

Reserved

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE MR. G. NARENDAR

AND

HON'BLE SRI JUSTICE ALOK MAHRA

WRIT PETITION (M/B) NO.127 OF 2025

Pawan Kumar Petitioner.

Versus

State of Uttarakhand & others Respondents.

With

WRIT PETITION (M/B) NO.131 OF 2025

Siddhant Bailwal Petitioner.

Versus

State of Uttarakhand & others Respondents.

WRIT PETITION (M/B) NO. 132 OF 2025

Tejendra Singh Petitioner.

Versus

State of Uttarakhand & others Respondents.

Counsel for the Petitioners : Mr. Shobhit Saharia and Mr. Tej Pratap Singh, learned counsel.

Counsel for the Respondents : Mr. S.N. Babulkar, learned Advocate General with Mr. J.S. Bisht, learned Standing Counsel.

Judgment Reserved on:17.06.2025

Judgment Delivered on:03.07.2025

The Court made the following:

COMMON JUDGMENT: (per Hon'ble The Chief Justice Mr. G. Narendar)

Heard learned counsel for the petitioners and learned Advocate General for the State- respondents.

2. The instant writ petitions are preferred praying to declare a part of Rule 17b of the Uttarakhand Excise Policy Manual- Year 2025-26, 2026-27 and 2027-28 (Three Year Excise Policy), which prohibits sale of liquor by FL-5DS/M licensees in “adjoining areas of Natraj Chowk, AIIMS, IDPL and Shyampur”. The rule is challenged on the ground of ambiguity and vesting of unguided power rendering it arbitrary and discriminatory.

3. Rule 17b of the Policy reads as under:-

“17(b) The previously approved FL-5 DS/M in Haridwar city of Haridwar district, Rishikesh city of Dehradun district such as Natraj Chowk and adjoining areas, AIIMS adjoining area, IDPL area, Shyampur area will not be renewed for the financial year 2025-26”.

4. The contention is that, the unguided discretion has resulted in ambiguity and has resulted in excessive delegation resulting in arbitrariness in the decision making.

5. The undisputed fact is that all the petitioners were granted FL-5 (DS) licenses for the year 2024-25; that as per the earlier policy, the Government, in exercise of its powers vested under Section 37-A, in particular, sub-section (3) of Section 37-A in Chapter VI-A of the United Provinces Excise Act, 1910(*for short “the Act, 1910”*), has prohibited sale of liquor within the Rishikesh Nagar Palika, i.e. within a definitive perimeter; that in consonance with the then existing policy, the petitioners were called upon to deposit the license fees for renewal, etc;. That it is not in dispute that

vending of foreign liquor in shopping malls, departmental stores, pursuant to the Rules formulated in 2013, namely, the Uttarakhand Excise (Settlement of Licenses for Foreign Liquor Premium Retail Vends, Shopping Malls/ Departmental Stores) Rules, 2013, which came to be gazetted on 26.12.2013, came to be permitted.

6. That the State Government enacted the impugned Policy/Rules, in exercise of the powers conferred on it under Section 40 of the U.P. Excise Act, 1910 (United Provinces Act No.04/1910) (as adapted and modified in Uttarakhand) read with Section 21 of the U.P. General Clauses Act, 1904. That the State Government, in a departure from the usual practice, has framed a triennial policy called Uttarakhand Policy Manual/ Year 2025-26, 2026-27, and 2027-28 (three years excise policy), which came to be issued on 05th March, 2025. That perusal of Rule 1 would demonstrate that it pertains to the expected revenue from the various thirteen districts for each of the years and the district also includes Haridwar, where ban or prohibition of sale of liquor has been implemented in certain parts and the projected revenue is the second highest amongst thirteen districts. That, while so framing the Rules, Rule 17 came to be enacted; that while so framing the Rules, the State proceeded to add the words “and adjoining areas”, after mentioning the definitive area, namely, Nataraj Chowk, AIIMS, IDPL and Shyampur and under

the triennial policy it was promulgated that FL-6/ DS/M licenses would not be renewed for the financial year 2025-26.

Rule 17 reads as under:-

“17. Regarding prohibition of alcohol:-

The following provisions will be applicable for the financial years 2025-26, 2026-27 and 2027-28.

a) No bar license will be approved in the places notified as restricted and prohibition areas in the state.

b) The previously approved FL-5DS/ M in Haridwar city of Haridwar district, Rishikesh city of Dehradun district such as Natraj Chowk and adjoining areas, AIIMS adjoining area, IDPL area, Shyampur area will not be renewed for the financial year 2025-26”.

7. The present petitioners are aggrieved by the words “*and adjoining areas*”, as it is their contention that the words “*and adjoining areas*” has resulted in delegation of unbridled and unguided power in the executive to choose any area under the ambiguous phrase “*and adjoining areas*”.

8. Several contentions have been canvassed, both orally and by way of written submission, by learned counsel for the petitioners and the learned Advocate General.

9. Learned counsel for the petitioners would content that the Rule prohibiting non-renewal of FL-5 (DS)/M licenses for the year 2025-26 under Rule 17(b) within the non-notified area, is patently discriminatory and arbitrary; that despite the Rules, the licenses in respect of Bars have been processed, and are permitted to dispense liquor.

10. That the sale of liquor by retail liquor shops is also not prohibited, and in fact, the authorities have permitted the sale of IMFL (Indian Made Foreign Liquor) by shops, situated

even on highway and also by shops, located at the very entrance of Rishikesh. The petitioners have also placed on record several photographs along with the supplementary-affidavit dated 23.04.2025.

11. That the attempt to distinguish between Bar licenses and FL-5DS/M licenses, is a clear demonstration of arbitrariness in the application of the Rules; that, admittedly, Section 37-A(3) of the Act, 1910 enables the State Government to impose prohibition in any "*particular area*"; that the phrase "*adjoining area*" is neither definitive, nor pertains to a particular area and vests an unbridled and unguided discretion in the executive to pick and choose any area under the phrase "*adjoining area*". That the phrase "*adjoining area*" is in the teeth of the provisions of sub-section (2), which stipulates that the specified area or areas requires to "specified"; that the provisions of sub-section (2) mandates prohibition of sale "in or over" a specified area or specified areas; that prohibition under sub-section (3) of Section 37 is to advance the policy of prohibition and the criteria for invoking sub-section (3) is set out in clauses (a), (b), (c) and (d); that the phrase "*adjoining area*" is neither specific nor particular to any identifiable area and has resulted in the officers of the State applying it in a selective and arbitrary manner, based on political and unethical considerations.

12. That in exercise of the powers under Section 37-A (3), a notification came to be issued on 07.08.2020 under which localities were notified, where-in, complete prohibition came to be imposed. By the said notification, the “areas” were specifically identified and prohibition came to be imposed in the “areas”, i.e., the limits of Haridwar and Rishikesh, Municipal Corporations. That the areas in and over which prohibition is imposed under the Excise Rules, 2025-26, are a reiteration of the same localities, that is, the areas comprised in the Municipal Corporations of Haridwar and Rishikesh. Reference is made to Rule 28.03, which reads as under:-

“28.3 Judgment passed by the Hon’ble Supreme Court in Civil Appeal No.12164-12166 of 2016, “State of Tamil Nadu vs. K. Baalu& anr.” dated 15.12.2016 and 31.03.2017, SLP Civil No.10243 of 2017, “Arrive Safe Society of Chandigarh Vs. The Union Territory of Chandigarh & anr.” dated 11.07.2017 and in the light of the decision passed in Civil Appeal No(s)12164-12166/2017, it is also mentioned that in the State, Haridwar and Rishikesh Municipal Corporation/ Municipal Bodies as a result of re-demarcation, the prohibition are in the said cities will remain as per the previously determined prohibition area.” (underlining by this Court)

13. It is contended by learned counsel for the petitioners, that the ‘area/s’, where the licensed shops of the petitioners are situated, do not fall within the limits of Municipal Corporations of Haridwar and Rishikesh. That in the premises, where one of the petitioners is carrying on business, in the first floor, a licensed bar is vending and serving liquor, while prohibition is sought to be selectively

applied to the premises of the petitioner by an arbitrary application of the phrase "*adjoining area*".

14. That the very Rule 17(b) is discriminatory, as prohibition is sought to be imposed only on the retail sale of liquor by Bars under Rule 17(a) and by FL-5DS/M stores under Rule 17(b); that there is no prohibition in respect of vending of liquor by retail stores; that the continuous running of the bars is evidenced by the bills issued by the said bars along with the Aadhaar card of the person who consumed / purchased the liquor from the bars on 24.04.2025 and 25.04.2025 are placed on record and are demonstrative of selective application of the ambiguous policy. That, though there are six types of licenses, only the renewal of FL-5DS/M licenses have been prohibited and the renewal of FL-6(C), FL-6 (C) star category, FL-6 (C) Five Star category, FL-7 (Restaurant Bar), FL-7 (B) (Beer Bar) and FL-7 (Club Bar) licenses have not been prohibited from vending liquor and the same *per se* renders the Rule discriminatory, and requires to be struck down. That, the ambiguity in the provisions has stood demonstrated by the subsequent action of the Excise Commissioner, who during the course of hearing, has issued an order dated 25.04.2025 whereby he has sought to define and clarify the ambiguity by stipulating the 'area' comprised within 2 Kms, from the "restricted specified areas", as being the 'adjoining area'. That the said order is *ultra vires* the

provisions of Section 40 of the Act, 1910, as the power to specify an 'area' is vested only with the State Government and not in the Excise Commissioner. That the provisions of Section 41 of the Act, 1910 empowers the Excise Commissioner to make Rules only in respect of the subjects covered under Section 41 of the Act, 1910 and the power of imposing prohibition in a specified area or areas, is not one of the subjects, which falls within the ambit of Section 41 of the Act, 1910.

15. It is contended that the very act of the Excise Commissioner in issuing the notification dated 24.05.2025, whereby renewal of bar licenses also came to be prohibited is proof enough of the discriminatory nature of the action and which notification has also been subjected to challenge in another batch of writ petitions.

16. The photographs filed along with the supplementary-affidavit, demonstrate location of IMFL-5 shops on the Yatra Marg and are indiscriminately situated along the highway, and in places clearly visible from the highway is proof of the discriminatory nature of the State action, in avoiding renewal of licenses to the selected IMFL-5 (DS)/ ML shops.

17. The Legislature has delegated separate rule making powers to the Government under Section 40, and to the

Excise Commissioner u/s 41 of the Act, 1910 and that the Government has neither further delegated, nor is the Excise Commissioner a delegatee under Section 40. That the power to legislate as a delegate is vested in the Excise Commissioner only under Section 41 of the Act, 1910, and Section 41 does not empower the delegatee to make rules in respect of prohibition, which is a subject that is clearly placed within the ambit of Section 40 r/w Section 37-A (2) and (3).

18. That the non-renewal, apart from being arbitrary, has also resulted in loss to the State Exchequer; that the notification defining 'adjoining areas' as being area within 2 Km. radius of the specified area is without jurisdiction and *ultra vires* Section 40 of the Act, 1910; that there being no power of further delegation with the State Government, the action of the Excise Commissioner in issuing the notification is wholly vitiated, as being contrary to the provisions of Section 40 read with Section 37-A of the Act, 1910. That the impugned notifications are in the teeth of the law settled by the Constitution Bench of the Hon'ble Apex Court in the case of ***Khoday Distilleries Ltd. vs. State of Karnataka***, reported in **(1995) 1 SCC 574**, more particularly, Paragraph No.60(g), wherein it has been held that once the State undertakes the business of granting license, it cannot practice arbitrariness in the matter of granting trade licenses; that reliance placed on the ruling of the Hon'ble Apex Court in the

case of ***State of Kerala & others vs. Kandath Distilleries, (2013) 6 SCC 573***, is inapplicable, as it relates to grant of a manufacturing license and not a license to trade or indulge in retail vending. That apart, the facts and circumstances of the said case and the facts and circumstances of ***BALCO Employees' Union (Regd.) vs. Union of India, (2002) 2 SCC 333*** are completely distinguishable to the case on hand; that in the instant case, the action of the State Government in selectively omitting renewal of licenses is a result of malafide exercise of power and the notifications are issued by an incompetent authority not vested with the jurisdiction u/s 40 of Act. This Court having perused the said judgment, it is apparent that the same deals with the issue of grant of manufacturing licence and not grant of retail vending licence. The issue with regard to grant of privilege to vend in retail sale of potable alcohol is squarely covered by the Constitutional Bench rendered in ***Khoday's*** case.

