

APPELLATE CIVIL

Before Tek Chand and H. R. Khanna, JJ.

STATE OF PUNJAB AND OTHERS,—Appellants.

versus

RAGHUNATH DASS,—Respondent.

Letter Patent Appeal No. 126 of 1962

1962
August, 9th.

Punjab Excise Act (I of 1914)—Ss. 8, 36, 41 and 44—Punjab Excise Rules—Rule 36—Liquor licence auctioned—Highest bid accepted and requisite deposit received from the bidder—Purchaser—Whether acquires rights of a Licensee—Reauction of same liquor licence without notice to previous purchaser—Whether legal or permitted by the Act—Licence—Different meanings of ‘Withdrawal’, ‘cancellation’ and ‘suspension’ of licence—meaning of—When can be made—S. 8—General superintendence and control—meaning of—Constitution of India (1950)—Article 226—Writ of mandamus—Whether can issue directing the licensing authority to issue the licence to the highest bidder whose bid has been accepted—Alternative remedy by way of suit for damages—Whether expedient or effective.

Held, that the forwarding of the instrument of licence in the specified form is merely a ministerial act performed as a matter of course in a prescribed manner in obedience to the mandate of a statutory authority without regard to, or without the exercise of one’s judgment upon, the propriety of the act done. Looking at the provisions of the Act and the statutory rules, after the Collector’s proposal is accepted by the Financial Commissioner and all the fees are paid, there is left no deliberative duty calling for the exercise of judgment, except to fill and sign the requisite form. The Act or the Rules do not require the satisfaction of any further condition on the part of the licensee, or compliance by him of any other legal requirement. After the proposal has been accepted by the Financial Commissioner and the requisite fee deposited by the licensee, he is entitled to receive the licence as a matter of routine. The Act does not provide for the penultimate intervention on the part of the authority or the exercise of any discretion on the part of the State, on the question of the desirability of

issuing the instrument of licence. In other words, such a person has acquired the legal status of grantee of a licence and he can invoke his rights and is subject to obligation under the Act and is within the protection of the statute. His licence cannot be cancelled or revoked or withdrawn except in accordance with the statutory provisions which do not give any power to the State Government or any other authority to react on the liquor licence at its own arbitrary will without notice to the previous purchaser whose bid had been accepted and from whom the requisite deposit was received.

Held, that the term 'licence' can be used in three possible senses. In its most natural sense, 'licence' is an authority justifying the doing of what otherwise would be wrongful. In the commonly accepted sense, the term means authority, or permission to do something specified, leave to do a thing which the licensor would otherwise have the right to prevent. A 'licence' confers a right which does not exist otherwise. It is in the nature of a grant of permission to exercise certain privilege, or to carry on a particular business, or to pursue a certain occupation. In the popular as also in the legal sense, it is a permission to do something which, without the 'licence', would not be allowable. In the secondary sense, it denotes a certificate or a document which embodies the permission in question. In the first sense, 'licence' is a franchise or creation of a right, or grant; and in the second sense, it is the instrument evidencing the rights and interests mentioned therein and furnishes the proof of permission to exercise a particular right to engage in a trade or calling. Whether the word 'licence' is to be construed as a right or an instrument, must perforce depend on the context. In the third sense, the word 'licence' is sometimes used to mean the licence-fee which is the price paid for the privilege conferred.

Held, that 'withdrawal' of a licence takes place when the authority decides to end the licence without any wish to continue it, either in the hands of the original grantee or on resale. No resale is contemplated of a withdrawn licence. This suggests that 'withdrawal' takes place when the authority decides to discontinue the licence. 'Cancellation' or 'suspension' results in the event of a breach or violation of conditions expressly specified in section 36. 'Withdrawal' is contemplated even where the grantee has

committed no breach, and even if there has been no infraction of any duty cast upon him and his conduct is free from blame. Thus 'withdrawal' takes place when something is recalled or retracted and not renewed. It is an act in the nature of abandonment, relinquishment, resumption, or annulment, but without renewal or restoration. Reaaction may follow 'cancellation' but not when there is 'withdrawal' of the licence, as the object of 'withdrawal' is discontinuance of the licence. 'Withdrawal' may be occasioned by a number of contingencies, as, where it is considered desirable that liquor should not be sold in a particular locality, or, where the Government decides to introduce prohibition in a particular area or district. As the licensee has not been guilty of any impropriety of conduct and has not committed any breach of the rules, he is allowed, under section 41, to receive compensation, which is not payable to him in the event of cancellation or suspension of his licence. Section 41 again provides that there should be a 'consideration' on the part of the authority granting a licence that it should be withdrawn. This consideration is in respect of a cause other than that specified in section 36. Thus, before an action for 'withdrawal' of licence is taken under section 41, the Collector as the authority which granted a licence has to deliberate on, and before making up his mind to withdraw the licence, has to weigh the appropriateness of, the reason or the motive, justifying the withdrawal, and such a ground for action has to be *dehors* the matters specified under section 36. It is true that withdrawal may be forthwith, without notice, but it has to be 'by the authority which granted a licence', that is, the Collector.

Held, that section 8 of the Punjab Excise Act, 1914, deals with superintendence and control of the excise administration and of excise officers. The power of 'superintendence', indicates the exercise of supervision over the work of others. It means overseeing or keeping a watch upon the work of others. It is the exercise of some authority of control over the person or thing subjected to oversight or surveillance. It is the giving charge of something with the power of direction. Moreover, the 'superintendence' is, of 'general' character, which means not specific or special but indefinite. It is this "general superintendence and administration" vesting in the Financial Commissioner which will be "subject to the control of the State Government." The use of the word 'control' suggests the power

of the State Government to check, restrain or influence the authority which is being placed under the control of the Government. It is a right to regulate or verify what is actually done by another subordinate to the authority controlling. Both etymologically and also in the dictionary sense, to 'control' means to hold in check, curb, restrain from action, to hinder or prevent. It is a word of limitation. Having regard to the commonly accepted meaning of the word 'control', and also in the background of the context, it cannot connote a command or a direction justifying interference by the State Government in an individual case or a particular matter.

Held, that under sub-section (a) of section 8 of the Punjab Excise Act, the only power that the State Government can exercise is of imposing a check or a restraint upon the power of 'general superintendence and administration' of matters relating to excise which have been vested in the Financial Commissioner. It may also be noticed that the Financial Commissioner has been given no absolute power of cancelling or suspending licences. The power conferred by section 36 is circumscribed, and cannot be exercised outside the matters specified therein. The power to withdraw licences under section 41, and that of cancelling or suspending them, is conferred upon 'the authority granting a licence' which, as indicated by the Punjab Liquor Licence Rule No. 1, is in all cases, except one, conferred on the Collector. It is only in the case of retail vend of foreign liquor in a Railway Dining Car, that the Financial Commissioner has been given the authority to grant or renew the licence. From whatever angle section 8 may be examined, and howsoever liberal construction one may put upon it, it cannot be construed to mean that the State retains to itself an omnibus power to terminate any licence causelessly or for a cause with or without notice or that the State Government has been given an absolute and unfettered discretion, having no fixed standards to follow, and is guided by its own ideas of policy and expediency when granting, cancelling, suspending, withdrawing, refusing, or reauctioning excise licences. Section 8 does not confer such a wide power on the State as to make it a law unto itself. It could not be the intention of the framers of the Act to confer an arbitrary, unregulated, unrestrained, absolute and plenary power upon the State of such a sweeping nature, for, that would be violative of the provisions of Article 19, clause (6), of the Constitution.

