

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

*THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

+WRIT PETITION Nos.41313, 44518, 44522, 44742, 44860, 44889,
44951 & 45107 of 2017 and 2846 of 2018

%20.02.2018

#Between:

WRIT PETITION No.41313 of 2017

A. Muthyala

...Petitioner

AND

1. State of Andhra Pradesh, rep. by its
Principal Secretary, Revenue (Excise-II) Dept.,
A.P. Secretariat, Velagapudi, Amaravathi,
Guntur District.
2. The Commissioner of Prohibition & Excise, Vijayawada,
Vijayawada, Krishna District.
3. The Deputy Commissioner of Prohibition and Excise,
Eluru, West Godavari District,
4. The Prohibition and Excise Superintendent,
Eluru, West Godavari District,
5. Ganamani Raja Babu.

... Respondents

WRIT PETITION No.44518 of 2017

1. B. Sreerami Reddy,
2. A. Krishna Reddy,
3. D.V. Konda Reddy,
4. A. Gangi Reddy

....Petitioners

AND

1. State of Andhra Pradesh, rep. by its
Principal Secretary, Revenue (Excise-II) Dept.,
A.P. Secretariat, Velagapudi, Amaravathi,
Guntur District.
2. The Commissioner of Prohibition & Excise, Vijayawada,
Vijayawada, Krishna District.
3. The Deputy Commissioner of Prohibition and Excise,
YSR kadapa, YSR Kadapa District,
4. The Prohibition and Excise Superintendent,
Proddutur, YSR Kadapa District.

.....Respondents.

WRIT PETITION No.44522 of 2017

B. Venkata Swamy,

...Petitioner

AND

1. State of Andhra Pradesh, rep. by its
Principal Secretary, Revenue (Excise-II) Dept.,
A.P. Secretariat, Velagapudi, Amaravathi,
Guntur District.
2. The Commissioner of Prohibition & Excise,
Vijayawada, Krishna District. Govt. of A.P.
3. The Deputy Commissioner of Prohibition and Excise,
Anantapuramu,
4. The Prohibition and Excise Superintendent,
Penukonda, Anantapuram district,

... Respondents

WRIT PETITION No.44742 of 2017

1. Yaddanapudi Nagaraju
2. Ponnamm Srinivasa Rao,
3. Goli Naresh Babu,
4. Guntur Ashok Reddy,
5. Rayapudi Raju,
6. N. Ravi Kiran Reddy

AND

...Petitioners

1. State of Andhra Pradesh, rep. by its
Principal Secretary, Revenue (Excise-II) Dept.,
A.P. Secretariat, Velagapudi, Amaravathi,
Guntur District.
2. The Commissioner of Prohibition & Excise, Vijayawada,
Vijayawada, Krishna District.
3. The Deputy Commissioner of Prohibition and Excise,
Guntur, Guntur District,
4. The Superintendent, Prohibition and Excise,
Guntur, Guntur District, A.P.

... Respondents

WRIT PETITION No.44860 of 2017

1. M. Uma Maheswara Reddy,
2. O. Ram Mohan Reddy

...Petitioners

AND

1. State of Andhra Pradesh, rep. by its
Principal Secretary, Revenue (Excise-II) Dept.,
A.P. Secretariat, Velagapudi, Amaravathi,
Guntur District.
2. The Commissioner of Prohibition & Excise,
Guntur, A.P.

3. The Superintendent, Prohibition and Excise,
Vijayawada, Krishna District, A.P. Respondents

WRIT PETITION No.44889 of 2017

1. Neduramalli Kamal Kumar Reddy
2. Vankayalapati Mahesh ...Petitioners
- AND

1. State of Andhra Pradesh, rep. by its
Principal Secretary, Prohibition & Excise Dept.
Secretariat Buildings, Velagapudi, Amaravathi,
Guntur District.
2. The Commissioner of Prohibition & Excise, Vijayawada,
Vijayawada, Krishna District, State of A.P.
3. The Deputy Commissioner of Prohibition and Excise,
Nellore, SPSR Nellore District.
4. The Superintendent, Prohibition and Excise,
Gudur SPSR Nellore District, AP. ... Respondents

WRIT PETITION No.44951 of 2017

1. G. Seetharam,
2. K. Krishna,
3. B. Ramakrishna ...Petitioners
- AND

1. State of Andhra Pradesh, rep. by its
Principal Secretary, Prohibition & Excise Dept.
Secretariat Buildings, Velagapudi, Amaravathi,
Guntur District.
2. The Commissioner of Prohibition & Excise,
Vijayawada, Krishna District, Andhra Pradesh
3. The Deputy Commissioner of Prohibition and Excise,
Kakinada, East Godavari District.
4. The Superintendent, Prohibition and Excise,
Kakinada, East Godavari District. ... Respondents

WRIT PETITION No.45107 of 2017

1. L. Dilleswara Rao,
2. Datti Srinivasa Rao,
3. Konari Rajasekhar ...Petitioners
- AND

1. State of Andhra Pradesh, rep. by its
Principal Secretary, Revenue (Excise-II) Dept.,
A.P. Secretariat, Velagapudi, Amaravathi,
Guntur District.

2. The Commissioner of Prohibition & Excise,
Vijayawada, Krishna District, State of A.P.,
 3. The Deputy Commissioner of Prohibition and Excise,
Srikakulam, Srikakulam district.
 4. The Superintendent, Prohibition and Excise,
Palasa, Srikakulam district.
- ... Respondents

WRIT PETITION No.2846 of 2018

Tummala Venkateswara Rao ...Petitioner

AND

1. State of Andhra Pradesh, rep. by its
Principal Secretary, Revenue (Excise-II) Dept.,
A.P.Secretariat, Velagapudi, Amaravathi,
Guntur District.
2. The Commissioner of Prohibition & Excise,
Vijayawada, Krishna District, State of A.P.,
3. The Superintendent, Prohibition and Excise,
Machilipatnam, Krishna District.
5. Katta Siva Nagaraju, ... Respondents

!Counsel for the petitioners : Sri O.Manohar Reddy,
M/s K.Chidambaram
Sri Kowturu Pavan Kumar
M/s V.R.Reddy Kovvuri,
Sri B.Bala Muralikrishna

Counsel for the respondents : Govt.Pleader for Proh& Excise.

<Gist :

>Head Note:

? Cases referred:

1. 2014 (5) ALD 682
2. 1984 (2) APLJ page 1 (FB)
3. AIR 1975 SC 1121
4. 1997(4)ALD 625
5. (1995 (1) SCC 574).
6. 1998(6)ALD 204=1998(5)ALT 498
7. 2001(6)ALT 240 FB=2002 Suppl.(1)ALD 375
8. (Notifications dated 15.07.2013 were issued inviting applications for 300 shops at the proposed places; 810 applications were received for 127 A-4 shops when challenged from the interim order of the Court later withdrawn and fresh notification issued for 60 A-4 shops at their original places in the third round of notification, were confirmed; notifications dated 03.11.2013 were issued by the District Collectors inviting applications for establishing A-4 shops at the notified places; 547 applications were received pursuant to these notifications; among the 547 applications, 14 were received

for the 12 A-4 shops notified in their original locations; as against the 121 A-4 shops sought to be relocated, 533 applications were received for 72 A-4 shops; lots were drawn on 07.12.2013 by the District Collectors and successful applicants were declared).

⁹. The Rule 4 amended further by G.O.Ms.No.112, dt.22.03.2017 speaks on Establishment of Shops that, subject to such directions, which the Government may issue in this regard from time to time, the Commissioner of Prohibition and Excise, having due regard to the requirement, public order, health, safety and other factors as he thinks fit, may fix the number of shops to be established in a Mandal/Nagar-Panchayat/Municipality/ Municipal-Corporation-(substituted for the words an area/locality) before the publication of notification under Rule 5 and may re-locate any un-disposed shops any where in the State(substituted for the words from any area/locality) as he thinks fit.

10. 2015(2) ALD 628=2015(4) ALT 532



HON' BLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION Nos.41313, 44518, 44522, 44742, 44860, 44889,
44951 & 45107 of 2017 and 2846 of 2018

COMMON ORDER:

All the petitioners in the 9 writ petitions respectively are the licensees of the respective wine shops in different parts of the State of Andhra Pradesh. Impugning the proceedings of Commissioner, Prohibition & Excise (for short, (P&E)) and consequential direction to the respective Superintendents (P&E) of concerned Districts in issuing the notification/ s in respective Gazettes, the petitioners filed these Writ Petitions.

2(a). So far as W.P.No.41313 of 2017 concerned, the same is filed by one Sri A.Muthyala of M/s.Sri Muthyala Wines, D.No.7-2/ 2, M.Jagannadhapuram village, Tadipalligudam Rural Mandal, West Godavari District, and the respondent Nos.1 to 5 are State of Andhra Pradesh, Revenue (Excise-II) Dept., rep. by its Principal Secretary, the Commissioner(P&E), Vijayawada, the Deputy Commissioner(P&E), Eluru, the Superintendent (P&E), Eluru and the unofficial R.5 Ganamani Raju Babu of M/s.Venkat Wines. The prayer in the writ petition is to issue a writ of mandamus or any other appropriate writ or direction declaring the action of the respondents in not considering the objections of petitioner dt.30.11.2017 filed against the application of 5th respondent for shifting of the shop from Kommugudem village to Arulla Village as illegal, arbitrary and consequently direct the 2nd respondent-Commissioner to consider the objections before taking any decision and pass such other or further orders. The material averments in support of it are that in Tadepalligudem Mandal, there are 10 shops notified and 2 shops are within municipal limits of 2 kms periphery and if the proposed shop is to be relocated at Komugudem Village of Tadepalligudem Mandal it cause injustice to the petitioner and he

objected thereby but unheeded. The criteria required to be taken to relocate an undisposed shop was not followed. This is undisputedly an undisposed shop for relocation ordered by the Commissioner.

2(b). So far as W.P.No.44518 of 2017 concerned, the same is filed by 4 petitioners viz; Sri B.Srirami Reddy of M/s. Satish Wines, D.No.13/ 338-1, A.Krishna Reddy of M/s Subba Reddy Wines, D.No.13-338-F, D.V.Konda Reddy of M/s Konda Reddy Wines, D.No.13-184-J, of Pulivendula Road and A.Gangi Reddy of M/s Vijaya wines, D.No.9/ 87, Gandhi Road, all of Vempally, YSR Kadapa District, and the respondent Nos.1 to 4 are State of Andhra Pradesh, Revenue (Excise-II) Dept., rep. by its Principal Secretary, the Commissioner(P&E), Vijayawada, the Deputy Commissioner(P&E), YSR Kadapa and the Superintendent(P&E), YSR Kadapa. The prayer in the writ petition is to issue a writ of mandamus or any other appropriate writ or direction declaring the proceedings of the 2nd respondent-Commissioner of Prohibition & Excise, issued in CR.No.4042/2017/CPE/ E2, dt.22.12.2017, with consequential direction to the 4th respondent-Superintendent(P&E) to issue notification inviting applications and selecting the applicant as illegal, arbitrary and contrary to the provisions of the AP Excise(Grant of Licence of Selling by Shop and Conditions of Licence) Rules, 2012(for short 'Rules,2012') and pass such other or further orders. The material averments in support of it are that in Vempally Mandal, there are 4 shops notified and the petitioners are the licencees conducting business and if the proposed one more shop is to be relocated in the Mandal it cause injustice to the petitioner and they objected thereby but unheeded. The criteria required to be taken to relocate an undisposed shop was not followed. This is undisputedly an undisposed shop for relocation ordered by the Commissioner.

2(c). So far as W.P.No.44522 of 2017 concerned, the same is filed by B.Venkata Swamy of M/s.Sree Lakshmi Wines, D.No.4-390-A, Kambadur village and Mandal, Anantapur District and the respondent Nos.1 to 4 are State of Andhra Pradesh, Revenue (Excise) Dept., rep. by its Principal Secretary, the Commissioner(P&E), Vijayawada, the Deputy Commissioner(P&E),Anantapuram and Superintendent(P&E), Penukonda, Anantapuram district. The prayer in the writ petition is to issue a writ of mandamus or any other appropriate writ or direction declaring the proceedings of the 2ndrespondent-Commissioner(P&E), issued in RC.No.4042/ 2017/CPE/E2, dt.22.12.2017 and consequential direction to 4threspondent-Superintendent(P&E), to issue notification inviting applications and selecting the applicant in respect of shop at Kambadur Mandal, as illegal, arbitrary and contrary to the provisions of the Rules, 2012 and pass such other or further orders. The material averments in support of it are that in Kambadur Mandal, there are A4 shops notified and the petitioner is the licensee conducting business for one of the shops and if the proposed one more shop is to be relocated in the Mandal it cause injustice to the petitioner and even objected it was unheeded. The criteria required to be taken to relocate an undisposed shop was not followed. This is undisputedly an undisposed shop for relocation ordered by the Commissioner.

2(d). So far as W.P.No.44742 of 2017 concerned, the same is filed by 6 petitioners viz; Yaddanapudi Naga Raju of M/s Sri Uma Wines, L.No.61/ 2017-19, D.No.13-178, Ponnamp Srinivasa Rao of M/s.Sri Wines, L.No.62/ 2017-19, D.No.2-54/ 1, Malkapuram village, Goli Naresh Babu of M/s.Maa Wines, L.No.63/ 2017-19,D.No.1-258/ 2, Pedaparimi village, Guntur Ashok Reddy of M/s.Amaravathi Wines, L.No.64/ 2017-19, D.No.5-292, Ananthavaram village, Rayapudi Raju of M/s.Siva Sri Wines,

L.No.65/ 2017-19,D.No.13-134 and N.Ravi Kiran Reddy of M/s.S.R.K.Wines, L.No.66/ 2017-19,D.No.C-81, Malkapuram village all are of Tulluru Mandal, Guntur District, and the respondent Nos.1 to 4 are State of Andhra Pradesh, Revenue (Excise-II) Dept., rep. by its Principal Secretary, the Commissioner(P&E), Vijayawada, the Deputy Commissioner (P&E), Guntur and the Superintendent(P&E), Guntur. The prayer in the writ petition is to issue a writ order or direction more particularly in the nature of mandamus declaring the action of the respondents in locating one more A-4 shop in Tulluru Mandal, vide Proceedings in Cr.No.4042/2017/ CPE/ E2, dt.22.12.2017 on the premise that it is an *undisposed A-4 shop* and located in Tulluru Mandal for disposal as highly illegal, arbitrary and contrary to law and consequently set aside the same insofar as locating the A-4 shop in Tullur Mandal, Guntur district, A.P. is concerned and pass such other order or orders. The material averments in support of it are that in Tullur Mandal, there are 6 shops notified and the petitioners are the licencees conducting business for the shops and if the proposed one more shop is to be relocated in the Mandal it cause injustice to the petitioners and even objected it was unheeded. The criteria required to be taken to relocate an undisposed shop was not followed. This is undisputedly an undisposed shop for relocation ordered by the Commissioner.

2(e). So far as W.P.No.44860 of 2018 concerned, the same is filed by two petitioners viz; M.Uma Maheshwara Reddy of A-4 Licensee, R/o D.No.4-147, Ammireddy Gudem village, Gampalagudem Mandal, Krishna District and O.Ram Mohan Reddy of A-4 Licensee r/o D.No.2-89, Ganapavaram village, Mylapuram Mandal, Krishna District, and the respondent Nos.1 to 3 are State of Andhra Pradesh, rep. by its Principal

Secretary, Excise Department, A.P.Secretariat, Commissioner (P&E), Vijayawada and Superintendent(P&E),Vijayawada. The prayer in the writ petition is to issue writ, order or direction preferably Writ of Mandamus, declaring the Notification No.KST/82,dt.26.12.2017 issued by the 3rd respondent-Superintendent vide Rc.No.99/2017/A2, dt.26.12.2017, as illegal, arbitrary and in violation of principles of natural justice and Article 14,19 and 21 of the Constitution of India and consequently set aside the same and to pass such other orders. The material averments in support of it are that in Gampalagudem Mandal, there are 3 shops notified and the petitioners are the licencees conducting business for the shops at Thotamula and Gampalagudem Villages respectively and if the proposed one more shop is to be relocated in the Mandal it cause injustice to the petitioners and even objected it was unheeded. The criteria required to be taken to relocate an undisposed shop was not followed. This is undisputedly an undisposed shop for relocation ordered by the Commissioner.

2(f). So far as W.P.No.44889 of 2017 concerned, the same is filed by two petitioners viz; Neduramalli Kamal Kumar Reddy of A-4 Licensee, D.No.26-3-587, Jyothi Nagar, Vedayapalem, Nellore City, SPSR Nellore District and Vankayalapati Mahesh of A-4 Licensee of Poolathata village, Doravarisatram Mandal, SPSR Nellore District, and the respondent Nos.1 to 4 are State of Andhra Pradesh, (Excise-II) Dept., rep. by its Principal Secretary, Velagapudi, Guntur District, the Commissioner(P&E), Vijayawada, the Deputy Commissioner(P&E), Nellore, SPSR Nellore District, and the Superintendent(P&E), Gudur, SPSR Nellore District. The prayer in the writ petition is to issue a writ, appropriate order or direction more particularly one in the nature of Writ of Mandamus declaring the proceedings of the 2nd respondent-Commissioner(P&E),

issued in CR.No.4042/2017/CPE/E2, dt.22.12.2017 and the consequential Gazette No.72,dt.26.12.2017 issued by the 4th respondent-the Superintendent(P&E), inviting applications for grant of A-4 Licence for A-4 Shop NL/226, Sullurupeta Mandal, SPSR Nellore District in Doravarisatram Mandal as illegal, arbitrary and contrary to the provisions of the Rules,2012, apart from being violative of the fundamental rights guaranteed to the petitioners under Articles 14,19 and 21 of the Constitution of India and consequently set aside the same and pass such other or further orders. The material averments in support of it are that in Doravarisatram Mandal, there are A4 shops notified and the petitioners are the licencees conducting business for the shops and if the proposed one more shop is to be relocated in the Mandal it cause injustice to the petitioners and even objected it was unheeded. The criteria required to be taken to relocate an undisposed shop was not followed. This is undisputedly an undisposed shop for relocation ordered by the Commissioner.

2(g). So far as W.P.No.44951 of 2017 concerned, the same is filed by three petitioners viz; Sri G.Seetharam, A-4 Licensee of D.No.6-23, Ilgrama colony, Yeleswaram Mandal, East Godavari District, K.Krishna, D.No.17-2-127,Ramalayam street, Ramayanapeta, Kakinada, East Godavari district and B.Ramakrishna r/o D.No.3-63,Puthipadu Lampakolava, East Godavari District, and the respondent Nos.1 to 4 are State of Andhra Pradesh, (P&E) Dept., rep. by its Principal Secretary, the Commissioner(P&E), Vijayawada, The Deputy Commissioner(P&E), Kakinada, East Godavari District and the Superintendent(P&E), Kakinada, East Godavari district. The prayer in the writ petition is to issue a writ of mandamus or any other appropriate writ or direction declaring the proceedings of the 2nd respondent-Commissioner, P&E, issued in CR.

No.4042/2017/CPE/E2,dt.26.12.2017 and the consequential direction to the 4th respondent-Superintendent, P&E, in issuing the notification in Gazette No.272/2017,dt.26.12.2017 as illegal, arbitrary and contrary to the provisions of Rules, 2012 and pass such other or further orders. The material averments in support of it are that in Prathipadu Mandal, there are A4 shops notified and the petitioners are the licencees conducting business for the shops and if the proposed one more shop is to be relocated in the Mandal it cause injustice to the petitioners and even objected it was unheeded. The criteria required to be taken to relocate an undisposed shop was not followed. This is undisputedly an undisposed shop for relocation ordered by the Commissioner.

2(h). So far as W.P.No.45107 of 2017 concerned, the same is filed by three petitioners viz; L.Dilleswara Rao of M/s Sri Sai Wines, Datti Srinivasa Rao of M/s Lucky Wines, D.No.1-68 and Konari Rajasekhar of M/s Tanish Wines, D.No.2-66, Haripuram, Mandasa, Sompeta, Srikakulam District and the respondent Nos.1 to 4 are State of Andhra Pradesh, Revenue (Excise-II) Dept., rep. by its Principal Secretary, Commissioner (P&E), Vijayawada, Deputy Commissioner(P&E), Srikakulam, and Superintendent(P&E), Palasa, Srikakulam district. The prayer in the writ petition is to issue a writ of mandamus or any other appropriate writ or direction declaring the proceedings of the 2ndrespondent-Commissioner,P&E, issued in Cr.No.4042/2017/CPE/ E2, dt.22.12.2017 and the consequential direction to the 4threspondent-Superintendent, P&E, in issuing the notification in Gazette No.256/2017, dt.26.12.2017 as illegal, arbitrary and contrary to the provisions of the Rules, 2012 and pass such other or further orders. The material averments in support of it are that in Mandasa Mandal, there are A4 shops notified and the petitioner is the licensee conducting

business in the shop and if the proposed one more shop is to be relocated in the Mandal it cause injustice to the petitioner and even objected it was unheeded. The criteria required to be taken to relocate an undisposed shop was not followed. This is undisputedly an undisposed shop for relocation ordered by the Commissioner.

2(i). So far as W.P.No.2846 of 2018 concerned, the same is filed by one Sri Tummala Venkateswara Rao, A-4 Licensee, r/o. Challapalli village and Mandal, Krishna District and the respondent Nos.1 to 4 are State of Andhra Pradesh, Revenue (Excise) Dept., rep. by its Principal Secretary, the Commissioner(P&E), Vijayawada, the Superintendent (P&E), Machilipatnam, and one unofficial respondent-Katta Sva Naga Raju. The prayer in the writ petition is to issue an appropriate writ, order or direction, more particularly one in the nature of writ of mandamus declaring the action of 2nd respondent-Commissioner, P&E, permitting the unofficial 4th respondent to establish and operate wine shop adjacent to the wine shop of the petitioner is contrary to Rules, 2012 and also the L.No.103/2017-18,dt.10.07.2017 issued in favour of the 4th respondent by the 3rd respondent-Superintendent, P&E, as illegal, arbitrary and contrary to the Rules framed under the Act and consequently direct the 2nd respondent-Commissioner, P&E not to permit the 4th respondent to do business adjacent to the shop of the petitioner as per the Rules and pass such other order or orders. The material averments in support of it are that in Challapalli Mandal, there are 5 shops notified and the petitioner is one of the licencees conducting business in the shop and if the proposed one more shop is to be shifted from Pathamajeru in the Mandal it cause injustice to the petitioner and even objected it was unheeded. The criteria required to be taken to

relocate an undisposed shop was not followed. This is undisputedly an undisposed shop for relocation ordered by the Commissioner.

3. The writ petition supporting affidavit, save the above special averments of respective cases, general averments vis-à-vis the oral submissions of the learned counsel for the respective petitioners which are mostly common in nutshell so far as impugment of the respective proceedings of the Commissioner, P&E are as follows:-

3(a). The respective petitioners are A.4 licencees and doing business by establishing shops respectively without contravention of any of the conditions of the licence or the provisions of the A.P. Excise Act (for short 'the Act') and the Rules made thereunder. It is further averred that in view of the G.O.Ms.No.113,dt.22.03.2017 issued as per policy decision by the 1st respondent on the proposal of the 2nd respondent-Commissioner, fixed the number of shops for the excise year 2015-17 i.e. 4,380 are retained for 2017-2019 also and in clause XVI it is mentioned that no areas/localities/ such as **wards**/ villages shall be notified; entire Mandal/ Nagarpanchayat/ Municipality/ Corporation shall be notified as a single unit and the selected applicants may be given liberty to establish the shops anywhere in the Mandal/ Nagar panchayat/ Municipality/ Corporation, as the case may be and in clause XXVII, it is stated that the 2nd respondent-Commissioner is permitted to relocate undisposed shops anywhere in the state as he deems fit. It is further averred that in view of the above G.O., the 2nd respondent-Commissioner issued notification for shops in respective places supra of the respective Writ Petitions and pursuant to it the petitioners applied and have become successful bidders/ licencees and established the shops in said mandals and are doing business. While things stood thus, the Commissioner on the proposals for relocation of undisposed A4 shops

submitted by the respective Deputy Commissioners and/ or the Prohibition and Excise Superintendents, Kakinada, Palasa, Gajuwaka and Gudur, approved the same under Rule 4 of the Rules and accorded permission for re-notification of the un-disposed A4 shops for disposal under Rule 5 of the Rules. In this regard, from what they mentioned Rule 4 of the Rules, speaks that *Subject to such directions, which the government may issue in this regard from time to time, the Commissioner of Prohibition and Excise, having due regard to the requirement, public order, health, safety and other factors as he thinks fit, may fix number of shops to be established in a Mandal/ Nagarpanchayat/ Municipality/ Municipal Corporation before publication of notification under Rule 5 and may relocate any un-disposed shop(s) anywhere in the State as he thinks fit'.*

3(b). Said action of the Commissioner is impugned herein stating the same is illegal and arbitrary since 1st respondent has already fixed the number of shops, they cannot **order** for relocation of anymore shops in the Mandals, that too without valid reasons but for by saying by the Commissioner as examined the proposals and approved. They further submitted that the action of the Commissioner would vitally affect their respective business and they have no other effective alternative remedy except to invoke the extraordinary jurisdiction of High Court under Art.226 of the Constitution.

3(c). In W.P.Nos.41313 of 2017 & 2846 of 2018, the respective petitioners further stated that Rule 28 of the Rules deals with regard to the shifting of licensed premises from one location to another and it is clear that the Commissioner is empowered to order shifting of licensed premises provided there are valid reasons and the proceedings in question no way sustain for no any reasons much less valid reasons. It is

further averred that despite objections for shifting, not considered the objections on the applications for shifting and before passing orders for shifting of any shop/ s near to them. The further averments are referring to respective area population and no need for any shifting of existing shops from one area to another or relocation of any undisposed shops by calling applications to the prejudice of their respective licensed business.

4. On the other hand, but for in W.P.Nos.2846 of 2018 and 41313 of 2017, in all other W.P.Nos.45107, 44951,44889, 44860, 44742, 44522 & 44518 of 2017 on behalf of the official respondents, counters are filed by denying the averments of the respective writ petition affidavits also stating orally of the contentions are common for the above two writ petitions also to the extent applicable that:-

4(a). As per the Government's Policy for 2017-19, 4380 liquor shops have been retained and the Commissioner, P&E can relocate any un-disposed A-4 liquor shops anywhere in the State as he deems fit. The relocation of respective A-4 shops permitted by the Commissioner at the respective Mandals of respective districts for 2017-19 was based on the proposals submitted by the Deputy Commissioner, Kakinada, the respective Superintendents, P&E of Palasa, Gajuwaka and Gudur and after careful examination of the same. The proposals made before the Commissioner to fix some undisposed liquor shops in various Mandals supra was based on census and from inadequacy of the existing shops in the respective Mandals and also from high number of applications received against the notification issued in March, 2017, indicating the demand for additional liquor shops in the respective Mandals and the liquor off take value of the said shop per month is also since high. Same warranted the establishment of additional liquor shop/s required to

relocate the undisposed liquor shops in respective mandals with reference to the population, public order, health, prevention of unauthorized sale of liquor in the respective mandals due to inadequacy of liquor shops etc., and in exercise of the powers vested under Rule 4 of the Rules, 2012, in permitting the respective Superintendents, P&E, to relocate A-4 liquor shops from one place to another where required including from applications received against the notification dt. 26.12.2017 for said relocated shops. Therefore there is no illegality or arbitrariness in relocating said shops.

4(b). It is also contended that what initially the Commissioner P&E fixed A-4 liquor shops in respective Mandals has not been precluded from re-assessing the situation with regard to the factors such as population, the number of hamlets and geographical extent of Mandals, prevention of unauthorized sale of liquor due to lack of sufficient liquor shops, public health and order etc., including based on number of revenue villages with Hamlets with inadequate shops, said Mandals are only chosen for relocation of the additional A-4 shops and the contrary version of the writ petitioners of as if there are no valid reasons for such relocation is not correct.

4(c). It is also contended that the Commissioner exercised his discretion having carefully examined the proposals before permitting the relocation of the A-4 liquor shops and the contention of writ petitioners of they would suffer loss is not correct, since the average liquor off take value of the existing liquor shops is in the order ranging from Rs. 41 lakhs, 209.03 lakhs, 147.60 lakhs, 23 lakhs, 35.40 lakhs, 96 lakhs and 56.66 lakhs per month in the present cases respectively. It is further contended that the Commissioner held a meeting for the purpose of relocation of undisposed liquor shops in the State on 11.12.2017 and discussed at length

to identify the Mandals in the State with reference to population, number of existing liquor shops, their adequacy, public health and order and responses for the previous notifications of the liquor shops etc., and as an outcome of said meeting, said proposal for relocation of A-4 liquor shops in various mandals has emanated.

4(d). It is stated that, during the Excise Policy of 2013-14, this Court in the batch of W.P.No.35116 of 2013 by its judgment dt.05.03.2014 in B.Venkateswarlu Vs. Government of AP¹ with regard to increase of the number of the existing shops after relocation, categorically held that the population ratio of a Village/ Municipality/ Municipal corporation is relevant only for fixation of the license fee, and has no bearing on the relocation of an undisposed shop and power is vested on the Commissioner under the amended Rule 4 of the Rules 2012 in this regard. The contention of the petitioners that area over which they have exclusive privilege is contrary to law, illegal and without jurisdiction. It is not open to the petitioners to now turn around and contend that undisposed A-4 shops should not be relocated in their areas as they may suffer losses. Hence, to dismiss the Writ Petitions.

4(e). It is the submission of the learned Government Pleader in the respective writ petitions that the impugned orders for above reasons in the counters and from the above legal position no way require interference for this Court by entertaining the writ petitions for there are neither factual errors nor legal infirmities in the orders passed, much less to interfere with the policy decisions taken in the larger interest of the public as fit cases, leave apart there are statutory remedies of revision under Section 64 of the Act if at all to impugn and

¹ 2014 (5) ALD 682

there is no fundamental right under Article 19(g) to a liquor licensee and thereby sought for dismissal of the writ petitions.

5. Heard both sides and perused the prayer in the respective writ petitions with supporting affidavits and other material on record and the legal provisions and propositions.

6. In deciding the legality and correctness of the respective impugned proceedings of the Commissioner (P&E), before coming to the special facts in the individual cases, the relevant provisions and propositions just to consider are concerned:

6(a). Among the A.P.Excise (Grant of licence of selling by shop conditions licence) Rules 2012, vide G.O.Ms.391 R&E(EX-II) Dept. Dt.18.06.2012, made under sections 72, 17, 28 and 29 of the Act and in supercession of the earlier Rules issued in G.O.Ms. No.998, REV(Ex.11) Dept. Dt.24.05.2005 and further added by G.O.Ms.No.357 REV.Ex.II Dept. Dt.22.06.2013 and further amended by G.O.Ms.No.112, dt.22.03.2017, including on difference between establishing of/relocation of and shifting of licensed liquor shops:

Rule 4 speaks on Establishment of Shops that, subject to such directions, which the Government may issue in this regard from time to time, the Commissioner of Prohibition and Excise, having due regard to the requirement, public order, health, safety and other factors as he thinks fit, may fix the number of shops to be established in a Mandal/ Nagar-Panchayat/Municipality/Municipal-Corporation-(substituted for the words an area/locality) before the publication of notification under Rule 5 and may re-locate any un-disposed shops any where in the State(substituted for the words from any area/locality) as he thinks fit.

Rule 28 speaks of (1). The licensee shall sell liquor only at the premises specified in the licence.

(2). No change or alteration of the licenced premises shall be made nor the licenced premises shifted else where.

(3). Shifting of the licenced premises may be permitted for valid reasons within the same notified Mandal/ Nagar Panchayat/ Municipality/ Municipal Corporation, subject to

conditions as may be specified by the Commissioner of Prohibition & Excise and subject to payment of 1% of licence fee or Rs.25,000/- whichever is higher.

Provided that the Commissioner of Prohibition and Excise may consider and permit for valid reasons shifting of the licenced premises of Shop located in the 2 KM belt area from the periphery of a Municipality or 5 KM belt area from the periphery of a Municipal Corporation within the same belt area from the periphery of a Municipality or a Municipal Corporation only, without affecting the total number of notified shops in the Mandal/Nagar Panchayat/Municipality/Municipal Corporation subject to conditions as may be specified by the Commissioner of Prohibition & Excise and subject to payment of 1% of licence fee or Rs.25,000/- whichever is higher.

6(b). From this coming to Chapter-2 of the Act which deals with establishment and control covered by Sections 3-8:-

Section 3 deals with Appointment of Commissioner reads that:-

(1) The Government may, by notification, appoint an officer as the Commissioner of Prohibition and Excise for the State, who subject to the general or special orders of the Government in this behalf, shall be the chief controlling authority in all matters connected with the administration of this Act.

(2) The Commissioner shall be competent to exercise all the powers of the Collector under this Act and shall have the control of the administration of the Prohibition and Excise Department.

Section 4 deals with General control of Commissioner over Collector reads that the Collector shall exercise the powers and perform the functions assigned by or under this Act, subject to the general control of the Commissioner.

Section 5 deals with appointment of certain officers and staff reads that:-

(1) The Government may appoint such number of Additional Commissioners, Joint Commissioners, Deputy Commissioners and Assistant Commissioners of Prohibition and Excise and District Prohibition and Excise Officers and such other officers as they think fit for the purpose of performing the functions respectively conferred on them by or under this Act.

(2) The Government may sanction the appointment of as many Prohibition and Excise Superintendents, Assistant Prohibition and Excise Superintendents and other subordinate staff as they think fit for the purpose of performing the functions respectively conferred on them by or under this Act.

(3) The appointment to the posts sanctioned in sub-section (2) shall be made by such authority as may be prescribed.

(4) All such officers shall perform the said functions within such area or areas or in the whole of the State as the Government or the Commissioner may assign to them.

Section 8 deals with delegation of powers speaks that the Commissioner, the Collector or the Prohibition and Excise Superintendent may, by order, delegate to any officer subordinate to him any of the powers conferred on or functions entrusted to the Commissioner, the Collector or the Prohibition and Excise Superintendent by or under this Act, subject to such restrictions and control as may be prescribed, and subject also to such limitations and conditions, if any, as may be specified in the order of delegation.

6(c). Section 28 covers Forms and conditions of licence etc.

speaks that:-

(1) Every permit issued or licence granted under this Act shall be issued or granted on payment of such fees, for such period, subject to such restrictions and conditions, and shall be in such form and shall contain such particulars, as may prescribed.

(2) The conditions prescribed under sub-section(1) may include provisions of accommodation by the licensee to Prohibition and Excise officers at the licensed premises on the payment of rent or other charges for such accommodations at or near the licensed premises and the payment of the costs, charges and expenses (including the salaries and allowances of the Prohibition and Excise officers) which the Government may incur in connection with the supervision to ensure compliance with the provisions of this Act, the rules made thereunder and the licence.

6(d). Section 33 deals with Surrender of licence by a licensee

speak that:-

(1) Any holder of a licence granted under this Act to sell an excisable article may surrender his licence on the expiration of one month's notice in writing given by him to the Prohibition and Excise Superintendent of his intention to surrender the same, but the licence fee proportionate to the unexpired portion of the term of the licence for which it would have been current but for such surrender shall not be refunded.

(2) Sub-section (1) shall not apply in the case of any licence issued in respect of a lease granted under Section 17.

6(e). Section 64 provides the remedy for any aggrieved to maintain Revision to Government speaks that the Government may,

either suo-mottu or on an application call for and examine the records of any officer in respect of any decision, order or other proceedings made under this Act, including those relating to the grant, issue or refusal of a licence, or permit, for the purpose of satisfying themselves as to correctness, legality or propriety of any such decision or order or as to the regularity of such proceedings and if in any case, it appears, to them that such decision, order or proceedings should be modified, annulled, reversed or remitted for reconsideration they may pass order accordingly. Provided that no order adversely affecting any party shall be passed under this section unless he has been given an opportunity of making his representation.

7. No doubt, the Full Bench of this Court in Tappers Co-operative Society, Maddur vs. Superintendent of Excise, Mahaboobnagar², referring to Section 31(1) and Section 15 of the Act and Rule 18 of the AP Rectified Spirit Rules observed that, “the power of suspension which is concomitant or adjunct is no doubt restricted by the statutory provision under the proviso in question to pass final orders of suspension.....we are concerned with the liquor licences in which the citizen has no right guaranteed under Article 19(1)(g) of the Constitution of India but only a privilege. No doubt once a licence is granted, valuable right would accrue to him and that can be taken away as per the provisions of the Act.”.

8. The question to decide therefrom is whether shifting nearby to shop of existing licensee or relocation of undisposed A4 shop nearby to shop of existing licensee is or tantamount to taking away the licence? Practically it is not, but for to consider how far it adversely affect the licensees existing business and if so, any opportunity of hearing before taking a decision in this regard is required and the rule of audi-alterem-partem is excluded or need not be in the case of an order shifting of a

² 1984 (2) APLJ page 1 (FB)

pending A4 licence? The answer to the above is covered in fact by the expression in B.Venkateswarlu supra in negating such contentious issues raised while dealing with the matters by scanning the law in detail.

9. Before coming to the expression in B.Venkateswarlu supra, at para 32 end of the Full Bench expression in Tappers Cooperative Society supra, it is observed that in case of intoxicants, the Govt. has got full control and the State has got power to part with those rights for a consideration as privilege and Article 19(1)(g) of the Constitution has no application-(vide, Har Shankar Vs. Dy. E&T.Commissioner³). The judicial review of administrative action if the violation is not a right but a privilege will be undoubtedly of a different degree and content. Hence under the impugned proceedings the petitioners have to establish the violation of statutory provisions in respect of the privilege conferred upon by the state under the licences granted to them. In para 35 it is observed further that.....If orders are passed which constitute abuse of power or excess and unreasonable, this court can always interdict the proceedings....

10. Another single judge of this Court in Sunil Vs. Assistant Commissioner of Prohibition and Excise/Excise Superintendent, Twin Cities of Hyderabad, Narayanguda and Another⁴, referring to the Full Bench expression in Tappers Cooperative Society supra, held at Paras 3 & 6 as follows:

“3. The contentions and issues raised in the Writ Petition are to be appreciated by keeping in view the settled legal position regarding the nature of trade or business in any intoxicating liquors. It is settled law that no citizen of this country has any fundamental right to trade in intoxicating liquors. The trade or business in liquor can be completely prohibited. Dealing in intoxicating liquors is considered to be res extra commercium because of its vicious and pernicious nature. Therefore, the manner and extent of regulation of trade and business of manufacture, production, consumption and sale rest in the discretion of the governing authority. The licensee has to

³ AIR 1975 SC 1121

⁴ 1997(4)ALD 625

conduct his business and trade subject to such terms and conditions as may be prescribed by the statute, rules and the licencing conditions. The licensee has no other right or privilege except that is specifically granted to him by the authority. This legal position has to be borne in mind by this Court in considering the validity of any order passed by the competent authority in purported exercise of power conferred by the A.P. Excise Act, 1968 and the Rules made thereunder.

6. It is settled law that this Court in a judicial review proceeding under Article 226 of the Constitution does not act as a Court of appeal against the orders passed by the statutory authorities. The Court is more concerned with the decision making process....."

11. In *Khoday Distilleries vs. State of Karnataka*⁵, the Constitution Bench of the Supreme Court, after referring to various authorities, summarized the law on the subject relating to right to carry on trade or business in potable liquor, laid down in paragraph 60 (b), (f), (g) and (m), as under:-

(b) The right to practice any profession or to carry on any occupation, trade or business does not extend to practicing a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious and is condemned by all civilized societies. It does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are obnoxious and injurious to health, safety and welfare of the general public, i.e., res extra commercium, (outside in commerce). There cannot be business in crime.

(f) For the same reason, again, the State can impose limitations and restrictions on the trade or business in potable liquor as a beverage which restrictions are in nature different from those imposed on the trade or business in legitimate activities and goods and articles which are res extra commercium. The restrictions and limitations on the trade or business in potable liquor can again be both under Article 19(6) or otherwise. The restrictions and limitations can extend to the State carrying on the trade or business itself to the exclusion of and elimination of others and/or to preserving to itself the right to sell licences to do trade or business in the same, to others.

(g) When the State permits trade or business in the 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.

(m) The restrictions placed on the trade or business in industrial alcohol or in medicinal and toilet preparations containing liquor or alcohol may also be for the purposes of preventing their abuse or diversion for use as or in beverage".

⁵ (1995 (1) SCC 574).

12. Another Division Bench of this Court in Superintendent, Prohibition & Excise Vs. Krishna Wines⁶, while referring to the Full Bench in Tappers Cooperative Society supra and other relevant decided cases held as under:

“It is now well settled that doctrine of natural justice if embodied in the statute ought to be given its true and proper meaning, and one need not give it restrictive meaning, but the entire text of the statute shall have to be looked into for the purpose of attributing a proper meaning”.

13. In Sri Narsimha Wines v. Prohibition and Excise⁷, a subsequent Full Bench of this Court observed that, the matter relating to grant of liquor licence is a matter of contract.

14. From the above, coming to the expression in B.Venkateswarlu supra, which is in relation to the facts covering the notifications issued by District Collectors, inviting applications for grant of licences for the relocation of the A-4 excise notified shops questioned in the Writ Petitions as being arbitrary, illegal and contrary to the A.P.Excise(Grant of licence of selling by shops and conditions of licence) Rules, 2012(Rules). The counter-affidavit filed on behalf of the Commissioner of Prohibition & Excise stated, among others, that the Commissioner had granted permission to relocate 314 of the 1311 undisposed shops after considering all relevant factors;⁸ the Prohibition and Excise Superintendents had issued provisional licences to the successful applicants. As per the additional counter, 110 A-4 shops had crossed the turnover of 14 times and above throughout the State; two of such A-4

⁶ 1998(6)ALD 204=1998(5)ALT 498

⁷ 2001(6)ALT 240 FB=2002 Suppl.(1)ALD 375

⁸ (Notifications dated 15.07.2013 were issued inviting applications for 300 shops at the proposed places; 810 applications were received for 127 A-4 shops when challenged from the interim order of the Court later withdrawn and fresh notification issued for 60 A-4 shops at their original places in the third round of notification, were confirmed; notifications dated 03.11.2013 were issued by the District Collectors inviting applications for establishing A-4 shops at the notified places; 547 applications were received pursuant to these notifications; among the 547 applications, 14 were received for the 12 A-4 shops notified in their original locations; as against the 121 A-4 shops sought to be relocated, 533 applications were received for 72 A-4 shops; lots were drawn on 07.12.2013 by the District Collectors and successful applicants were declared).

shops were disposed of at the relocated places in the second round of notification; the three A-4 shops, proposed in scheduled areas, were not notified for want of Gram Sabha resolution; of the remaining 104 A-4 shops, notified at places where the turnover was 14 times and more, 17 A-4 shops have been notified for relocation at places where there is not even a single A-4 shop for the entire Mandal; from out of these 104 A-4 shops, 61 were disposed of; out of 17 A-4 shops, notified at places where there is not even a single shop in the entire Mandal, 11 shops have been disposed of; in all 72 A-4 shops have been disposed of under the present notifications; in all these cases, the licensees were granted A-4 licences for the excise year 2012-13; in accordance with Rule 21, the licences of all A-4 licensees were renewed for a further period of one year from 01.07.2013 to 30.06.2014, wherever the licensees had sought renewal; the 7 times turnover, prescribed under Rule 16(9), is for each licence year; in the present notification a fixed licence fee is notified, in proportion to the period for which a licence was issued, in terms of Rule 16(9); if the licensee's turnover crosses 7 times the licence fee, or the proportionate licence fee, in that excise year such licensees are liable to pay privilege fee; the petitioners' contention that they would be put to loss if licences are issued to prospective applicants is not tenable. After elaborate hearing on respective submissions in support of rival contentions and referring to several expressions it was observed mainly referring to Rules 4, 5, 16 of the Rules supra in relation to the excise policy of the excise year 2013-14 on the scope of law that:-

“8. The Andhra Pradesh Excise Act is intended to raise and secure revenue to the State without, at the same time, sacrificing the public interest involved in regulation of trade in intoxicants. Administration of the Act is therefore vested primarily and centrally in the Commissioner of Excise. The fixation of the number of shops, their location and grouping are considered by the legislative delegate to be matters of such vital importance in Excise administration that the power in this regard is vested in the Excise Commissioner-(Rajamalliah v. Anil Kishore-AIR 1980-SC 1502. The provisions confer ample regulatory power upon the Excise Authority to regulate, several activities related

to liquor, in any reasonable manner-(State of Punjab v. Devans Modern Breweries Ltd.-(2004)11 SCC 26).

9.....

10. The word "un-disposed", in amended Rule 4, disables the Commissioner from relocating any A-4 shop, and his power to relocate A-4 shops is confined only to those which remained undisposed for the Excise Year 2013-14. The un-disposed A-4 shops are those for which either no licence was granted in the Excise Year 2012-13 or for which the licensees chose not to renew their licences for the Excise Year 2013-14. As against the stipulated 6596 shops for the entire State, the number of A-4 shops for which licences were renewed for the Excise Year 2013-14 were 4986. Around 1610 A-4 shops remained un-disposed, and were sought to be sold to augment State revenue. It is only these un-disposed A-4 shops which the amended Rule 4 empowered the Commissioner to relocate for augmenting State revenue through collection of licence fees.

11.....

12. Both in Arji Sankara Rao-(2005(6)ALD 514) and in G.Venkatesh-(2007(2)ALD 830), the rules under consideration were the A.P. Excise (Lease of Right of selling by Shop and Conditions of Licence) Rules, 2005 (hereinafter called the "2005 Rules"). These Rules did not confer any power on the Commissioner of Excise to relocate un-disposed A-4 retail shops from an area/locality. The 2012 Rules were published in the A.P. Gazette on 18.06.2012.....It is only under the amended Rule 4 of the 2012 Rules that power has been conferred on the Commissioner to relocate an undisposed A-4 shop from an area/locality⁹.

13. The contention that the addition to Rule 4, by amendment of the rules does not carry any meaning does not merit acceptance. In the interpretation of statutes, the court always presumes that the legislature has inserted every part thereof for a purpose, and the legislative intent is that every part of the statute should have effect. These presumptions will have to be made in the case of the rule-making authority also-(J.K.Cotton Spinning & Weaving Mills Co.Ltd. v. State of U.P.-AIR 1961-SC 1170). It is a cardinal principle of construction of a statute or a statutory rule that effort should be made in construing the different provisions so that each provision will have its play. A statute, or rules made thereunder, should be read as a whole and one provision should be construed with reference to the other so as to make the rules consistent. Any construction which would bring any inconsistency or repugnancy between one provision and the other should be avoided. A construction that reduces one of the provisions to a 'dead letter' is not a harmonious construction as one part is being destroyed-(Jagdish Singh v. Lt.Governor Delhi-AIR 1997 SC 2239). To harmonise is not to destroy.

14. Relocation of an A4 shop is permissible only if it was not disposed of at the beginning of the Excise Year 2013-14. Accepting the contention that the number of hops fixed in an area/ locality, when the notifications were issued for the Excise Year 012-13, cannot be increased subsequently, under the guise of relocation, would mean that an un-disposed shop can only be relocated to an area where no licence was either granted or renewed for an A-4 shop in the Excise year 2013-14. Undertaking such an exercise would be futile. As no one had sought licences in such areas/ location in the first place, they are not likely to seek licences for the undisposed shops relocated to the same area/ locality. The construction sought to be placed by the petitioner

⁹ The Rule 4 amended further by G.O.Ms.No.112, dt.22.03.2017 speaks on Establishment of Shops that, subject to such directions, which the Government may issue in this regard from time to time, the Commissioner of Prohibition and Excise, having due regard to the requirement, public order, health, safety and other factors as he thinks fit, may fix the number of shops to be established in a Mandal/Nagar-Panchayat/Municipality/ Municipal-Corporation-(substituted for the words an area/locality) before the publication of notification under Rule 5 and may re-locate any un-disposed shops any where in the State(substituted for the words from any area/locality) as he thinks fit.

would render the very amendment of Rule 4 meaningless. Reading any limitation on the power conferred by the amended Rule 4, to relocate an un-disposed A-4 shop only within the district in which it was originally fixed, would also require this Court to read the words "to an area/locality within the district" into the amended Rule 4. A construction which requires, for its support, addition or substitution of words, or which results in rejection of words, has to be avoided. (Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests- AIR 1990 SC 1747, Shyam Kishori Devi v. Patna Municipal Corpn- AIR 1966 SC 1678, A.R. Antulay v. Ramdas Srinivas Nayak- 1984(2) SCC 500, Dental Council of India v. Hari Prakash- (2001) 8 SCC 61, J.P. Bansal v. State of Rajasthan- (2003) 5 SCC 134 and State of Jharkhand v. Govind Singh- (2005) 10 SCC 437). Courts should not, ordinarily, add words to a statute or read words into it which are not there, especially when a literal reading thereof produces an intelligible result. (Delhi Financial Corp v. Rajiv Anand- (2004) 11 SCC 625). Effect should be given to all the provisions and a construction that reduces one of the provisions to a "dead letter" must be avoided- (Anwar Hasan v. Mohd. Shafi- (2001) 8 SCC 540).

15. The contentions that the Commissioner lacks the power to relocate an undisposed shop from any area as he thinks fit under the amended Rule 4 "to any area at any time as he thinks fit", as it would amount to adding words, which were omitted in the Rule, by the Rule making authority; and no words which are omitted can be read into the Rule (casus omissus); are not tenable as no words have been omitted from Rule 4. On the contrary the words "and may relocate any undisposed shops from any area/locality as he thinks fit" has been inserted thereto.

16. On a plain and literal reading, it is evident that the amended Rule 4 is open ended, and leaves it to the discretion of the Commissioner to decide the place where an undisposed A-4 shop should be relocated. No words need be added thereto. On the other hand reading any limitation in the amended Rule 4, regarding the areas/ locality to which it should be relocated, would require addition of words thereto which is impermissible in law.

III. ARE THE FACTORS ENUMERATED IN RULE 4 REQUIRED TO BE TAKEN INTO CONSIDERATION EVEN WHILE RELOCATING UNDISPOSED A-4 SHOPS?

17. It is contended on behalf of the petitioners that, even while relocating A-4 shops, the factors enumerated in Rule 4 should be taken into consideration as fixation of the number of shops is at a micro level. The prescription in Rule 4, of having due regard to the requirement of public order, health, safety and other factors, is before the Commissioner fixes the number of shops to be established in an area/locality. Such an exercise has already been undertaken and completed in the previous Excise Years. On a plain and literal reading of the amended Rule 4 it is evident that the Commissioner is not obligated to again have due regard to these factors while relocating an un-disposed shop from an area/ locality.

18.

IV. CAN SHOPS, HITHERTO FIXED FOR AN AREA/ LOCALITY WITHIN A DISTRICT, BE RELOCATED TO ANOTHER AREA/ LOCALITY IN ANOTHER DISTRICT OF THE STATE?

19. It is contended on behalf of the petitioners that there are six zones in the State which are divided into two multi-zones; in the absence of any definition in the rules, and as the Licensing Authority (Excise Superintendent) is in-charge of an excise district, the word "area" can only mean a part of a district and not beyond; a "locality" is similar to an "area"; the words "area/ locality" should be read *ejusdem generis*, and cannot travel beyond the district; the words "any area" must be read to mean a locality within the same Mandal; the entire State cannot be taken as one area; the contemporaneous understanding of the Commissioner, in the impugned notification dated 30.11.2013, is that the word "area/ locality" means a

"district"; from the Excise Policy, notified in G.O.Ms.No.358 dated 22.06.2013, it is clear that the government understood "district" to be the "area"; as a result of the impugned notifications the number of shops, already fixed at the time of starting of the Excise Year, in an area has increased; the amended portion of Rule 4 does not confer power to relocate undisposed shops from one district to another after the number of shops, for each district, has been fixed on the basis of the criteria laid down in Rule 4; no power is conferred on the authority to enhance the number of shops in the transferee district; transfer of a shop from one district to another defeats the population ratio, falls foul of Rule 16(1), and adversely affects the licensee as there cannot be more than one shop for the same population; and the number of shops, fixed in an area/locality at the time of the notification, cannot be increased subsequently under the guise of relocation.

20. It is no doubt true that Rule 4 of the 2012 Rules confers power on the Commissioner to fix the number of shops to be established in an area/ locality, and it is in exercise of this power that the Commissioner had, hitherto, fixed the number of shops in different areas/ localities in the State. The relocation, sought to be made by way of the impugned notifications, is of undisposed shops hitherto fixed in a particular area/ locality. As the power of Commissioner to relocate an undisposed shop, from an area/ locality to another, is not fettered by village/ municipal/ municipal-corporation/ Mandal/ district-level restrictions, it is open to him, for just and valid reasons, to relocate undisposed shops from an area/ locality in a district/ zone/ multizone to another area/ locality in a different district/ zone/ multi-zone.

21. Reference made in the impugned notifications, issued by the District Collectors, is to the initial fixation of shops, by the Commissioner on 12.07.2012, in an area/ locality. The distinction, between fixation of shops in an area/ locality and relocation of an undisposed shop, must be borne in mind. While the initial exercise undertaken by the Commissioner under Rule 4 is to fix the total number of 6596 shops, stipulated in the Excise Policy of the Government for the entire State, in different areas/ localities of the State, the exercise of power to relocate undisposed shops is restricted only to those shops for which no licences were renewed/ granted for the Excise Year 2013-14. It is only because the shops, hitherto fixed in an area/ locality, were not disposed of (for which either no licences were granted or renewed) are they now sought to be relocated.

22. In *Shaktikumar M. Sancheti v. State of Maharashtra*-(1995)1 SCC 351, the Supreme Court considered the scope of the words "local area" under the Motor Vehicles Taxation Act and observed that the expression "local area" must be understood in the sense of any area administered by a local body. In *C.P. Sikh Regular Motor Service v. State of Maharashtra*-(1974) 2 SCC 579=AIR 1974 SC 1905, the observations of the Supreme court were in the context of Section 2(1) of the Motor Vehicles Act, 1939 as inserted by Act 56 of 1969 whereby 'area', in relation to any provision of said Act, was defined to mean such area as the State Government may, having regard to the requirements of that provision, specify by notification in the Official Gazette. The definition of "local area" under the Motor Vehicles Taxation Act, and "area" under the Motor Vehicles Act, cannot be extrapolated to the 2012 Rules. The amended Rule 4 refers merely to the area/ locality where the un-disposed shop was hitherto located. It does not specify the area/ locality to which the undisposed A-4 shop should be relocated. Even if the words "area" or "locality" is read to mean a town/ village or a part thereof, the amended Rule 4 does not prohibit relocation of an un-disposed A-4 shop to an area/ locality where an A-4 shop licence has already been granted. The meaning to be given to the words "area" or "locality" is, therefore, of no consequence.

23. While the Excise Policy for 2013-14 places restrictions on relocation of an undisposed shop, from a higher population slab to a lower population slab, it does not prohibit an undisposed shop from

being re-located in an area/ locality where an A-4 shop is in operation. The population ratio of a village/municipality/ municipal corporation is relevant only for fixation of the licence fee, and has no bearing on the relocation of an undisposed shop. The petitioners' contention that the number of shops fixed in an area/locality, when the notifications were issued in July, 2012, cannot be increased subsequently is not tenable as such a power inheres, under the amended Rule 4 of the 2012 Rules, in the Commissioner.

V. DISTINCTION BETWEEN THE EXERCISE OF POWER UNDER THE AMENDED RULE 4 AND RULE 18:

24. It is contended on behalf of the petitioners that the rule making authority was conscious of the difference between an "area" or "locality" as referred to in Rule 18(1), and the words "any where in the State" as referred to in Rule 18(2); an area/locality is the basis for fixation of shops, and power must be exercised under Rule 4 for each area; and the very fact that the words "anywhere in the state" has not been used in the amended Rule 4 goes to show that undisposed A-4 shops can only be relocated within the same district, and not beyond.

25. The power of the District Collector, under Rule 18(1) of the Rules, to permit APBCL to open outlets to sell IMFL and FL is circumscribed by the requirement of obtaining approval of the Commissioner. Exercise of such a power is limited only to such areas/localities where (i) the privilege of sale of shops could not be disposed of through selection; or (2) when a licence already granted is cancelled and the said shop could not be re-allotted for any reason. As the jurisdiction of the District Collector is confined to a "district" and not beyond, his power to permit APBCL to open outlets is not only confined to the district of which he is the Collector but also, as is clear from the use of the word "such", to the very same area where the licence granted earlier was cancelled, or no licence was granted, that too only with the approval of the Commissioner. On the other hand the Commissioner's power under Rule 18(2), to permit APBCL to open outlets, is neither limited by any area/locality restrictions nor is his power confined only to grant of permission in such places where an A-4 shop licence could not be disposed of or where a cancelled licence could not be re-allotted. The only limitation on his power is his satisfaction that granting such permission is in public interest. The words "anywhere in the State" were used in Rule 18(2) only to distinguish the powers conferred on the District Collector and the Commissioner. While the power of the District Collector under Rule 18(1) is confined to the area/ locality in the District, the power of the Commissioner under Rule 18(2) is not.

26. Unlike Rule 18(1) which is confined to outlets being opened by the APBCL, no power is conferred under the 2012 Rules on the District Collector to relocate an un-disposed A-4 shop by grant of a licence. While Rule 18(2) enabled him to permit APBCL to open outlets anywhere in the State, the Commissioner, hitherto, lacked the power to relocate un-disposed A-4 shops from a certain area/locality to another. Such a power is now conferred on the Commissioner by the amended Rule 4. Consequent to Rule 4 being amended, the Commissioner not only has the power to permit APBCL to open outlets anywhere in the State, he also has the power to relocate un-disposed A-4 shops from any area/locality as he thinks fit to another.

VI. DISTINCTION BETWEEN SHIFTING OF AN A-4 SHOP IN TERMS OF RULE 28 AND RELOCATION OF AN UNDISPOSED A-4 SHOP IN TERMS OF THE AMENDED RULE 4:

27. It is contended on behalf of the petitioners that the words "shifting" and "relocating" mean the same; relocation of shops under Rule 4 can only be in accordance with the proviso to Rule 28(3); and the very fact that the rule making authority has neither amended Rule 28(3), nor has the word "district" been used in Rule 4, can only mean

that the words "area/ locality" in Rule 4 covers an area within the same Mandal, and not beyond.

28. Rule 28 of the 2012 Rules empowers the Commissioner to permit a licensed premises to be shifted either within a notified area or beyond a notified area but within the same Mandal or Municipality or Municipal Corporation. Unlike Rule 28, which relates to a licensed premises (ie an A-4 shop for which the licence has been renewed for the Excise Year 2013-14), power is conferred under the amended Rule 4 only to relocate those A-4 shops for which licences have not been granted or renewed for the Excise Year 2013-14. The power conferred under the amended Rule 4 to relocate an un-disposed shop is not fettered, unlike under Rule 28, by any "area" restrictions. The distinction between the amended Rule 4 and Rule 28 can be explained by way of an illustration. Let us say, for example, two A4 shops were fixed for grant of licences in "X" municipality. However licence was granted only in respect of one shop, and the other shop remained undisposed. While a request made by a licensee, for shifting the shop for which a licence was granted in his favour, can be considered in terms of Rule 28 only within the area limits of "X" Municipality, the power to relocate the other A-4 shop, which remained un-disposed, is not confined to the area limits of "X" Municipality. The only limitation placed by the Excise Policy for the year 2013-14, on relocation of an un-disposed A-4 shop, is that it should be from an area to another within the same population slab or from a lower population slab to a higher population slab.

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35.....promulgation or publication of some reasonable sort is essential-(Harla v. State of Rajasthan-AIR 1951 SC 467; T.Narasimhulu v. State of A.P.-(2010)6 SCC 545). The object of publication is to enable the public to acquire knowledge-(Tirumala Devi Eada v. State of Andhra Pradesh 2012(6)ALD 98(DB); B.K.Srinivasan v. State of Karnataka-(1987)1 SCC 658; Sonic Industries, Rajkot v. Municipal Corp. of the city of Rajkot-AIR 1986 SC 1518; Harla-AIR 1951 SC 467).

36. Where a law, whether parliamentary or subordinate, demands compliance, those that are governed must be notified of the law and all changes and additions made to it by various processes. Whether law is viewed from the standpoint of the 'conscientious good man' seeking to abide by the law or from the standpoint of Justice Holmes 'unconscientious bad man' seeking to avoid the law, the law must be known, that is to say it must be so made that it can be known. Subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. (B.K.Srinivasan-(1987)1 SCC 658; Pankaj Jain Agencies v. Union of India-(1994) 5 SCC 198; Sonic Industries-AIR 1986 SC 1518; Harla-AIR 1951 SC 467).

37. When a statute vests a public power and conditions the manner of exercise of that power then the law insists on that mode of exercise alone-(Charles K. Skaria v. C.Mathew-(1980)2 SCC 752). Where the law prescribes the mode of publication of the law to become operative, the law must be published in that mode only. Where the statutory requirement of the mode or form of publication is mandatory, a failure to comply with those requirements might result in there being no effective order or rule, but where the mode of publication of the law is not prescribed by the law, such law should be published in some usual or recognised mode to bring it to the knowledge of all persons concerned-(State of Maharashtra v. Mayer Hans George-AIR 1965 SC 722; T.Narasimhulu-(2010) 6 SCC 545).

38. The mode of publication, prescribed under Section 72(1) of the A.P. Excise Act, is by way of a notification in the A.P. Gazette. "Notification", in common English acceptation, means and implies the formal announcement of a legally relevant fact and in the event of a statute speaking of a notification being published in the official gazette, it cannot but mean a notification published by authority of law in the official gazette. Once the Rules are published in the Official Gazette they shall be deemed to have been published, and to be effective-(Subhash Ramkumar Bind v State of Maharashtra-(2003)1 SCC 506-AIR 2003 SC 269; M.K.Rajasekhar v. Government of A.P-2012(6) ALD 390). The amendment to the 2012 Rules, notified in G.O.Ms.No.357 dated 22.06.2013, was published in the A.P. Gazette on 24.06.2013 and, on such publication, the general public has been made aware of these Rules having been made. The amended 2012 Rules thus came into force on 24.06.2013.

IX. HAS THE AMENDED RULE 4 BEEN GIVEN RETROSPECTIVE EFFECT?

39. It is contended on behalf of the petitioners that, when licences were granted to them in the year 2012, there was no statutory rule or provision for relocation of an undisposed shop; even the renewal endorsement in the year 2013-14 does not refer to the possibility of relocation of other shops; licenses granted to the petitioners for the Excise year 2012-13, following the policy then in existence, cannot be changed as the licences were merely renewed and not issued afresh; the amended Rule 4 cannot be made applicable retrospectively to licences granted on 01.07.2012; and the exercise of relocation of undisposed shops should have been undertaken, if at all, before the licences were renewed and not thereafter.

40. Para 4 of the 2012-13 Excise Policy stipulates that the period of licence shall be for one year. The one year period, for which the licence was originally granted, was from 1st July 2012 till 30.06.2013. For the second year 2013-14 the licensee was only entitled to have his request for renewal of the licence considered in terms of the Excise policies for the years 2012-13 and 2013-14. Rule 21 of the 2012 Rules provides that a licence granted under the Rules, for the period from 1st July, 2012 to 30th June, 2013 or part thereof, shall be considered for renewal for the period 1st July, 2013 to 30th June, 2014 subject to the applicant completing all formalities stipulated thereunder. The amendment made, by G.O.Ms.No.357 dated 22.06.2013, is to the 2012 Rules and, on its coming into force, forms part of the 2012 Rules which, in terms of Rule 21, necessitate compliance for grant of renewal of a licence. The original licence for the Excise Year 2012-13, which is a binding contract between the petitioners and the State, is only for one year and came to an end on 30th June, 2013. The renewed A-4 licence is a fresh contract between the petitioners and the State for a period of one year from 01.07.2013 till 30.06.2014. The licences for the Excise year 2013-14 were renewed, and a new contract was entered into between the petitioners and the State on or after 01.07.2013, in accordance with the amended Rules which came into force on 24.06.2013 prior to the commencement of the Excise Year 2013-14 on 01.07.2013. Neither the Act nor the Rules stipulate that the amended Rules would come into force only on each licensee being intimated thereof. The mere fact that the renewal endorsement on the petitioners licence does not refer to the amended rule is of no consequence, as the licensees are presumed to have knowledge of the Rules which were notified and published in accordance with law. As the amended rules have been made applicable only for renewal of licences for the Excise Year 2013-14, the contention that the amended Rule 4 has been applied retrospectively is not tenable.

41. Reliance placed, on behalf of the petitioners, on State of A.P. v. Guntakal Toddy Tappers Co-op. Society-(1985)3 SCC 360 is misplaced. In Guntakal Toddy Tappers Co-op. Society-(1985)3 SCC 360, the Supreme Court held:

"..... The net position, therefore, is that upto September 30, 1982, under the original Rule 3 annual leases were being granted following public auction. A five year basis was adopted under the newly introduced proviso to Rule 3 in respect of Tappers Cooperative Societies but at the end of one year out of the term of five years, there was a reversal of the policy and annual settlements were again adopted. That again was changed and a three year basis was adopted at the end of the year. It gives us a very uneasy feeling that the State has dealt with the Tappers Cooperative Societies, with whom contracts had been entered into, in such a cavalier fashion. If the State's intention was really to earn more revenue and, with a view to protecting the interests of the State Exchequer, there was a deviation from the policy of settlement for five years with the Tappers Societies to the old scheme of one year, there could be no warrant for the adoption of a three year basis. At this juncture, counsel for respondents readily agreed to increase of the fee payable by each of them under the contracts entered into in 1982 valid for five years taking into consideration the general rise in prices and the corresponding rise in auction money fetched in other districts in respect of settlement of excise shops. It was also pointed out to us by counsel for respondents that in respect of three of the Tappers Societies out of four-exception being the Society in Guntakal District, the Societies have been running the shops not as lessees but as agents of the State. Learned counsel for the State told us that in regard to Guntakal no arrangement at all has been made during the current excise year. We are of the view that the State should not have interfered with the existing rights of the Tappers Societies and if it wanted to bring in a change, effect should have been given to such change only after the existing contracts with the respondent Societies came to terminate by efflux of time....."-(emphasis supplied).

42. Unlike in Guntakal Toddy Tappers Co-op Society, where the Rule was amended when the five year license period was in operation, Rule 4 has been amended and applied for the Excise year 2013-14 (i.e., from 01.07.2013 to 30.06.2014) only after the one year license, granted for the Excise year 2012-13, expired on 30.06.2013.

X.CAN RESTRICTIONS BE PLACED, ON A LICENCE GRANTED TO CARRY ON TRADE IN LIQUOR, ONLY BY PLENARY LEGISLATION AND NOT SUBORDINATE:

43. It is contended, on behalf of the petitioners, that a property right cannot be affected by way of Rules and Executive Instructions; the authority of law, within the meaning of Article 300A, is a law made by legislative authority; the word 'law', in the context of Article 300A, must mean an Act of Parliament or of a State Legislature; the State or its Executive Officers cannot interfere with the rights of others unless a specific rule of law authorizes their acts; "Every act done by the Government or by its officers must, if it has to operate to the prejudice of any person, be supported by legislative authority"; the respondents have usurped power not vested in them under the Act and the Rules; the power so usurped will militate against the very scheme and intentment of the Excise statute, interfering and even destroying the existing legitimate contractual rights with the State, without compensation; and this would result in violation of Articles 14, 300A and 19(1)(g) of the Constitution of India as it would be in violation of Sections 17, 23, 28, 32 and 33 of the Act.

44. Reliance placed, on behalf of the petitioners, on Bishambhar Dayal Chandra Mohan v. State of U.P-AIR 1982 SC 33=(1982)1 SCC 39; State of M.P. v. Thakur Bharat Singh- AIR 1967 SC 1170; Satwant Singh Sawhney v. Ramarathnam, Assistant Passport Officer, Govt. of India, New Delhi-AIR 1967 SC 1836 and Smt Indira Nehru Gandhi v. Raj Narain-AIR 1975 SC 2299, to contend that the State or its executive officers cannot interfere with the rights of others unless they can point to some specific rule of law which authorises their acts; the State or its officers may not, in the exercise of executive authority, without any legislation in support thereof, infringe the rights of citizens merely because the

legislature of the State has the power to legislate in regard to the subject on which the executive order is issued; and every act done by the Government or by its officers must, if it is to operate to the prejudice of any person, be supported by some legislative authority; is misplaced.

45. In *Bishambhar Dayal Chandra Mohan* the scope and extent of the executive power of the State, under Article 162 of the Constitution of India, in relation to trade and commerce in, and the production, supply and distribution of, food stuffs arose for consideration. In *Smt. Indira Nehru Gandhi*³², the validity of Article 329A of the Constitution of India, and certain provisions of the Representation of the People Act, 1951, were in issue. In *Thakur Bharat Singh*, the validity of an order, made in the exercise of the powers conferred by Section 3 of the Madhya Pradesh Security Act, 1959, was under challenge. In *Satwant Singh Sawhney*, the validity of the action of the Regional Passport Officer, in calling upon the petitioner to surrender both his passports to the Government, was under examination.

46. None of these judgements relate to the executive power of the State to control and regulate trade in liquor. Even if the "license" granted in the petitioners favour is presumed to be a proprietary right, restrictions on the right of a licensee to carry on trade in liquor can be imposed by subordinate legislation or even executive instructions. There is nothing in clauses(2) to (6) of Article 19 which makes it imperative to impose restrictions on trade or business in potable liquor only by a law enacted by the legislature. Restrictions can also be imposed by subordinate legislation as long as it is not violative of any provisions of the Constitution. The trade or business in potable liquor is a trade or business in res extra commercium and, hence, can be regulated and restricted even by an executive order-(*Khoday Distilleries Ltd.*- (1995)¹ SCC 574). The contention that the power to relocate undisposed A-4 shops, from an area/locality to another, can only be conferred by plenary legislation, and not subordinate, does not, therefore, merit acceptance.

XI. IS THE PETITIONERS RIGHT OF EXCLUSIVE PRIVILEGE, TO SELL IMFL AND FL IN AN AREA, VIOLATED ON RELOCATION OF UNDISPOSED A-4 SHOPS TO THESE AREAS?

47. Learned Counsel for the petitioners would contend that, Section 17 to 23 and 28 deals with parting of exclusive privilege vested in State; the distinction between "privilege to sell" and "exclusive privilege to sell in an area" in Sections 13 and 17 should be borne in mind; once the right to carry on business has been conferred by the State, after collecting the prescribed licence fee, no fetters can be placed, or an embargo imposed, on the privilege conferred on the licencees; the parting of exclusive privilege for consideration in such area/ locality as the Commissioner may fix for sale by notification, and the licence granted over such an area, is an exclusive privilege granted to the contractor to the debarment of others from articulation in the said area, as a particular right or favour by law contrary to the general law, or else it is not a privilege much less an exclusive privilege granted under the Act; the State cannot claim a right over such an area/ locality for granting further licences until the existing contract is terminated or expires by efflux of time; grant of exclusive privilege for an area creates a binding contract and a vested right in a licensee, to the exclusion of all others in the licensed area, for the excise year; the substantive right conferred on the petitioners under Section 17, on licenses being granted in their favour, was renewed during the current year under Rule 21; this substantive right is affected, in terms of sales, on undisposed shops being relocated in their area, causing them considerable prejudice; new conditions cannot be imposed varying the subsisting contract with the petitioners who were granted exclusive privilege under Section 17; once areas/ localities are demarcated by the Commissioner under Rule 4, sold to bidders for a consideration, and licenses are granted, there is a "concluded contract" between the State

and the citizen/contractor; the statutory right of a licensee, under Section 23 of the Act, cannot be undermined; a shop can be relocated only to an area where no shops were licensed earlier; there was no provision in the Act or the Rules earlier for shifting or relocating an A-4 shop to an area in which exclusive privilege was already conferred; and the impugned action of the Commissioner, to relocate undisposed shops from other areas into the petitioners' area over which they have exclusive privilege, is contrary to law, illegal and without jurisdiction.

48. Trade in liquor is not a fundamental right. It is a privilege of the State. The State parts with this privilege for revenue considerations-(Devans Modern Breweries Ltd.-(2004)11 SCC 26; Kerala Samsthana Chethu Thozhilali Union v. State of Kerala-(2006)4 SCC 327). The State can impose limitations and restrictions on the trade or business in potable liquor as a beverage which restrictions are in nature different from those imposed on the trade or business in legitimate activities and goods and articles which are res commercium. When 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-(Khoday Distilleries Ltd.33). Section 17(1)(v)of the Act enables the Govt., subject to the provisions of Sections 28 and any rules made in this behalf and subject to such conditions as they may deem fit to impose, to grant for a fixed period, to any person at any place, a lease/licence for the exclusive privilege of selling Indian Made Foreign Liquor(IMFL) and Foreign Liquor(FL) by shop. Section 17(2) empowers the Government to prescribe, from time to time, different methods of selection for grant of exclusive privilege for different purposes under Section 17(1). Section 17(3) stipulates that, notwithstanding anything contained in sub-section(1), a lease/licence in respect of a shop may be granted for a period not exceeding two years at a time.

49. What do the words "Exclusive Privilege", used in Section 17(1) of the Act, mean? The word "Exclusive" is defined in "Law Lexicon of Ramanatha Iyer" to mean possessed and enjoyed to the exclusion of others; debarred from participation or enjoyment, undivided, sole(as exclusive) possession; not including, admitting or pertaining to any other; opposed to inclusive, not to be taken in to account. In Blacks Law Dictionary, the word "exclusively" is shown to have multiple nuances or shades of meanings such as only or solely or substantially all or for the greater part. It also means to the exclusion of all others-(CBI v. Braj Bhushan Prasad-(2001) 9 SCC 432; Anoka County v. City of St. Paul 1 999 ALR 1137). The word "Privilege", as commonly used in its broad and commonly accepted sense, means a particular advantage or a personal benefit or favour and a private or personal favour enjoyed. It also means a particular and peculiar benefit or advantage enjoyed by a person beyond the common advantage of other citizens; and some particular right or favour granted by law contrary to the general rule.

50. The doctrine of *Noscitur a sociis* (meaning of a word should be known from its accompanying or associating words) has relevance in understanding the import of words in a statutory provision. (Bangalore Water Supply & Sewerage Board v. A Fajappa-1978(2)SCC 213; Rohit Pulp & Paper Mills Ltd. v. CCE-1990(3)SCC 447; Oswal Agro Mills Ltd. v. CCE-1993 Supp.(3)SCC 716; K.Bhagirathi G.Shenoy v. K.P. Ballakuraya-1999(4)SCC 135; Lokmat Newspapers (P) Ltd. v. Shankarprasad-1999 (6) SCC 275; Braj Bhushan Prasad-(2001)9 SCC 432). On application of the said doctrine, and reading both the words "Exclusive" and "privilege" together, the term "exclusive privilege" can only mean a privilege granted to a person to the exclusion of all others. However a lease/licence for such "exclusive privilege" is, by Section 17(1) itself, made subject to Section 28 of the Act, the Rules made thereunder and the conditions which the Government may deem fit to impose. The expression "subject to" conveys the idea of a provision yielding place to another provision or other provisions to which it is made subject. (South India Corp.(P)Ltd. v. Secy. Board of Revenue, Trivandrum-(1964) 4 SCR 280; Chandavarkar Sta Patna Rao v. Ashalata S Guram-(1986)4 SCC 447). The operative part of Section 17(1) is prefaced by the words

"subject to the provisions of Section 28, any rules made in this behalf and such conditions as the government may deem fit to impose", which means that the exclusive privilege granted by the State must yield to the provisions of Section 28 of the Act, any rules made in this behalf, and such conditions as the government may deem fit to impose. (Indian Minerals Co. v. N.I.L.M.Assos. -AIR 1958 All. 692).

51. The power conferred on the Government, under Section 17(1)(v) of the Act, to grant an exclusive privilege to any person to sell IMFL and FL in a shop is subject to (1) the provisions of Section 28 of the Act; (2) any Rules made in this behalf; and (3) any conditions which the Government may deem fit to impose. Section 28(1) requires every permit/licence to be issued or granted on payment of such fees, for such period, subject to such restrictions and conditions, to be in such form and to contain such particulars as may be prescribed. Section 2(26) of the Act defines 'prescribed' to mean prescribed by Rules made under the Act. The 2012 Rules were made in the exercise of the powers conferred by Section 72 r/w. Sections 17, 28 and 29 of the Act. Rule 1(4) of the 2012 Rules makes these rules applicable for grant of licence for selling IMFL and FL in retail by shop, the conditions governing such licence, and the transport of IMFL and FL by such licence holders.

52. The Rules, subject to which exclusive privilege was granted to the petitioners for the Excise Year 2013-14 (i.e., from 01.07.2013 to 30.06.2014), are the 2012 Rules as amended by G.O.Ms.No.357 dated 22.06.2013. The conditions imposed by the Government, to which the exclusive privilege granted to the petitioners are subject to, are those stipulated in the Excise Policy for the year 2012-13 as notified in G.O.Ms.No.390 dated 18.06.2012, and for the Excise Year 2013-14 as notified in G.O.Ms.No.358 dated 22.06.2013. The power conferred on the Commissioner, under Rule 4 of the Rules, is subject to such directions which the Government may issue from time to time. Para 5 of the Excise Policy, formulated by the Government for the Excise year 2012-13, stipulates that the number of retail shops shall be retained at the present level i.e., 6596. The Commissioner was, therefore, not entitled to increase the total number of retail shops in the State beyond the 6596 shops fixed by the Government.

53. The State can adopt any reasonable mode of selling licences for trade or business with a view to maximise its revenue-(Khoday Distilleries Ltd.33). The State Government's exclusive privilege, or right to carry on certain activities in liquor, are given or sold by it to a private person under a licence for the amount receivable under the Act and the Rules. Such an amount constitutes the consideration for the licence and is termed as a 'licence fee'. The term 'licence fee' connotes the idea of it being the consideration in money receivable by the Government from a private person by grant of a licence, for parting in such person's favour, its exclusive privilege or right of carrying on certain activities in respect of liquor-(State of U.P. v. Sheopat Rai-AIR 1994 SC 813=1994 Supp(1)SCC 8). The issuance of a liquor licence constitutes a contract between the parties i.e. between Excise Authorities on the one hand and the individual applicant-contractor on the other-(Devans Modern Breweries Ltd.-(2004)11 SCC 26). However the said contract has, by law, been made subject to the amended 2012 Rules and the Excise Policy of the year 2013-14. Notwithstanding the exclusive privilege granted to the petitioners, to sell IMFL and FL in the stipulated areas/localities, undisposed A-4 shops can be relocated in accordance with the amended 2012 Rules and the Excise Policy for the year 2013-14.

54. Reliance placed by the petitioners on Sections 13 and 21 to 23 of the Act is misplaced. Section 13 of the Act relates to manufacture and bottling of liquor for sale and has no application to sale of IMFL and FL in an A-4 shop. Section 21 enables the Government to levy excise duty or/and a countervailing duty on any excisable article manufactured or produced in the State, and Section 22 prescribes the modes in which excise duty and countervailing duty may be levied on any excisable article. Section 23(1) stipulates that, instead of or in

addition to any excise duty or fees leviable under Sections 21 and 22, the Commissioner may accept payment of a sum in consideration of the grant of licence or both for the exclusive privilege in respect of liquor or any other intoxicant under Section 17. Section 23 relates merely to the consideration for the lease or licence for grant of exclusive privilege under Section 17 and, as Section 17 itself makes the lease/licence for grant of exclusive privilege subject to Section 28, the Rules made in this behalf and the conditions which the Government may deem fit to impose, the petitioners cannot claim exclusive privilege either under Section 17 or Section 23 of the Act contrary to the amended 2012 Rules and the Excise Policy for the year 2013-14.

XII. STATUTORY RULES ARE PRESUMED TO BE CONSTITUTIONALLY VALID:

55. It is contended, on behalf of the petitioners, that the power to make rules can only be exercised to make rules consistent with the Act and not contrary thereto; relocation of shops from one district to another, and from one zone to another, is ultra-vires Rule 4 as it is not in relation to an "area" or a "locality"; and any unreasonable rule or condition, in the excise contract licence, is ultra vires the Act.

56. It is no doubt true that the power of delegated legislation can be exercised to give effect to, and must be in conformity with, the provisions of the Act-(Kerala Samsthana Chethu Thozhilali Union supra). The vires of the amended Rule 4 of the 2012 Rules has not been subjected to challenge in this batch of Writ Petitions. Judicial restraint is in order while judging the constitutional validity of statutes and delegated legislation. There is a presumption in favour of the constitutionality of both statutes and delegated legislation, and it is only when there is a clear violation of a constitutional provision (or of the parent statute, in the case of delegated legislation) beyond reasonable doubt that the court should declare it to be unconstitutional-(Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat-(2008)5 SCC 33; Govt. of A.P. v. P.Laxmi Devi-2008 28 JT 639). The Courts must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, that its discriminations are based on adequate grounds, and that the legislature is free to recognise degrees of harm, and confine its restrictions to those cases where the need is deemed to be the clearest-(Mohd. Hanif Quareshi v. State of Bihar-AIR 1958 SC 731; Nagaland Senior Govt. Employees Welfare Assn. v. State of Nagaland-(2010)7 SCC 643; Mahant Moti Das v. S.P. Sahi-AIR 1959 SC 942; A.C. Aggarwal, Sub-Divisional Magistrate, Delhi v. Ram Kali-AIR 1968 SC 1). The statutory provision must be interpreted and read broadly, and not narrowly. The approach must be to uphold the validity of the impugned delegated legislation by a process of fair and broad reading of the statutory mandate-(Devans Modern Breweries Ltd.-(2004)11 SCC 26). It would be wholly inappropriate for this Court, therefore, to examine the validity of the amended Rule 4 on the basis of submissions made across the bar.

XIII. BURDEN LIES HEAVILY ON THE PERSON, WHO SEEKS TO IMPEACH THE RULE, TO PLEAD AND PROVE THAT IT IS UNCONSTITUTIONAL:

57. The contention that Rule 4 is ultra vires the Act, and Article 14 of the Constitution, is without support of any pleadings in the Writ Petitions. It is well settled that, even in cases where there is a challenge to the validity of a statutory rule, the burden is on the party, who seeks to impeach the validity of a rule made by a competent authority on the ground that the rules offend Article 14, to plead and prove that there has been a clear violation of the constitutional principles. If the validity of the rule is challenged on the ground either of its unreasonableness or its discriminatory nature, the petitioners ought to have laid a foundation for it by setting out the facts necessary to sustain such a plea and adduce cogent and convincing evidence, for there is a presumption that every factor which is relevant or material has been taken into account in formulating the classification-(State of U.P. v. Kartar Singh-AIR 1964

SC 1135; K.B.Nagur v. Union of India-(2012)4 SCC 483; Nagaland Senior Govt. Employees Welfare Assn.- (2010) 7 SCC 643). The action of governmental authorities must be presumed to be reasonable and in public interest and the person assailing it must plead and prove the contrary-(Fertilisers and Chemicals Travancore Ltd. v. Kerala SEB-(1988)3 SCC 382; Nagaland Senior Govt. Employees Welfare Assn.- (2010)7 SCC 643). Courts must be slow to embark upon an unnecessary, wide or general enquiry, and confine their decision within the narrow limits required on the facts of a case. Decisions, on questions of constitutionality, should not be taken unless such adjudication is unavoidable; and the policy of strict necessity must be followed in disposing of a constitutional issue. (K.B.Nagur-(2012) 4 SCC 483).

XIV. IS THE ACTION OF THE COMMISSIONER, IN RELOCATING UNDISPOSED A-4 SHOPS TO AREAS WHERE THE PETITIONERS SHOPS ARE LOCATED, DISCRIMINATORY?

58. It is contended that the petitioners have been discriminated against as the A-4 shops in other districts, and in scheduled areas, are now being relocated to areas/localities where they are running their A-4 shops; the turnover in each A-4 shop for the year 2012-13 was taken into consideration to determine the areas/localities where undisposed A-4 shops should be relocated; under Rule 16(1), the license fees are proportionality reduced for new entrants; no shop has been relocated in areas where the turnover of the A-4 shop is 13 times or below; on shops being relocated, the turnover of the existing licensees would fall below the turnover of the A-4 shops whose turnover is 13 times the license fee; failure to relocate undisposed shops, in areas where the turnover is 13 times, would also result in discrimination; and a new A-4 shop should not be established in their area, in the middle of an excise year, more so as the Government would not get any extra monetary benefit.

59. Article 14 forbids class legislation, and not a reasonable classification. What is forbidden is discrimination. Persons similarly situated must be similarly treated. Where, however, the persons are not similarly situated, there is no prohibition to treat them separately, provided of course there is a reasonable nexus between the basis of classification and the object to be achieved-(K.Muthusamy v. Government of Tamilnadu-MANU/ TN 0192/ 2003= TLMAD-2003-0-582). Every instance of discrimination does not necessarily fall within the ambit of Article 14 of the Constitution. Discrimination means an unjust and unfair action in favour of one and against another. It involves an element of intentional and purposeful differentiation and unfavourable bias; an unfair classification-(Rajasthan State Industrial Development & Investment Corporation v. Subhash Sndhi Coop. Hs. Society-(2013)5 SCC 427; The State of M.P. v. Narmada Bachao Andolan-(2011)7 SCC 639; Madhu Kishwar v. State of Bihar-(1966)5 SCC 125). A valid classification based on a just objective is truly a valid discrimination. The result to be achieved by the just objective presupposes the choice of some for differential consideration/treatment over others. Legalistically, the test for a valid classification may be summarized as a distinction, based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. (Kallakurichi Taluk Retired Officials Assn. v. State of T.N-(2013)2 SCC 772). Classification must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved-(State of Maharashtra v. Indian Hotel & Restaurants Assn.-(2013)8 SCC 519; State of Jammu & Kashmir v. Shri Triloki Nath Khosa-(1974)1 SCC 19). To pass the test of permissible classification two conditions must be fulfilled, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) the differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases.

What is necessary is that there must be a nexus between the basis of classification and the object of the provision under consideration- (Indian Hotel & Restaurants supra; Budhan Choudhry v. State of Bihar-AIR 1955 SC 191).

60. Rule 16(9) of the 2012 Rules required a licensee to pay privilege fee at 8% plus applicable Value Added Tax(VAT) thereon, on the sale price of IMFL and FL purchased from APBCL where the cumulative value of purchases, during the licence period, exceeded six times the annual licence fee. The "six times", prescribed under the 2012 Rules, was enhanced to "seven times" on Rule 16(9) being amended by G.O.Ms.No. 357 dated 22.06.2013. While all licencees are required to pay the annual licence fee or the proportionate licence fee as stipulated in Rule 16(1) and its proviso, a privilege fee is levied only when the cumulative purchases of IMFL and FL by the licensee, during the Excise Year, exceeds seven times the annual licence fee. If his cumulative purchases for the Excise Year are less than seven times the annual licence fee, the licensee is not required to pay the privilege fee. Implicit in Rule 16(9) is that the Rule making authority considered the profit earned on cumulative purchases of IMFL and FL by the licensee, upto seven times the annual licence fee, as a reasonable return on their investment. By the impugned notifications, undisposed A-4 shops were sought to be relocated only to areas/localities where the cumulative purchases of each A-4 shop, during the Excise year 2012-13, exceeded fourteen times their licence fee. The licensees, whose turnover exceeded fourteen times the annual licence fee in the previous Excise Year 2012-13, form a distinct class, different from those who did not achieve a turnover of fourteen times the licence fee. The object sought to be achieved by relocation of shops only to such areas is two fold. Firstly, to generate more revenue for the State and, secondly, to ensure that, even after relocation, both the existing and the relocated A-4 shops achieve, on an average, a turnover of seven times the annual licence fee and, thereby, achieve a reasonable return on their investment.

61. The contentions that, as the turnover is not uniform throughout the year, the monthly turnover should have been taken as the basis; the turnover from 1st July to 30th November, 2013 should also have been taken into consideration before deciding on which shop should be relocated; as the licence fee is correlated to population, the population figures should have been factored, while identifying areas/localities for relocation of undisputed A-4 shops; all shops, whose turnover exceeds 14 times, should have been arranged in a descending order, and notified in seriatum; a chronological order should have been followed, and shops should have firstly been relocated in areas where the turnover is the highest; leaving big Mandals, and proceeding against smaller ones, violates Article 14 of the Constitution of India; and if the State intends to raise revenue, and dispose of un-disposed shops, they should reduce the basis of the number of times turnover; are not tenable. Classification, to be valid under Article 14, need not necessarily fall within an exact or a scientific formula for exclusion or inclusion of persons or things. There is no requirement of mathematical exactness or for doctrinaire tests to be applied for determining the validity, as long as it is not palpably arbitrary- (Indian Hotel & Restaurants Assn.-(2013)8 SCC 519; Ram Krishna Dalmia v. S.R.Tendolkar-AIR 1958 SC 538; Welfare Association, A.R.P. v. Ranjit Pl. Gohili-(2003)9 SCC 358; Shashikant Laxman Kale v. Union of India-(1990)4 SCC 366). So long as there is a nexus between the basis of classification and the object sought to be achieved, the classification is valid-(The State of Madhya Pradesh v. Gopal D.Tirthani-(2003)7 SCC 83). The test ought not to be what would be a 'better' basis for the categorization for that would introduce subjectivity in the process. The test is whether categorization, on the basis adopted, results in hostile discrimination and adoption of the criteria has no reasonable nexus with the object sought to be achieved- (Samaj Parivartana Samudaya v. State of Karnataka-(2013)8 SCC 154). It is no doubt true that, on another shop being established in his area/locality, the licensee, who had earlier achieved a turnover of fourteen times the

licence fee in the Excise Year 2012-13, may achieve a turnover less than a licensee who had achieved a turnover of thirteen times the licence fee in the earlier Excise year 2012-13. However relocating an undisposed shop to an area, where the turnover achieved in the Excise Year 2012-13 was thirteen times or below the licence fee, would have resulted in each of the two licencees not being able to achieve a turnover of seven times the annual licence fee, which Rule 16(9) presumes to be a reasonable return on their investment.

62. The licence fee is fixed for a population slab. It is the very same licence fee, fixed in terms of Rule 16(1) on the basis of population that is levied even on relocation of an un-disposed A-4 shop. Where an un-disposed A-4 shop is relocated after 31st July, the licence fee is required to be reduced proportionately in terms of the proviso to Rule 16(1). While the licence fee, even for the relocated A-4 shop, would be the licence fee prescribed under Rule 16(1), the proviso to Rule 16(1) would require a proportionate reduction of such licence fee, if a licence is granted to the relocated un-disposed shop after 31st July, 2013. The privilege fee, of 8%plus VAT, is required to be paid by the licensees of the relocated undisposed A-4 shops as soon as their purchases exceed seven times the proportionate licence fee paid by them, and not the prescribed annual licence fee.

63. It is not even the petitioners' case that any area/location, where an A-4 shop had achieved a turnover of less than fourteen times the licence fee in the Excise Year 2012-13, has been identified for relocation of un-disposed A-4 shops. Even with regards the new shops, in the relocated areas, there is no discrimination shown by the State as the existing licensees are not being deprived of their rights to vend liquor in retail-(R.Selvaraj v. Govt. of TN rep. by its Secretary, P&E Dept.-2002(1)MLJ 627). In the additional counter-affidavit, the allegation that the respondents had not notified some places where the cumulative value of purchases is more than that of the place of the petitioners is denied. The respondents state that at Munugodu the two A-4 shops, notified and disposed of for the year, had recorded a turnover of 18.5 and 7.14 times respectively on their licence fee for the year 2012-13; the average turnover of Munugodu village was 12.93 times and, as such, no shop was proposed for relocation at Munugodu; in Valigonda the two A-4 shops had recorded an average turnover of 23.36 times during 2012-13, and hence one more A-4 shop was notified thereat to which as many as 33 applications had been received, and the said shop has been disposed of in the present notification.

XV. IS EXERCISE OF POWER BY THE COMMISSIONER, TO RELOCATE UNDISPOSED A-4 SHOPS TO PLACES WHERE THE PETITIONERS SHOPS ARE SITUATED, SO UNREASONABLE AND ARBITRARY AS TO VIOLATE ARTICLE 14 OF THE CONSTITUTION?

64. It is contended, on behalf of the petitioners, that "requirement" under Rule 4 can be assessed only after taking sales into consideration; the impugned decision to relocate undisposed A-4 shops, by the notifications dated 30.11.2013, was taken in the latter half of the excise licence year 2013-14; by this time some of the petitioners had lifted more than 7 times the licence fee, and were paying privilege fee of 8%plus VAT; as the rival competitor is not liable to pay privilege fee or VAT, the competitive edge of the petitioner in the market would be adversely affected; the impugned action would result in a difference in the sale price, as additional tax need not be paid by the new entrants; payment of additional tax at 13.5% by the existing licensees is almost equal to the licence fee; treating unequals as equals is in violation of Article 14 of the Constitution of India; the Commissioner cannot relocate shops from one district to another at his whims and fancies; he must take viability, under Rule 16(9), into consideration; except collection of the licence fee, no other object is achieved in establishing another shop in the same area; a new shop being established in the area will only result in dispersal of customers, and creation of unhealthy competition; there is no transparency as

state-wide statistical data has not been published; the counter-affidavit is also silent whether the Commissioner was appraised of the statistical details of the entire State; shops with higher turnover have not been notified; exercise of power, to relocate shops from one district to another, is unwarranted and unreasonable; and, instead, the power under Rule 18 should have been exercised, and APBCL ought to have been permitted to open outlets in the localities/ areas where shops could not be disposed/ allotted for any other reason.

65. Article 19(1)(g) of the Indian Constitution confers a fundamental right to trade subject to reasonable restrictions. However, liquor trade is viewed differently on the premise that there is no fundamental right to trade in intoxicants-(R.Selvaraj-2002 (1)-MLJ 627; Cooverjee v. Excise Commissioner-AIR 1954 SC.220; State of Orissa v. Harinarayan-AIR 1972 SC.1816; Nashirwar v. State of M.P.-AIR 1975 SC.360, Harishankar v. Dy.Excise and Taxation Commissioner-AIR 1975 S.C. 1121 and Lakhanlal v. State of Orissa-AIR 1977 SC.722). The State can create a monopoly, either in itself or in the agency created by it, for the sale and distribution of liquor as a beverage. It can also sell the licence to the citizens, for the said purpose, by charging fees. This can be done under Article 19(6), or even otherwise, as the State can impose limitations and restrictions, on the trade or business in potable liquor as a beverage, which are in their nature different from those imposed on the trade or business in goods and articles which are res commercium-(R.Selvaraj-2002(1)MLJ 627 & Khoday Distilleries Ltd). Privilege can be claimed by a State in a "no-right" situation, namely, when a citizen is not permitted to carry on trade. However persons in whose favour licences have been granted, in terms of a statutory enactment, derive a right to deal in liquor-(Devans Modern Breweries Ltd).

66. While the power to relocate an un-disposed shop may well be unfettered save population-slab restrictions, it cannot be exercised by the Commissioner at his mere whim or fancy. The power conferred by legislation-plenary or subordinate-must be exercised reasonably and should be informed by reason. Article 14 of the Constitution would be attracted even in the matter of trade in liquor-(Kerala Samsthana Chethu Thozhilali Union; V.K.Ashokan v. Assistant Excise Commissioner-(2009)14 SCC 85). The State can, for the purpose of selling the licence, adopt any mode with a view to maximise its revenues but, while doing so, must conform to the equality clause enshrined in Article 14 of the Constitution. (Devans Modern Breweries Ltd-(2004)11 SCC 26). When the State decides to grant such a right or a privilege to carry on trade or business in liquor to others, it cannot escape the rigour of Article 14. It cannot act arbitrarily or at its sweet will. It must comply with the equality clause while granting the exclusive right or privilege of selling liquor. The State cannot ride roughshod over the requirement of that Article-(State of M.P. v. Nandlal Jaiswal-(1986)4 SCC 566 & Devans Modern Breweries Ltd). The State, while parting with its exclusive privilege or a part thereof, may impose conditions but, once such terms and conditions are laid down by reason of a statute, the same cannot be deviated from. (Kerala Samsthana Chethu Thozhilali Union³⁴).

67. The power conferred on the Commissioner, to relocate undisposed A-4 shops, is by subordinate legislation (amendment of Rule 4 of the 2012 Rules) and by Executive Policy (para 2 of G.O.Ms.No.358 dated 22.06.2013). The principle of non-arbitrariness cannot apply to a change of policy by legislation-(Madras City Wine Merchants' Assn. v. State of T.N-(1994)5 SCC 509). As the vires of the amended Rule 4 is not under challenge in these Writ Petitions, this Court is only required to examine whether exercise of power, under the said Rule, by the Commissioner is in violation of Article 14 of the Constitution. While considering the applicability of Article 14 to liquor trade, the Court would be slow to interfere with the policy laid down by the State Government, for the sale of liquor, having regard to the nature of the trade or business. The Court would, in view of the inherently pernicious nature of the commodity, allow a large measure of

latitude to the State Government in determining its policy of regulating trade in liquor. The grant of licence for the sale of liquor would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the State Government has done unless it appears to be plainly arbitrary, irrational or malafide. What can be said in regard to legislation relating to economic matters must apply equally in regard to executive action in the field of economic activities-(Nandlal Jaiswal & R.Selvaraj)

68. While the Excise policy for 2013-14 prohibits relocation of an undisposed A-4 shop from a higher population slab to a lower population slab, the Commissioner has confined exercise of his power under the amended Rule 4, to relocate A-4 shops which remained undisposed in an area/ locality, only to those areas/ localities where the existing A-4 shops achieved a turnover of 14 times or more the annual license fee in the earlier Excise year 2012-13 thereby striking a balance between augmenting State revenue and ensuring a reasonable return on investment for both the existing A-4 shop and the relocated undisposed A-4 shop. The amended Rule 16(9), in levying privilege fee at 8%plus VAT only on purchases from APBCL in excess of seven times the annual license fee, presumes that a turnover of seven times the annual license fee is a reasonable return on investment.

69. It is only if this Court were to be satisfied that the exercise of power by the Commissioner is so unreasonable, as to violate Article 14, would interference be justified. The concept of 'reasonableness' defies definition. The functional and conceptual implication of the term 'reasonableness' is that it is essentially another word used for public policy-(Om Prakash v. State Of Uttar Pradesh-2004 (3) SCC 402; Friedmann: 'Legal Theory, 4th Ed., at pages 83-85'). The authority must, by the use of his reason, ascertain and follow the course which reason dictates. He must act reasonably. The word 'unreasonable' is frequently used as a general description of the things that must not be done. A person entrusted with discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. The rule of reason has thus become a generalized rubric covering not only sheer absurdity or caprice, but merging into illegitimate motives and purposes, a wide category of errors commonly described as 'irrelevant considerations', and mistakes and misunderstandings which can be classed as self-misdirection. (Administrative Law: HWR Wade & C.F.Forsyth-Tenth Edition).

70. Can exercise of power, to relocate undisposed A-4 shops to areas where the existing shops achieved a turnover exceeding fourteen times the annual licence fee in the previous Excise Year 2012-13, be said to be so arbitrary and unreasonable as to violate Article 14 of the Constitution of India? The grant of a liquor licence does not involve any right or expectation but is a matter of privilege. All that is required is that the Commissioner should act fairly, and deal with the applications without any bias, and not in an arbitrary or capricious manner-(M/s. Chingleput Bottlers v. M/s. Majestic Bottling Co.-AIR 1984 SC.1030). The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The court must, therefore, resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended. If the decision is within the confines of reasonableness, it is no part of the court's function to look further into its merits. 'With the question whether a particular policy is wise or

foolish the court is not concerned; it can only interfere if to pursue it is beyond the powers of the authority." (Sterling Computers Ltd. v. M & N Publications Ltd- (1993)1 SCC 445; Administrative Law, Prof. Wade). Article 14 cannot be interpreted in a doctrinaire or dogmatic manner. Excessive interference by the judiciary in the functions of the executive is not proper. In view of the inherent complexities involved in modern society, some free play must be given to the executive- (Transport and Dock Workers Union v. Mumbai Port Trust-(2011)2 SCC 575; Missouri, Kansas and Texas Railway Co. v. May 48 L Ed 971; Aravali Golf Club v. Chander Hass-(2008)1 SCC 683). While fair play in action is an essential requirement, "free play in the joints" is also a necessary concomitant for an administrative body functioning in an administrative sphere-(Fasih Chaudhary v. D.G., Doordarshan-(1989)1 SCC 89).

71. It is un-understandable as to how, in the instant case, the action of the State and the Commissioner can be termed arbitrary as their endeavour is only to sell as many of the remaining undisposed A-4 shops as is possible and, thereby, augment State revenue. The exercise undertaken by the Commissioner is merely to relocate undisposed A-4 shops within the maximum number of shops fixed by the Government. The State can always re-locate undisposed shops, for augmenting public revenue, as long as the existing licensees are not deprived of their privilege of carrying on their business-(R.Selvaraj-2002(1)MLJ 627). It is not even the petitioners' case that they are prevented from trading in liquor as a result of relocation of an undisposed shop in their area. It does not stand to reason that the power to relocate an undisposed shop should be exercised only at the beginning of the Excise year, and not thereafter. If the respondents could have exercised the power under the amended Rule 4 at the inception, without any demur, there is no reason to contend that the respondents cannot take any steps subsequently to settle such vacant shops in accordance with the Rules-(K.Muthusamy supra.).

72. The undisposed shops, which have been relocated consequent to the impugned notifications, are required, in terms of the proviso to Rule 16(1), only to pay the proportionate licence fee, and not the annual licence fee in its entirety. Privilege fee, under Rule 16(9), would be levied on these shops the moment they achieve a turnover of seven times the proportional licence fee paid by them. The decision of the Commissioner, to relocate undisposed A-4 shop only to those areas where the existing licensees had achieved twice the purchases prescribed in Rule 16(9), is informed by reason and has not been exercised at his whim or fancy. As licensees who achieved a turnover of 14 times the annual licence fee, in the Excise Year 2012-13, constitute a distinct class, it cannot be said that unequals have been treated equally. No material has been placed by the petitioners to even show, let alone establish, that relocation of undisposed A-4 shops would either create a law and order problem or unhealthy competition. Those A-4 shops, which have already achieved a turnover of seven times or more the annual licence fee for the Excise Year 2013-14, cannot be heard to complain of loss of competitive edge as they have already earned a reasonable return on their investment, in terms of Rule 16(9), even before completion of 3/4th of the said Excise Year.

73. Any reduction in the price, at which the relocated A-4 shops would sell IMFL and FL till they achieve a turnover of seven times the proportionate license fees paid by them, would only benefit consumers. Permitting APBCL to open outlets, in areas where the A-4 shops could not disposed of, may not help the State in enhancing its revenues as the very fact that no one came forward to seek licences in such areas reflects low consumption of IMFL and FL thereat. The contention that the decision of the Commissioner to relocate undisposed A-4 shops to areas/localities in which the petitioners were granted renewal of their licences, is arbitrary and in violation of Article 14 must therefore fail.

XVI. DOES PRINCIPLES OF NATURAL JUSTICE NECESSITATE COMPLIANCE BEFORE AN UNDISPOSED A-4 SHOP IS RELOCATED?

74. It is contended, on behalf of the petitioners, that the decision of Commissioner, to relocate some other undisposed shop into the area of the petitioners shops, was taken without notice to them, and without giving them an opportunity of being heard; and the administrative decision of the Commissioner, affecting the exclusive privilege of the petitioner to sell IMFL & FL in their licensed area, infringes their right, results in civil consequences, and is in violation of principles of natural justice.

75. The rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case and the framework of the law under which the enquiry is held. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether observance of that rule was necessary for a just decision on the facts of the case-(Maneka Gandhi v. Union of India-AIR 1978 SC 597; Suresh Koshy George v. University of Kerala-AIR 1969 SC 198= (1969)1 SCR 315; D.F.O., South Kheri v. Ram Sanehi Singh-(1971)3 SCC 864=AIR 1973 SC 205). It should not proceed as if there are inflexible rules of natural justice of universal application. Each case depends on its own circumstances. Rules of natural justice vary with the rules prescribed by the legislature-(M/s.Chingleput Bottlers-AIR 1984 SC.1030).

76. Rules of natural justice are not statutory rules. These rules are not cast in a rigid mould nor can they be put in a legal strait-jacket. They are not immutable but flexible. These rules can be adapted and modified by statutes and statutory rules- (Union of India v. Tulsiram Patel-(1985)3 SCC 398). Not only can the principles of natural justice be modified but, in exceptional cases, they can even be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion-(Tulsiram Patel supra; State of U.P. v. Sheo Shanker Lal Srivastava-(2006) 3 SCC 276). If a statutory provision either specifically, or by necessary implication, excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice-(Union of India v. Col.J.N.Sinha-(1970) 2 SCC 458 & Tulsiram Patel supra). The implication of natural justice being presumptive, it may be excluded by express words of the statute or by necessary intendment-(Swadeshi Cotton Mills v. Union of India-(1981)1 SCC 664 & Tulsiram Patel supra). The power conferred on the Commissioner, under the amended Rule 4, is to relocate undisposed A-4 shops from any area/locality as he thinks fit. The wide discretion conferred on the Commissioner neither explicitly, nor by necessary implication, requires compliance with principles of natural justice before its exercise.

77. Undisposed A-4 shops have been relocated by the Commissioner in the exercise of his powers under Rule 4 of the amended 2012 Rules. Legislative action, plenary or subordinate, is not subject to natural justice. Subordinate legislation cannot be questioned on the ground of violation of principles of natural justice on which administrative action may be questioned-(Tulsipur Sugar Co.Ltd. v. Notified Area Committee, Tulsipur-(1980)2 SCC 295 Rameshchandra Kachardas Porwal v. State of Maharashtra-(1981)2 SCC 722; Madras City Wine Merchants' Assn. supra; Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India-(1985)1 SCC 641; Bates v. Lord Hailsham of St.Marylebone-(1972) 1 WLR 1373). Even otherwise the grant of licence to trade in liquor is the grant of a "privilege". An authority or body need not observe the rules of natural justice where its decision, although final, relates not to a 'right' but to a 'privilege or licence'. All that is required, in such cases, is that the applications must be considered fairly-(M/s. Chingleput Bottlers-AIR 1984 SC.1030). As has been already held the

decision, to relocate undisposed A-4 shops, is fair and reasonable and is not in violation of Article 14 of the Constitution.

XVII. SCOPE OF INTERFERENCE IN POLICY DECISIONS OF GOVERNMENT:

78. The Excise Policy for the year 2012-13, notified in G.O.Ms.No. 390 dated 18.06.2012 and published in the A.P. Gazette on 18.06.2012, stipulated that the privilege of selling liquor through retail shops should be granted by collecting a fixed licence fee based on the population (as per census) of the places (municipality/ town/ village) where the shops were proposed to be established; the method of selection, for grant of shop licences, was to be by drawal of lots; the period of licence was for one year; and renewal for the second year 2013-14 was to be considered subject to payment of the licence fee to be fixed by the Government for the second year (2013-14), and the licensee not incurring any disqualification as per rules. The total number of A4 shops in the entire State was fixed at the earlier stipulated number of 6596 shops. The licence fee, for different population slabs, was prescribed in Para 8 of the said Excise Policy i.e, for the population slab of upto 10,000, the licence fee was Rs.32.50 Lakhs. It was Rs. 34.00 Lakhs for the population slab between 10,000 and 50,000; Rs. 42.00 Lakhs for the population slab between 50,000 and 3 lakhs; Rs. 46.00 Lakhs for the population slab between 3 lakhs and 5 lakhs; Rs. 64.00 Lakhs for the population slab between 5 lakhs and 20 lakhs; and Rs. 104.00 Lakhs for the population slab above 20 lakhs. In addition to the licence fee, the licensee was required to pay a privilege fee at 8% plus applicable VAT, on the invoice value of the liquor purchased during the licence year in excess of 6 times the annual licence fee.

79. The Excise Policy for the year 2013-14, as notified in G.O.Ms. No. 358 dated 22.06.2013 and published in the A.P. Gazette on 24.06.2013, stipulated that the privilege, of selling liquor through retail shops, should be renewed by collecting a fixed licence fee based on the population, as per the 2011 Census, of the places (Corporation/ Municipality/ Town/ Village) for the year 2013-14. Para 2 of the said Excise Policy, while permitting the Commissioner of Prohibition and Excise to relocate un-disposed A-4 shops from any locality/ area as he thought fit, prohibited him from relocating such A-4 shops from a higher licence fee slab to a lower licence fee slab. Para 3 prescribed the method of selection, for grant of licences for the un-disposed shops, to be by drawal of lots. Under Para 5, the total number of retail shops in the entire State was retained at 6596. The licence fee, stipulated under para.8 of the Excise Policy for the year 2013-14 for different population slabs, is the same as stipulated in the earlier Excise Policy for the year 2012-13. However the privilege fee, at the rate of 8% plus applicable VAT, was to be paid only where the invoice value of the liquor purchased by a licensee, during the excise year, was in excess of seven times the prescribed annual licence fee.

80. The Excise Policies for the years 2012-13 and 2013-14 have been made by the Government to enhance State revenue. This Court would not, ordinarily, examine in judicial review proceedings under Article 226 of the Constitution of India, policy choices of the Executive. Policy is not static but is dynamic-(T.N. Education Deptt. Ministerial & General Subordinate Services Assn. v. State of T.N. (1980)3 SCC 97). If the policy cannot be faulted on grounds of malafide, unreasonableness, arbitrariness or unfairness etc the mere fact that it would hurt business interests does not justify invalidating the policy. In economic regulation cases, there are good reasons for judicial restraint, if not judicial deference, to the judgment of the executive. Courts should not express their opinion whether, at a particular point of time or in a particular situation, any such policy should have been adopted or not. It is best left to the discretion of the State. (Ugar Sugar Works Ltd. v. Delhi Admn.- (2001)3 SCC 635). Each State is empowered to formulate its own liquor policy. No direction can be given or expected from the Court regarding the "correctness" of an executive policy unless, while implementing such policies, there is infringement or violation of any

constitutional or statutory provision-(Ugar Sugar Works Ltd. supra). Public authorities must have liberty in framing policies. If a decision has been taken in a bonafide manner, although not strictly following the norms laid down by Courts, such decisions are upheld on the principle that Courts, while judging the validity of executive decisions, must grant certain measure of freedom of "play in the joints" to the executive. (Sterling Computers Ltd.-(1993)1 SCC 445). Judges should exercise judicial self-restraint while exercising powers of judicial review of administrative or legislative decisions-(Transport and Dock Workers Union supra).

81. Specific places were hitherto fixed by the Commissioner, in the exercise of his powers under Rule 4 of the 2012 Rules and the earlier 2005 Rules, for locating the total 6596 A-4 retail shops in different areas/localities of the State.....Save this restriction the power conferred on the Commissioner, by the amended Rule 4 to relocate un-disposed A-4 shops, is unfettered.

82. From the counter-affidavit filed on behalf of the respondents it is evident that as many as 617 shops were not disposed of, inspite of repeated notifications, during the Excise year 2012-13; a notification was issued for disposal of these 617 shops during the Excise year 2013-14; applications in respect of 76 shops were received and disposed of, leaving 541 shops undisposed; as against 5979 shops, for which licenses were granted for the year 2012-13, licenses for only 4,986 shops were renewed for the year 2013-14; 993 shops were left unrenewed; at the end of the first round of notifications for the year 2013-14, 1610 shops remained undisposed; 215 shops were disposed of in the second round, leaving 1,395 shops undisposed for the year 2013-14; after repeated notifications, another 225 shops were disposed of; and 1,170 shops are yet to be disposed off even after seven rounds of notifications. The revenue which the State expected to generate was by collection of the prescribed licence fee for all the 6596 A-4 shops. As 1610 A-4 shops remained undisposed for the Excise Year 2013-14, before the impugned notifications were issued, there was a substantial shortfall in the expected revenue generation. This necessitated relocation of undisposed A-4 shops to other areas/localities where there was a greater demand for grant of licences to establish A-4 shops. As the licence fee is fixed for a population slab, relocation of an A-4 shop from a higher population slab to a lower population slab would have resulted in collection of lower licence fees, for grant of a licence for the A-4 shop, at the relocated place. This would, in turn, have resulted in loss in collection of the estimated revenue, thereby defeating the very object of relocating un-disposed A-4 shop in terms of the amended Rules and the Excise Policy.

XVIII. LEGITIMATE EXPECTATION:

83. It is contended on behalf of the petitioners that, once a licence is granted with specific conditions and the licence is renewed on those conditions, the licensee has a legitimate expectation of carrying on business in the areas earmarked in their favour when they were granted A-4 licences; and the petitioners cannot be denied the opportunity of making reasonable profits.

84. Legitimate expectation may arise (a) if there is an express promise given by a public authority; or (b) because of the existence of a regular practice which the claimant can reasonably expect to continue. Such an expectation must be reasonable-(Madras City Wine Merchants' Assn-(1994)5 SCC 509). A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment-(Jasbir Singh Chhabra v. State of Punjab-(2010)4 SCC 192; Halsbury's Laws of England, 4thEdn.). A decision taken in an arbitrary manner contradicts the principle of legitimate expectation. An authority is under a legal obligation to exercise power reasonably and in good faith to effectuate the purpose for which the power stood conferred. In this context, "in

good faith" means "for legitimate reasons". It must be exercised bonafide for the purpose and for none other-(Commr. of Police v. Gordhandas Bhanji-AIR 1952 SC 16, Sirsi Municipality v. Cecelia Kom Francis Tellis-(1973)1 SCC 409, State of Punjab v. Gurdial Singh-(1980)2 SC 471, