IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 6558 of 2016 (O&M)
Date of decision: November 03, 2016

Harish Kumar Aggarwal

.. Petitioner

v.

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE DARSHAN SINGH

...

Present: Mr. H. S. Brar and Mr. Balram Singh, Advocates for the petitioners.

Mr. Kamal Sehgal, Addl. Advocate General, Punjab.

Mr. Anil Ksheterpal, Senior Advocate with
Mr. Rohit Nagpal and Mr. Maninder Singh Saini, Advocates for respondent No. 7.

Mr. Sumit Jain, Advocate for respondents No. 8 and 9.

...

Rajesh Bindal J.

1. This order will dispose of two petitions bearing CWP Nos. 6558 and 6760 of 2016, as common questions of law and facts are involved.

2. In CWP No. 6558 of 2016, prayer is for setting aside the order dated 29.3.2016, vide which allotment of liquor vend has not been approved

in favour of the petitioner. A direction has been sought to allot the liquor vend of Group No. 11, M.C. Kotfatta in favour of the petitioner being successful in the draw of lots held on 27.3.2016. Further prayer is for quashing Clause 2.22 of the Excise Policy for the year 2016-17. Prayer has also been made for quashing the allotment of liquor vend in the draw of lots held on 31.3.2016. Action has been sought against respondents No. 5 and 6 for causing loss of revenue to the State to the tune of ₹ 2.20 crores.

3. In CWP No. 6760 of 2016, the prayer is for quashing Clause 2.22 of the Excise Policy for the year 2016-17. Prayer has also been made for quashing allotment of liquor vend in the draw of lots held on 31.3.2016. Further prayer has been made for directing the official respondents to hold draw of lots of the groups, which remained unsold on 27.3.2016.

4. Reference to the facts and annexures has been made in the judgment from CWP No.6558 of 2016, unless otherwise specifically noticed.

Arguments on behalf of the petitioner

5. Learned counsel for the petitioner submitted that public notice was issued by Excise and Taxation Department on 18.3.2016 for inviting applications for allotment of retail sale outlets of P.M.L. (L-14A) and I.M.F.L. (L-2) and wholesale of Cannabis for the year 2016-17. Details of the licensing units could be collected from the concerned Excise and Taxation Office, which were available even on the website of the department. Application fee was prescribed. The applications could be submitted from 19.3.2016 to 22.3.2016. Single person could file any number of separate applications for a particular unit or group. Separate application was required for each licensing unit or group. List of

applications received was to be displayed in the office of the Excise and Taxation Commissioner (hereinafter referred to as 'the Commissioner') on 22.3.2016. In case the number of applications received was more than the number of units/groups to be allotted, the procedure of draw of lots was to be followed. Videography of entire proceedings was to be made. In case the number of applications received was less than the number of units, then re-grouping of the vends was permissible.

6. For District Bathinda, the entire area was divided into 20 groups. The draw of lots was to be held on 27.3.2016. Against 20 groups, 826 applications were received. The petitioner was successful for Group No. 11, M.C. Kotfatta. Immediately after the draw of lots, the petitioner deposited 5% of the licence fee as security. Thereafter, further process was stopped. Subsequently, on the recommendations made by the Committee, the Collector, namely, Deputy Excise and Taxation Commissioner, vide order dated 29.3.2016, did not approve the allotment of liquor vends in favour of the successful applicants in the draw of lots, who had deposited the requisite fee with the department. A report was sent by the Deputy Excise and Taxation Commissioner on the same day proposing cancellation of draw of lots in the interest of revenue and recommended for formation of three groups for entire Bathinda District. The same was accepted by the Commissioner on the same day, vide Annexure R-1/2. Vide separate order passed on 29.3.2016, the Collector-cum-Deputy Excise and Taxation Commissioner cancelled the allotment of excise group M. C. Kotfatta in favour of the petitioner and directed for refund of the money deposited, which has not been refunded till date.

7. Further, learned counsel for the petitioner submitted that on 30.3.2016, a public notice was published in 'The Tribune' only for inviting applications for retail sale of P.M.L. and I.M.F.L. in District Bathinda for the year 2016-17. The applications were to be submitted by 7.00 PM on the same day. Details regarding groups were neither mentioned in the public notice nor the same were available on the website of the department. The allotments were to be made by 31.3.2016.

8. Assailing the action of the department, learned counsel for the petitioner, while referring to Rule 36(6) of Punjab Liquor Licence Rules, 1956 (for short, 'the Rules'), submitted that a successful applicant is required to pay allotment fee immediately on draw of lots. The next draw was to be held only after the first successful applicant had deposited the amount of allotment fee due from him. Failure to deposit the allotment fee will lead to cancellation of allotment and disqualification for future. Such an applicant is also disqualified from any other allotment in the State. On deposit of allotment fee, the applicant is deemed to have entered into a contractual obligation with the department. The petitioner herein was successful for Group No. 11, M.C. Kotfatta, the draw of lots for which could be held only after deposit of allotment fee by the earlier successful applicants. In fact, the petitioner had deposited the allotment fee immediately after he was successful in the draw of lots. As the department had certain other motives in mind, immediately thereafter raising the plea of chaos, the process of draw of lots was stopped and suspended. The reason assigned was that three of the earlier successful applicants for Group Nos. 8 to 10 had not deposited the fee and run away from the spot with money. The petitioner cannot be said to be at fault. As per Rule 36(26) of the Rules, there was an allottee in

the waiting as well. If first successful allottee had run away from the spot, offer should have been made to the allottee in waiting. The process was not followed for extraneous reasons. It is apparent that the petitioner being successful in the draw of lots may not be to the liking of other applicants or the authorities.

9. He further argued that after suspending the process of draw of lots on 27.3.2016, till such time the recommendations made by the Committee were dealt with by the Collector-cum-Deputy Excise and Taxation Commissioner on 29.3.2016, no further efforts were made to hold the draw of lots again. Reports were made while sitting in the office. On 29.3.2016, the Deputy Excise and Taxation Commissioner, Faridkot decided not to approve the draw of lots. On the same day, he sent a report to the Commissioner opining that re-grouping would be in larger interest of State revenue and three groups be formed for the entire district. Even the groups were also specified. On the same day, the report was received in the office of the Commissioner at Patiala. Immediately again on the same day, the Commissioner agreed with the report of the Deputy Excise and Taxation Commissioner recommending cancellation of the process of draw of lots. He further submitted that action has been taken by the Commissioner in exercise of powers conferred under Rule 35 of the Rules. Rule 35(2) of the Rules, as existing at the relevant time, conferred power on the Commissioner to re-group the area only if it is found that applications have not been received for all units or groups or zones in a particular area. In the case in hand, it is not in dispute that sufficient number of applications, namely, more than one had been received by the department against each of 20 groups sought to be allotted in District Bathinda, hence, the action was

totally without jurisdiction.

10. It was further contended that reliance on Clause 2.22 of the Excise Policy, 2016-17 will not be relevant as the same runs contrary to the Rules itself, rather, deserves to be struck down. Rule 36(9) of the Rules clearly provides that if there are more than one applications, the allotment is to be made by draw of lots. Rule 36(13) of the Rules provides that in case successful applicant fails to deposit the amount of security in time, his allotment shall be deemed to have been cancelled and money forfeited. The draw of lots has to be in open place and conducted in a transparent manner, as provided for in Rule 26(20) of the Rules. Rule 36(26) of the Rules provides that if at the end of draw of lots, some licensing units remain unallotted, then opportunity is to be given to other unsuccessful applicants pertaining to the revenue district. If at the end of allotment proceedings, any licensing unit still remains un-allotted, name and location thereof shall be displayed in the office of the Assistant Excise and Taxation Commissioner. Report of un-allotted licensing units is to be made separately to the Commissioner on the next day.

11. While assailing the action of the official respondents, learned counsel for the petitioner further submitted that one of the reasons assigned is safeguarding the revenue by the State. The submission is that in the process, the State had been caused loss to the tune of about ₹ 4 crores in the form of application money, which was non-refundable/non-adjustable, as deposited by 826 applicants in District Bathinda. The allotment was not by way of auction, rather by draw of lots. The amount was fixed, hence, no question of any loss to the State. With re-grouping of 20 units into three, there is no increase in the revenue. The process was so secretive that only

six applicants could participate. As regards the process being secretive and the draw of lots having been conducted in the office of the Assistant Excise and Taxation Commissioner, Faridkot and not in an open place in a transparent manner, the allegations made by the petitioner in para No. 7 of the writ petition have not been denied. In fact, the object of the entire process was to create monopoly.

12. He further submitted that the application money deposited by many of the applicants, who were either successful or unsuccessful, was adjusted in the amount payable by the new successful allottee after re-grouping without there being any enabling provision, which clearly establishes connivance. The veil has to be lifted. In support of his plea, reliance was placed upon judgment of Hon'ble the Supreme Court in Ramana Dayaram Shetty v. International Airport Authority of India and others, (1979) 3 SCC 489 and judgments of this Court in State of Punjab and others v. Raghunath Dass, AIR 1963 Punjab 76 and M/s Bhagat Singh v. The State of Punjab, etc., AIR 1975 Punjab 236.

13. In CWP No. 6760 of 2016, learned counsel for the petitioners supplemented that there was no good reason to stop the process of draw of lots after Group No. 11. The applicants for subsequent groups were available at the spot. The successful applicants for Groups No. 8 to 10 if had run away from the spot without depositing the allotment fee, then the officials of the department were to be blamed. The other applicants, who were either successful or were waiting for subsequent draw of lots to be conducted, could not be made to suffer. Specific allegation to that effect in para No. 7 of the petition has not been denied.