19. In fact, the rigor of Section 40 and the sanctity of the power vested in the State Government is fortified by Section 10(2)(f) of the U.P. Excise Act, 1910, which specifically prohibits the State Government from delegating its rule making power under Section 40 to the Excise Commissioner.

20. Lastly, it is submitted that the promulgated rules are still-born on account of non-compliance with the mandatory provisions of Section 23-A of the U.P. General Clauses Act, 1904 which mandates the placing of Rules before both the Houses of the legislature for a total period of thirty days; that the non-compliance is fatal and the Rules stands vitiated on account of non-compliance with the mandatory requirement of placing the Rules before the Houses; that the provisions of Section 23-A of the U.P. General Clauses Act, 1904 also enable the Houses to either modify or reject the Rules; that in the absence of such validation by the Houses, the Rules are rendered *non est* in the eyes of law and still born.

21. Per contra, learned Advocate General would vehemently counter the contentions on the short ground that there are no sufficient pleadings in support of the prayers and on account of no sufficient pleadings, the prayers and the grounds urged in the course of argument cannot be appreciated by this Court. This contention need not deter this Court for long. A bare reading of the prayer would suffice to show that the challenge is limited to the offending phrase “and adjoining area”. That apart, the contentions canvassed are legal contentions. It is no more *res integra* that the procedure is the hand made of justice and procedural aspects and technicalities ought not to be allowed, to assume

insurmountable proportions and turn into hurdles in dispensing justice. The Hon'ble Apex Court in the case of ***“Ramathal & others vs. K. Rajamani (Dead) through Lrs and Another”*** reported in **2023 SCC OnLine SC 1022**, in Paragraph Nos.23 and 24 held as under:-

“23. It would be appropriate at this stage itself to refer to the settled legal position on the above aspect. This Court in the case of Bhagwati Prasad v. Chandramaul very aptly put that the question for the Courts to consider in such matters is whether the parties knew that the matter in question was involved and whether they led evidence about it. We may profitably extract para 10 of the aforesaid report:

“10. But in considering the application of this doctrine of the facts of the present case, it is necessary to bear in mind the other principle that considerations of form cannot over-ride the legitimate considerations of substance. If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is: did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another.”

24. The said ratio has been followed by this Court in 2008, by a two-judge Bench in the case of Bachhaj Nahar v. Nilima Mandal. This

Court in clear terms stated the object and purpose of pleadings and issues. Para 12 of the said report is reproduced hereinunder:

“12. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.”

22. As noted supra, the very reliefs sought clearly indicate the issue in question which is required to be answered by the respondent-State. Furthermore, the Hon’ble Apex Court in the case of **“R. Nagaraj (Dead) through Lrs. & another vs. Rajmani & others”**, reported in **2025 SCC OnLine SC 762**, has, after relying on its earlier judgments, been pleased to hold in Paragraph No.21 and 21.1 as under:-

“21. We have in earlier paragraph discussed the object of framing the issues. We also held that there could be several points directly or indirectly connected with the main issue that has been framed. In such cases, when the larger issue that has been framed is wide enough to cover different points of disputes within it, there is no necessity to frame a specific issue on that aspect. Further, when the parties go to trial with the knowledge that a particular point is at lis, had full opportunity to let in evidence, they cannot later turn back to say that a specific issue was not framed. All that is required under law, is for the Court to render a finding on the particular fact or law in dispute, on the facts of the case. However, we make it clear that such evidence, in the absence of pleadings, cannot permit either of the parties to make out a new case. It is pertinent to mention here that the Courts are vested with powers to go into the question of law, touching upon either the limitation or the jurisdiction, even if no plea is raised and not in cases, where facts have to be pleaded and evidence has to be let in. The Civil Procedure Code

and the law of limitation, being procedural laws, meant to assist the Courts in the process of rendering justice, cannot curtail the power of the Courts to render justice. Procedural laws after all are handmaid of justice. What is to be seen is whether any irregularity arising from a failure to follow procedure has caused serious prejudice to the parties. It is not to be forgotten that the process of adjudication is to discern the truth.

21.1. It will be useful to refer to certain judgments of this Court on violation of procedural law, which are as follows:

(i) *Sardar Amarjit Singh Kalra (Dead) by L.Rs. v. Pramod Gupta (Smt.) (Dead) by L.Rs.:*

“26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice.....”

(ii) *Kailash v. Nanhku:*

*“28. All the Rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of Code of Civil Procedure or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in *Sushil Kumar Sen v. State of Bihar* (1975) 1 SCC 774] are pertinent : (SCC p. 777, paras 5-6)*

The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer.

*The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist Rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. ... Justice*

is the goal of jurisprudence -- processual, as much as substantive.

29. *In State of Punjab v. Shamlal Murari* (1976) 1 SCC 719 : 1976 SCC (L&S) 118] the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as mandatory on the principle that : (SCC p. 720)

"Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. In Ghanshyam Dass v. Dominion of India (1984) 3 SCC 46] the Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle."

(iii) *Sugandhi (Dead) by LRs v. P. Rajkumar*:

"9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under Sub-rule (3)."

23. That apart, it is no more *res integra* that the Constitutional Courts are well endowed with the authority to mould the relief. In this regard, reliance is placed on the ruling reported in (2010) 3 SCC 470, Paragraph Nos.17, 18, 19 and 26.

24. It is also a primary objection by the State, that this Court cannot go into the vires and legality of the Policy/

Rules, nor the legality of the rule making power of the Excise Commissioner under Section 40 of the Act, 1910.

25. Elaborating further he would contend that the Rules are a policy decision and this Court cannot enter upon and adjudicate the correctness of the policy, that too, the policy being an economic policy. That, it is settled law that, Courts ought to be slow in tinkering with the opinion of experts who have drawn the policy.

26. The Learned Advocate General would simply brush aside the submissions regarding the impugned action being discriminatory. He would submit that the phrase “adjoining areas”, is well defined, and the apprehension that bars are exempted is only an apprehension and the State Government is in the process of imposing ban on bars also; that no bar licenses have been renewed and the apprehension is without reasonable basis.

27. That, the right to trade in liquor, is not a legal right but is merely a privilege which the State may or may not grant. That the right to carry on business in liquor, not being a fundamental right, the writ petitions are required to be rejected at the threshold itself. That the invocation of the provisions of Article 226 can be only by an aggrieved person, and the right to do business in liquor not being a fundamental right, the petitioners cannot have any grievance. In this

regard, he would place reliance on the ruling of the Hon'ble Apex Court rendered in ***State of Kerala & others vs. Kandath Distilleries***, reported in **(2013) 6 SCC 53**, and would place reliance on the observations and conclusions of the Hon'ble Apex Court drawn in Paragraph Nos.24, 25, 27, 28, 29, 30, 31, 32 and 33.

28. The learned Advocate General would contend that, the Hon'ble Apex Court by a catena of decisions, has held that carrying on business in potable liquor/ alcohol is a matter of policy and the scope of interference in economic policy matters ought to be minimal. That, the framing of such policies is the positive responsibility of the legislature and the Courts have only the power to destroy and not to reconstruct, and therefore, the Courts ought to adopt the principle of Judicial self- restraint.

29. That policies are made by the Government, after due deliberations with experts and the discretion is left with the policy makers as to the time, place and manner, in which, any particular issue or policy is required to be addressed. That it is also within the exclusive domain of the policy makers, to decide, as to which class of people of the society the policy will be applicable, because framing of economic policies is a function of experts and the Courts do not possess the expertise to determine as to which of the policy is good or

bad. In this regard, he would place reliance on the judgment of the Hon'ble Apex Court in the case of ***BALCO Employees' Union (Regd.) vs. Union of India & others***, reported in **(2002) 2 SCC 333** and would place reliance on the observations and the conclusion drawn in Paragraph Nos.36 to 51.

30. The Learned Advocate General would further submit that framing of the policy by the State Government invoking the provisions of Section 40 of the of the Act, 1910 and the consequent framing of Rule 17(b) is a subordinate legislation and it is well- settled principle, that the subordinate legislation can be challenged on two grounds: (i) on the ground of violation of fundamental and legal rights; (2) on the ground of violation of any provisions of the parent or principal Act, and no other ground is available to the petitioner to challenge the impugned policy. That admittedly, the petitioner has no fundamental right in carrying on business of potable liquor/ alcohol. That as the petitions are not challenging the *vires* of the provisions of the parent or principal act, the writ petitions are liable to be rejected. That the contentions of the petitioner that the denial of renewal of licenses of FL-5DS/M shops is discriminatory, is merely based on value judgment basis and not supported by any material.

31. That during the pendency of the writ petitions, the Government has refused the renewal of bar licenses in the prohibited areas.

32. That it is a policy of the State that sale and consumption of potable liquor/ alcohol in religious areas, like Rishikesh and Haridwar, should be prohibited. If this be the contention of the State, then the *raison d'être* is lost as it is the admitted case that the shops of the petitioners are situated well outside the boundaries of Rishikesh and Haridwar. The above is not only the submission, but is also the rule as framed by the State and subsisting.

33. That it settled law that it is not the imperative for the State to implement its entire policy in one-go and the State has the right to implement its policy in a phased manner. In this regard, he would place reliance on the ruling of the Hon'ble Apex Court rendered in the case of ***Lalit Kumar Jain vs. Union of India***, reported in **(2021) 9 SCC 321**, and would place reliance on Paragraph No.103; that the various grounds canvassed by the petitioners in the course of hearing are not supported by necessary pleadings.

34. It is further contended that the author of the notification issued by the Excise Commissioner refers to the policy of the Government and the explicit and implied power available to the Commissioner for making the Rules to make

the Government Policies more effective and workable; that the Government Order passed by the Excise Commissioner is as a functionary of the government and a ministerial act. That the Excise Commissioner has the right to adopt all means and measures to implement the policy. That the principle, that the officers/ bureaucrats are functionaries and not delegates of the government is settled in the case of ***Samsher Singh vs. State of Punjab & another***, reported in ***(1974) 2 SCC 831***, and reliance is placed on Paragraph Nos.31 and 35, and in the case of ***Bidi, Bidi Leaves & Tobacco Merchants Association Gondia & other vs. The State of Bombay & others***, reported in ***AIR 1962 SC 486***, Paragraph No.20.

35. That the arguments advanced cannot be considered as they are not supported by the pleadings and that the Court cannot make out a case in favour of the petitioners who have not raised any pleadings. In this regard, he would place reliance on the ruling of the Hon'ble Apex Court in the case of ***State of Maharashtra & others vs. Narmada Estates Pvt. Ltd. & others***, reported in ***(2010) 12 SCC 419***; ***State of U.P. & others vs. Raj Karan Singh***, reported in ***(1998) 8 SCC 529***, and; ***Dr. R.K.S. Chauhan & another vs. State of U.P. & others***, reported in ***1995 Supp (3) SCC 688***.

36. Lastly, he would contend that *de hors* the above contentions, the State is empowered under the provisions of

Section 36-A of the U.P. Excise Act, to refuse renewal of licenses without assigning any reason; that there is no challenge questioning the *vires* of the said provision.

37. The last contention will not detain this Court and the ruling of the Constitutional Bench of the Supreme Court in the case of ***Khoday Distilleries***, particular Paragraph No.60, is a clear answer. The provisions of Section 36-A cannot be read, interpreted and understood as vesting unbridled power in the State to act in an arbitrary and discriminatory manner, and the power vested under Section 36-A has to be read down and be understood in the light of the law laid down by the Hon'ble Apex Court. Hence, the said contention requires to be rejected at the threshold itself. That apart, the rule of law, the primacy of law and fairness in action are the soul of the Constitution and any statute enacted are subject to the power conferred on the State by the Constitution and not independent of the Constitution and are subject to judicial review.

38. Having heard learned counsel for the petitioners and learned Advocate General for the State, this Court is of the opinion that it is just and necessary to extract various provisions, relevant and pertinent, for adjudicating the issue on hand.

39. Admittedly, the power to legislate regarding prohibition of sale in a specified area or areas or to a person or a class of persons, is vested in the State under the provisions of Section 37-A, and the power to make rules in this regard is vested in the State under Section 40 and the bar to further delegate this rule making power is traceable to Section 10(2)(f). The provisions of Section 10(2)(f), Section 37-A, Section 40 and read as under:-

*“Section 10(2)(f) delegate 1[***] to the Excise Commissioner all or any of its powers under this Act, **except the power conferred by Section to make rules.** (emphasis by this Court).*

Section 37-A. Prohibition of import, export, transport, possession or consumption of intoxicants.-(1) Subject to the provisions in sub-section (4), the import or export of any intoxicating into or from Uttar Pradesh or any part thereof or the transport of any intoxicant shall be prohibited.

(2) Notwithstanding anything contained in Section 20, but subject to the provision of sub-section (4), the possession or consumption by any person or class of persons or subject to such exceptions, if any, as may be specified, by all persons in Uttar Pradesh **or in any specified area or areas thereof,** of any intoxicant **shall absolutely or subject to such conditions as may be specified, be prohibited.**(emphasis by this Court).

(3) In pursuance of the policy of gradual extension of prohibition in the State and having regard to the administrative convenience, **the State Government may from time to time select different areas** in that behalf after taking into account any one or more of the following factors, namely :—

(a) the character of an area as —

- (i) the seat of Government; or
- (ii) a seat of learning; or
- (iii) a place of pilgrimage or of religious importance; or
- (iv) hill area; or
- (v) an industrial area; or
- (vi) contiguous to dry area; or
- (vii) inhabited by Scheduled Castes or Scheduled Tribes;

or

(b) the general economic condition of the local population, including their level of nutrition and standard of living; or

(c) the local public opinion; or

(d) any other relevant factor which in the opinion of the State Government is material in the public interest;

Provided that nothing in this sub-section shall be construed to require the State Government to recite in its order, the considerations on the basis of which a particular area is selected at any time for the enforcement of prohibition.

(4) Subject to the provisions of sub-section (3), the area to which the prohibition on import, export or transport of any intoxicant under sub-section (1) and on possession or consumption of any intoxicant under sub-section (2) extends and the date on which the prohibition in any area comes into force, shall be such as the State Government may, from time to time, specify by notification.(emphasis by this Court).

(5) Notwithstanding anything contained in sub-section (4), in relation to any prohibition area, the State Government may, either by rules or by general or special order make any exemption or relaxation in respect of the possession, consumption, import, export or transport of the intoxicants mentioned in the notification under sub-section (4) or any of such intoxicant by or for purposes of —

- (a) member of defense services;
- (b) foreigners visiting or residing in the prohibition area;
- (c) travellers through the prohibition area;
- (d) district hospitals or medical colleges requiring any intoxicant for medicinal purposes;
- (e) persons holding licenses under Sections 17, 18, 21 and 24;
- (f) consignment from, to, or passing through the prohibition area by rail, road or air;
- (g) industrial, scientific, educational, medical or religious purposes.

.....

Section 40. Power of State Government to make rules.-

(1) The State Government may make rules for the purpose of carrying out the provisions of this Act or other law for the time being in force relating to excise revenue:(emphasis by this Court).

[Provided that the Uttar Pradesh Licensing under the Surcharge Fee System Rules, 1968 made by the Excise Commissioner, Uttar Pradesh, with the previous sanction of the State Government, as amended by the Excise Commissioner, Uttar Pradesh, from time to time, before the commencement of this Act, shall, until altered or repealed by the State Government by rules made under this section be deemed to be and always to have been as valid and effective as if the said rules were duly made by the State Government under this section.]

(2) In particular and without prejudice to the generality of the foregoing provision, the State Government may make rules —

- (a) regulating the delegation of any powers by the Excise Commissioner or Collector under Section 10(2)(h);
- (b) prescribing the powers and duties of officers of the Excise Department;
- (c) prescribing the manner in which appeals or revisions shall be presented and the procedure for dealing with such appeals and revisions;
- (d) regulating the import, export, transport or possession of any intoxicant;
- (e) regulating the periods and localities for which, and the persons to whom, licenses for the vend by wholesale or by retail of any intoxicant may be granted;**
- (f) prescribing the procedure to be followed and the matters to be ascertained before any license for such vend is granted for any locality;

(g) for the prohibition of the sale of any [intoxicant] to any person or class of persons;

(h) for the grant of expenses to witnesses and compensation for loss of time to persons released under Section 49 on the ground that they have been improperly arrested and to persons charged before a Magistrate with offences punishable under the Act but acquitted;

(i) regulating the power of excise officers to summon witnesses from a distance under the provisions of Section 49;

(j) for declaring the excise officers to whom, and the manners in which, information or aid should be given under Section 56;

(k) for the prohibition of the employment by the license-holder of any person or class of persons to assist in his business in any capacity whatsoever;

(l) for the prevention of drunkenness, gambling or disorderly conduct in or near any licensed premises and the meeting or remaining of persons of bad character in such premises.

[(m) for the grant of rewards to officials, officers or informers by the Collector out of and up to fifty per cent of composition fee and by the Magistrate trying the case, out of and up to fifty per cent of fine recovered under the Act.]”

(emphasis supplied by this Court).

40. That apart, the other provision that is required to be looked into is are Section 23-A of the U.P. General Clauses Act, 1904 r/w Section 77 of the U.P. Excise Act, 1910, which read as under:-

“23-A. Date of coming into effect of rules and the control of Legislature over them.-(1) All rules made by the State Government under an Uttar Pradesh Act shall, as soon as may be after they are made, be laid before each House of the State Legislature, while it is in session, for a total period of not less than thirty days, which may be comprised in one session or two or more successive sessions, and shall, unless some later date is appointed, take effect from the date of their publication in the Gazette subject to such modifications or annulments as the two Houses of the Legislature may, during the said period, agree to make, so however, that any such modification or annulments as the two Houses of the Legislature may, during the said period, agree to make so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

(2) Where any Central Act, in force in or applicable to Uttar Pradesh and relating to matters with respect to which the State Legislature has power to make laws for Uttar Pradesh, confers power on the State Government to make rules thereunder then subject to any express provisions to the contrary in such Act, the provisions of subsection (1) shall mutatis mutandis apply to the rules made by the State Government in exercise of that power.]

77. Publication of rules and notifications.- All rules made and notifications issued under the Act shall be published in the Official Gazette, and shall have effect as if enacted in this Act from the date of such publication or from such other date as may be specified in that behalf:

[Provided that notwithstanding anything to the contrary contained in this section or in any judgment, decree or order, the Notification Nos.3514-E/ XIII-331-78 and 1227-E/ XIII-332-78, both dated April 17, 1978, made by the State Government in exercise of the powers under Sections 28 and 29 of the amendments made by the aforesaid notifications shall have effect and be deemed always to have effect on and from April 1, 1978:]

[Provided further that notwithstanding anything to the contrary contained in this section, or in any contract, judgment, decree or order, the Notification No.3842-E/ XIII-512-83, dated May 25, 1983, made by the State Government in exercise of the powers under Section 30 shall have effect and be deemed always to have effect on and from April 1, 1983.]”

41. The interpretation and consideration of the law is to be interspersed and appreciated in the backdrop of the Uttar Pradesh Rules of Business, 1975 and the Business of Uttaranchal (Allocation) Rules, 2003.

42. The point that is canvassed by the petitioners is the legality and the competence of the Excise Commissioner to make rules and the legality of the Rules notified in exercise of the powers vested u/s 40, on 05th March, 2025. It would be beneficial to examine the law regarding delegation or excessive delegation, or what tantamounts to excessive delegation and one of the earliest ruling of the Hon’ble Apex Court is rendered in the case of **“M.K. Papiiah & Sons vs. Excise Commissioner & another”**, reported (1975) 1 SCC

492. Paragraph Nos.11 to 19 read as under:-

“11. We are not certain whether the preamble of the Act gives any guidance for fixing the rate of excise duty. But that does not mean that the Legislature here has no control over the delegate. The legislative control over delegated legislation may take many forms.

12. In Corporation of Calcutta v. Liberty Cinema [AIR 1965 SC 1107, the validity of Section 548(2) of the Calcutta Municipal Act, 1951, which empowered the Corporation to levy fees “at such rates as may from time to time be fixed by the Corporation” was challenged on the ground of excessive delegation as it provided no

guidance for the fixation of the amount. The majority upheld the provision relying on the decision in *Banarsi Das v. State of M.P.* [AIR 1958 SC 909] holding that the fixation of rates of tax **not being an essential legislative function**, could be validly delegated to a non-legislative body, but observed that when it was left to such a body, **the Legislature must provide guidance for such fixation**. The Court found the guidance in the monetary needs of the Corporation for carrying out the functions entrusted to it under the Act.

13. In *Municipal Board, Hapur v. Raghuvendra Kripal* [AIR 1966 SC 693], the validity of the U.P. Municipalities Act, 1916, was involved. The Act had empowered the municipalities to fix the rate of tax and **after having enumerated the kinds of taxes to be levied, prescribed an elaborate procedure for such a levy and also provided for the sanction of the Government**. Section 135(3) of the Act raised a conclusive presumption that the procedure prescribed had been gone through on a certain notification being issued by the Government in that regard. This provision, it was contended, was ultra vires because there was an abdication of essential legislative functions by the Legislature with respect to the imposition of tax inasmuch as the State Government was given the power to condone the breaches of the Act and to set at naught the Act itself. This, it was contended, was an indirect exempting or dispensing power. Hidayatullah, J. speaking for the majority, said that regard being had to the democratic set up of the municipalities which need the proceeds of these taxes for their own administration, it is proper to leave to these municipalities the power to impose and collect these taxes. He further said that apart from the fact that the Board was a representative body of the local population on whom the tax was levied, **there were other safeguards by way of checks and controls by Government which could veto the action of the Board in case it did not carry out the mandate of the Legislature**.

14. In *Devi Dass Gopal Krishnan v. State of Punjab* [AIR 1967 SC 1895] the question was whether Section 5 of the East Punjab General Sales Tax Act, 1948, which empowered the State Government to fix sales tax at such rates as it thought fit was bad. **The Court struck down the section on the ground that the Legislature did not lay down any policy or guidance to the Executive in the matter of fixation of rates**. Subba Rao, C.J., speaking for the Court, pointed out that the needs of the State and the purposes of the Act would not provide sufficient guidance for the fixation of rates of tax. He pointed out the danger inherent in the process of delegation:

“An overburdened Legislature or one controlled by a powerful Executive may unduly overstep the limits of delegation. It may not lay down any policy at all: **it may declare its policy in vague and general terms; it may not set down any standard for the guidance of the Executive; it may confer an arbitrary power on the Executive to change or modify the policy laid down by it without reserving for itself any control over subordinate legislation**. This self-effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation.”

In *Municipal Corporation of Delhi v. Birla Cotton Spinning and Weaving Mills* [AIR 1968 SC 1232 : (1968) 3 SCR 251] the main question was about the constitutionality of delegation of taxing powers to municipal corporations. The Delhi Municipal Corporation Act (66 of 1957) by Section 113(2) had empowered the Corporation to levy certain optional taxes. Under Section 150, power was given to the Corporation to define the maximum rate of tax to be levied, the classes of

persons and the description of articles and property to be taxed, the systems of assessment to be adopted and the exemptions, if any, to be granted. The majority of the Court held the delegation to be valid. Wanchoo, C.J. observed that there were sufficient guidance, checks and safeguards in the Act which prevented excessive delegation. The learned Chief Justice observed that statements in certain cases to the effect that the power to fix rates of taxes is not an essential legislative function were too broad and that

“the nature of the body to which delegation is made is also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation.”