Held, that ex vi termini—a permit in the nature of a licence is revocable at Government's pleasure—may be true of a very limited class of licences which are usually called 'bare licence' or 'mere licence'; and the attribute of such a licence is, that it is personal, revocable, and unassignable. A licence not for profit, but for pleasure, is countermandable, as it offers a personal privilege without creating any interest in the licensee, but revocability is not the attribute of a licence, where the licensee has been induced to expend money towards its enjoyment or which is accompanied with a grant. A right does not cease to be vested merely because it is styled a licence. Excise licences are not 'bare licences' but they are coupled with interest and as such are not revocable at pleasure. There is a clear distinction between a 'bare licence' which is revocable *brevis manu*, at the licensor's will,—and a licence coupled with interest, or with a grant which is not revocable. There is also a distinction drawn between licences granted by a Governmental agency and those granted by private persons. The object of granting the former is either regulation of, or taxation on, professions, trades or occupations. These licences are granted in the exercise of the State's police power, in the interest of health and moral welfare, etc. Excise licences more aptly fall in this class. It is no doubt a general rule that a privilege granted by means of a licence may be withdrawn at the discretion of the grantor. But a licence usually contains provisions for its revocation in specified eventualities. Where a licence is granted under a statutory provision, by a statutory authority, the right of revocation is confined within the statutory limits. Where a statute enumerates causes for revocation, the licence cannot be cancelled on grounds other than those specified therein. The same is true where licences emanate from a contract. Courts do not countenance countermanding of such a licence for an undisclosed cause or, for a cause which is *dehors* the statutory inhibitions. Where procedure for cancellation or suspension is prescribed, that alone must be pursued. The authority empowered to revoke a licence cannot do so outside the statutory grounds, far less arbitrarily or capriciously. It must be for a prescribed cause. The word 'cause' is to be understood in the sense of a valid and reasonable ground, and not as a mere excuse or pretext for doing so.

Held, that where a reauction of the licence has been ordered in a manner which is extraneous to the statute, the

granting of relief by way of issuing an appropriate writ will be proper. Failure to issue the certificate of licence, which furnishes proof of permission having been given to a party, cannot be allowed to interfere with the sanctity of the statutory action taken by the authorities which were required to call for an auction, to record the bids, to verify the qualifications of the successful bidders, to receive fee in instalments in the manner prescribed and to give approval to the bids which were accepted by the Collector. Moreover, omission to perform a ministerial duty of issuing licences, after all the deliberative, nay, essential conditions as imposed by law had been given effect to, cannot be allowed to stand in the way of solemnisation of an obligation as ordained by legislative enactment. This is especially so when there is a provision in the Act itself for countermanding or resuming a licence, which has not been resorted to. Recourse was not had even to the revisional powers of the Financial Commissioner. The High Court is a repository of law and equity and our system admits of fusion of the principles under both the branches. A wrongful revocation can be interfered with by a Court of equity. Where a determination, though within the competence of an authority, has not been made according to law, a *mandamus* is granted to hear and determine the application according to the statute. Where a decision is influenced either on extraneous consideration, or the jurisdiction is exercised where it does not exist, interference by way of extraordinary remedy is justified. Where the issuance of a liquor licence is merely ministerial, or where the licensing authority has acted in an arbitrary manner, relief by way of *mandamus* will be granted. Where the authority revoking the licence has acted in excess of jurisdiction or has abused the discretion vested in it, *mandamus* will lie.

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of the Hon'ble Mr. Justice D. K. Mahajan passed in Civil Writ No. 376 of 1962 on 24th April, 1962.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, for the Appellants.

H. L. SIBAL AND NARINDER SINGH, ADVOCATES, for the Respondent.

JUDGMENT

Tek Chand, J. TEK CHAND, J.—This judgment will dispose of three Letters Patent appeals Nos. 125, 126 and 127 of 1962, preferred from the judgment of D. K. Mahajan, J., as all these appeals give rise to similar questions of fact and law.

The respondents claim themselves to be the liquor licensees under the Punjab Excise Act. On 8th February, 1962, the Deputy Excise and Taxation Commissioner auctioned liquor licences. In all these cases the respondents were the highest bidders. The bids had been approved of on 20th February, 1962, by the Excise and Taxation Commissioner exercising the powers of Financial Commissioner. The successful bidders had deposited on 15th March, 1962, one-sixth of the licence-fee which was a statutory obligation. On 30th March, 1962, the Government, without disclosing any reasons and without giving notice to the respondents whose bids had been accepted, re-auctioned the liquor licences. The new bidders to whom the liquor licences have been sold have not been impleaded in this case. The respondents invoked the jurisdiction of this Court under Article 226 of the Constitution by filing writ petitions on 28th March, 1962, praying for the issuance of a writ of *mandamus* or any other suitable writ, order or direction, to the State of Punjab, the Excise and Taxation Commissioner, Punjab, Patiala, and the Deputy Excise and Taxation Commissioner, Patiala, prohibiting them or restraining them from re-auctioning the wholesale and retail licences of country liquor for Faridkot, Kot Kapura, and Bhatinda. They also prayed for an appropriate writ or order commanding the Punjab State and the other two respondents actually to issue the licences to them, as their bids had been accepted and from whom one-sixth of the total fee had been received.

In the written statement it was admitted that the licences for the retail vend of country spirit for the year 1962-63 were auctioned by the Deputy Excise and Taxation Commissioner and that the highest bids were of the present respondents which were accepted by the Deputy Excise and Taxation Commissioner, Patiala Division, subject to the confirmation by the Excise and Taxation Commissioner, Punjab. It was also admitted that one-sixth of the amount of the annual fee had been deposited. It was further admitted that the "vends in question were reaucted on 30th March, 1962, after observing all the formalities which are observed at the time of annual excise auctions required under the rules." It was also conceded that no notice was given to the petitioners for reaucting the vends, but due publicity in this connection was given. It was added that the auction results of the vends in question were, after due consideration, cancelled by Government who directed reauction thereof. It was admitted that the bids of the petitioners offered for the vends for the year 1962-63 were accepted as they were the highest and they were confirmed by the Excise and Taxation Commissioner. These licences, it was stated, were to commence with effect from 1st April, 1962. It was then stated "since these (licences) were not actually issued to them, the question of their revocation did not arise".

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It may be stated here that the circumstances which led the Government to reauction the licences have not been stated and no reasons have been indicated which induced the Government, after the confirmation of the bids by the Excise and Taxation Commissioner and after the acceptance of one-sixth deposits by them, to order reauction.

Before dealing with the findings of the learned Single Judge and examining the arguments advanced at the bar, a brief reference to the salient

State of Punjab provisions of the Act and rules made thereunder is
and others desirable.

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export, transport, manufacture, sale and possession
of intoxicating liquor and of intoxicating drugs.
Section 5 empowers the State Government to declare
limit of sale by retail and by wholesale. Section
8, upon which considerable reliance has been
placed on behalf of the State, runs thus—

“8. *Superintendence and control of the excise administration and excise officers.*

(a) Subject to the control of the State Government and unless the State Government shall by notification otherwise direct, the general superintendence and administration of all matters relating to excise shall vest in the Financial Commissioner.

(b) Subject to the general superintendence and control of the Financial Commissioner and unless the State Government shall by notification otherwise direct, the Commissioner shall control all other excise officers in his division.

(c) Subject as aforesaid and to the control of the Commissioner and unless the State Government shall by notification otherwise direct, the Collector shall control all other excise officers in his district.”

Section 9 empowers the State Government by notification to appoint an Excise Commissioner enabling it to invest him with all or any of the powers

conferred on the Financial Commissioner by this Act. Consequently, on 19th March, 1956, notification No. 990-E&T/56/724, was issued stating that in accordance with this section an Excise Commissioner, who will be designated as Excise and Taxation Commissioner, Punjab, had been appointed and invested with all the powers conferred on the Financial Commissioner by the said Act. Section 14 of the Act makes original or appellate order of an Excise Officer appealable. Under section 15-A, the Financial Commissioner may at any time revise any order passed by an Excise Officer subordinate to him. Sections 16 to 19 under Chapter III deal with import, export and transport, and Chapter IV deals with manufacture, possession and sale of intoxicants. Section 26 provides that no liquor shall be sold except under the authority and subject to the terms and conditions of a licence granted in that behalf. Chapter V refers to duties and fees chargeable on excise articles. Section 35 provides, *inter alia*, that the Collector may grant licences for the sale of any intoxicant within his district. Section 36, which has some bearing on this case, is reproduced below :—

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“36. 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 or 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

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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 ;

- (d) if the holder thereof is convicted of any offence punishable under this Act or 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."