Arguments on behalf of the State

14. On the other hand, learned counsel for the State referred to Clauses 5, 6 and 9 to 14 of the public notice issued for inviting applications. He submitted that the public notice was exhaustive providing sufficient details and conditions, however, further details were available on the website as well as in the Excise and Taxation Office of the district concerned, including details regarding the groups. As scheduled, draw of lots was held on 27.3.2016. There was chaos after the draw of lots was held for Group No. 11. Despite efforts, the applicants present did not calm down. The situation was such that the process of draw of lots could not be proceeded with. The successful applicants of draw of lots for Group Nos. 8 to 10 did not deposit the allotment fee. The report was sent by the Committee present at the spot for carrying out draw of lots. The same was accepted by the Collector-cum-Deputy Excise and Taxation Commissioner for cancelling the entire process. He further recommended to the Commissioner to form three groups and carry out the process again. As the interest of the revenue of the State was involved and to safeguard the same, emergent action was required. The operation of the liquor vends for the next year was to start from 1.4.2016. Any delay would have caused loss to the exchequer. While recommending formation of three groups, experience of the previous year was also quoted. Power was sought to be exercised in terms of Rule 35 of the Rules. The recommendations made by the Collector-cum-Deputy Excise and Taxation Commissioner were accepted by the Commissioner. While cancelling the draw of lots held on 27.3.2016, the Deputy Excise and Taxation Commissioner was directed to intimate the successful applicants and proceed to refund the amount due. On the same

day, decision was taken for re-grouping by formation of three groups for District Bathinda. Fresh public notice was issued, which was published in 'The Tribune'. Draw of lots was held outside the office of the Assistant Excise and Taxation Commissioner, which was duly videographed. Allotment was made in favour of three successful applicants. It was further submitted that simultaneously, order was passed in the case of the petitioner. It was sought to be served upon him, but his wife refused to accept the same. It was pasted outside his house.

15. He further submitted that the Rules are amended every year in consonance with the excise policy declared for that year. For the year in question as well, relevant amendments were made in the Rules vide notification dated 23.3.2016, however, there being some error in Rule 35 of the Rules, corrigendum was issued on 13.5.2016, which clearly empowers the Commissioner to exercise the power of re-grouping in the interest of revenue. Though in the report sent by the Deputy Excise and Taxation Commissioner, it has been stated that efforts were made even subsequently to hold draw of lots, however, the department was not successful. There is no material referred in support thereof.

16. It was further argued that option of offering the allotment to the second person for Group Nos. 8 to 10 could not be explored as for Group Nos. 8 and 10, second person, namely, Chander Mohan Sharma, had run away from the spot while not depositing the allotment fee for the group in which he was successful. The petitioner did not participate in the process of draw of lots held on 30.3.2016 as he was not even the applicant. It was further submitted that as almost six months for the year are already over, disturbing the allotment at this stage will affect revenue of the State.

Deemed allotment, as provided for in Rule 36(6)(b) of the Rules, is only to bind the successful applicant. The right will flow to him only after the Collector approves allotment in terms of Rule 36(9) of the Rules. The allottee cannot be permitted to withdraw.

Arguments on behalf of private respondents

17. Learned counsel appearing for the private respondents submitted that draw of lots was rightly cancelled as successful allottees of Group Nos. 8 to 10 failed to deposit the allotment fee. Clause 2.22 of the policy empowered the Commissioner to re-group the area. Even Rule 35(2) of the Rules was amended. As there was certain error initially, corrigendum was issued on 13.5.2016. Chander Mohan Sharma and Ram Kumar are not the allottees out of three groups, who are successful applicants. The private respondents have no concern with the action of the State in either refunding the application money or the allotment fee deposited by the successful applicants or even by Chander Mohan Sharma and Ram Kumar, who had run away from the spot without depositing the allotment fee despite being successful. Irregularity in forfeiture will not result in setting aside the allotment subsequently made to the private respondents, which has been done by following due process. They are not at fault. They will suffer huge loss. It was further submitted that half of the period of licence is already over, hence, the arrangement already made should not be disturbed.

Reply on behalf of the petitioner

18. In response, learned counsel for the petitioner submitted that the stand of the State that entire exercise was done with a view to safeguard the interest of the revenue is merely an eye-wash. All the allotments were to be made by way of draw of lots. The price was fixed. There were applicants

available even at the stage when draw of lots was suspended. The effort was to give benefit to the private respondents. There is no provision in the Rules for issuance of fresh advertisement. The procedure, as envisaged in the Rules, was not followed. For three groups re-constituted later on, there were only three applicants filing multiple applications. All three have been allotted one group each. It was further submitted that motive of the authorities is well-established from the fact that entire amount paid by most of the earlier applicants was adjusted in the amount payable by the new allottees, without there being any enabling provision in the Rules. He further submitted that even if the draw of lots was to be cancelled in terms of the provisions of Rule 36(2) of the Rules, ₹ 2000/- against each application was to be deducted while refunding the application fee. The official respondents were in so much hurry that they adjusted the entire amount, thereby causing loss to the State. The process of re-grouping and re-allotment of the vends was followed only in District Bathinda. At all other places, the process for tendering was followed, hence, the action is clearly malafide.

19. Heard learned counsel for the parties and perused the paper book.

Discussions

Provisions of law

20. The relevant provisions of Rule 35(2) of the Rules is extracted below:

> "35 (1) The following licenses may be granted on fixed fee by inviting applications for a Licensing Unit, namely:-

xx xx xx

(2) The Punjab Medium Liquor and Indian Made Foreign Liquor vends shall be disposed off as licensing units. A Licensing Unit in urban areas shall consist of one L-14A vend and one L-2 vend. In rural areas, a licensing unit may consist either of a single L-14A vend or a L-14A vend and L-2 vend. The licensing units shall be formed by the Collector with prior approval of Excise Commissioner, Punjab. The size of group or zone in financial terms, shall be as under:-

i. All Municipal Corporations (Corporation area and other Municipal Committee Area. Notified Area Committee and rural vends clubbed with the Corporation)	Upto Rs. 20 crore
ii. Urban areas, (Municipal Committees, Nagar Panchayats and Notified Area Committee or their combination and rural area vends which have been clubbed with this area	Upto Rs. 15 crore
iii. Rural areas	Upto Rs. 6 crore

The licensing units on above lines shall be formed by the Collector-cum-Deputy Excise and Taxation Commissioners on the advice of the Assistant Excise and Taxation Commissioners and with the approval of the Excise and Taxation Commissioner, Punjab.

The license fee of a group or zone shall be the sum total of the license fee, prescribed for each of the units in that group or zone.

If it is found that applications have not been received for all the Units or groups or zones in a particular area, the Excise

Commissioner may, if satisfied that a part of allotment of Units or Groups or zones in such area shall adversely affect the State revenue, or that it may impinge upon the smooth administration of excise laws in such area, he may cancel the allotment procedure for that particular area. To facilitate the re-allotment of such units or groups or zones, the Excise Commissioner may invite fresh applications with or without reorganizing the groups/zones. The groups or zones may be enlarged at this stage to include all the Units in that location or an area or a Municipal Corporation of a city.

After depositing the fee as specified in sub-rule (6) of rule 36,-

(i) if successful applicant or allottee fails to deposit the balance amount of prescribed security;

(ii) if there is no other person in the waiting list; and

(iii) the number of successful allottees are less than the number of units or zones in that particular area, the procedure, as given in the foregoing paragraph, shall be followed:

Provided that the Excise and Taxation Commissioner may allow formation of Groups/Zones in a particular area of a size exceeding the financial limits prescribed above with prior approval of the Financial Commissioner (Taxation). In certain exceptional circumstances allotment may also be made through tender process with the reserve price approved by the Government."

21. The corrigendum issued by the State on 13.5.2016 with certain changes in part of Rule 35(2) of the Rules is extracted below:

"**GOVERNMENT OF PUNJAB**

EXCISE AND TAXATION COMMISSIONER'S OFFICE, PUNJAB, PATIALA

CORRIGENDUM

The 13th May, 2016

In the Government of Punjab, Excise and Taxation Commissioner's office, Punjab, Patiala, Notification No. G.S.R. 19/P.A.1/1914/S.59/Amd. (127)/2016, dated the 23rd March, 2016, published in the Punjab Government Gazette (Extraordinary) dated the 24th March, 2016, in clause 5, FOR-", the Excise Commissioner may, if satisfied that a part of allotment of Units or Groups or zones in such area shall adversely affect the State revenue, or that it may impinge upon the smooth administration of excise laws in such area, he may cancel the allotment procedure for that particular area", READ- "or allotment of a licensing unit or group of licensing units in a particular region/area does not seem to be in interest of the State revenue, the Excise Commissioner may cancel the process of allotment of that region/area".

22. The other relevant provisions of the Rules are also extracted below:

36. Procedure to grant the license.- The following procedure is prescribed for the grant of liquor licenses, referred to in Rule 35, namely:-

(1) The applications shall be in the prescribed form:

(2) The application form for the grant of liquor vends shall be available in the office of the Assistant Excise and Taxation Commissioner (hereinafter referred to as AETC), In-charge of the district. The application Forms can also be downloaded from the website of the department (www.pextax.com). In addition to, these application forms shall also be available in various bank branches authorized by the department for receipt of application forms. The applicant can submit his application for any Licensing Unit/Group/Zone of any district in any of the bank branches. The cost of application forms shall be as under:

(i)	A licensing unit or group of units of License fee upto Rs. 2 crore	Rs. 15,000/-
(ii)	A zone/group of units of License fee upto Rs. 4 crore	Rs. 25,000/-
(iii)	A zone/group of units of License fee upto Rs. 6 crore	Rs. 35,000/-
(iv)	A zone/group of units of License fee upto Rs. 8 crore	Rs. 45,000/-
(v)	A zone/group of units of License fee upto Rs. 10 crore	Rs. 55,000/-
(vi)	A zone/group of units of L/fee above Rs. 10 crore	Rs. 70,000/-

The fee shall not be refundable or adjustable. If the first or any subsequent allotment procedure is cancelled by the department or, any application form is rejected by the department being invalid and not put to draw of lots, then the amount of application fee shall be refunded to the concerned applicant, after deducting two thousand rupees per application as processing fee. Out of the total proceeds from the sale of application form, fifty per cent shall be deposited in Development Fund constituted under the Punjab Development Fund Act, 2014 (Punjab Act No. 1of 2015).