According to the learned Chief Justice, the fact that delegation was made to an elected body responsible to the people including those who paid taxes provided a great check on the elected councillors imposing unreasonable rates of tax. He then said:

“The guidance may take the form of providing maximum rates of tax up to which a local body may be given the discretion to make its choice, or it may take the form of providing for consultation with the people of the local area and then fixing the rates after such consultation. It may also take the form of subjecting the rate to be fixed by the local body to the approval of Government which acts as a watch-dog on the actions of the local body in this matter on behalf of the Legislature. There may be other ways in which guidance may be provided.”

15. In *Sita Ram Bishambhar Dayal v. State of U.P.* [(1972) 4 SCC 485] Section 3-D(1) of the U.P. Sales Tax Act, 1948, had provided for levying taxes at such rates as may be prescribed by the State Government not exceeding the maximum prescribed therein. Hegde, J., in speaking for the Court, observed: [SCC p. 487 para 5, SCC (Tax) p. 296]

“However much one might deplore the ‘New Despotism’ of the Executive, the very complexity of the modern society and the demand it makes on its Government have set in motion forces which have made it absolutely necessary for the Legislatures to entrust more and more powers to the Executive. Text book doctrines evolved in the 19th century have become out of date.

16. In this case, we think that Section 71 of the Act which provides for the rule-making power imposes the necessary check upon the wide power given to the Government to fix the rate. Sub-section (4) of that section provides:

“Every rule made under this section shall be laid as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule (it?) shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

17. The appellant submitted that Section 71(4) does not provide a guarantee for legislative control over delegated legislation. The argument was that the rules would come into force as soon as they are framed and that the power of the Legislature to annul the rules

subsequently cannot be regarded as sufficient control over delegated legislation.

18. That laying of rules before the Legislature is control over delegated legislation is implied in the speech of Lord Thankerton in the House of Lords in *Minister of Health v. King* [1931 AC 524] where he said:

“In this case, as in similar cases that have come before the courts, Parliament has delegated its legislative function to a Minister of the Crown, but in this case Parliament has retained no specific control over the exercise of the function by the Minister, such as a condition that the order should be laid before Parliament and might be annulled by a resolution of either House within a limited period.”

19. In *Institute of Patent Agents v. Joseph Lockwood* [1894 AC 347] Lord Watson said:

“The Legislature retained so far a check that it required that the regulations which they framed should be laid upon the table of both Houses; and of course these regulations could have been annulled by an unfavourable resolution upon a motion made in either House.”

(emphasis supplied by this Court)

43. On a plain reading of the above, it is apparent that the Hon’ble Apex Court has drawn a clear distinction between, matters which are essentially legislative in nature and matters that are not essential legislative function. Proceeding further, the Hon’ble Apex Court has recognized the inevitability of discharge of legislative functions by the Executive, but the ratio clearly settled by the above judgment after placing reliance on its own rulings is that the rule making power that may be entrusted to the Executive can be delegated only after providing a proper policy or guidance for the purpose of achieving the objective of the Act or Rules, and; that any enabling provision, enabling the Executive which is not bounded by policy or guidance is liable to be struck down. What can be deduced from the above ratio is that, the Legislature may invest the Executive to perform a legislative function within definite boundaries and any enabling provision which confers an arbitrary power on the

Executive to change or modify the policy would amount to a subordinate legislation resulting in self-effacement of legislative power in favour of an agency other than the legislature, and which in the wisdom of the Hon'ble Apex Court is beyond the permissible limits of delegation.

44. In the case on hand, the limits of delegation is clearly set-out under Section 10(2)(f) of the Act of 1910, wherein it is unambiguously stipulated that the rule making power in respect of subject matters envisaged under Sections 40 r/w Section 37-A cannot be delegated to the Excise Commissioner. Despite this embargo, the facts disclose that the impugned Government Order notifying the “adjoining areas” and specifying the boundaries of a specified area wherein prohibition is imposed, has been issued by the Excise Commissioner, contrary to the mandate of Section 40 r/w Section 37-A and Section 10(2)(f). The Excise Commissioner having been expressly prohibited from being invested with the jurisdiction to make any subordinate legislation in respect of the matters enumerated under Section 40 r/w Section 37-A, the impugned proceedings fall foul of the mandate of law.

45. A useful reference could also be made to the law laid down by the Hon'ble Apex Court in the case of ***St. Johns Teachers Training Institute vs. Regional Director, National Council for Teacher Education &another,***

reported in **(2003) 3 SCC 321**, wherein in Paragraph Nos.10, 12, 16 and 17, the Hon'ble Apex Court has been pleased to elucidate on the importance of the subordinate legislation being made validly and also regarding the checks and balances against the excessive delegation. Paragraph Nos.10, 12, 16 and 17 read as under:-

*"10. A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and regulations are all comprised in delegated legislations. **The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details.** The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of policy. **The need for delegated legislation is that they are framed with care and minuteness when the statutory authority making the rule, after coming into force of the Act, is in a better position to adapt the Act to special circumstances.** Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operation of statutes. Rules and regulations made by reason of the specific power conferred by the statutes to make rules and regulations establish the pattern of conduct to be followed. Regulations are in aid of enforcement of the provisions of the statute. The process of legislation by departmental regulations saves time and is intended to deal with local variations and the power to legislate by statutory instrument in the form of rules and regulations is conferred by Parliament. The main justification for delegated legislation is that the legislature being overburdened and the needs of the modern-day society being complex, it cannot possibly foresee every administrative difficulty that may arise after the statute has begun to operate. Delegated legislation fills those needs. The regulations made under power conferred by the statute are supporting legislation and have the force and effect, if validly made, as an Act passed by the competent legislature. (See Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi [(1975) 1 SCC 421 : 1975 SCC (L&S) 101 : AIR 1975 SC 1331] .)*

*12. **The question whether any particular legislation suffers from excessive delegation has to be decided having regard to the subject-matter, the scheme, the provisions of the statute including its preamble and the facts and circumstances in the background of which the statute is enacted. (See Registrar of Coop. Societies v. K. Kunjabmu [(1980) 1 SCC 340 : AIR 1980 SC 350] and State of Nagaland v. Ratan Singh [AIR 1967 SC 212 : 1967 Cri LJ 265] .)** It is also well settled that in considering the vires of subordinate legislation one should start with the presumption that it is intra vires and if it is open to two constructions, one of which would make it valid and the other invalid, the courts must adopt that construction*

which makes it valid and the legislation can also be read down to avoid its being declared ultra vires.

16. The contention that there are no guidelines for the State Governments regarding grant of an NOC and consequently, the State Governments may refuse to grant an NOC on wholly irrelevant considerations is without substance. It is averred in para 7 of the counter-affidavit filed by the Council that it has issued certain guidelines to the State Governments on 2-2-1996 for issuance of an NOC and a copy whereof has also been annexed. The relevant part of the guidelines is being reproduced below:

"1. The establishment of teachers' training institutions by Government, private managements or any other agencies should largely be determined by assessed need for trained teachers. This need should take into consideration the supply of trained teachers from existing institutions, the requirement of such teachers in relation to enrolment projections at various stages, the attrition rates among trained teachers due to superannuation, change of occupation, death etc. and the number of trained teachers on the live register of the employment exchanges seeking employment and the possibility of their deployment. The States having more than the required number of trained teachers may not encourage opening of new institutions for teacher education or to increase the intake.

2. States having shortage of trained teachers may encourage establishment of new institutions for teacher education and to increase intake capacity for various levels of teacher education institutions keeping in view the requirements of teachers estimated for the next 10-15 years.

3. Preference might be given to institutions which tend to emphasize the preparation of teachers for subjects (such as Science, Mathematics, English etc.) for which trained teachers have been in short supply in relation to requirement of schools.

4. Apart from the usual courses for teacher preparation, institutions which propose to concern themselves with new emerging specialities (e.g. computer education, use of electronic media, guidance and counselling etc.) should receive priority. Provisions for these should however, be made only after ensuring that requisite manpower, equipment and infrastructure are available. These considerations will also be kept in view by the institution intending to provide for optional subjects to be chosen by students such as guidance and counselling special education etc.

5. With a view to ensuring supply of qualified and trained teachers for such specialities such as education of the disabled, non-formal education, education of adults, preschool education, vocational education etc. special efforts and incentives may be provided to motivate private managements/voluntary organisations for establishment of institutions, which lay emphasis on these areas.

6. With a view to promoting professional commitment among prospective teachers, institutions which can ensure adequate residential facilities for the Principal and staff of the institutions as well as hostel facilities for a substantial proportion of its enrolment should be encouraged.

7. Considering that certain areas (tribal, hilly regions etc.) have found it difficult to attain qualified and trained teachers, it

would be desirable to encourage establishment of training institutions in those areas.

8. Institutions should be allowed to come into existence only if the sponsors are able to ensure that they have adequate material and manpower resources in terms, for instance, of qualified teachers and other staff, adequate buildings and other infrastructure (laboratory, library etc.), a reserve fund and operating funds to meet the day-to-day requirements of the institution, including payment of salaries, provision of equipment etc. Laboratories, teaching science methodologies and practicals should have adequate gas plants, proper fittings and regular supply of water, electricity etc. They should also have adequate arrangements. Capabilities of the institution for filling norms prepared by NCTE may be kept in view.

9. In the establishment of an institution preference needs to be given to locations which have a large catchment area in terms of schools of different levels where student teachers can be exposed to demonstration lessons and undertake practice teaching. A training institution which has a demonstration school where innovative and experimental approaches can be demonstrated could be given preference."

17. A perusal of the guidelines would show that while considering an application for grant of an NOC the State Government or the Union Territory has to confine itself to the matters enumerated therein like assessed need for trained teachers, preference to such institutions which lay emphasis on preparation of teachers for subjects like Science, Mathematics, English etc. for which trained teachers are in short supply and institutions which propose to concern themselves with new and emerging specialities like computer education, use of electronic media etc. and also for speciality education for the disabled and vocational education etc. It also lays emphasis on establishment of institutions in tribal and hilly regions which find it difficult to get qualified and trained teachers and locations which have catchment area in terms of schools of different levels where student teachers can be exposed to demonstration lessons and can undertake practice teaching. Para 8 of the guidelines deals with financial resources, accommodation, library and other infrastructure of the institution which is desirous of starting a course of training and teacher education. The guidelines clearly pertain to the matters enumerated in sub-section (3) of Section 14 of the Act which have to be taken into consideration by the Regional Committee while considering the application for granting recognition to an institution which wants to start a course for training in teacher education. The guidelines have also direct nexus to the object of the Act, namely, planned and coordinated development of teacher education system and proper maintenance of norms and standards. It cannot, therefore, be urged that the power conferred on the State Government or Union Territory, while considering an application for grant of an NOC, is an arbitrary or unchannelled power. The State Government or the Union Territory has to necessarily confine itself to the guidelines issued by the Council while considering the application for grant of an NOC. In case the State Government does not take into consideration the relevant factors enumerated in sub-section (3) of Section 14 of the Act and the guidelines issued by the Council or takes into consideration factors which are not relevant and rejects the application for grant of an NOC, it will be open to the institution concerned to challenge the same in accordance with law. But, that by itself, cannot be a ground to hold that the Regulations which require an NOC from the State Government or the Union Territory are ultra vires or invalid."

46. On a reading of the law as elucidated by the Hon'ble Apex Court, hereinabove, it can be safely discerned that a rule or order is a regulation prescribed by a superior for the management of the businesses. That the power to make subordinate legislation is derived from the enabling act and it is fundamentally that the delegatee has to act within the limits of authority conferred upon it by the Act. That rules cannot be made to supplant the provisions of the enabling act only to the extent of supplementing it; that what can be delegated is only ancillary function or in the wisdom of the Hon'ble Apex Court, a power to fill-up details. That delegated legislation ought to be framed with care and minuteness in order that the enable easy adaptation of the Act once it comes in force. The Hon'ble Apex Court has held that the main justification for permitting delegated legislation is because the legislature is over-burdened and the needs of the modern society being complex, it would be difficult for the legislature for foresee any administrative difficulty that may arise. That apart, in Paragraph No.16, the Hon'ble Apex Court has examined the guidelines that have been framed under the enabling act and thus, providing a definitive area of operation to the delegate.