Section 40 provides that when licence is cancelled or suspended under section 36, clause (a), clause (b), clause (c), clause (d) or clause (e), the holder shall not be entitled to any compensation for its cancellation nor to the refund of any fee paid or deposit made. Section 41 runs as under—

"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, withdraw the licence either—

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- (a) on the expiration of fifteen days' notice in writing of its intention to do so, or
 - (b) forthwith without notice.
- (2) If any licence, permit or pass be withdrawn under clause (b) of sub-section (1), in addition to the sum remitted as aforesaid, there shall be paid to the licensee such further sum (if any) by way of compensation as the Financial Commissioner may direct.
- (3) When a licence, permit or pass is withdrawn under this section, any fee paid in advance or deposit made by the licensee in respect thereof shall be refunded to him, after deducting the amount (if any) due to the State Government."

Section 57 provides that no suit shall lie in any civil Court against the Government or any officer or person for damages for any act in good faith done, or ordered to be done, in pursuance of this Act or of any other law for the time being in force relating to the excise revenue. Section 58 empowers the State Government to make rules by notification for the purpose of carrying out the provisions of the Act. Section 59 empowers Financial Commissioner to make rules by notification regulating, *inter alia*, sale of an intoxicant.

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The Punjab Liquor Licence Rules were made by means of a notification No. 938-X.P.(R), dated 2nd April, 1956. Rule 36, which is sub-divided into 24 sub-rules, prescribes the procedure for the grant of licences by auction. According to sub-rule (2), the Collector shall hold auction once a year after giving timely notice of the date and place of the auction and specifying other particulars. The presiding officer has to invite bids and records the same. Bids shall be received for the whole annual licence fee. Where the highest bid is refused the presiding officer is required to record his reasons for accepting another bid. Sub-rule (18) requires that "all bids accepted by an officer subordinate to the Collector require the Collector's sanction. All sales are open to revision by the Financial Commissioner." Sub-rule (19) provides—

"(19) If the Collector refuses to sanction a sale or if a sale is set aside by the Financial Commissioner on revision, the Collector may resell the licence by auction or by tender; if the resale is by tender, these rules shall apply as far as may be."

After the auction is closed, the Collector is required to forward to the Financial Commissioner certain statements and if no intimation to the contrary is received within three weeks, the Collector may assume that the Financial Commissioner has accepted his proposals [*vide* sub-rule (22)]. Under sub-rule (23), a person, to whom a shop has been sold, shall pay one-sixth of the annual fee within seven days of the auction. The balance of the fee may be paid either by monthly instalments or in lump sum. Under sub-rule (24), when a licence has been cancelled, the Collector may resell it by public auction or by private contract and any

deficiency and expenses of the resale are recoverable from the defaulting licensees.

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Before dealing with the arguments advanced by the learned counsel, I may briefly state the findings of the learned Single Judge. After referring to rule 36, sub-rules (23) and (24), the learned Single Judge expressed the view that if the sale is by the Collector and not by an officer subordinate to him, the confirmation or approval is by the Excise and Taxation Commissioner and no revision is provided in the rules against such a confirmation. The learned Judge, therefore, concluded that the moment the confirmation was made and the licensee was prepared to pay instalment of the licence-money, he automatically became the licensee, and later on he was given a formal certificate called the licence. Neither the rules nor the Act, according to the view of the learned Single Judge, conferred any power on the Financial Commissioner or on the Government to set aside the confirmation of the sale or to cancel the licence for reasons outside sections 36 and 41. Learned Single Judge then proceeded on to say that "it is common ground that the cancellation in this case is neither under section 36 nor under section 41, nor in the nature of things it could be under these provisions". Learned Single Judge then repelled the contention of the Additional Advocate-General that the State, in the exercise of its supervisory power under section 8 of the Act, could cancel the licence or the confirmation of the auction. The next finding of the learned Single Judge is, that on re-auctioning the licences the writ petitions had not become infructuous as they had been filed before the date of the resale and that at the time of the filing of the petitions notice had been given by the petitioners to the State. Learned Single Judge thought that any resale after notice to the State could not prejudice the petitioners who had by

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the earlier valid sale acquired a vested right to work the licences. The next contention which was raised before the learned Single Judge by the counsel for the State was that it was incumbent upon the petitioners to implead the persons whose bids had been accepted by the State as a result of reauction. This contention did not prevail with the learned Single Judge, as, persons who were said to have acquired certain rights during the pendency of *lis* could have no precedence over the prior rights of the petitioners which had been acquired by them validly. This contention was also rejected on the ground that it was not available to the State but to those persons whose rights were said to have been prejudiced. For the above reasons, the petitions were allowed and it was held that the Government had no power to resell the licences which had been validly sold to the petitioners and a direction was given that the petitioners be permitted to work the licences forthwith. The petitioners were allowed their costs.

It is not denied in this case that after the approval of the sale in favour of the petitioners by the Excise and Taxation Commissioner, no order was passed by any authority or by the State cancelling the licences and no such order has been placed on the record. In this case, the highest bids were accepted by the Collector and deposits of one-sixth of the annual fee had been received from them and the sales in their favour had been approved by the Excise and Taxation Commissioner. The Financial Commissioner had exercised no revisional power—assuming he had such a power despite the approval of the sales—cancelling these sales. The petitioners have received no notice from any authority cancelling the sales in their favour. The contention is that the sales are deemed to be cancelled impliedly by

virtue of the reauctioning of the same shops on 30th March 1962, and on account of the acceptance of new bids. One fact relied upon on behalf of the State is that the certificate of licence was never issued to the petitioners and that being so they cannot be held to be licensees. In other words, the petitioners cannot be deemed to be licensees as licence means not the acceptance of the bids by the Collector or their approval by the Financial Commissioner, or even the receipt of the licence fee, but the possession of the formal certificate of licence. This argument may first be examined.

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The term 'licence' can be used in three possible senses. In its most natural sense, 'licence' is an authority justifying the doing of what otherwise would be wrongful. In the commonly accepted sense, the term means authority, or permission to do something specified, leave to do a thing which the licensor would otherwise have the right to prevent. A 'licence' confers a right which does not exist otherwise. It is in the nature of a grant of permission to exercise certain privilege, or to carry on a particular business, or to pursue a certain occupation. In the popular as also in the legal sense, it is a permission to do something which, without the 'licence', would not be allowable. In the secondary sense, it denotes a certificate or a document which embodies the permission in question. In the first sense, 'licence' is a franchise or creation of a right, or grant and in the second sense, it is the instrument evidencing the rights and interests mentioned therein and furnishes the proof of permission to exercise a particular right to engage in a trade or calling, Whether the word 'licence' is to be construed a right or an instrument must perforce depend on the context. In the third sense, the word 'licence' is sometimes used to mean the licence-fee which is the price paid for the privilege conferred.