The application forms shall be serially numbered at three places, i.e. In the application form, in the slip of draw of lots and on the receipt, issued to the applicant.

xx xx xx

(6)(a) A successful applicant shall be required to pay allotment fee immediately on the draw of his lot which shall be @ 2% of the license fee in Corporation areas and @ 1% of the license fee in other urban and rural areas. This payment may be made by cash or through demand draft, banker's cheque, pay order or other prepaid Bank instruments.

(b) The next draw shall be made only after the first successful applicant has deposited the amount of allotment fee due from him. Failure to deposit allotment fee will lead to cancellation of allotment and disqualification for future. The person shall also be disqualified from any other allotment in the State. Once the allotment fee has been paid, the person will be deemed to have entered into a contractual obligation with the Department and would discharge all the liabilities of this contract including payment of full amount of license fee determined for that license.

xx xx xx

(9) The grant of licenses L-14A and L-2 shall be made out of those applications, which may be found to be complete in all respects. In case, the number of applications for a licensing Unit is more than one, the allotment shall be made by a draw of lots. The draw of lots shall be conducted under the supervision of a Committee, comprising the AETC as Chairman, the Excise and Taxation Officer (Excise) of the respective district and the concerned Excise Inspector or Excise and Taxation Inspector as members. The Committee would make its recommendations to the Collector for the grant of licenses to the successful applicants in respect of the licensing Units. On receipt of such recommendations, the Collector shall approve the recommendations within two days and issue the requisite licenses. In the revenue districts of Ludhiana, Jalandhar and Amritsar, where there are more than one Excise Districts, the AETC of district-I in the revenue districts, shall be the Chairman for the draw of lots pertaining to licensing units falling within the Corporation limits. For the draw of lots pertaining to other licensing units, the AETC of the concerned Excise District shall be the Chairman. A representative of the Deputy Commissioner of the revenue district concerned may also be present as Observer at the evenue (*sick venue*), fixed for draw of lots:

Provided that the Excise Commissioner may authorize any officer of the Excise and Taxation Department to be the

Chairman of the Committee for the draw of lots in any district in place of the concerned AETC.

xx xx xx

(13) If any successful applicant fails to deposit the amount of security in time, or refuses to accept the license, his allotment shall be deemed to have been cancelled automatically, and the earnest money or security amount deposited, shall be forfeited and the license may be re-allotted as per the provisions of these rules.

xx xx xx

(20) The allotment of licensing unit(s) and the draw of lots shall be done in an open and transparent manner in full public view. A transparent jar shall be used for the draw of lots, so as to ensure that the slips that are put into the jar, are visible to the public.

xx xx xx

(22) In a rural area, all the applications for a partiular licensing Unit shall be put into the Jar. The applicant whose slip, is first drawn, shall have the right for allotment of that licensing Unit. The applicant whose slip is drawn, shall be declared as an 'allottee in waiting', who shall have the claim to allotment of the respective retail outlet, in case the first allottee defaults or is debarred. In the event of the 'allottee in waiting' also getting defaulted or getting debarred, the application for the retail outlet shall be invited afresh, and the whole process shall be repeated again.

xx xx xx

(23) In an urban or any other area where more than one licensing Unit is to be allotted, all the valid applications meant for that location, shall be put into the Jar. Slips shall be drawn equal in number to the number of licensing Units one by one. Applicants, whose slips are selected, shall have the right for allotment of one of such Units. In addition to this, the slips for the 'allottee(s) in waiting' would also be selected in the following ratio:

Serial No.	No. of licensing units	No. of allottee(s) in waiting	Remark-
(i)	Upto 10	Fifty per cent	While calculating percentage, fraction of a number shall be taken as one number
(ii)	Beyond 10	Twenty five per cent (But not less than five)	

(24) The name of the successful applicants and the 'allottee(s) in waiting' shall be announced then and there.

(25) If the number of applicants are equal to the number of licensing units available in a particular place, all such applicants shall be declared as allottees, after the approval of the concerned Deputy Excise and Taxation Commissioner.

(26) If at the end of the draw of lots, some licensing units remain un-allotted, the un-successful applicants pertaining to a particular revenue district shall be allowed to participate in allotment of such Units. For this purpose, option of such un-successful applicants shall be taken on the spot and the un-allotted Units shall be allotted by following the aforesaid procedure. For the purpose, the 'allottee(s) in waiting' shall also

be treated as an un-successful applicants.

Provided that licensing units remaining unsold on the first day of the allotment may also be sold by way of inviting tenders with prior approval of the Excise Commissioner.

(27) The allotment by draw of lots shall also be made on the day or days fixed for this purpose.

xx xx xx

(30) In case, at the end o the allotment proceedings, any licensing unit remains unallotted, the names and locations of such licensing units and the corresponding retail outlets, their annual license fee and annual quota shall be displayed prominently in the office of the concerned AETC.

[Provided that the licensing unit or a group of licensing units, which may remain unallotted after first day of April, 2016 shall be allotted to the applicants, by proportionating quota of PML/IMFL, and the license fee for the remaining part of the year by seeking fresh applications therefor.]

[Provided further that the successful allottee or licensee, shall have the option to get the allotment of complete zone or group or licensing units as the case may be, as a whole transferred before or after the grant of license on the following terms and conditions, namely:-

(i) the successful allottee or licensee shall be required to deposit one per cent of the license fee of the said licensing unit as transfer fee:

(ii) the successful allottee or licensee should not be a defaulter for causing revenue loss to the State revenue in any manner at the time of transfer of license;

(iii) only one transfer will be allowed during the financial year;

(iv) before transfer of the license of the said zone or group or licensing unit, the transferee, shall submit all the documents, prescribed under the Excise Policy or the Act or the Rules; and

(v) the request made by the successful allottee or licensee, for the transfer of license, shall be subject to the approval by the Collector.]

(31) A report of unallotted licensing units shall be made separately to the Excise Commissioner, Punjab on the next day. Applications for such retail outlets shall then be invited again at the time and date, to be notified and the procedure detailed heretofore shall be followed afresh."

23. As per the scheme envisaged in the Rules for allotment of licences, Rule 35(2) of the Rules provides that the licensing units shall be formed by the Collector with prior approval of the Excise Commissioner. The size of group or zone in financial terms is provided in the Rules. It further provides that if the applications are not received for all the units or groups or zones in a particular area and the Excise Commissioner is satisfied that part of allotment of units or groups or zones in such area shall adversely affect the State revenue or that it may impinge upon smooth administration of excise law, he may cancel the process of allotment for that particular area. To facilitate re-allotment of such units or groups or zones, the Excise Commissioner may invite fresh applications with or without re-organising the groups/zones. The groups or zones may be enlarged. It further provides that if after depositing the fee, as specified in Rule 36 of

the Rules, the successful applicant or allottee fails to deposit the balance amount; if there is no other person in the waiting list and if the number of successful allottees are less than the number of units or zones in that particular area, the Excise Commissioner may allow re-formation of groups/zones in a particular area or a size exceeding the financial limits prescribed in Rule 35 of the Rules with prior approval of the Financial Commissioner (Taxation). In exceptional circumstances, the allotment may also be made through tendering process with reserve price approved by the Government.

Part of Rule 35(2) of the Rules sought to be changed by way of a corrigendum published in the Gazette on 13.5.2016, where the power of cancellation of process of allotment was given to the Commissioner, even if he is of the opinion that allotment of a licensing unit or a group of licensing units in a particular region/area does not seem to be in the interest of the State revenue.

24. Rule 36(2) of the Rules provides for the cost of application form for different categories of licensing units with reference to the licence fee. It specifically provides that the fee so paid is not refundable or adjustable. However, if the allotment procedure is cancelled by the department or any application is rejected being invalid and is not put to draw of lots, then the fee shall be refundable after deducting ₹ 2,000/- per application as processing fee.

As per Rule 36(6) of the Rules, a successful applicant is required to pay allotment fee immediately on draw of lots in his favour. It shall be 2% of the licence fee for the vends located in the Corporation area and 1% of the licence fee for the vends in urban and rural areas. The next draw of lots is to be held only after the first successful applicant had deposited the amount of allotment fee due from him. Failure to deposit the allotment fee will lead to cancellation of allotment and dis-qualification for future. The person is also disqualified from any other allotment in the State. Once the allotment fee has been paid, the person shall be deemed to have entered into a contractual obligation with the department and would discharge all liabilities of the contract including payment of full amount of licence fee determined for that licence.

Rule 36(9) of the Rules provides that in case the number of applications for a licensing unit is more than one, the allotment is to be made by way of draw of lots. The draw of lots is to be conducted under the supervision of a Committee comprising of Assistant Excise and Taxation Commissioner as Chairman, Excise and Taxation Officer (Excise) and Excise Inspector of the district concerned. The Committee is to make recommendations to the Collector for grant of licences to the successful applicants in respect of the licensing units. The recommendations so received are to be approved by the Collector within two days thereof.

Rule 36(13) of the Rules provides that if any successful applicant fails to deposit the requisite security in time or refuses to accept the licence, his allotment shall be deemed to have been cancelled automatically and the earnest money or security amount deposited by him shall be forfeited. The licence may be re-allotted as per the provisions of the Rules.

Rule 36(20) of the Rules provides that allotment of licensing units and the draw of lots is to be made in an open and transparent manner in full public view. A transparent jar shall be used for draw of lots.

