After considering the matter from all aspects, I am of the opinion that the learned Single Judge has taken an erroneous view of this matter and that he has not paid due regard to the observations of the learned Judges of the Supreme Court in the three most recent cases which have dealt with the priciples upon which the *vires* of such matters are to be considered. I would, therefore, hold that rule 27.30 is not *ultra vires* the Constitution, and these petitions must, therefore, fail. I would accordingly allow both the appeals and dismiss the petitions with costs.

Dulat, J.

DULAT, J.—I agree.

R.S.

APPELLATE CIVIL

Before G L. Chopra, J.

BHAGWAN DASS,—*Plaintiff-Appellant.*

versus

THE DISTRICT BOARD KARNAL AND ANOTHER,—*Defendants-Respondents*

Regular Second Appeal No. 844 of 1955.

1959

Jan., 14th

Northern India Ferries Act (XVII of 1878)—Management of a public ferery transferred to a local body—Provisions of the Act—Wheher applicable—Arrears of lease money—Whether recoverable as arrears of land revenue under the Act by the District Magistrate—Jurisdiction of the Civil Court—Whether barred—Amount of compensation payable on surrender of lease—By whom to be determined.