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Having regard to the statutory provisions it is difficult to agree with the contention of the Additional Advocate-General that the term 'licence' can only indicate the form or the certificate which is the *sine qua non*; and till it is received, no licence can be said to have been granted. On the other side. Mr. Sibal has argued that after the statutory requirements have been satisfied, the bid has been accepted by the Collector, and it has been approved by the Excise and Taxation Commissioner who has the same power as the Financial Commissioner, the one-sixth amount of the bid having been deposited, the licence is deemed to have been granted even if the ministerial act of giving certificates as in forms L-2 and L-14 (in this case) have not been received. Section 26 of the Excise Act forbids sale of intoxicants except under the authority and subject to the terms and conditions of a licence granted in that behalf. Section 35 confers the power of granting licence for the sale of any intoxicant upon the Collector within his district and upon the Financial Commissioner where the licence is for sale in more than one district. Section 36 refers to powers of the authority granting any licence to cancel or suspend the same for causes specified therein. Cancellation or suspension of a licence under this section would connote the taking away of a right to sell intoxicating liquor. It cannot mean the cancellation of the document but of the right or the power which has been granted. Section 41 confers a power to withdraw licences in contradistinction to power to 'cancel' or suspend licences given under sections 36 and 37. Withdrawal of a licence for purposes of section 41 refers to the right or the franchise which is being withdrawn. Our attention has also been drawn to the use of the two terms with reference to the same person. Section 36(a), (b), (c), (d) and (e);

refers to 'holder' of licence whereas section 41(2) refers to the 'licensee'. There appears to be no reason whatsoever to distinguish between 'holder of a licence' as the person who has received the certificate of licence, and the 'licensee' as the one to whom licence has been granted but who has not so far received the document. Emphasis has been laid by the learned counsel for the State upon Explanation to section 44, sub-section (2). Sub-section (1) provides that no holder of a licence granted under this Act to sell an intoxicant shall surrender his licence, except on the expiration of one month's notice in writing, given by him to the Collector, of his intention to surrender the same. The Explanation reads thus—

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“The words ‘holder of a licence’ as used in this section include a person whose tender or bid for a licence has been accepted, although he may not actually have received the licence”

Thus for purposes of surrender of licence, the holder of a licence may not have actually received the licence, that is, the document conferring the right. The argument advanced at the bar on behalf of the appellant is that the term ‘holder of a licence’ in its ordinary meaning is a person who has actually received the instrument, but for purposes of this particular provision the term is understood in larger sense. From this it is sought to be concluded that the ‘holder of a licence’ should be construed to mean a recipient of the instrument save as expressly excepted.

In the light of discussion which is to follow and on the examination of other provisions, the construction sought to be placed by implication on the basis of Explanation to section 44 is forced and far-fetched. The Explanation may have been added

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by way of abundant caution. In any case, the language cannot be stretched to mean that elsewhere in the Act 'holder of a licence' is necessarily to be understood as the possessor of the certificate of licence and not the person in whose favour the licence has been ordered to be granted by the highest authority, though the document has not been issued so far.

Coming to the Punjab Liquor Licence Rules, Rule 1 provides several classes of licences for which there are 21 forms, L-1 to L-21. The licences which are subject of these appeals are in forms L-2 for 'wholesale and retail vend of foreign liquor to public only' and L-14 'retail vend of country spirit for consumption on and off, the premises'. The mode of granting such a licence is by auction and the authority empowered to grant it is the Collector. Unlike licences in certain other forms, no previous consent of the Financial Commissioner is required for granting them. Every licence has to be granted to a particular licensee in respect of certain premises. Licences in forms L-2 and L-14 are not renewable. Rule 36 prescribes detailed procedure for the grant of licences by auction. Sub-rule (22) to rule 36 provides that after the conclusion of every auction the Collector shall forward to the Financial Commissioner statements in forms M-14 and M-14A showing the locality of each shop sold, the probable sales during the year, the name of the person to whom the shop has been sold, etc. It then reads—

"If no intimation to the contrary is received within three weeks, the Collector may assume that the Financial Commissioner has accepted his proposals. The Excise and Taxation Officer shall forward a list of licensees and the shops held by them

to the Superintendent of Police of the State of Punjab
 district and to the managers of all dis- and others
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Rule 22, when referring to list of licensees, does not appear to indicate persons who have actually received the instrument of licence. Sub-rule (23), *inter alia*, requires that if any person, whose bid has been accepted by the Presiding Officer at the auction, fails to make the deposit of one-sixth of the annual fee, or if he refuses to accept the licence, the Collector may resell the licence either by public auction or by private contract, etc. Here refusal to accept the licence cannot mean declining to receive the instrument or the document in the specified form. The power of the Collector to 'resell the licence' refers to the right to sell liquor. Sub-rule (24) again provides that when a licence has been cancelled the Collector may resell it. Here also, cancelling of the licence and resale by the Collector refer to the right or the franchise granted. Mr. Doabia has not been able to draw our attention to any rule governing issuance of the instrument. The term 'licence' has not been defined either in the Act or in the Rules. There is, however, no gainsaying the fact that after the licences have been ordered, an instrument in the particular form, in these cases in forms L-2 and L-14, is prepared and made over to the licensee and such a document is liable to inspection by the Excise Officers.

The question, however, is that after the bid has been accepted at a public auction conducted by the Collector, and the proposal made in accordance with Rules has been duly accepted by the Financial Commissioner or, as in this case, by the Excise and Taxation Commissioner, and the requisite deposit has been made, has such a person acquired the rights of a 'licensee' and has become liable to the

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statutory obligations ; or, till the instrument has been prepared and given to him, no rights have been acquired and no obligations incurred. I am inclined to the view that the forwarding of the instrument of licence in the specified form is merely a ministerial act performed as a matter of course in a prescribed manner in obedience to the mandate of a statutory authority without regard to, or without the exercise of one's judgment upon, the propriety of the act done. Looking at the provisions of the Act and the statutory rules, after the Collector's proposal is accepted by the Financial Commissioner and all the fees are paid, there is left no deliberative duty calling for the exercise of judgment, except to fill and sign the requisite form. The Act or the Rules do not require the satisfaction of any further condition on the part of the licensee, or compliance by him of any other legal requirement. After the proposal has been accepted by the Financial Commissioner and the requisite fee deposited by the licensee, he is entitled to receive the licence as a matter of routine. The Act does not provide for the penultimate intervention on the part of the authority or the exercise of any discretion on the part of the State, on the question of the desirability of issuing the instrument of licence. In other words, such a person has acquired the legal status of grantee of a licence and he can invoke his rights and is subject to obligations under the Act and is within the protection of the statute.

Mr. Doabia wants to defend the action of the State Government in reauctioning the licences not only on the basis of section 8 but also under section 41 of the Excise Act. Mr. Sibal has opposed this on the ground that before the learned Single Judge the stand under sections 36 and 41 had been abandoned and it was confined exclusively to section 8.

Mr. Sibal has referred to the following passage in the judgment of Mahajan, J.—

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“It is common ground that the cancellation in this case is neither under section 36 nor under section 41 nor in the nature of things it could be under these provisions. What is contended for by Mr. Doabia, learned counsel for the State, is that the State has the supervisory power under section 8 of the Act whereunder they could cancel the licence or, in other words, cancel the confirmation of the auction, and this power the State has exercised in these cases and, therefore, the order of the State reauctioning these licences is in order.”

But in the concluding portion Mahajan, J., has referred to sections 36 and 41 also, wherein the learned Judge said—

“Therefore, section 8 does not confer any jurisdiction on the State Government after the licence has been validly sold Nothing has happened so far which would entail cancellation of the licence either under section 36 or section 41 of the Act.”

Though argument raised on section 8 had furnished the main plank of the case of the State before the learned Single Judge, we have not considered it proper to rule out arguments with reference to section 41, which may now be considered.

Mr. Doabia maintained that the decision to reauction the licences could be justified both under section 8 and section 41, though he conceded that in terms section 36 was not applicable as no order of cancellation was passed by the authority

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granting the licences in question and it could only be done for reasons specified in that provision. Being of the view that the licences had in fact been granted by the appropriate authority and the grant had been duly accepted and necessary requirements of law had been specified, the question is, whether in these cases it is open to any authority, under the Act, to reauction the sales of the shops. The Act has contemplated two modes of terminating a licence and has employed a different terminology. Section 36 confers upon the authority granting any licence power to 'cancel, or suspend licences, etc.' Section 41 refers to the power of the authority which granted a licence, etc., to 'withdraw' licences. Thus, the two provisions in the Act draw a distinction between 'cancellation' and 'withdrawal' of licences. It is not indicated as to what precisely is meant by 'cancellation' and 'withdrawal' and what different meanings are given to these two terms. It is from the tenor and the circumstances that the distinctive application of the two expressions is to be gathered. Section 36 refers to specific infractions resulting in cancellation or suspension of the licence and the power is conferred upon the 'authority granting any licence' and in these cases it refers to the Collector. Of course, it is open to the State to prescribe restrictions upon the Collector's power to cancel or suspend licences. Section 38 provides for recovery of the balance of fee from the ex-licensee, and section 39 confers upon the Collector the power either to take licences granted by him under his management or to resell them. Section 40 provides that in the event of cancellation or suspension under clauses (a), (b), (c), (d), or (e) of section 36, or under section 37, the holder of the licence shall not be entitled to any compensation for its cancellation or suspension or to the refund of any fee paid or deposit made in respect thereof. Rule 36, sub-rule

(23), provides, that the Collector may resell the licence, either by public auction or by private contract, to a person whose bid has been accepted at the auction and who fails to make the deposit of one-sixth of the annual fee, or if he refuses to accept the licence. Sub-rule (24) lays down, that when a licence has been cancelled the Collector may resell it by public auction or by private contract ; and any deficiency in price, and all expenses of such resale or attempted resale shall be recoverable from the defaulting licensee in the manner laid down in section 60 of the Excise Act. Thus it will be seen, that in the event of cancellation of a licence, resale follows, unless, the Collector has decided under section 39 to take the grant under his management though at the risk of the defaulter.

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Section 41, which has been reproduced *in extenso* in earlier part of this judgment, confers power upon the authority which has granted a licence, permit, or pass, to 'withdraw' them for a cause other than those specified in section 36. This means that a licence, which has been granted, cannot be withdrawn for any one of the causes specified in section 36, as the breach of those specified conditions can result either in 'cancellation' or in 'suspension' of the licence. It then provides that when a licence is 'withdrawn' the authority granting the licence may do so either (a), on the expiration of fifteen-days' notice in writing of its intention to withdraw, or (b), forthwith, without notice. In both these cases, the sum equal to the amount of the fees payable for fifteen days is to be remitted. Sub-clause (2) provides in respect of withdrawal without notice, for a further remittance to the licensee of a sum by way of compensation as the Financial Commissioner may direct. Thus, in either case, a licensee is entitled to the remittance of money where a licence has been 'withdrawn'

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though it is not so where it is 'cancelled'. Sub-section (3) provides for refund of fee of deposit in the event of withdrawal of a licence which might have been made by the licensee. Our attention has not been drawn to any provision of the Act, or the Rules, providing for resale of the licence after withdrawal. One distinction which can be legitimately promised is that 'withdrawal' of a licence takes place when the authority decides to end the licence without any wish to continue it, either in the hands of the original grantee or on resale. No resale is contemplated of a withdrawn licence. This suggests that 'withdrawal' takes place when the authority decides to discontinue the licence. 'Cancellation' or 'suspension' results in the event of a breach or violation of conditions expressly specified in section 36. 'Withdrawal' is contemplated even where the grantee has committed no breach, and even if there has been no infraction of any duty cast upon him and his conduct is free from blame. Thus 'withdrawal' takes place when something is recalled or retracted and not renewed. It is an act in the nature of abandonment, relinquishment, resumption, or annulment, but without renewal or restoration. Reaaction may follow 'cancellation' but not when there is 'withdrawal' of the licence, as the object of 'withdrawal' is discontinuance of the licence. 'Withdrawal' may be occasioned by a number of contingencies, as, where it is considered desirable that liquor should not be sold in a particular locality, or, where the Government decides to introduce prohibition in a particular area or district. As the licensee has not been guilty of any impropriety of conduct and has not committed any breach of the rules, he is allowed, under section 41, to receive compensation, which is not payable to him in the event of cancellation or suspension of his licence, Section 41 again provides that there should be a 'consideration' on the

part of the authority granting a licence that it should be withdrawn. This consideration is in respect of a cause other than that specified in section 36. Thus, before an action for 'withdrawal' of licence is taken under section 41, the Collector as the authority which granted a licence has to deliberate on, and before making up his mind to withdraw the licence, has to weigh the appropriateness of, the reason or the motive, justifying the withdrawal, and such a ground for action has to be *dehors* the matters specified under section 36. It is true that withdrawal may be forthwith, without notice, but it has to be 'by the authority which granted a licence', that is, the Collector.

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It is nowhere alleged either that licence had been 'withdrawn' under section 41 or that the purported withdrawal was at the instance of the Collector. The written statement does not refer to any withdrawal. It was, however, pleaded that the vends were 'reauctioned on 30th March, 1962, after observing all the formalities which are observed at the time of annual excise auctions required under the reuls'. This plea is vague and from the bald statement, it is impossible to gather, that it was tantamount to alleging, firstly, that the licence was 'withdrawn', secondly, it was withdrawn by the Collector; thirdly, this was done after considering the desirability of withdrawal for some cause outside what was specified in section 36. The provisions of section 41 were not in the forefront when the vends had been reauctioned. For these reasons, it does not appear to me, that the impugned act of reauctioning the licences can be justified with reference to section 41, as these provisions neither apply, nor were they relied upon, in the written statement filed under the signature of the Excise and Taxation Commissioner. Moreover, no material has been placed upon the record indicating the circumstances of the so-called withdrawal, if there had

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been one, on the part of the authority granting the licences.

Mr. Doabia relied upon a Bench decision of Madhya Pradesh High Court in *Dinshah Framroz v. State of M.P.* (1). The facts of that case were that on an application for a licence for sale of foreign liquor, the State Government had sanctioned the grant of the licence, Subsequently, on the recommendations of the Urban Advisory Committee, the Government informed the licensee that it did not think proper to grant the licence of foreign liquor to the licensee. The order cancelling the grant of licence was challenged by the licensee in the High Court by means of a writ petition. It was held that section 32 of the Madhya Pradesh Excise Act, which is analogous to section 41 of the Punjab Act, was not confined to cases where a licence had been actually issued in pursuance of an order of the licensing authority, and the power conferred by that section could be exercised before the licence was issued. It was also observed that where there was an order in favour of any particular person for issue of a licence, and the licensing authority refused to implement that order subsequently, it should amount to 'withdrawal' of the licence within the meaning of section 32. It was held, that no person whose licence was withdrawn, or, in whose favour the licensing authority refused to implement the order to issue a licence, could complain of the non-continuance, or non-issuance of the licence, and all that he could claim was monetary compensation for the action that had been taken against him. This decision, though containing certain observations in support of the contention of the State, is distinguishable. In that case, there was the Urban Advisory Committee whose duty it was to give advice on the desirability

(1) 1960 M.P.L.J. 323.

of opening liquor shop in any particular municipal area. There the public was displeased with the order of the State proposing a shop of that kind to be opened in the town. A meeting of the Excise Advisory Committee was called and it unanimously decided that 'no licence for shops of foreign liquor be granted as it is against the policy of State prohibition'. It was stated at the bar there, that the State Government had not considered it proper to issue a licence to the petitioners on account of their policy in respect of prohibition, and an affidavit was filed by the District Excise Officer stating, that the 'Government were following a policy of not opening a foreign liquor shop at Bala Ghat'. In these circumstances, the contention of the State, that the licence had been withdrawn under section 32 of the Madhya Pradesh Excise Act, was accepted and the writ petition was dismissed. The distinguishing feature of that case is, that for a cause, the power of withdrawal had been exercised, and the licence for the locality, after it had been withdrawn, was not re-issued to any other licensee, presumably, out of respect for the public feeling which favoured prohibition, and for the reason, that the granting of such a licence was 'against the policy of State prohibition'. The Government advocate of Madhya Pradesh, during the course of arguments there, had maintained that the withdrawal was 'on account of their policy in respect of prohibition'. No similar reasons exist in this case which is not of 'withdrawal' of the licence out of any respect for State policy of prohibition, but of re-issuance in favour of some other bidder. Incidentally it may be stated, that the term 'withdrawal' in section 32 of Madhya Pradesh Act was understood in the sense of 'abandonment of the licence' and not of 'cancellation and re-issuance of the vend' as stated in paragraph 5 of the written statement. This decision of Madhya Pradesh High

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Court does not advance the case of the State before us, as it was based on different facts and circumstances which are not similar to the case before us.

I may now turn to the applicability of section 8 upon which learned Additional Advocate-General had taken his stand both before the learned Single Judge and also before us.

Section 8 deals with superintendence and control of the excise administration and of excise officers. Mr. Doabia has relied in the main upon the words "subject to the control of the State Government and unless the State Government shall by notification otherwise direct, the general superintendence and administration of all matters relating to excise shall vest in the Financial Commissioner" occurring in section 8(a). All that it provides is, that the "general superintendence and administration" is vested in the Financial Commissioner but this "general superintendence and administration" shall be subject to the control of the State Government. It is, however, open to the State Government by notification to direct that the "general superintendence and administration" of all matters relating to excise shall vest in somebody other than the Financial Commissioner. Again, what vests in the Financial Commissioner under this provision is only the "general superintendence and administration" which is subject to the control of the State Government. If the term "general superintendence and administration" were to cover the specific powers conferred upon the Financial Commissioner in other parts of the Act, then those provisions would be redundant. For instance, section 15(a) specifically confers the power of revising

any order passed by an Excise Officer upon the Financial Commissioner. Section 21 confers certain powers on the Financial Commissioner dealing with establishment or licensing of distilleries and breweries. The Financial Commissioner has to give directions regarding fees for terms, conditions and form of, and duration of, licences, permits and passes (section 34). He is required to grant a licence for sale where it is to operate in more than one district. He is also the authority empowered to grant licences of retail vends of foreign liquor in a Railway Dining Car. The power to cancel, permit or pass, granted in any district is given to the Financial Commissioner under section 37. The Financial Commissioner has to direct payment of compensation to the licensee in the case of withdrawal of the licence [section 41, sub-section (2)]. It is the Financial Commissioner whose decision, as to what is a technical defect, irregularity or omission, is made final [section 42, sub-section (2)]. Section 59 confers the power upon the Financial Commissioner to make rules by notification on matters specified therein. Reference to above provisions, which is illustrative, indicates that specific powers with respect to particular matters have been conferred upon the Financial Commissioner, as it was felt, that section 8 could not be an omnibus provision enabling the Financial Commissioner to interfere in individual cases by virtue of his powers of "general superintendence and administration".

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The power of 'superintendence' indicates the exercise of supervision over the work of others. It means overseeing or keeping a watch upon the work of others. It is the exercise of some authority or control over the person or thing subjected to oversight or surveillance. It is the giving charge

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of something with the power of direction. Moreover, the 'superintendence' is, of 'general' character, which means not specific or special but indefinite. It is this "genral superintendence and administration" vesting in the Financial Commissioner which will be "subject to the control of the State Government."

The employment of the word 'control' is significant. The use of the word 'control' suggests the power of the State Government to check, restrain or influence the authority which is being placed under the control of the Govrenment. It is a right to regulate or verify what is actually done by another subordinate to the authority controlling. Both etymologically and also in the dictionary sense, to 'control' means to hold in check, curb, restrain from action, to hinder or prevent. It is a word of limitation. Having regard to the commonly accepted meaning of the word 'control, and also in the background of the context, it cannot connote a command or a direction justifying interference by the State Government in an individual case or a particular matter.

Thus, under sub-section (a) of section 8, the only power that the State Government can exercise is of imposing a check or a restraint upon the power of 'general superintendence and administration' of matters relating to excise which have been vested in the Financial Commissioner. It may also be noticed that the Financial Commissioner has been given no absolute power of cancelling or suspending licences. The power conferred by section 36 is circumscribed, and cannot be exercised outside the matters specified therein. The power to withdraw licences under section 41, and that of cancelling or suspending them, is conferred upon 'the authority granting a licence' which, as indicated by the Punjab Liquor Licence Rule No. 1, is

in all cases, except one, conferred on the Collector. It is only in the case of retail vend of foreign liquor in a Railway Dining Car that the Financial Commissioner has been given the authority to grant or renew the licence. From whatever angle section 8 may be examined, and howsoever liberal construction one may put upon it, it cannot be construed to mean that the State retains to itself an omnibus power to terminate any licence causelessly or for a cause with or without notice. It could not be the intention of the framers of the Act to confer an arbitrary, unregulated, unrestrained, absolute and plenary power upon the State of such a sweeping nature, for, that would be violative of the provisions of Article 19, clause (6), of the Constitution. A discretion, assuming there is one in this case, if unfettered, ceases to be reasonable. This matter was considered by the Supreme Court in *Guruswami v. Mysore State* (2), which was a case under the Mysore Excise Act, the provisions of which are analogous. After referring to the Act and the Rules and to their observations in *State of Assam v. Keshab Prasad Singh* (3), their Lordship said—

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“It is evident that there is a policy and a purpose behind it all and it is equally evident that the fetters imposed by legislation cannot be brushed aside at the pleasure of either Government or its officers. The Rules bind State and subject alike.

The Act and the Rules make it plain that liquor licensing in the State of Mysore can only be done in certain specified ways and such discretion as is left to the authorities is strictly controlled by statute and Rule” (p. 594).

(2) A.I.R. 1954 S.C. 592.

(3) A.I.R. 1953 S.C. 309.

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In that case, an excise contract was auctioned on 27th April, 1953, in favour of the appellant whose bid was the highest, being Rs. 1,80,000. The fourth respondent who was present at the auction had not bid, but he went direct to the Excise Commissioner behind the appellant's back and made an offer of Rs. 1,85,000 which the Excise Commissioner accepted and cancelled auction-sale in favour of the appellant. Their Lordships remarked—

“Whatever is done must be done either under the Rules or under a Notification which would receive like publicity and have like force, and of which the people at large would have like notice. Arbitrary improvisation of an ‘*ad hoc*’ procedure to meet the exigencies of a particular case is ruled out. The grant of the contract to Thimmappa was, therefore, wrong.” (p. 595).

Their Lordships considered that the furtive method adopted of settling a matter of such moment behind the backs of those interested and anxious to compete was unjustified apart from other reasons, as that would lead to gross abuse. Bose, J., who delivered the judgment of the Supreme Court, said :—

“But deeper considerations are also at stake, namely, the elimination of favouritism and nepotism and corruption ; not that we suggest that that occurred here, but to permit what has occurred in this case would leave the door wide open to the very evils which the legislature in its wisdom has endeavoured to avoid. All that is part and parcel of the policy of the legislature. None of it can be ignored”.

These deeper considerations equally govern a case like the present.

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Their Lordships then observed, that in the ordinary course they would have given the appellant the writ which he sought, but as the excise year was near expiration, the granting of a writ at that late stage would be ineffective. Having enunciated the law, their Lordships dismissed the petition, but directed the State of Mysore and the fourth respondent to pay the appellant's costs. The principles laid down by their Lordships are applicable to the facts and circumstances of this case.

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Our attention has also been drawn to the observations of the Supreme Court in *Dwarka Prasad-Laxmi Narain v. State of Uttar Pradesh* (4), to the effect, that 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, of the Constitution, it must be held to be wanting in reasonableness.

Reference may be made to a Division Bench decision of this Court in *Hari Kishan Sharma v. The Punjab State* (5), which was a case under the Punjab Cinemas (Regulation) Act. In that case, the power of granting a licence under section 4 had been conferred upon the Sub-Divisional Officer, Jhajjar, and the State Government had declined to grant the licence to the petitioner. The Sub-Divisional Officer had never exercised his

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

(5) I.L.R. (1961) 2 Punj. 831—1961 P.L.R. 580.

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discretion under section 5 as he had received instructions from the State Government requiring him to refer to the Government, for orders, all requests for grant of permission to open permanent cinemas. The question which arose before the Bench was, whether the State Government could assume to itself the power which the Act conferred expressly on the authority subordinated to it, namely, the Sub-Divisional Officer. The Bench accepted the view expressed by Mahajan, J., in *Thakar Dass v. The Punjab State* (6), to the effect that the power to grant a licence vested only in the District Magistrate. The exercise of that power was subject to the control of the Government, but it was the District Magistrate alone who had to apply his mind in a given case where the conditions of the Act and the Rules had been satisfied. The District Magistrate ought to exercise his discretion under the Act and it was only after he had exercised his discretion that the question of the control of the Government could arise. The Bench declined to construe the word 'control' used in the Punjab Cinemas Act, section 5, in the wider sense of command or direction. They construed the term in the sense of restraint or check in that context.

A Bench of Allahabad High Court in *Bharat Bhushan v. Cinema and City Magistrate* (7), has, however, expressed the view that the word 'control' in the Cinematograph Act, section 5(3), was used in a comprehensive sense, and included an interference on the part of the State with the individual decision in a particular case given by the District Magistrate. This view was unsuccessfully canvassed before the Bench of this Court in

(6) 1960 P.L.R. 502.

(7) A.I.R. 1956 All. 99.

the case of *Hari Kishan Sharma*, referred to above, and does not commend itself to me either. Apart from the fact that that case, on its facts, is distinguishable from our case, I cannot persuade myself to give my accord to the wider construction of the term, which neither the true meaning of the term nor the context, in which it is used, justify. I agree with the observations of Mahajan, J., in *Thakar Dass v. The Punjab State* (6), that the word 'control' should be taken to mean 'control in accordance with the provisions of the Act,' and if its meanings are extended so as to include refusal of a licence, although the provisions of the Act and Rules have been satisfied, such a construction would offend against Article 19. In that case the refusal was not on the part of the District Magistrate, who had that power, but it was under the orders of the Government in the exercise of its power of general control. Mahajan, J., thought, that such an order by the Government was not envisaged under section 5(2), as the District Magistrate had to exercise his discretion in the first instance, and it was only after that, that the question of the control of the Government over such an exercise could arise. One significant feature of the instant case is, that the State Government has not purported to exercise any power under section 8 of the Excise Act. This is only being surmised from the subsequent act of reauctioning of the licences. Section 8, howsoever liberally construed, cannot lend itself to the construction, that the State Government is given an absolute and unfettered discretion, having no fixed standards to follow, and is guided by its own ideas of policy and expediency when granting, cancelling, suspending, withdrawing, refusing, or reauctioning excise licences. Section 8 does not confer such a wide power on the State as to make it a law unto itself.

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The next point urged on behalf of the State Government is, that the matter involves the issuance of a licence; and *ex vi termini*, a permit in the nature of a licence is revocable at Government's pleasure—to use Mr. Doabia's words—without rhyme or reason. This contention is entirely misconceived. It may be true of a very limited class of licences which are usually called 'bare licence' or 'mere licence'; and the attribute of such a licence is, that it is personal, revocable, and unassignable. A licence not for profit, but for pleasure, is countermandable, as it offers a personal privilege without creating any interest in the licensee, but revocability is not the attribute of a licence, where the licensee has been induced to expend money towards its enjoyment or which is accompanied with a grant. A right does not cease to be vested merely because it is styled a licence. Excise licences are not 'bare licences' but they are coupled with interest and as such are not revocable at pleasure. There is a clear distinction between a 'bare licence' which is revocable *brevi manu*, at the licensor's will,—and a licence coupled with interest, or with a grant which is not revocable. There is also a distinction drawn between licences granted by a Governmental agency and those granted by private persons. The object of granting the former is either regulation of, or taxation on, professions, trades or occupations. These licences are granted in the exercise of the State's police power, in interest of health and moral welfare, etc. Excise licences more aptly fall in this class. It is no doubt a general rule that a privilege granted by means of a licence may be withdrawn at the discretion of the grantor. But a licence usually contains provisions for its revocation in specified eventualities. Where a licence is granted under a statutory provision, by a statutory authority, the right of revocation is con-

finned within the statutory limits. Where a statute enumerates causes for revocation, the licence cannot be cancelled on grounds other than those specified therein. The same is true where licences emanate from a contract. In the words of the Privy Council in *Canadian Pacific Railway v. R.* (8),—

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“Whether any and what restrictions exist on the power of a licensor to determine a revocable licence must, their Lordships think, depend upon the circumstances of each case.”

Following the above quotation, Lord Greene in *Millennium Productions, Ltd. v. Winter Garden Theatre (London), Ltd.* (9), said :—

“Even if it is said that a licence is a thing which, if artificially taken by itself and in isolation, is in its nature, revocable, the contract must be examined to see whether that rule applies to the particular licence under consideration.”

Courts do not countenance countermanding of such a licence for an undisclosed cause or, for a cause which is *dehors* the statutory inhibitions. Where procedure for cancellation or suspension is prescribed, that alone must be pursued. The authority empowered to revoke a licence cannot do so outside the statutory grounds, far less arbitrarily or capriciously. It must be for a prescribed cause. The word ‘cause’ is to be understood in the sense of a valid and reasonable ground, and not as a mere excuse or pretext for doing so.

(8) 1931 A.C. 414 (432)

(9) (1946) 115 L.J. Cl, 297 (298).

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The next question is whether a writ petition is an appropriate remedy for a wrongful revocation.

This is a case in which failure to issue the certificate of licence, which furnishes proof of permission having been given to a party, cannot be allowed to interfere with the sanctity of the statutory action taken by the authorities which were required to call for an auction, to record the bids, to verify the qualifications of the successful bidders, to receive fee in instalments in the manner prescribed and to give approval to the bids which were accepted by the Collector. Moreover, omission to perform a ministerial duty of issuing licences, after all the deliberative, nay essential conditions as imposed by law had been given effect to, cannot be allowed to stand in the way of solemnisation of an obligation as ordained by legislative enactment. This is especially so when there is a provision in the Act itself for countermanding or resuming a licence, which has not been resorted to. Recourse was not had even to the revisional powers of the Financial Commissioner. It is in this background that this Court has to consider the feasibility, the adequacy and the effectiveness of the remedy invoked in this case.

In the recent decision of the Supreme Court in *M/s Ghaio Mal & Sons v. State of Delhi* (10), under the Punjab Excise Act, the Chief Commissioner of Delhi was the only competent authority empowered to grant L-2 licences for wholesale and retail vendes of foreign liquor to the public. It was found in that case that no valid order granting the L-2 licence had been issued by the only authority competent to grant it. The applications for the grant of L-2 licences were for the year 1954-55

which had gone past. In the changed circumstances, the Supreme Court issued a *mandamus* to the Chief Commissioner directing him to fill the vacancy by inviting applications from competent licensees and granting the same to the most suitable party. Thus, where a reauction of the licence has been ordered in a matter which is extraneous to the statute, the granting of relief by way of issuing an appropriate writ will be proper.