47. The Constitution Bench of the Hon'ble Apex Court in the case of ***“Rojer Mathew vs. South Indian Bank Ltd. &***

others”, reported in **(2020) 6 SCC 1**, after a detailed consideration of several of its own rulings, has been pleased to hold in Paragraph 120 to 137 as under:-

“120. The Eighth Schedule referred to in Section 183 contains a list of 19 tribunals with corresponding enactments under which they were constituted. Section 183 overrides the provisions of the enactments specified in Column 3 of the Eighth Schedule and mandates that from the appointed date, the Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or Member of the Tribunal, Appellate Tribunal or, as the case may be, other authorities as specified in Column 2 of the Eighth Schedule shall be appointed in terms of provisions of Section 184 of the Finance Act. These provisions, however, do not apply to those who have already been appointed to the said posts immediately before the appointed date, that is the date on which the Central Government may, by a notification in the Official Gazette, bring the said provisions into effect.

121. Section 184, to repeat, reads as under:

“184. Qualifications, appointment, term and conditions of service, salary and allowances, etc. of Chairperson, Vice-Chairperson and Members, etc. of the Tribunal, Appellate Tribunal and Other Authorities.—(1) The Central Government may, by notification, make rules to provide for qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or Member of the Tribunal, Appellate Tribunal or, as the case may be, other authorities as specified in Column 2 of the Eighth Schedule:

Provided that the Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or Member of the Tribunal, Appellate Tribunal or other Authority shall hold office for such term as specified in the rules made by the Central Government but not exceeding five years from the date on which he enters upon his office and shall be eligible for reappointment:

Provided further that no Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or Member shall hold office as such after he has attained such age as specified in the rules made by the Central Government which shall not exceed,—

(a) in the case of Chairperson, Chairman or President, the age of seventy years;

(b) in the case of Vice-Chairperson, Vice-Chairman, Vice-President, Presiding Officer or any other Member, the age of sixty-seven years:

(2) Neither the salary and allowances nor the other terms and conditions of service of Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or Member of the Tribunal, Appellate Tribunal or, as the case may be, other authority may be varied to his disadvantage after his appointment.

122. Section 184 has conferred upon the Central Government power to make rules by way of notification to provide for (a) qualifications; (b) appointment; (c) term of office; (d) salaries and allowances; (e) resignation; and (f) removal and other terms and conditions of service of the Chairperson, Vice-Chairperson, Chairman, Vice-Chairman, President, Vice-President, Presiding Officer or Member of the Tribunal, Appellate Tribunal or, as the case may be, other Authorities as specified in Column 2 of the Eighth Schedule. The first proviso states that the incumbent officers shall hold office for such terms as may be specified in the rules made by the Central Government but the term shall not exceed five years from the date on which he assumes the office and shall be eligible for reappointment. The second proviso states that the persons so appointed shall hold office till they attain the age specified in the rules made by the Central Government which shall not exceed in the case of Chairperson, Chairman and the President, the age of 70 years and in the case of Vice-Chairperson, Vice-Chairman, Vice-President or any other Members, the age of 67 years. Sub-section (2) of Section 184 states that the salaries and allowances and other terms and conditions of service of the persons appointed may not be varied to their disadvantage after appointment.

123. Section 185(1) of the Finance Act is also relevant and reads:

“185. Transitional provisions.—(1) Any person appointed as the Chairperson or Chairman, President or Vice-Chairperson or Vice-Chairman, Vice-President or Presiding Officer or Member of the Tribunals, Appellate Tribunals, or as the case may be, other authorities specified in Column 2 of the Ninth Schedule and holding office as such immediately before the appointed day, shall on and from the appointed day, cease to hold such office and such Chairperson or Chairman, President, Vice-Chairperson or Vice-Chairman, Vice-President or Presiding Officer or Member shall be entitled to claim compensation not exceeding three months' pay and allowances for the premature termination of term of their office or of any contract of service.”

The Chairperson or Chairman, President or Vice-Chairperson or Vice-Chairman, Vice-President or Presiding Officer or Member of the Tribunals/Appellate Tribunals specified in Column 2 of the Ninth Schedule who hold office as per the above provisions before the appointed date shall cease to do so and will be entitled to compensation not exceeding three months' pay and allowance for the premature termination of the office or the contract of office. However, we would clarify that presently we are not examining constitutional vires of sub-section (1) to Section 185.

124. Section 186 of the Finance Act, 2017 reads as under:

“186. General power to make rules.—Without prejudice to any other power to make rules contained elsewhere in this Part, the Central Government may, by notification, make rules generally to carry out the provisions of this Part.”

The aforesaid provisions stipulate that without prejudice to any other power to make rules contained elsewhere in Part XIV of the

Finance Act, 2017, the Central Government may, by notification, make rules generally to carry out the provisions of the said Part.

125. Reading of the said provisions indicates that except for providing the upper age-limit and that the person appointed shall not have tenure exceeding five years from the date on which he enters office and shall be eligible for re-appointment, the Finance Act delegates the power to specify the qualifications, method of selection and appointment, terms of office, salaries and allowances, removal including resignation and all other terms and conditions of service to the Central Government which would act as a delegatee of Parliament. The governing statutory provisions embodied in the existing parent legislation specified in Column 3 of the Schedule and the rules made thereunder are overwritten and authority and power is conferred on the Central Government to decide qualifications for appointment, process for selection, and terms and conditions of service including salaries, allowances, resignation and removal through delegated or subordinate legislation. Before we look into the vires of this delegation, it behoves us to recount and reflect on the approach adopted by this Court in gauging the validity of delegated legislation.

126. This Court addressed this conundrum the first time in *Delhi Laws Act, 1912, In re* [*Delhi Laws Act, 1912, In re*, 1951 SCC 568 : AIR 1951 SC 332] wherein a seven-Judge Bench delivered seven different judgments clearly evincing the divergence of opinion on the issue. Albeit, the majority view, as clarified and held by J.M. Shelat, J. speaking for the majority in *B. Shama Rao v. State (UT of Pondicherry)* [*B. Shama Rao v. State (UT of Pondicherry)*, AIR 1967 SC 1480] , can be deduced as under : (*B. Shama Rao case* [*B. Shama Rao v. State (UT of Pondicherry)*, AIR 1967 SC 1480] , AIR p. 1486, para 5)

"5. ... In view of the intense divergence of opinion except for their conclusion partially to uphold the validity of the said laws it is difficult to deduce any general principle which on the principle of stare decisis can be taken as binding for future cases. It is trite to say that a decision is binding not because of its conclusion but in regard to its ratio and the principle laid down therein. The utmost, therefore, that can be said of this decision is that the minimum on which there appears to be consensus was (1) that legislatures in India both before and after the Constitution had plenary power within their respective fields; (2) that they were never the delegates of the British Parliament; (3) that they had power to delegate within certain limits not by reason of such a power being inherent in the legislative power but because such power is recognised even in the United States of America where separatist ideology prevails on the ground that it is necessary to effectively exercise the legislative power in a modern State with multifarious activities and complex problems facing legislatures; and (4) that delegation of an essential, legislative function which amounts to abdication even partial is not permissible. All of them were agreed that it could be in respect of subsidiary and ancillary power.

127. All the seven Judges in *Delhi Laws Act, 1912, In re* [*Delhi Laws Act, 1912, In re*, 1951 SCC 568 : AIR 1951 SC 332] were in unison that abdication or effacement by conferring the power of legislation to the subordinate authority, even if partial, is not permissible. The difference of opinion primarily arose from the meaning and scope of the abdication or effacement of the legislative power. On the said aspect, we would like to refer to the judgments of Fazl Ali, J., Mukherjea, J. and Bose, J. Fazl Ali, J. had expressed the said principle as : (*Delhi Laws Act, 1912, In re case* [*Delhi Laws Act, 1912, In re*, 1951 SCC 568 : AIR 1951 SC 332] , SCC pp. 611 & 615-16, paras 11, 19 & 22)

"11. ... 'The true distinction ... is this. The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend. To deny this would be to stop the wheels of Government [Locke's Appeal, (1873) 72 Pa 491] .'

2. The true import of the rule against delegation is this:

19. This rule in a broad sense involves the principle underlying the maxim, delegatus non potest delegare, but it is apt to be misunderstood and has been misunderstood. In my judgment, all that it means is that the legislature cannot abdicate its legislative functions and it cannot efface itself and set up a parallel legislature to discharge the primary duty with which it has been entrusted. This rule has been recognised both in America and in England....

22. What constitutes abdication and what class of cases will be covered by that expression will always be a question of fact, and it is by no means easy to lay down any comprehensive formula to define it, but it should be recognised that the rule against abdication does not prohibit the legislature from employing any subordinate agency of its own choice for doing such subsidiary acts as may be necessary to make its legislation effective, useful and complete."

The learned Judge had further observed that an act is a law when it embodies policies, defines standards and directs the authority chosen to act within certain prescribed limits and not go beyond. The Act should be a complete expression of the will of the legislature to act in a particular way and of its command on how it should be carried out. When the legislature decides the circumstances as the best way to legislate on a subject, then, such legislation does not amount to abdication of powers because from the very nature to legislation it is manifest that when power is misused it can be withdrawn, altered and repealed. Most importantly, the delegate is to only adopt and extend the laws enacted by the legislature.

128. Mukherjea, J. in Delhi Laws Act, 1912, In re [Delhi Laws Act, 1912, In re, 1951 SCC 568 : AIR 1951 SC 332] opined that the legislative functions concern with declaring the legislative policy and laying down the standards which is to be enacted into a rule of law, and what can be delegated as the task of subordinate legislation by its very nature is ancillary to the statute which delegates the power to make it. When the legislative policy is enunciated with sufficient clearness or the standards are laid down, the courts cannot interfere with the discretion that the legislature has exercised in determining the extent of necessary delegation. The delegatee cannot be allowed to check the policy declared by the legislators and cannot be given the power to repeal or abrogate any statute.

129. Bose, J. in Delhi Laws Act, 1912, In re [Delhi Laws Act, 1912, In re, 1951 SCC 568 : AIR 1951 SC 332] while observing that the main function of the legislature is to legislate and not leave it to others, nevertheless acknowledged that it is impossible to carry on Government of a modern State with its infinite complexities and ramifications without a large devolution of power and delegation of authority. This is a practical necessity which has been acknowledged even by the American courts. To decide otherwise would make it difficult for the Government to function and work effectively.

130. A Division Bench of this Court in Ramesh Birch v. Union of India [Ramesh Birch v. Union of India, 1989 Supp (1) SCC 430] had examined the aforesaid seven opinions in Delhi Laws Act, 1912, In re [Delhi Laws Act, 1912, In re, 1951 SCC 568 : AIR 1951 SC 332] and culled out the ratio to observe that the lines of reasoning were different but nevertheless the Judges had accepted the inevitable that

while Parliament has ample and extensive powers of legislation, these would include the power to entrust some of the functions and powers to another body or authority. At the same time, in *Delhi Laws Act* [*Delhi Laws Act, 1912, In re*, 1951 SCC 568 : AIR 1951 SC 332] the Judges had agreed that there should be limitations on such delegation. However, on the question as to what is this limitation, there was a lack of consensus. The two Judges in *Ramesh Birch* [*Ramesh Birch v. Union of India*, 1989 Supp (1) SCC 430] relying on the ratio in *Delhi Laws Act* [*Delhi Laws Act, 1912, In re*, 1951 SCC 568 : AIR 1951 SC 332], had observed : (*Ramesh Birch case* [*Ramesh Birch v. Union of India*, 1989 Supp (1) SCC 430], SCC p. 467, para 19)

“19. ... Some thought that there is no abdication or effacement unless it is total i.e. unless Parliament surrenders its powers in favour of a “parallel” legislature or loses control over the local authority to such an extent as to be unable to revoke the powers given to, or to exercise effective supervision over, the body entrusted therewith. But others were of opinion that such “abdication” or “effacement” could not even be partial and it would be bad if full powers to do everything that the legislature can do are conferred on a subordinate authority, although the legislature may retain the power to control the action of such authority by recalling such power or repealing the Acts passed by the subordinate authority. A different way in which the second of the above views has been enunciated—and it is this view which has dominated since—is by saying that the legislatures cannot wash their hands off their essential legislative function. Essential legislative function consists in laying down the legislative policy with sufficient clearness and in enunciating the standards which are to be enacted into a rule of law. This cannot be delegated. What can be delegated is only the task of subordinate legislation which is by its very nature ancillary to the statute which delegates the power to make it and which must be within the policy and framework of the guidance provided by the legislature.”

Thereupon the Division Bench had referred to the “policy and guideline” theory as a test to decide whether or not it is a case of excessive delegation which it was observed means reference and giving proper regard to the context of the Act and the object and purposes sought to be achieved which should be clear and it is not necessary that the legislation should “dot all the i's and cross all the t's of its policy”. It is sufficient if it gives the broadest indication of the general policy of the legislature.

131. We would now refer to an earlier decision of this Court in *Devi Das Gopal Krishnan v. State of Punjab* [*Devi Das Gopal Krishnan v. State of Punjab*, AIR 1967 SC 1895] wherein K. Subba Rao, C.J. speaking for the Court had struck down Section 5 of the *East Punjab General Sales Tax Act, 1948* which had empowered the State Government to fix rate of tax to such rate as it deemed fit, as bad and unconstitutional observing that the needs of the State and the purposes of the Act did not provide sufficient guidance for fixing the rates of tax. It was observed : (AIR p. 1901, para 15)

“15. ... ‘But in view of the multifarious activities of a welfare State, it cannot presumably work out all the details to suit the varying aspects of a complex situation. It must necessarily delegate the working out of details to the executive or any other agency. But there is a danger inherent in such a process of delegation. An overburdened legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. It may not lay down any policy at all; it may declare its policy in vague and general terms; it may not set down any standard for the guidance of the executive; it may confer an arbitrary power on the executive to change or modify

the policy laid down by it without reserving for itself any control over subordinate legislation. This self-effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation. It is for a court to hold on a fair, generous and liberal construction of an impugned statute whether the legislature exceeded such limits. But the said liberal construction should not be carried by the courts to the extent of always trying to discover a dormant or latent legislative policy to sustain an arbitrary power conferred on executive authorities. It is the duty of the court to strike down without any hesitation any arbitrary power conferred on the executive by the legislature.'

132. A year later in *MCD v. Birla Cotton Spg. & Wvg. Mills* [*MCD v. Birla Cotton Spg. & Wvg. Mills*, AIR 1968 SC 1232] this Court, however, upheld Section 113(2) of the Delhi Municipal Act, 1957 which had empowered the corporation to levy certain optional taxes by observing that there were sufficient guidelines, safeguards and checks in the Act which prevented excessive delegation as the Act had provided maximum rate of tax. It was observed that the nature of body to which delegation is made is also a relevant factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation and also when delegation is made to an elected body accountable to the people including those who paid taxes, as this acted as a sufficient check. It was observed : (AIR p. 1244, para 28)

"28. A review of these authorities therefore leads to the conclusion that so far as this Court is concerned, the principle is well established that essential legislative function consists of the determination of the legislative policy and its formulation as a binding rule of conduct and cannot be delegated by the legislature. Nor is there any unlimited right of delegation inherent in the legislative power itself. This is not warranted by the provisions of the Constitution. The legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purposes and objects of the Act. Where the legislative policy is enunciated with sufficient clearness or a standard is laid down, the courts should not interfere. What guidance should be given and to what extent and whether guidance has been given in a particular case at all depends on a consideration of the provisions of the particular Act with which the Court has to deal including its Preamble. Further it appears to us that the nature of the body to which delegation is made is also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation."

Thus, the guidelines in the form of providing maximum rates of tax up to which a local body may be given discretion to make its choice or provision for consultation with the people of the local area and then fixing the rates or subjecting the rate of tax so fixed by the local authority to the approval of the Government which acts as watchdog were treated as satisfying the policy and guideline test.

133. This ratio in *Birla Cotton Spg. & Wvg. Mills* [*MCD v. Birla Cotton Spg. & Wvg. Mills*, AIR 1968 SC 1232] was followed and expounded in *M.K. Papiiah & Sons v. Excise Commr.* [*M.K. Papiiah & Sons v. Excise Commr.*, (1975) 1 SCC 492 : 1975 SCC (Tax) 128] in which this Court had examined what constitutes essential features that the legislature cannot delegate, to observe that this cannot be delineated in detail but nevertheless and certainly it does not include the change of policy. The legislator is the master of the policy and the delegate is not free to switch the policy for then it would be usurpation of legislative power itself. Therefore, when the question of the excessive delegation arises, investigation has to be made

whether policy of the legislation has not been indicated sufficiently or whether change of policy has been left to the pleasure of the delegate. This aspect is of substantial importance and relevance in the present case.

134. In *Avinder Singh v. State of Punjab* [*Avinder Singh v. State of Punjab*, (1979) 1 SCC 137] this Court had highlighted that the founding document, that is, the Constitution had created three instrumentalities with certain basic powers and it is axiomatic that legislative powers are not abdicated for this would mean betrayal of the Constitution and is intolerable in law. Therefore, legislature cannot self-efface its personality and make over in terms the plenary and essential legislative functions. Nevertheless, the complexities of modern administration are bafflingly intricate and present themselves with urgencies and difficulties and the need for flexibility, which the direct legislation may not provide. Delegation of some part of the legislative powers therefore became inevitable and an administrative necessity. Thus, while essential legislative policy cannot be delegated, however inessentials can be delegated over to relevant agencies.

135. Similar opinion was expressed in *Registrar of Coop. Societies v. K. Kunjabmu* [*Registrar of Coop. Societies v. K. Kunjabmu*, (1980) 1 SCC 340], wherein it has been observed : (SCC pp. 342-43, para 3)

"3. ... They function best when they concern themselves with general principles, broad objectives and fundamental issues instead of technical and situational intricacies which are better left to better equipped full time expert executive bodies and specialist public servants. Parliament and the State Legislatures have neither the time nor the expertise to be involved in detail and circumstance. Nor can Parliament and the State Legislatures visualise and provide for new, strange, unforeseen and unpredictable situations arising from the complexity of modern life and the ingenuity of modern man. That is the raison d'être for delegated legislation. That is what makes delegated legislation inevitable and indispensable. The Indian Parliament and the State Legislatures are endowed with plenary power to legislate upon any of the subjects entrusted to them by the Constitution, subject to the limitations imposed by the Constitution itself. The power to legislate carries with it the power to delegate. But excessive delegation may amount to abdication. Delegation unlimited may invite despotism uninhibited. So, the theory has been evolved that the legislature cannot delegate its essential legislative function. Legislate it must by laying down policy and principle and delegate it may to fill in detail and carry out policy. The legislature may guide the delegate by speaking through the express provision empowering delegation or the other provisions of the statute, the Preamble, the scheme or even the very subject-matter of the statute. If guidance there is, wherever it may be found, the delegation is valid. A good deal of latitude has been held to be permissible in the case of taxing statutes and on the same principle a generous degree of latitude must be permissible in the case of welfare legislation, particularly those statutes which are designed to further the directive principles of State policy."

The above decision states that the policy and principles test can be applied through express provisions empowering delegation or any other provision of the statute including the Preamble, the scheme or even the subject-matter of the statute.

136. We will refer to a recent decision of this Court in *Keshavlal Khemchand & Sons (P) Ltd. v. Union of India* [*Keshavlal Khemchand & Sons (P) Ltd. v. Union of India*, (2015) 4 SCC 770 : (2015) 2 SCC (Civ) 681] wherein a Division Bench of this Court had

observed that in spite of abundance of authority on the subject we are not blessed with certainty, and then observed that in *Kunjabmu* [*Registrar of Coop. Societies v. K. Kunjabmu*, (1980) 1 SCC 340] this Court had declined to consider whether *M.K. Papiiah & Sons* [*M.K. Papiiah & Sons v. Excise Commr.*, (1975) 1 SCC 492 : 1975 SCC (Tax) 128] had beaten the final retreat from the position enunciated in *Delhi Laws Act* [*Delhi Laws Act, 1912, In re*, 1951 SCC 568 : AIR 1951 SC 332] and had proceeded to examine the theory of “policy and guidelines” referring to several judgments. The Division Bench then went on to observe that the earlier judgments had not been able to lay down the principle including as to what exactly constitutes “essential legislative function”, but the following inferences can be drawn : (SCC p. 796, para 51)

“51.1. The proposition that essential legislative functions cannot be delegated does not appear to be such a clearly settled proposition and requires a further examination which exercise is not undertaken by the counsel appearing in the matter. We leave it open for debate in a more appropriate case on a future date. For the present, we confine to the examination of the question:

‘Whether defining every expression used in an enactment is an essential legislative function or not?’

51.2. All the judgments examined above recognise that there is a need for some amount of delegated legislation in the modern world.

51.3. If the parent enactment enunciates the legislative policy with sufficient clarity, delegation of the power to make subordinate legislation to carry out the purpose of the parent enactment is permissible.

51.4. Whether the policy of the legislature is sufficiently clear to guide the delegate depends upon the scheme and the provisions of the parent Act.

51.5. The nature of the body to whom the power is delegated is also a relevant factor in determining ‘whether there is sufficient guidance in the matter of delegation’. ”

(emphasis in original)

137. Appropriate in regard to “policy and guideline” test would be reference to yet another earlier judgment of this Court in *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. CST* [*Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. CST*, (1974) 4 SCC 98 : 1974 SCC (Tax) 226 : AIR 1974 SC 1660] wherein while referring to the views of an eminent American jurist Willoughby, it was stated : (SCC p. 112, paras 24-25)

“24. The matter has been dealt with on p. 1637 of Vol. III in Willoughby on the Constitution of the United States, 2nd Edn., in the following words:

‘The qualifications to the rule prohibiting the delegation of legislative power which have been earlier adverted to are those which provide that while the real law-making power may not be delegated, a discretionary authority may be granted to executive and administrative authorities : (1) to determine in specific cases when and how the powers legislatively conferred are to be exercised; and (2) to establish administrative rules and regulations, binding both upon their subordinates and upon the public, fixing in detail the manner in which the requirements of the statutes are to be met, and the rights therein created to be enjoyed.’

25. The matter has also been dealt with in *Corpus Juris Secundum*, Vol. 73, p. 324. It is stated there that the law-making power may not be granted to an administrative body to be exercised under the guise of administrative discretion. Accordingly, in delegating powers to an administrative body with respect to the administration of statutes, the legislature

must ordinarily prescribe a policy, standard, or rule for their guidance and must not vest them with an arbitrary and uncontrolled discretion with regard thereto, and a statute or ordinance which is deficient in this respect is invalid. In other words, in order to avoid the pure delegation of legislative power by the creation of an administrative agency, the legislature must set limits on such agency's power and enjoin on it a certain course of procedure and rules of decision in the performance of its function; and, if the legislature fails to prescribe with reasonable clarity the limits of power delegated to an administrative agency, or if those limits are too broad, its attempt to delegate is a nullity."

48. In the case on hand, a bare reading of triennial policy would suffice to demonstrate the ambiguity in the matter of specifying area to impose prohibition. The enabling provision Section 37-A r/w Section 40 speak of a "specific area", whereas the offending portion speaks of "adjoining areas", which by no stretch of imagination can be equated with a "specific area".

49. With regard to delegation, the Hon'ble Apex Court in the case of ***"The Registrar of Cooperative Societies, Trivandrum & another vs. K. Kunjabmu & others"***, reported in **(1980) 1 SCC 340**, has observed in Paragraph No.3 and the efficacy of the internal aids in the matter of interpretation of a statute. A useful reference could also be made to the observations of the Hon'ble Apex Court in Paragraph No.12. Paragraph Nos.3 and 12 read as under:-

*"3. It is trite to say that the function of the State has long since ceased to confined to the preservation of the public peace, the exaction of taxes and the defence of its frontiers. **It is now the function of the State to secure to its citizens "Social, economic and political justice", to preserve "liberty of thought, expression, belief, faith and worship" and to ensure "equality of status and of opportunity" and "the dignity of the individual" and the 'unity of the nation'.** That is what the preamble to our Constitution says and that is what is elaborated in the two vital chapters of the Constitution on Fundamental Rights and Directive Principles of State Policy. The desire to attain these*

objectives has necessarily resulted in intense legislative activity touching every aspect of the life of the citizen and the nation. Executive activity in the field of delegated or subordinate legislation has increased in direct, geometric progression. It has to be and it is as it should be. Parliament and the State Legislatures are not bodies of experts or specialists. They are skilled in the art of discovering the aspirations, the expectations and the needs, the limits to the patience and the acquiescence and the articulation of the views of the people whom they represent. They function best when they concern themselves with general principles, broad objectives and fundamental issues instead of technical and situational intricacies which are better left to better equipped full time expert executive bodies and specialist public servants. Parliament and the State Legislatures have neither the time nor the expertise to be involved in detail and circumstance. **Nor can Parliament and the State Legislatures visualise and provide for new, strange, unforeseen and unpredictable situations arising from the complexity of modern life and the ingenuity of modern man. That is the raison d'etre for delegated legislation.** That is what makes delegated legislation inevitable and indispensable. The Indian Parliament and the State Legislatures are endowed with plenary power to legislate upon any of the subjects entrusted to them by the Constitution, subject to the limitations imposed by the Constitution itself. The power to legislate carries with it the power to delegate. But excessive delegation may amount to abdication. Delegation unlimited may invite despotism uninhibited. So the theory has been evolved that the legislature cannot delegate its essential legislative function. Legislate it must by laying down policy and principle and delegate it may to fill in detail and carry out policy. The legislature may guide the delegate by speaking through the express provision empowering delegation or the other provisions of the statute, the preamble, the scheme or even the very subject-matter of the statute. If guidance there is, wherever it may be found, the delegation is valid. A good deal of latitude has been held to be permissible in the case of taxing statutes and on the same principle a generous degree of latitude must be permissible in the case of welfare legislation, particularly those statutes which are designed to further the Directive Principles of State Policy. (emphasis supplied by this Court)

12. The policy of the Act is there and so are the guidelines. Why the legislation? "To facilitate the formation and working of Cooperative Societies." Cooperative Societies, for what purpose? "For the promotion of thrift, self-help and mutual aid." Amongst whom? "Amongst agriculturists and other persons with common economic needs." To what end? "To bring about better living, better business and better methods of production." **The objectives are clear, the guidelines are there.** There are numerous provisions of the Act dealing with registration of societies, rights and liabilities of members, duties of registered societies, privileges of registered societies, property and funds of registered societies, inquiry and inspection, supersession of committee of societies, dissolution of societies, surcharge and attachment, arbitration, etc. We refrain from referring to the details of the provisions except to say that they are generally designed to further the objectives set out in the preamble. **But, numerous as the provisions are, they are not capable of meeting the extensive demands of the complex situations which may arise in the course of the working of the Act and the formation and the functioning of the societies.** In fact, the too rigorous applications of some of the provisions of the Act may itself occasionally result in frustrating the very objects of the Act instead of advancing them. It is to provide for such situations that the Government is invested by Section 60 with a power to relax the occasional rigour of the provisions of the Act and to advance the objects of the Act. Section 60 empowers the State Government to

*exempt a registered society from any of the provisions of the Act or to direct that such provision shall apply to such society with specified modifications. **The power given to the government under Section 60 of the Act is to be exercised so as to advance the policy and objects of the Act**, according to the guidelines as may be gleaned from the preamble and other provisions which we have already pointed out, are clear.” (emphasis supplied by this Court)*

50. From a reading of Paragraph No.3 above, it is clear that the Hon'ble Apex Court has recognized the function of the State having traversed the preservation of public peace and the exaction of taxes and the defence of its frontiers. It is further recognized that the functions of the State are all encompassing and that it is the function of the State to secure to its citizens “social, economic and political justice”, expression, belief, faith and worship and to ensure equality of status and of opportunity and the dignity of the individual and the ‘unity of the nation’. Elaborating further, the Hon'ble Apex Court has recognized the need for “delegated legislation”, but proceeded to caution in role that excessive delegation may amount to abdication itself and having examined the various provisions of the Act under challenge therein, concluded that the power given to the Government under Section 60 of the Act, i.e. the power of the State Government to exempt registered society from the applications of the Act, held that the power ought to be exercised only to advance the policy and objects of the Act. In the instant case, there is no dispute that the legislative act by the Government or notifying a specific area over which the transporting, vending and possessing of potable liquor came to be banned, i.e. within

the limits of Haridwar and Rishikesh Municipal Corporations. The Revenue laws and the Panchayat Raj Acts and Municipal Corporation Acts, provided for revenue villages, district municipalities and the manner for establishing the areas are provided in detail. That apart, the establishment of above area, is within the definitive boundary notified and published in the gazette. On the contrary, "adjoining areas" is neither definitive nor specific. It would invest unguided and unbridled power in the Executive to pick and choose any area and define it as an "adjoining area".

51. It is also necessary to examine the law regarding the maxim delegatus non potest delegare. The Hon'ble Apex Court has elucidated on this maxim in the case of **Sahni Silk Mills (P) Ltd. & another vs. Employees' State Insurance Corporation**, reported in **(1994) 5 SCC 346**. Paragraph Nos.6 to 8 read as under:-

"6. By now it is almost settled that the legislature can permit any statutory authority to delegate its power to any other authority, of course, after the policy has been indicated in the statute itself within the framework of which such delegatee is to exercise the power. The real problem or the controversy arises when there is a sub-delegation. It is said that when Parliament has specifically appointed authority to discharge a function, it cannot be readily presumed that it had intended that its delegate should be free to empower another person or body to act in its place. In *Barium Chemicals Ltd. v. Company Law Board* [AIR 1967 SC 295 : 1966 Supp SCR 311 : (1966) 36 Com Cas 639] , this Court said in respect of sub-delegation:

"Bearing in mind that the maxim *delegatus non potest delegare* sets out what is merely a rule of construction, sub-delegation can be sustained if permitted by express provision or by necessary implication."

7. Again in *MangulalChunilal v. ManilalMaganlal* [AIR 1968 SC 822 : (1968) 2 SCR 401 : 1968 Cri LJ 979] , while considering the scope of Section 481(1)(a) of the Bombay Provincial Municipal Corporation Act (59 of 1949) this Court said that Commissioner of the Ahmedabad Municipal Corporation had delegated his power and function under the aforesaid section to a Municipal Officer to launch proceedings against a person charged with offences under the Act or the rules and that officer

to whom such functions were delegated could not further delegate the same to another.

8. In Halsbury's Laws of England, 4th Edn., Vol. I, in respect of sub-delegation of powers it has been said:

"In accordance with the maxim *delegatus non potest delegare*, a statutory power must be exercised only by the body or officer in whom it has been confided, (*H. Lavender & Son Ltd. v. Minister of Housing and Local Government* [(1970) 3 All ER 871 : (1970) 1 WLR 1231]) unless sub-delegation of the power is authorised by express words or necessary implication (*Customs and Excise Comrs. v. Cure and Deeley Ltd.* [(1962) 1 QB 340 : (1961) 3 All ER 641 : (1961) 3 WLR 798] and *Mungoni v. Attorney General of Northern Rhodesia* [(1960) 1 All ER 446 : (1960) 2 WLR 389 : 1960 AC 336, PC]). **There is a strong presumption against construing a grant of legislative, judicial, or disciplinary power as impliedly authorising sub-delegation; and the same may be said of any power to the exercise of which the designated body should address its own mind.** *Allam & Co. v. Europa Poster Services Ltd.* [(1968) 1 All ER 826: (1968) 1 WLR 638] ..."

(emphasis supplied by this Court)

52. From a reading of the above, it can be deduced that there is a strong presumption against "construing a glance of legislative, judicial or disciplinary power, as impliedly authorizing sub-delegation".

53. The distinction between the sub-delegation and ministerial exercise of power has been dealt with by the Hon'ble Apex Court in the case of ***Sidhartha Sarawgi vs. Board of Trustees for the Port of Kolkata & others***, reported in **(2014) 16SCC 248**. Paragraph Nos.4,9 &10 read as under:

"4. There is a subtle distinction between delegation of legislative powers and delegation of non-legislative/administrative powers. As far as delegation of power to legislate is concerned, the law is well settled: the said power cannot be sub-delegated. The legislature cannot delegate essential legislative functions which consist in the determination or choosing of the legislative policy and formally enacting that policy into a binding rule of conduct [Harishankar Bagla v. State of M.P., AIR 1954 SC 465 at p. 468, para 9; Agricultural Market Committee v. Shalimar Chemical Works Ltd., (1997) 5 SCC 516 at p. 524, para 24]. Subordinate legislation which is generally in the realm of rules and regulations dealing with the procedure on implementation of plenary legislation is generally a task entrusted to a specified authority. Since the legislature need not spend its time for working out the details on implementation of the law, it has thought it fit to entrust the said

task to an agency. **That agency cannot entrust such task to its subordinates; it would be a breach of the confidence reposed on the delegate.**

9. The Constitution confers power and imposes duty on the legislature to make laws and the said functions cannot be delegated by the legislature to the executive. The legislature is constitutionally required to keep in its own hands the essential legislative functions which consist of the determination of legislative policy and its formulation as a binding rule of conduct. After the performance of the essential legislative function by the legislature and laying the guiding policy, the legislature may delegate to the executive or administrative authority, any ancillary or subordinate powers that are necessary for giving effect to the policy and purposes of the enactment. In construing the scope and extent of delegated power, the difference between the essential and non-essential functions of the delegate should also be borne in mind. While there cannot be sub-delegation of any essential functions, in order to achieve the intended object of the delegation, the non-essential functions can be sub-delegated to be performed under the authority and supervision of the delegate.

10. Sometimes, in the plenary legislation itself, the lawmakers may provide for such sub-delegation. That is what we see under Sections 21 and 34 of the Major Port Trusts Act, 1963, which we shall be discussing in more detail at a later part of this judgment.”

From a reading of the above it is crystal clear that legislative function cannot be delegated and the mandate of the Constitution is that legislative function which consists of determination of legislative policy and its formulations as a binding rule of conduct and what may be delegated is any ancillary or subordinate powers that are necessary for giving effect to the policy. In and under the Act, it is discernible that “specifying an area” is a matter of policy and determination of the policy cannot be sub-delegated.

54. As observed earlier, the efficacy of the laws under challenge is to be also appreciated in the background of U.P. Rules of Business, 1975 and the Business of Uttaranchal (Allocation) Rules, 2003. The U.P. Rules of Business, 1975 have been made in exercise of power conferred under clauses

(2) and (3) of Article 166 of the Constitution of India and hold the field as on today.

Rule 3 reads as under:-

“3. Disposal of Business- *Subject to the provisions of these Rules in regard to consultation with other departments and submission of cases to the Chief Minister, the Cabinet and the Governor, all business allotted, to a department under the Business of U.P. (Allocation) Rules, 1975, shall be disposed of by or under the general or special direction of the Minister-in-charge.”*

Rule 4 relating to inter-departmental consultations reads as under:-

“4. Inter-departmental Consultations- (1) When the subject of a case concerns more than one department, no order shall be issued until all such departments have concurred, or, failing such concurrence, a decision thereon has been taken by or under the authority of the Cabinet.