Rule 36(22) of the Rules provides that in case of rural area, the applicant whose slip is first drawn from the jar shall have the right for allotment of that licensing unit. The applicant whose slip is drawn later shall be declared as an 'allottee in waiting', who shall have the claim to allotment in case the first allottee defaults or is debarred. In the event of the 'allottee in waiting' also committing default, the applications for retail outlet shall be invited afresh and the whole process shall be repeated.

Rule 36(23) of the Rules provides for similar procedure as is there in the case of vends in rural area, for the urban area. The names of the successful applicants and the allottees in waiting are to be announced there and then.

Rule 36(25) of the Rules provides that if the number of applications are equal to the number of licensing units in a particular area, all such applicants shall be declared as allottees after the approval of the concerned Deputy Excise and Taxation Commissioner.

Rule 36(26) of the Rules provides that if at the end of draw of lots, some licensing units remain unallotted, the unsuccessful applicants pertaining to a particular district shall be allowed to participate in allotment of such units. For that purpose, option of such unsuccessful applicants shall be taken on the spot. For this purpose, even 'allottee(s) in waiting' is also treated as an unsuccessful applicant. Unsold licesing units on the first day of the allotment may also be sold by way of inviting tenders with prior approval of the Excise Commissioner.

Rule 36(30) of the Rules provides that in case at the end of allotment proceedings, any licensing unit remains unallotted, the names and location of such units and the corresponding retail outlets shall be displayed prominently in the office of the concerned Assistant Excise and Taxation Commissioner.

Rule 36(31) of the Rules provides that a report of unallotted licensing units is to be made to the Excise Commissioner on the next day. The applications for allotment thereof are to be invited again and the entire procedure is followed afresh.

Facts regarding public notice

25. In the case in hand, the undisputed facts on record are that the Excise and Taxation Department issued public notice dated 18.3.2016 inviting applications for allotment of retail sale licences for L-14A and L-2 for the year 2016-17. The applications were to be submitted from 19.3.2016 to 22.3.2016. Along with the application, application money, as prescribed, was to be deposited. The applications were to be furnished separately for each licence unit or group. A single person could file multiple applications for any particular unit or group. List of all applications received was to be displayed in the office of Assistant Excise and Taxation Commissioner concerned on 22.3.2016. In case of any complaint concerned Assistant Excise and Taxation Commissioner could be contacted. The public notice further provided that in case the number of applications are more than the number of licensing units or groups or zone, allotment shall be made by draw of lots, which was to be conducted on 27.3.2016 at 9.00 AM, at the venue to be notified later on. In case, number of applications for any particular area are less than the number of units, then re-grouping of vends, if required, was to be done by the Excise and Taxation Commissioner and the same was to be notified on 23.3.2016 at 5.00 PM, for which last date for

submission of application was fixed as 26.3.2016 and the draw of lots was to be held on 28.3.2016. Relevant clauses of the public notice are extracted below:

> "xx xx xx
>
> 4. Receipt of Applications:-
>
> (a) Applications may be submitted from 19.3.2016 to 22.3.2016.
>
> (b) Applications may be submitted in the offices of respective AETCs. The application must be accompanied by the application money as mentioned above in the shape of Cash or through Demand Draft, Banker cheques, Pay order or any other pre-paid bank instrument. The office will give serially numbered receipt to the applicant.
>
> xx xx xx
>
> 5. The application should be furnished separately for each licensing Unit or group or zone as applicable.
>
> 6. A person can make any number of applications for any licensing unit without any upper limit.
>
> 7. A list of all the applications received shall be displayed at a conspicuous place in the office of the Assistant Excise and Taxation Commissioner on 23.3.2016. Any applicant having any grievance may contact the concerned Assistant Excise and Taxation Commissioner.
>
> 8. So far as the applications submitted at the banks are concerned, a list of those will be displayed on the website of the department on 23.3.2016 by 2.00 p.m. If any applicant has any

grievance that his application or particulars given in his application have not been properly recorded by the bank, he may submit his objection via mail at e-mail ID excise201516@gmail.com by 24.3.2016 upto 2.00 p.m. He may also submit his objection in writing in the office of DETC (D) Patiala who will handle all such objections for the entire State. All such objections will be decided by the DETC (D) Patiala by 2.00 p.m. on 25.3.2016 and the decision conveyed to the applicant. The decision of DETC (D) Patiala will be final.

9. In case the number of applications is more than the number of licensing units or groups or zones to be allotted in a particular area, the allotment shall be made by draw of lots which will be conducted by a Committee consisting of the Assistant Excise and Taxation Commissioner in-charge of the District, Excise and Taxation Officer (Excise) and Excise and Taxation Inspector (Excise) of the respective district in the presence of the Observers, the representatives of media and the applicants who wish to be present at the venue fixed for draw of lots. The entire process of draw of lots will be videographed. Draw of lots will be held on 27.3.2016 (9.00 a.m.) for which venues will be notified subsequently.

10. If the number of applications for any particular area are less than the number of units, then the re-grouping of vends, if required, will be done by the Excise and Taxation Commissioner and the same will be notified on 23.3.2016 by 5.00 p.m. for which the last date of submission of applications

in the office of concerned AETCs in the State of Punjab will be 26.3.2016 by 4.00 p.m. and it will be put to draw of lots on 28.3.2016 (9.00 a.m.).

11. A successful applicant will be required to pay allotment fee immediately on the draw of lot which will be @ 2% of the total license fee for that licensing unit/group/zone in the case of Corporation area and @ 1% of the license fee of the licensing unit/group/zone in other areas.

12. The next draw shall be made only after the first successful applicant has deposited the amount of allotment fee due from him. In case successful applicant fails to deposit the allotment fee than:-

a) His allotment will be cancelled.

b) Allotment in his favour in any district throughout the Punjab will also stand cancelled without any prior notice.

c) He will be disqualified for any subsequent allotment of retail licenses during for year 2016-17. "

Receipt of applications & draw of lots

26. District Bathinda was divided into 20 groups. As multiple applications could be filed against each group, details of 20 groups and the number of applications received against each group are extracted below:

"Sr. No.	Name of Group	Number of applications
1.	Bhagta	21
2.	MC Goniana	68
3.	Aklia Kalan	2
4.	Karamgarh Shatran	92
5.	M.C. Sangatmandi	20

6.	Chack Kharaksinghwala	57
7.	MC Bhucho	13
8.	Nawa Pind Fatehgarh Nowabad	23
9.	MC Raman	2
10.	Nathana	37
11.	M.C. Kotfatta	151
12-16	M.Corp. Bathinda	53
17.	MC Maur	2
18-19	MC Rampura	12
20.	Singo	273

		826
		-------------------”

27. Particulars of the applicants and the number of applications filed by them against each of the group are extracted below:

Sr. No.	Name of Group	Applicant Name	Father/husband's name	No. of applications
GROUP NO. 1				
1.	Bhagta	Ram Kumar	Ramji Dass	2
2.	Bhagta	Chandan Sethi	Harish Kumar	2
3.	Bhagta	Jaswinder Singh	Hardev Singh	2
4.	Bhagta	Amarjit Singh	Lachhman Singh	2
5.	Bhagta	Kamal Kumar	Sudesh Kumar	2
6.	Bhagta	ABS Wines Pvt. Ltd.		11
	Total:			21
GROUP NO. 2				
1.	MC Goniana	Harish Kumar	Ruldu Ram	5
2.	MC Goniana	Ashish Bansal	Banwari Lal Bansal	4
3.	MC Goniana	Rahul Kansal	Ram Sarup Kansal	29
4.	MC Goniana	Ajaib Singh	Balwant Singh	2
5.	MC Goniana	Lalit Kumar	Darshan Kumar	1
6.	MC Goniana	Vikas Kumar	Prem Kumar	1
7.	MC Goniana	Nrotam Kumar Singla	Hukam Chand	1

8.	MC Goniana	Ram Kumar	Ramji Dass	25
	Total:			68

GROUP NO. 3

1.	Aklia Kalan	Chander Mohan Sharma	Diyal Sharma	1
2.	Aklia Kalan	Ravinder Singh	Gurcharan Singh	1
	Total:			2

GROUP NO. 4

1.	Karamgrarh Shatran	Bhagwan Das	Ram Chand	1
2.	Karamgrarh Shatran	Karan Kumar	Bhagwan Dass	1
3.	Karamgrarh Shatran	Ram Kumar	Ramji Dass	2
4.	Karamgrarh Shatran	Chandan Sethi	Harish Kumar	27
5.	Karamgrarh Shatran	Amarjit Singh	Lachhman Singh	2
6.	Karamgrarh Shatran	Kamal Kumar	Sudesh Kumar	2
7.	Karamgrarh Shatran	Jaswinder Singh	Hardev Singh	2
8.	Karamgrarh Shatran	ABS Wines Pvt. Ltd.	--	11
9.	Karamgrarh Shatran	Punit Kumar Bansal	Om Parkash Bansal	9
10.	Karamgrarh Shatran	Jaskinder Kaur	Kuljeet Singh Brar	4
11.	Karamgrarh Shatran	Rahul Kansal	Ram Srup Kansal	1
12.	Karamgrarh Shatran	Mohra Devi	Kheta Ram	1
13.	Karamgrarh Shatran	Bikram Singh	Indher Singh	1
14.	Karamgrarh Shatran	Veena Oberoi	Parmod Obroi	1
15.	Karamgrarh	Amarjit Kaur	Mohan Lal	1

	Shatran			
16.	Karamgrarh Shatran	Kuljeet Singh	Sant Singh	1
17.	Karamgrarh Shatran	Ashish Bansal	Banwari Lal Bansal	25
	Total:			92

GROUP NO.5

1.	MC Sangat Mandi	Ram Kumar	Ramji Dass	5
2.	MC Sangat Mandi	Kamal Kumar	Sudesh Kumar	6
3.	MC Sangat Mandi	Jaswinder Singh	Hardev Singh	4
4.	MC Sangat Mandi	Amarjit Singh	Lachhman Singh	5
	Total			20

GROUP NO.6

1.	Chack Kharakhsingh Wala-	Chandan Sethi	Harish Kumar	13
2.	Chack Kharakhsingh Wala-	Amarjit Singh	Lachhman Singh	3
3.	Chack Kharakhsingh Wala-	Jaswinder Singh	Hardev Singh	3
4.	Chack Kharakhsingh Wala-	Ram Kumar	Ramji Dass	1
5.	Chack Kharakhsingh Wala-	ABS Wines Pvt. Ltd.	--	11
6.	Chack Kharakhsingh Wala-	Kuljeet Singh	Sant Singh	2
7.	Chack Kharakhsingh Wala-	Bharbhur Singh	Gurmail Singh	1
8.	Chack Kharakhsingh Wala-	Jaskinder Kaur	Kuljeet Singh Brar	2

9.	Chack Kharakhsingh Wala-	Ashish Bansal	Banwari Lal Bansal	12
10.	Chack Kharakhsingh Wala-	Rahul Kansal	Ram Srup Kansal	2
11.	Chack Kharakhsingh Wala-	Punit Kumar Bansal	Om Parkash Bansal	5
12.	Chack Kharakhsingh Wala-	Sanjeev Kumar	Mohan Lal	1
13.	Chack Kharakhsingh Wala-	Chander Mohan	Dayal Sharma	1
	Total			57

GROUP NO.7

1.	MC Bhucho	NC Group	--	3
2.	MC Bhucho	Chander Mohan Sharma	Dayal Sharma	5
3.	MC Bhucho	Ram Kumar	Ramji Dass	5
	Total			13

GROUP NO.8

1.	Nawa Pind Fatehgrah Nowabad	Jaskinder Kaur	Kuljeet Singh Brar	2
2.	Nawa Pind Fatehgrah Nowabad	Ranvir Singh	Mani Ram	1
3.	Nawa Pind Fatehgrah Nowabad	Chander Mohan Sharma	Diyal Sharma	10
4.	Nawa Pind Fatehgrah Nowabad	Ram Kumar	Ramji Dass	10
	Total			23

GROUP NO.9

1.	MC Raman	Ravinder Singh	Gurcharan Singh	1
2.	MC Raman	Chander Mohan Sharma	Diyal Sharma	1
	Total			2

GROUP NO.10

1.	Nathana	Jagsir Singh	Balwinder Singh	3
2.	Nathana	Kaka Singh	Karnail Singh	3
3.	Nathana	Kalawati	Charan Singh	1
4.	Nathana	Chander Mohan	Dayal Sharma	15
5.	Nathana	Ram Kumar	Ramji Dass	15
	Total			37

GROUP NO.11

1.	MC Kotfatta	Amarjit Singh	Lachhman Singh	3
2.	MC Kotfatta	Chandan Sethi	Harish Kumar	3
3.	MC Kotfatta	Jaswinder Singh	Hardev Singh	3
4.	MC Kotfatta	Kamal Kumar	Sudesh Kumar	1
5.	MC Kotfatta	Amrit Pal	Mehar Chand	5
6.	MC Kotfatta	Ajay Kumar Goyal	Shiv Pal Goyal	2
7.	MC Kotfatta	ABS Wines Pvt. Ltd.	--	11
8.	MC Kotfatta	Harish Kumar	Ruldu Ram	8
9.	MC Kotfatta	Gurmit Singh	Harcharan Singh	8
10.	MC Kotfatta	Iqbal Singh	Mukhtiar Singh	1
11.	MC Kotfatta	Kuldeep Singh	Bhola Singh	1
12.	MC Kotfatta	Kuljit Singh	Sant Singh	2
13.	MC Kotfatta	Jaskinder Kaur	Kuljit Singh	3
14.	MC Kotfatta	Chander Mohan Sharma	Diyal Sharma	50
15.	MC Kotfatta	Ram Kumar	Ramjit Dass	50

	Total			151

GROUP NOS.12 TO 16

1.	M. Corp. Bathinda	Malkit Singh	Balwinder Singh	1
2.	M. Corp. Bathinda	Vijay Kumar	Bhola Ram	1
3.	M. Corp. Bathinda	Chander Mohan Sharma	Dyal Sharma	25
4.	M. Corp. Bathinda	Ravinder Singh	Gurcharan Singh	26
	Total			53

GROUP NO.17

1.	MC Maur	Ravinder Singh	Gurcharan Singh	1
2.	MC Maur	Chander Mohan Sharma	Diyal Sharma	1
	Total			2

GROUP NOS.18 & 19

1.	MC Rampura	Rajender Kumar Soni	Sagar Lal Soni	1
2.	MC Rampura	Ravinder Singh	Gurcharan Singh	5
3.	MC Rampura	Chander Mohan Sharma	Diyal Sharma	6
	Total			12

GROUP NO.20

1.	Singo	Arvind Singla	Sh. Pawan Singla	20
2.	Singo	Divya Singla	Sh. Arvind Singla	7
3.	Singo	Usha Singla	Sh. Pawan Singla	7
4.	Singo	Baljinder Kumar	Sh. Bant Ram	17
5.	Singo	Jagjit Singh	Gurdev Singh	2
6.	Singo	Hardavinder Singh	Sikander Singh	3
7.	Singo	Balkaran Singh	Sukhpal Singh	4
8.	Singo	Baltej Singh	Ram Singh	3
9.	Singo	Karamjit Singh	Baltej Singh	3

10.	Singo	Sandeep Singh	Paramjit Singh	3
11.	Singo	Amrinder Singh	Surjit Singh	4
12.	Singo	Chander Mohan Sharma	Diyal Sharma	100
13.	Singo	Ravinder Singh	Gurcharan Singh	10
14.	Singo	Ram Kumar	Ramji Dass	40
15.	Singo	Chanden Sethi	Harish Kumar	50
	Total			273

28. The draw of lots was held at Antique Palace, Bathinda on 27.3.2016.

For Group No. 1 (Bhagta), Chandan Sethi was the successful applicant. He deposited the requisite allotment amount.

For Group No. 2 (MC Goniana)- Rahul Kansal was the successful applicant. He deposited ₹ 6,50,000/- as allotment fee.

For Group No. 3 (Aklia Kalan)- Chander Mohan Sharma was the successful applicant. He deposited ₹ 4,50,000/- as allotment fee.

For Group No. 4 (Karamgarh Shatran)- Kuljeet Singh was the successful applicant. He deposited ₹ 3,00,000/- as allotment fee.

For Group No. 5 (M.C. Sangat Mandi)- Kamal Kumar was the successful applicant. He deposited ₹ 6,50,000/- as allotment fee.

For Group No. 6 (Chack Kharaksingh Wala), Chandan Sethi was the successful applicant. He deposited ₹ 4,10,000/- as allotment fee.

For Group No. 7 (MC Bhucho)- Chander Mohan Sharma was the successful applicant. He deposited ₹ 8,50,000/- as allotment fee.

For Group No. 8, Ram Kumar was the successful applicant. For Group No. 9-Chander Mohan Sharma was the successful applicant and for

Group No. 10, Ram Kumar was again the successful applicant. No allotment amount was deposited for the aforesaid three groups.

For Group No. 11 (M.C. Kotfatta), Harish Kumar/petitioner in CWP No. 6558 of 2016 was the successful applicant. He deposited the allotment amount of ₹ 8,50,000/-. No draw of lots for Group Nos. 12 to 20 was held.

Office report after draw of lots

29. In the office file of Deputy Excise and Taxation Commissioner, the proceedings as recorded for draw of lots of District Bathinda, as was held on 27.3.2016, are available. From the proceedings, it is evident that Sheena Aggarwal, Additional Deputy Commissioner was present as observer. The Collector-cum-Deputy Excise and Taxation Commissioner was also present. It mentions the details of all the successful applicants upto Group No. 11. It also notices that the petitioner, who was successful allottee for Group No. 11 immediately deposited 5% security in the bank. It was at this stage that the Excise Inspector of Group Nos. 8, 9 and 10 informed the Excise and Taxation Officer (Excise) and the Assistant Excise and Taxation Commissioner that the successful allottees thereof had run away from the bank counter without depositing the requisite 1% fee. Further, draw of lots was stopped immediately. The Assistant Excise and Taxation Commissioner informed that there appeared some intention to jeopardise the entire allotment process for the reasons best known to them. Noticing that it was mandatory for the successful allottee to deposit the fee before the next draw could be carried out, it was not possible to continue with the process. It specifically recorded that the successful allottees of three groups vanished

from the spot without depositing the allotment fee. Despite repeated efforts and requests to them to join the process of draw of lots, they refused. The report records that 'they seemed bent upon to bring the entire process to a stand still'. As the process could not be revived, it had to be suspended. The report, as prepared by the Committee, also quoted that the successful allottees, who had failed to deposit the allotment fee were the major stake holders in the process. The report was sent to the Deputy Excise and Taxation Commissioner.

30. Vide order passed by the Deputy Excise and Taxation Commissioner on 29.3.2016, the draw of lots, as held on 27.3.2016 for eight groups for which the licence fee was deposited, was not approved by him. On the same day, he sent a communication to the Excise and Taxation Commissioner. He recommended for change in grouping pattern while recommending creation of bigger groups by invoking powers conferred in Rule 35 of the Rules read with para 2.22 of the excise policy, which entitles the Commissioner to cancel the process of draw of lots in revenue's interest. The groups to be re-constituted were also mentioned in the communication.

Dealing of case at Head Office level

31. In the office file of Deputy Excise and Taxation Commissioner, there is a report dated 27.3.2016 submitted by the Committee constituted for holding draw of lots. It is specifically mentioned therein that three successful allottees for Groups No. 8 to 10 refused to deposit the allotment money and they being major stake holders and having refused to participate in the future process, the draw of lots was proposed to be suspended. It was sent to the Deputy Excise and Taxation Commissioner on the same day. The Deputy Excise and Taxation Commissioner, Faridkot passed an order dated

29.3.2016 recommending cancellation of process of draw of lots and allowing re-allotment by inviting applications afresh by forming new groups, which were three in number. On the same day, the Excise and Taxation Commissioner passed order cancelling the process of draw of lots while accepting the recommendations made by Deputy Excise and Taxation Commissioner, Faridkot. On the same day, Deputy Excise and Taxation Commissioner, Faridkot sends a notice/intimation to the petitioner on 29.3.2016 mentioning that allotment in favour of the petitioner had been cancelled by the Excise and Taxation Commissioner. It mentions No. 1315 O/o DETC. There is another document on record in the file at page No. 107 mentioning names of all eight successful allottees and ordering that allotment of excise groups in their names stood cancelled. There is nothing on record to suggest that separate notice/intimation, as is claimed to have been sent to the petitioner, was sent to any other allottees. That order is without any date. It contains the same number, namely, 1315 O/o DETC. Five persons, whose signatures are shown on the aforesaid order are those, who got their applications/allotment money adjusted for fresh allotment. There is another allottee-Kuljit Singh for Group No. 4. There is nothing on record to suggest that the order was ever served upon him. The definite stand of learned counsel for the State was that the record produced before this court is the original record.

32. When the record was perused, while dictating the judgment, on a perusal of the aforesaid order, it was apparent that signatures of five persons, to whom the order was shown to have been served, were not original. As there was some suspicion, the matter was directed to be listed in court on 17.10.2016 for direction, on which date, following order was

passed:

> "The case was put up though the order was reserved on 3.10.2016, as in the file produced by the State containing original record there was doubt regarding service of order No. 1315/Office of DETC dated nil, passed by Deputy Excise and Taxation Commissioner, Faridkot Division, Faridkot, available at pages 107 and 109 of office file DETC, Draw of lots 2016-17, to the parties concerned. Signatures at Sr. No. 1 to 5 do not seem to be original."

33. On 18.10.2016, after hearing learned counsel for the parties and finding that opinion of Central Forensic Science Laboratory may be required to find out as to whether signatures of five persons on the order were original or not, the document was sent for examination to Central Forensic Science Laboratory, Chandigarh. The matter was put in the court on 24.10.2016. The report received in the sealed cover was opened. The same was taken on record. Regarding disputed signatures of five persons, Central Forensic Science Laboratory opined as under:

> "1. On examination of the documents containing the enclosed signatures marked Q1 to Q5 under various light arrangements such as U.V. Light, I.R. Light, transmitted light etc. utilizing various Scientific Instruments such as Docu-Center Expert, Stereomicroscope, magnifiers etc. under different magnification, it is revealed that the signatures marked Q1 to Q5 are not the original signatures. The signatures marked Q1 to Q5 have been reproduced on the document using digital image acquisition and transfer mechanism from the respective source

signatures."

34. A perusal of the aforesaid report shows that the State had tried to mislead the court by producing fabricated record. Though it was claimed that original record was produced in court, however, on the order dated nil No. 1315 O/o DETC, though the Deputy Excise and Taxation Commissioner had signed in original and it was initialled by some officer on 30.3.2016 as 'seen' and further initialled by Deputy Excise and Taxation Commissioner on the same day in original, however, signatures of five persons, to whom the order was shown to have been served, were scanned and not in original. Meaning thereby, the record was created only to produce before this court to show that every step taken by the department was in order, whereas it was not. At this stage, the court was apprised by the State that the Deputy Excise & Taxation Commissioner is under suspension and this aspect of the matter shall also be considered by the authority.

35. The conduct of the department is further evident from other record produced in court, which does not inspire confidence, as the file contains many original copies and many documents are photo copies only. There is a typed index on the file with page numbers, which is never seen in any government office. There is cutting and over-writing on page number as well.

36. Vide order passed by the Excise and Taxation Commissioner, Punjab on 29.3.2016, he cancelled the process of draw of lots for eight groups, as held on 27.3.2016. The reason assigned was that out of the total targeted revenue of ₹ 202.34 crores from the district, only ₹ 54.31 crores could be secured on allotment of eight groups, which was only 26%. The balance of ₹ 148.12 crores was remaining. In fact, the balance was for

vends which were still to be allotted and for whom more than one application had been received.

37. Even though in the letter sent by the Deputy Excise and Taxation Commissioner to the Excise and Taxation Commissioner, there is no reference of any separate chart or recommendations or statement regarding proposed groups, but still in a separate file produced by learned counsel for the State, only documents available are details regarding three proposed groups, which were signed by Assistant Excise and Taxation Commissioner, Bathinda, Deputy Excise and Taxation Commissioner, Faridkot, Additional Excise and Taxation Commissioner, Punjab and finally approved by the Excise and Taxation Commissioner, Punjab. In the order dated 29.3.2016, passed by the Excise and Taxation Commissioner, there is no reference to this effect. The recommendation made by the Deputy Excise and Taxation Commissioner to cancel the process of draw of lots only was accepted. The relevant part thereof is extracted below:

> "I agree with the report of the DETC, Faridkot that part allotments of groups in such area will adversely affect the State revenue. Hence, as recommended by DETC, Faridkot to safeguard the revenue interests of the State, I hereby cancel the process of draw of lots for following groups/allottees, held on 27.3.2016 for Bathinda District:-

S.No.	Name of Group	Unit Code	Successful allottees
1.	Bhagta	52-U-8-1	Chandan Sethi
2.	MC Goniana	52-U-2-1	Rahul Kansal
3.	Aklia Kalan	52-R-2-1	Chander Mohan Sharma
4.	Karamgarh Shatran	52-R-1-1	Kuljeet Singh
5.	MC Sangat	52-U-6-1	Kamal Kumar
6.	Chack Kharaksingh Wala	52-R-4-1	Chandan Sethi

7.	MC Bhucho	52-U-3-1	Chander Mohan Sharma
8.	MC Kotfatta	52-U-7-1	Harish Kumar

DETC-cum-Collector, Faridkot is directed to intimate the above mentioned successful allottees and proceed to refund the amounts due to them in terms of provisions of Excise Policy 2016-17 immediately."

38. Another file produced by learned counsel for the State in a separate folder was containing certain notings. It mentions list of certain groups/zones in Districts Bathinda, Patiala, Sangrur, Barnala, Ferozepur, Fazilka and Moga. Even though there were 20 groups in District Bathinda, however, the note mentioned that there were three groups in District Bathinda, which could not be allotted. While referring to the recommendations made by the Deputy Excise and Taxation Commissioner and the discussions held with the prospective licensees on the basis thereof, it was recommended that instead of 20 groups, the district be divided into three groups. Though recommendation for formation of three groups as against 20 is later, however, in the opening paragraph of the note, where details regarding un-allotted vends were mentioned, only three groups have been shown in District Bathinda. The recommendation was for re-allotment by forming three groups. For other districts, the reserve price was reduced from 10% to 15% and re-grouping of vends was directed. The same was finally approved. For District Bathinda, the vends were to be allotted by inviting fresh applications, whereas for other districts, the vends were to be re-allotted by inviting tenders.

39. The facts, as noticed in the aforesaid file, against each district regarding un-allotted liquor vends are summarised below:

District Patiala

From the noting pertaining to District Patiala, it is evident that the district was first divided into 54 groups. The applications were received against all groups. Draw of lots was held on 27.3.2016. Six successful allottees failed to deposit allotment fee of 1%, hence, the allotment of these vends could not be completed. Fresh applications were invited for allotment of pending groups, for which draw of lots was to be held on 29.3.2016, but no applications were received. Six successful allottees did not deposit 5% security money within 48 hours from the draw of lots, after depositing initial 1% of the allotment fee.

District Sangrur

The District was divided into 50 groups. Applications were received only for 36 groups. Draw of lots was held on 27.3.2016. Out of successful allottees, 15 groups failed to deposit the allotment fee of 1%. Fresh applications were invited, however, no response was received for the draw of lots to be held on 29.3.2016. Two successful allottees did not deposit 5% security money within 48 hours from the draw of lots, after depositing initial 1% of the allotment fee.

District Barnala

The District was divided into 31 groups. Draw of lots was held on 27.3.2016. Out of successful allottees, 6 groups failed to deposit the allotment fee of 1%. Fresh applications were invited, however, no response was received for the draw of lots to be held on 29.3.2016.

District Ferozepur

The District was divided into 19 groups. Applications were received for all the groups. Draw of lots was held on 27.3.2016. Out of successful allottees, 8 groups failed to deposit the allotment fee of 1%. Fresh applications were invited, however, no response was received for the draw of lots to be held on 29.3.2016.

District Fazilka

The District was divided into 40 groups. Applications were received for all the groups. Draw of lots was held on 27.3.2016. Out of successful allottees, one group failed to deposit the allotment fee of 1%. Fresh applications were invited, however, no response was received for the draw of lots to be held on 29.3.2016.

District Moga

The District was divided into 31 groups. Applications were received only for 16 groups. Draw of lots was held on 27.3.2016. Out of successful allottees, two groups were not available at the venue. Fresh applications were invited for the draw of lots to be held on 29.3.2016. In response thereto, only one application was received. Allotment money was also not deposited for the draw of lots, which was to be held on 29.3.2016.

District Bathinda

The District was divided into 20 groups. Draw of lots was held on 27.3.2016. Out of successful allottees, 8 groups deposited their allotment fee amounting to ₹ 54.31 crores, which was only 26% of the total revenue of the district. Twelve groups involving revenue implication of ₹ 148.12 crores could not be allotted. Apprehension about the profitability of the liquor business with the existing group formation and revenue thereof was expressed. After discussions with the prospective licensees, recommendations were made for re-grouping by reducing total groups from 20 to 3.

40. Finally, the proposal, as approved by the Minister-in-Charge is extracted below:

"In view of the recommendations of the DETCs, the following revenue reduction is proposed:

"Name of the District	Remaining Groups		Proposed as per recommendations of the DETCs		
	No. of groups	Revenue (in Crores)	No. of groups	Revenue (in Crores)	%age of revenue reduction
1	2	3	4	5	6
Bathinda	3	Rs. 153.88	3	Rs. 153.88	0
Patiala	12	Rs. 50.08	5	Rs. 42.52	15
Sangrur	31	Rs. 151.33	2	Rs. 132.40	12.5
Barnala	6	Rs. 17.22	1	Rs. 14.76	15
Ferozepur	9	Rs. 41.66	9	Rs. 35.41	15
Fazilka	1	Rs. 3.78	1	Rs. 3.40	10
Moga	19	Rs. 69.28	19	Rs. 61.16	11.72
Total:	81	Rs. 487.23	40	Rs. 443.53	

"

It is recommended that the revenues as proposed in column 5 (based on proposals of DETCs) above may be kept as the reserve price for inviting open tender from interested parties. The tender route will be transparent and will also help in fully realizing the market potential of various groups.

It has been provided in para 2.22 of the Excise Policy 2016-17 that in exceptional circumstances, the licensing units/ groups/ zones can be allotted through tender system with the approval of Hon'ble Dy. CM as Minister-in-charge.

In a view of the proposals received from the field officers and the provisions of the Excise Policy 2016-17, it is proposed that:-

1. DETC Faridkot may be allowed to cancel the process of

draw of lots held on 27.3.2016 and to re-allot the vends by inviting fresh applications, by forming three groups of Bathinda district as mentioned above.

2. Districts of Patiala, Sangrur, Barnala, Ferozepur, Fazilka and Moga, the DETCs, Patiala and Ferozepur may be allowed to re-allot the unsold/pending groups through open tender by reducing license fee/quota of PML and IMFL as mentioned in table above. With this, the license fee for these unsold groups will be reduced from Rs. 487.23 crores to Rs. 443.53 crores. Similarly the amount of recoverable additional license fee and special license fee will also get reduced corresponding to the reduction in PML Quota.

4. To approve the reserve price as given in column 5 for these districts."

41. From a perusal of the aforesaid file, it is evident that for District Bathinda, complete and clear facts were not noticed in the note that applications had been received for all the groups. The process of draw of lots was continuing. Some of the successful allottees had failed to deposit the licence fee and as a result, further draw of lots was stopped. It further does not notice the fact that for the balance 12 liquor vends, applications had been received by the department and the applicants were also available at the venue, hence, without continuing with the exercise of draw of lots, it could not be opined that there was any apprehension of loss of revenue.

Different procedure in different Districts

42. It is further evident that procedure followed for the purpose of

grant of licences for the liquor vends in different districts was different, though the Rules applicable and the policy was same.

For District Bathinda, it is claimed that the process of draw of lots was suspended as three of the successful allottees failed to deposit the allotment fee, even though subsequent allottee had deposited the fee and the applicants for the left over vends were available at the venue.

For Districts Patiala, Barnala, Ferozepur and Fazilka, even though the department had received applications against all the groups, however, finally, after the draw of lots, it was found that some of the successful allottees had failed to deposit the allotment fee, as a consequence the process of allotment could not be completed. It was not suspended.

For Districts Sangrur and Moga, applications were not received for allotment of all the groups. Still the power, as available in Rule 35(2) of the Rules, for re-grouping was not exercised before the process of draw of lots. Some of the allottees failed to deposit the licence fee after being successful in the draw of lots. The process was not suspended.

43. From the aforesaid facts, available in the file, it is evident that the process of draw of lots for all the districts, as noticed above, continued even after there was failure on the part of the earlier allottees to deposit the licence fee. Exception was carved out only in the case of District Bathinda by raising the issue of chaos, even though it is specifically noticed even in the report that three of the successful allottees had run away from the venue without deposit of the licence fee. They were claimed to be major stake holders.

44. Further, it is evident that in all the districts, where certain vends remained un-alloted for any reason, fresh applications were invited for the

draw of lots to be held on 29.3.2016. No such effort was made in the case of District Bathinda. It was only for District Bathinda that same process was to be followed for allotment of liquor vends, whereas in all other districts, tendering process was directed. For District Bathinda, there was no reduction in licence fee, whereas in all other districts, there was substantial reduction in the licence fee as well, as if the State was not concerned with loss of revenue in those districts or the boggy of protection of State's revenue was being raised for District Bathinda only, where the revenue was otherwise safe.

Re-allotment process

45. After the approval of fresh system by the Minister-in-charge, notice was published only in 'The Tribune' on 30.3.2016 for inviting fresh applications for district Bathinda. The applications were to be submitted by 7.00 PM on the same day. The details of groups were not there in the advertisement. Counsel for the petitioner claimed that it was not even available on the website, as was mentioned in the advertisement. The draw of lots was to be held on 31.3.2016. Though Rule 36(2) of the Rules provides that draw of lots had to be held at a public place in a transparent manner, however, as claimed, the same was held in the office of Assistant Excise and Taxation Commissioner.

46. In response to the public notice so issued, six applications were received for three groups. These were two applications each filed by three applicants, namely, (i) Gagan Wine Trade and Financers Limited; (ii) Ekam Wines and (iii) Advanced Wines. In fact, as is evident from the file of the office of Deputy Excise and Taxation Commissioner, the aforesaid three applicants had filed two applications each for three different groups.

Practically there was only one applicant for each group. Each of the three groups were allotted the liquor vends. It looks like a tailor-made arrangement. It is also evident from the subsequent facts, as are available in the affidavit dated 29.9.2016 by G. S. Gill, Deputy Excise and Taxation Commissioner, Faridkot.

47. There were total 826 applications received for allotment of 20 groups in District Bathinda initially. The details of number of applications in each group have already been noticed in paragraph No. 26 of the judgment. Out of 826 applicants, 685 applicants requested the department to adjust their application/allotment money against the allotment fee of the successful applicants in the draw of lots held on 31.3.2016. Despite there being admittedly no provision in the policy or the Rules for such an adjustment, the Deputy Excise and Taxation Commissioner ordered for adjustment of that amount. The explanation given for same in the affidavit is that it was done with bonafide intention in order to safeguard Government revenue. The explanation is strange as if the new allottees were not in a position to deposit the licence fee. Refund to the balance 141 applicants is yet to be granted, though more than six months have passed.

48. The draw of lots for 11 groups was held, out of which 8 had deposited the licence fee. Nine out of the successful allottees got their application fee/ licence fee adjusted against the licence fee to be paid by the successful allottees. The only two remaining were the petitioner and one Kuljeet Singh, who was successful for group No. 4. This clearly establishes link of the earlier applicants and the new allottees.

Safeguarding the Government revenue

49. Every action in the entire process of allotment of liquor vends

is sought to be justified by taking the plea of safeguarding the Government revenue. It starts from suspending the draw of lots, re-grouping the vends in the district, cancelling the licences of the successful allottees in the draw of lots and adjustment of the application/licence fee of the un-successful and successful applicants in the first draw of lots against the amount due from the successful applicants in the second draw of lots.

50. In the first round of allotment of liquor vends for District Bathinda, it was divided into 20 groups. 826 applications were received. The total amount of application fee received was ₹ 2,27,85,000/-. The draw of lots for 11 groups out of 20 groups was held. Out of 11 successful allottees, 8 allottees had deposited the allotment amount to the tune of ₹ 48,60,000/-. Ram Kumar and Chander Mohan Sharma, who were successful allottees for Groups No. 8 to 10 and had run away without depositing the allotment amount were also successful allottees for Groups No. 1, 3 and 7. The entire dispute arose when the draw of lots for Group No. 11 was held, where the petitioner was successful. He had deposited the allotment fee. There were total 151 applications received for this group, out of which 8 were filed by the petitioner, whereas 50 each were filed by Chander Mohan Sharma and Ram Kumar, who were the successful allottees for Groups No. 8 to 10 and had run away from the spot without depositing the allotment money. In fact, if the list of total applications received for all 20 vends of different applicants is seen, as has been reproduced in paragraph No. 27 of the judgment, it is evident that Chander Mohan Sharma and Ram Kumar were the major players, who had filed total 370 applications, but could be successful only for 5 groups out of 11 groups, the draw of lots of which was held. It was not a case of auction of liquor vends where the participants

were bidding for higher and higher amount for allotment of a particular vend, rather, the licence fee was fixed. The allotment was merely by way of draw of lots. Meaning thereby, the maximum amount to be received by the State was fixed. In addition, the State was to retain the entire amount of application money, which was neither refundable nor adjustable. It was to be tune of ₹ 2,27,85,000/-. In the entire process, the State has, in fact, lost that amount, as the major amount therefrom has been ordered to be adjusted against the allotment fee of the fresh allottees and part of which is to be refunded. Against fresh allotments, the application money received is ₹ 4,20,000/- from six applicants.

51. It is the admitted case of the State on record that the chaos started with non-deposit of allotment fee by the allottees of Groups No. 8 to 10, who were Chander Mohan Sharma and Ram Kumar. Besides these three groups, they had deposited the allotment fee for other two groups totalling ₹ 13,00,000/. In terms of Rule 36(6)(b) of the Rules, they were deemed to have entered into contractual obligation with the department to discharge all liabilities regarding payment of full licence fee. Even though draw of lots for an allottee in waiting was also to be carried out and was, in fact, carried out for Groups No. 8 to 10 and as claimed by learned counsel for the State that for two of the groups, even the allottee in waiting was also one of the aforesaid two applicants, but even for third group no opportunity was given to the allottee in waiting. Rule 36(6)(b) of the Rules provides that on failure to deposit the allotment money, allotment was liable to be cancelled entailing disqualification for future. Even in clause 12 in the public notice issued for allotment of liquor vends, it was specifically provided that in case the successful applicant fails to deposit the allotment fee, then his allotment

shall be cancelled. Allotment to such an applicant in any other district was also to be treated as cancelled without any prior notice and he shall not be eligible for any later allotment for the year 2016-17, hence, as a consequence of default of Chander Mohan Sharma and Ram Kumar, their earlier two allotments could very well be cancelled and the amount deposited could be forfeited in terms of Rule 36(13) of the Rules. But was not done as the effort was to favour them.