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Before the learned Single Judge and also before us, it was urged that the injury complained of was now beyond repair as the reauction had taken place, and the new licensees are in the enjoyment of the licences granted to them and this subsequently acquired right of theirs ought not to be disturbed. The learned Single Judge had rightly repelled the contention by observing that the wrongful reauction during the pendency of *lis* did not adversely affect the rights of the party wronged. This contention can also be effectively met by referring to a passage from the judgment of Lord Greene, sitting in the Court of Appeal in *Millennium Productions Ltd. v. Winter Garden Theatre (London), Ltd.* (9). In that case the defendants, Winter Garden Theatre (London) Ltd., had granted a licence of their theatre to the plaintiffs, Millennium Productions Ltd., for the purpose of producing stage plays, concerts or ballets, although there was no express term in the contract under which the licence was granted, for the revocation of the licence. The question arose whether there was a power of revocation implied by law. The view expressed by the Court was, that the question could not be segregated and treated by itself as it was a matter of the construction of the contract granting the licence. The next question which came up for consideration was, that where

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it was found that the licensor had revoked the licence illegally, whether a Court of equity could restrain him from taking steps pursuant to his wrongful revocation. Lord Greene in this context said—

“In the present case it seems to me that the grant of an option which, if I am right, is an irrevocable option, must imply a negative undertaking by the licensor not to revoke it. That being so, in my opinion such a contract could be enforced in equity by an injunction. Then the question would arise: at what time can equity interfere? If the licensor were threatening to revoke, equity, I apprehend, would grant an injunction to restrain him from carrying out that threat. But supposing he has in fact purported to revoke, is equity then to say: ‘We are now powerless. We cannot stop you from doing anything to carry into effect your wrongful revocation?’ I apprehend not. I apprehend equity would say: You have revoked and the licensee had no opportunity of stopping you doing so by an injunction; but what the Court of equity can do is to prevent you from carrying that revocation into effect and restrain you from doing anything under it’ I can see no reason at all why, on general principles, equity should not interfere to restrain the licensors from acting upon the purported revocation, that revocation being, as I consider, a breach of contract.”

In the instant case the breach lies in reauctioning a licence which is not made revocable by the

statute at the *ex parte* volition of the State Government. The above observations of Lord Greene, presiding in the Court of Appeal, were affirmed by Lord Uthwatt when the matter was taken up in the House of Lords (*Winter Garden Theatre (London), Ltd. v. Millennium Productions Ltd.* (11),—

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“I merely confess my present inability to see any answer to the propositions of law stated by the Master of the Rolls (Lord Greene) in his judgment in the case under appeal. The settled practice of the Courts of equity is to do what they can by an injunction to preserve the sanctity of a bargain. To my mind, as at present advised, a licensee who has refused to accept the wrongful repudiation of the bargain which is involved in an unauthorised revocation of the licence is as much entitled to the protection of injunction as a licensee who has not received any notice of revocation; and, if the remedy of injunction is properly available in the latter case against unauthorised interference by the licensor, it is also available in the former case. In a Court of equity wrongful acts are no passport to favour.”

The last sentence from the above passage from the opinion of Lord Uthwatt, cannot be any the less compelling in cogency, if it were to be rewritten thus—

“In a Court of equity wrongful acts of re-auctioning excise licences contrary to the statute are no passport to favour.”

State of Punjab and others v. Raghunath Dass Without doubt, this Court is a repository of law and equity and our system admits of fusion of the principles under both the branches.

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A wrongful revocation can be interfered with by a Court of equity. Where a determination, though within the competence of an authority, has not been made according to law, a mandamus is granted to hear and determine the application according to the statute.

In *R. v. Sykes* (12), the matter came up under section 8 of Wine and Beer House Act, 1869, which provided that no application for a certificate in respect of a licence to sell, by retail beer, cider or wine, not to be consumed on the premises, shall be refused except on one or more of the four grounds which are specified in the section. It was held, that the licensing Justices who refused licences to the applicant, were bound to state to him upon which of the four grounds they had so refused it.

Where a decision is influenced either on extraneous consideration, or the jurisdiction is exercised where it does not exist, interference by way of extraordinary remedy is justified. Where the issuance of a liquor licence is merely ministerial, or where the licensing authority has acted in an arbitrary manner, relief by way of *mandamus* will be granted. Following statement of law from 48 C.J.S. Article 160 P. 263, may be cited with advantage—

“..... if a licence has been refused to a properly qualified person, without any reason whatever, or without any reason which is valid, and sufficient in law, but in the arbitrary, capricious or unlawful exercise of the power vested in the

(12) (1875) 1 Q.B. 52.

licensing authorities, redress may be had by *mandamus*, and this is also true where the only duty which the licensing authority has to perform is merely ministerial, as where no objection has been filed,”

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On the same page, there is a foot-note which reads—

“Where every necessary fact is found by the licensing officer in favour of applicant, so as to entitle him to a licence, the officer thereby exhausts his discretion, leaving only the ministerial duty of issuing the licence.”

Where the authority revoking the licence has acted in excess of jurisdiction or has abused the discretion vested in it, *mandamus* will lie.

High Courts have, in the exercise of their powers under Article 226 of the Constitution, issued directions and orders, as well as writs, where the provisions of Article 19(1)(g) have been violated. This was done by Allahabad High Court in *Rameshwar Prasad Kedarnath v. The District Magistrate* (13), where the District Magistrate had refused to renew the licence granted to the petitioner by form B-1, under the U.P. Controlled Cotton Cloth and Yarn Dealers' Licensing Order, 1948, on considerations which were found to be irrelevant.

The learned Single Judge had the discretion to pass the order which he exercised in our view, rightly. In any case, it is not for the Court of appeal to lightly interfere with the exercise of a discretion.

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It is then said, that the issuance of a writ will be futile and infructuous as the licence can again be revoked. The issuance of a writ will certainly not be meaningless because of lapse of time as the petitioner can still utilise the licence till the end of March, 1963. We have held that the form of the licence, which in this case is only ministerial, cannot be withheld. It has also been found that under section 8 of the Excise Act the power of control conferred upon the State Government cannot be construed to be the power to revoke, suspend or withdraw an excise licence in any individual case. If and when the provisions of section 36 are violated by the licensees, the appropriate authority under the provision can examine the nature of the breach and pass an appropriate order. Again, if it is decided by the appropriate authority to 'withdraw' the licence under section 41 of the Act it can decide accordingly, but within the ambit of that section. The relief granted by the learned Single Judge is not infructuous or futile in the circumstances. Regarding the other remedy available to the licensee by instituting a suit for damages, that cannot be said to be adequate in the circumstances of this case as it would neither be speedy nor effective. According to the relief granted to the respondents in this case by the learned Single Judge, they can use their licences profitably to their advantage. It will not be easy to calculate damages on any reasonable basis in consequence of non-utilisation of the licence, as, such an assessment would be conjectural. In the circumstances, the remedy by way of suit is not adequate. The arbitrary action which is sought to be impugned is entirely without jurisdiction and the Act, certainly not section 8, has not armed the State Government with the power to interfere with a licence in the manner in which it has been done in this case. The order passed by the learn-

ed Single Judge is eminently just and is in accordance with law. It was also urged that complications would arise, as the licences had been re-auctioned and they are being exploited by the other parties. This argument was rejected on the ground that the successful bidders on re-auction had acquired their rights during the pendency of *lis* and such rights could have no precedence over those which had already been validly acquired by the petitioners. It was also remarked that this argument was not available to the counsel for the State as it amounted to pleading the State in default.

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For the reasons detailed above, the appeals of the State are devoid of merit and I would, therefore, dismiss them with costs.

H. R. KHANNA, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before Mehar Singh and Shamsher Bahadur, JJ.

BALWANT SINGH AND OTHERS,—Appellants.

versus

KEHAR SINGH,—Respondent.

Regular Second Appeal No. 1719 of 1960.

Khanna, J.

Punjab Pre-emption Act (I of 1913) as amended by Punjab Pre-emption (Amendment) Act (X of 1960)—S. 5—Exclusion of right of pre-emption in respect of sale of agricultural waste land reclaimed by vendee—Whether extends up to the date of suit or decree.

1962

August, 20th

Held, that under section 5 of the Punjab Pre-emption Act as amended by Punjab Pre-emption (Amendment) Act, X of 1960, the agricultural waste land which is saved from the pre-emption suit is only the land which has been