Explanation- Every case in which a decision, if taken in one department, is likely to affect the transaction of business allotted to another department, shall be deemed to be a case the subject of which concerns more than one department.

(2) Unless the case is fully covered by powers to sanction expenditure or to appropriate or re-appropriate funds, conferred by any general or special orders made by the Finance Department, no department shall, without the previous concurrence of the Finance Department, issue any orders which may-

(a) involve any abandonment or revenue or involve any expenditure for which no provision has been made in the Appropriation Act;

(b) involve any grant of land or assignment of revenue or concession, grant, lease or licence of mineral or forest rights or a right to water power or any easement or privilege in respect of such concession;

(c) relate to the number or grade of posts, or to the strength of a service, or to the pay or allowances of government servants or to any other condition of their service having financial implications; or

(d) otherwise have a financial bearing whether involving expenditure or not:

Provided that no orders of the nature specified in clause (c) shall be issued in respect of the Finance Department without the previous concurrence of the Department of Personnel.

(3) The Law Department shall be consulted on:-

(a) proposals for legislation;

(b) the making of rules and orders of a general character in the exercise of a statutory power conferred on the Government; and

(c) the preparation of contracts and assurances to be entered into by the Government.

(4) Unless the case is fully covered by a decision or advice previously given by the Department of Personnel that Department shall be consulted on all matters involving-

(a) the determination of the methods of recruitment and conditions of service of general application to government servants in civil employment, and

(b) the interpretation of the existing orders of general application relating to such recruitment or conditions of service.

(5) Notwithstanding anything contained in sub-rules (1), (2) and (4), the Department in-charge of a case may, while consulting any Department other than the Law Department and Finance Department, as required under these rules, set a time-limit, which shall ordinarily not be less than two weeks, and if the comments of the Department consulted are not received within that time-limit, the Department in-charge of the case may presume that the Department consulted has no comments to offer or no views to express. It may thereupon recall its file from the Department consulted and take its own decision accordingly, except where these rules require the concurrence of the Department consulted.

(6) For the removal of doubts, it is hereby declared that the mere fact that the advice of any other Department is sought should not mean that its consent is necessary, and the Department seeking advice may take its own decision according to these rules while differing from the Department consulted."

55. In the instant case, the note provided by the State regarding date-wise details of the promulgation proceedings of the Uttarakhand Excise Policy Rules for the year 2025-26, 2026-27 and 2027-28. The note details that the file was forwarded to the Finance Department, thereby the State has acknowledged that the requirement of inter-departmental consultations, and the note of the Finance Department dated 27.02.2025 has recommended that guidance/ approval of the Hon'ble Cabinet be obtained. The note does not detail the concurrence of the Finance Department and sub-rule (2) of Rule 4 reads as under:-

".....

(2) Unless the case is fully covered by powers to sanction expenditure or to appropriate or re-appropriate funds, conferred by any general or special orders made by the Finance Department, no department shall, without the previous concurrence of the Finance Department, issue any orders which may-

(a) involve any abandonment or revenue or involve any expenditure for which no provision has been made in the Appropriation Act;

(b) involve any grant of land or assignment of revenue or concession, grant, lease or licence of mineral or forest rights or a right to water power or any easement or privilege in respect of such concession;

(c) relate to the number or grade of posts, or to the strength of a service, or to the pay or allowances of government servants or to any other condition of their service having financial implications; or

(d) otherwise have a financial bearing whether involving expenditure or not:

Provided that no orders of the nature specified in clause (c) shall be issued in respect of the Finance Department without the previous concurrence of the Department of Personnel."

56. In terms of sub-rule (3), the file has also been forwarded to the Law Department, and the Law Department, after providing its consultation, is said to have returned the file. Neither the note, nor the consultation of the Law Department is placed before the Court. That apart, Rule 7 mandates that all items specified in First Schedule shall be placed before the Cabinet. Items 19, 27 and 30 read as under:-

"19. Proposal involving any important change of policy or practice.

27. Cases involving financial implications on which the Finance Minister desires a decision of the Cabinet.

30. Proposals to vary or reverse a decision previously taken by the Cabinet."

57. In consonance with the Business of Uttaranchal (Allocation) Rules, 2003, the Department of Excise is held by the Chief Minister. It is pertinent to note at this juncture that the House was in session between 18.02.2025 and 22.02.2025, but the Rules have not been placed before the House. On this being pointed out the Ld Advocate General,

made a vain attempt to pass it off as an ordinance, and placing it before the House was not imperative.

58. One of the primary objections raised by the learned Advocate General is that various argument regarding *vires* and the legality of the Rules promulgated are not supported by the pleadings and hence, cannot be considered as the same would tantamount to the Court making out a case on behalf of the petitioners. The next limb of argument is that no relief beyond the relief claimed can be granted.

59. The reliance on **BALCO's** case (*supra*), in the opinion of this court, is wholly misplaced. The law regarding moulding of the prayer is well settled by the Hon'ble Apex Court. That apart the challenge is to the ambiguous phrase "adjoining areas" only. The policy having not afforded any pre-decisional hearing and the policy, in the facts and circumstances of the case on hand, having been sought to be utilized against the petitioners, and select few, the relief sought for, is in respect of only a phrase of the policy, which in the opinion of the petitioners, is being deliberately and discriminatorily used to target a few by taking advantage of the ambiguity in the provision.

60. That apart, the specific case of the petitioners is that the executive/ administrative action is unguided and unbridled, in the absence of definition of the phrase

“*adjoining area*”, as incorporated in Rule 17b. It is pertinent to note at this stage that the phrase “*adjoining area*” came to be clarified by an administrative order, after the commencement of arguments of the instant writ petitions, and the said order has been issued by the Excise Commissioner on 25.04.2025.

61. That apart, the facts and circumstances of the **BALCO’s** case (*supra*) are wholly at variance with the facts and circumstances of the instant case and the facts of the instant case are more appropriately covered by the law laid down by the Constitutional Bench of the Hon’ble Apex Court in **Khoday Distilleries** case (*supra*), which holds the field even as on today. Similarly, reliance in the case of **Lalit Kumar Jain** (*supra*), in our respectful consideration, is inapplicable to the case on hand. It is not the case that partial prohibition in a particular area has been promulgated with the intention of extending the policy of prohibition, but the stated grounds on which the prohibition has been imposed, is that the area within the limits of Haridwar & Rishikesh has a special religious significance and sale of liquor hurts the sentiments of the local population. If the prohibition was in furtherance of the policy of prohibition, the case of the State would have been on a different pedestal. The case of the petitioners is that the petitioners are being selectively targeted by taking advantage of the ambiguous phrase

“adjoining area”, and which “adjoining area” later came to be clarified by the order of the Excise Commissioner as meaning 2 Km. radius.

62. The contention that the said Government Order issued by the Excise Commissioner is without jurisdiction or without competence, is not without substance. The area of legislation by the Excise Commissioner, as noted supra, has been delegated under Section 41, and in fact, a bar is placed on the State Government in delegating its rule making power under Section 40 by way of a negative covenant under Section 10(2)(f), as reproduced supra. The clause though empowers the State to delegate to the Excise Commissioner, all or any of its powers under this Act, it excepts the rule making power under Section 40 from being delegated. The rigor of the enactment is amplified by this very provision which clearly negates any arguments that it is a matter for the executive and a mere ministerial act. The argument must fly in the face of bar under Section 10(2)(f), which clearly excepts the power under Section 40 being delegated by the State Government to the Excise Commissioner. In the light of the above bar, the maxim of delegatus non potest delegare gets applicable. We have already extracted the relevant portion of the ruling of the Hon’ble Apex Court in this regard.

63. That apart, we find that there is no compliance with the provision of 23-A of the U.P. General Clauses Act, 1904. Section 77 of the United Provinces Excise Act, 1910 mandates that all rules made and notifications issued under the Act shall be published in the official gazette and shall have effect as if enacted in this Act from the date of such publication. If Section 77 is read in conjunction with Section 23-A, it becomes apparent that the mandate of the provision has been violated in more ways than one.

64. The sequence of dates and events when appreciated, it is apparent that the authority empowered to make rules has not placed the proposed rules for the consideration of the house.

65. That apart, the mandate of Section 23-A also stands violated. It is the mandate of Section 23-A that the rules be placed before the House of the State Legislature for a period of thirty days. The efficacy and mandatory nature of such a provision has been succinctly dealt with by the Hon'ble Apex Court in the case of ***M.K. Papiiah***, reported in **(1975) 1 SCC 492 (Para 14)**. It is not in dispute that the State Legislature is a unicameral Legislature and the house was in session between 18.02.2025 and 22.02.2025. The Hon'ble Supreme Court has held that the requirement of placing the Rules before the House, constitutes a inherent, check &

balance. Despite the same, the rules have not been placed before the House.

66. Apart from the above discussion, the law that holds the field with regard to grant of licenses, is the law settled by the Constitutional Bench of the Hon'ble Apex Court in ***Khoday Distilleries*** case (*supra*), more particularly, Paragraph No.60(g), which clearly states that the State action can neither be discriminatory, nor arbitrary, once the State permits trade or business in potable liquor with or without limitation, the citizen has the right to carry on trade or business subject to the limitations, if any, and the State cannot make discrimination between the citizens who are qualified to carry on the trade or business.

67. In the case on hand, the phrase "adjoining area" is not only vitiated by ambiguity, but has become an enabling tool for selective application of the same. The very fact that the Government Orders were issued refusing bar licenses after the commencement of arguments, and that the adjoining area came to be clarified as a 2Km radius after the commencement of arguments, are matters which this Court cannot close its eyes to.

68. The notifications notifying or clarifying the "*adjoining area*" is *per se* without competence. The jurisdiction to determine an area over which prohibition is to

be imposed, is vested in the State, and the said power is traceable to Section 40(2)(e) read with Section 37-A(2). The ambit of the Excise Commissioner as a legislative function, as detailed *supra*, is traceable to Section 41 alone, as no notification delegating any other power in the Excise Commissioner has been placed before this Court to demonstrate the lawful delegation in terms of Section 10(2)(f). The use of the specified by prefixing it before the word area, amplifies the intention of the Legislature to enable the State to prohibit sale in an “identifiable locality”. The word ‘specified’ is an adjective of the word “specify” which is defined as “identify clearly and definitely. That apart in the light of the bar u/s 10(2)(f) the notification issued by the Excise Commissioner was without competence. Even the said GO does not specify any locality that is identified clearly and definitely.

69. In view of our above discussions, we are of the considered opinion that the provisions of Rule 17b to the extent enabling the State to impose prohibition in “adjoining areas” is liable to be held bad in law.

- (i) The rule making power of the State to impose prohibition, being in respect of “specified area”, the phrase “adjoining area” not being a specified area, as required under sub-section (2) of Section 40,

the same requires to be declared as *ultra vires*, and is accordingly, declared as *ultra vires* sub-section (2) of Section 40 r/w sub-sections (2) and (3) of Section 37-A.

- (ii) The Government Order dated 25.04.2025 is being in the teeth clause (f) of sub-section (2) of Section 10 which vests the power to legislate in the exclusive domain of the State Government, the same are declared to be without competence and beyond the power of the Excise Commissioner, conferred upon him under Section 41 and beyond the legislative competence of the Excise Commissioner.

70. Accordingly, the writ petitions are allowed. The offending phrase / words of Rule 17b, i.e. “adjoining areas” is, hereby, quashed. Rule 17b shall be read down and be read without the phrase “adjoining areas”.

71. The State Government shall process the applications of the petitioners and other eligible persons in terms of the law laid down by the Constitutional Bench of the Hon’ble Apex Court in Paragraph 60 (g) in the case of ***Khoday Distilleries*** (*supra*) within an outer limit of four weeks from the date of receipt of this judgment.

- 72. There shall be no order as to costs.
- 73. Pending application, if any, also stands disposed of.

(G. NARENDAR, C.J.)

(ALOK MAHRA, J.)

Dated: 03rd July, 2025

NISHANT

NISHANT
KUMAR