52. Rule 35(2) of the Rules envisaged re-grouping only in case the applications are not received for all the licensing units/groups. The power could be exercised if allotment in part may affect the State revenue. In the case in hand, it is not in dispute that applications had been received for all groups. In fact, even single application for any particular group was also enough, as draw of lots was to be carried out only if the number of applications for a particular group were more than one. Even the condition in the advertisement also provided that in case for any specific area, the number of applications received are less than the units, re-grouping could be done by the Excise Commissioner. It was not disputed that whatever terms are provided in the excise policy, correspondingly the amendments are made in the Rules. Though the action of re-grouping even in the event of receipt of applications for each and every group is sought to be justified while referring to clause 2.22 of the excise policy, however, there is no corresponding amendment in the Rules. The amendment, in fact, was carried out vide notification dated 13.5.2016, which is being claimed as a corrigendum. The present petition was filed on 5.4.2016 raising the plea that clause 2.22 of the excise policy was contrary to the provisions of the

Rules, no immediate action was taken.

53. It is not the case where applications for all the groups had not been received. Even for the groups, for which the draw of lots was yet to be conducted, there were more than one application, hence, to claim that Government revenue would have suffered, is merely a misnomer. This court could not find any justification to cancel the entire allotment process merely on default by two of the applicants. Rather by cancelling their earlier allotments also the State would have gained.

54. Rule 36(2) of the Rules clearly provides that application fee is neither refundable nor adjustable, however, in case the allotment procedure is cancelled by the department, the application fee is refundable. By taking a decision apparently with a view to favour some of the persons by cancelling the process of allotment, the State had, in fact, suffered loss of ₹ 2,27,85,000/-, received as application fee. Everything was done in such a hurry that the department decided to adjust the entire application money received, whereas even in the eventuality of cancellation of allotment procedure, ₹ 2,000/- per application were to be deducted as processing fee. The amount comes out to ₹ 13,70,000/- against 685 applications, where adjustment was made against the amount payable by new allottees.

55. The connivance is well-established from the fact that in the case of all major players, who primarily were not successful till such time draw of lots upto Group No. 11 was held, got their application money and the allotment fee adjusted against the amount due from new licensees without there being any enabling provision. That clearly establishes the link between the applicants, who were unsuccessful or even successful and the new allottees, who were merely three groups. Adjustment is also sought to

be justified in the interest of Government revenue, which is not understandable, as new allottees were bound to pay the licence fee or face the consequences. In fact, in the entire process, evidently defaulters have been made the beneficiaries, by dictating the terms. The department succumbed to their pressure.

56. The action of re-grouping the vends is sought to be justified by taking the plea of 'safeguarding the Government revenue'. Rule 35(2) of the Rules enables the Excise Commissioner to exercise power of re-grouping in case the applications have not been received for all the units and the process of allotment in part may affect the State revenue. Such a power was not exercised at the right time, when applications were not received for all the groups in Districts Sangrur and Moga. The draw of lots was allowed to be held. Though a plea is sought to be raised that process of draw of lots at Bathinda was required to be cancelled as in terms of Rule 36(6)(b) of the Rules, next draw was to be made only after the first successful applicant had deposited the allotment fee, but that procedure was not followed in Districts Patiala, Sangrur, Barnala, Ferozepur and Fazilka, where number of successful applicants failed to deposit the allotment fee within the time permitted. If the State was so concerned about the revenue, then effort to save the same should also have been made at the appropriate time in other districts as well.

Case law

57. The extent to which the Court can exercise power of judicial review is well-defined. In Tata Cellular v. Union of India, (1994) 6 SCC 651, it has been opined that judicial review can be exercised to prevent any action of the State being arbitrary or tainted with favoritism. Relevant para

No. 70 thereof is extracted below:

> "**70.** It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favoritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. *Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State*. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down."

58. It is settled that there is no fundamental right to do business or trade in intoxicants, however, if the State decides to grant such privilege or right, it cannot escape from rigors of Article 14 of the Constitution of India. It cannot be permitted to act arbitrarily or at will. Though the court is slow to interfere with the policy of the Government for grant of licences for liquor or award of contracts, however, decision-making process can certainly be gone into. The Court can interfere if such a process is vitiated by arbitrariness, unfairness, illegality or irrationality. In Common Cause, a

Registered Society v. Union of India and others, AIR 1999 SC 2979, Hon'ble the Supreme Court observed as under:

> "43. Government decisions regarding award of contracts are also open to judicial review and if the decision-making process is shown to be vitiated by arbitrariness, unfairness, illegality and irrationality, then the Court can strike down the decision-making process as also the award of contract based on such decision. This was so laid down by this Court in *Tata Cellular v. Union of India,* (1994) 6 SCC 651: A.I.R. 1996 S.C. 11: (A.I.R. 1994 S.C.W. 3344). Initially the Supreme Court was of the opinion that while the decision-making process for award of a contract would be amenable to judicial review under Articles 226 or 32 of the Constitution, a breach of a contractual obligation arising out of a contract already executed would not be so enforceable under such jurisdiction and the remedy in such cases would lie by way of a civil suit for damages. (See: *Radhakrishna Agarwal v. State of Bihar,* (1977) 3 S.C.C. 457: (1977) 3 S.C.R. 249: A. I.R. 1977 S.C. 1496. But the Court changed its opinion in subsequent decisions and held that even arbitrary and unreasonable decisions of the government authorities while acting in pursuance of a contract would also be amenable to writ jurisdiction. This principle was laid down in *Gujarat State Financial Corpn. v. Lotus Hotels (P) Ltd.*, (1983) 3 S.C.C. 379: A.I.R. 1983 S.C. 848. This Court even went to the extent of saying that the terms of contract cannot be altered in the garb of the duty to act fairly. (See: *Asstt. Excise*

Commr. v. Issac Peter, (1994) 4 S.C.C. 104; (1994) 2 S.C.R. 67; (1994 A.I.R. S.C.W. 2616). Duty to act fairly in respect of contracts was also the core question in *Mahabir Auto Stores v. Indian Oil Corpn.*, (1990) 1 S.C.R. 818; (1990) 3 S.C.C. 752; A.I.R. 1990 S.C. 1031 in which this Court relied upon its earlier decisions in *E.P. Royappa v. State of T. N.,* (1974) 2 S.C.R. 348; (1974) 4 S.C.C. 3; A.I.R. 1974 S.C. 555; *Maneka Gandhi v. Union of India,* (1978) 1 S.C.C. 248; (1978) 2 S.C.R. 621; A.I.R. 1978 S.C. 597; *Ajay Hasia v. Khalid Mujib Sehravardi,* (1981) 1 S.C.C. 722; (1981) 2 S.C.R. 79; A.I.R. 1981 S.C. 487, *Ramana Dayaram Shetty v. International Airport Authority of India,* A.I.R. 1979 S.C. 1628 as also *Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay,* (1989) 3 S.C.C. 298: (1989) 2 S.C.R. 751: A.I.R. 1989 S.C. 1642."

59. In State of Jharkhand and others v. M/s CWE-Soma Consortium, AIR 2016 SC 3366, Hon'ble the Supreme Court opined that while exercising judicial review in the matter of Government contract, the primary concern of the court is to see as to whether there is any infirmity in decision-making process or whether it is vitiated by mala fides, unreasonableness or arbitrariness.

60. In a recent judgment of Division Bench of this Court in Amarjit Singh Sidhu v. State of Punjab and others, 2016(3) RCR (Civil) 365, this court considered the issue as to whether the State can discriminate between the citizens where privilege for trade or business in the potable liquor is granted by the State and the scope of judicial review. It was opined that

action of the Government is amenable to judicial review, where it violates any statutory provision or rights guaranteed under the Constitution of India. Where the State decides to part with the privilege, it cannot escape the rigours of Article 14 of the Constitution of India and act arbitrarily or at will. If the decision-making process is vitiated by arbitrariness, unfairness, illegality or irrationality, the court can strike it down in exercise of its power of judicial review. Special Leave Petition against the above judgment was dismissed.

61. If the manner in which the authorities have conducted themselves in the process of cancellation of allotments, re-grouping and fresh allotments is examined on the touch-stone of the law laid down by Hon'ble the Supreme Court, it can safely be opined that the same suffers from unreasonableness and arbitrariness. There was discriminate application of the Rules as well as the policy, apparently with a view to favour some persons.

62. Accordingly, the allotment of liquor vends in favour of respondents No. 7 to 9 is set aside. The competent authority is directed to re-allot the vends for the remaining period strictly in terms of the Rules and the policy. The necessary exercise be completed by 13.11.2016. New vends to start operation from 15.11.2016. It shall be ensured that there is no loss of revenue to the State. If any of the vends remains un-allotted in any case, the present allottee shall remain bound to carry on till 31.3.2017.

63. As in the entire process the State had, in fact, suffered loss on account of adjustment of application fee, non-deduction of processing fee and non-forfeiture of allotment money paid by the successful allottees, who defaulted, enquiry shall be got conducted and responsibility fixed. Conduct

of the Deputy Excise & Taxation Commissioner for producing fabricated record in Court shall also be examined by the competent authority.

64. The writ petitions are allowed with costs, which are quantified at ₹ 50,000/- in each petition. The amount be paid to the petitioner(s) by the State with liberty to recover from the guilty officer/official on fixing responsibility.

(Rajesh Bindal)
Judge

(Darshan Singh)
Judge

November 03, 2016
mk

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No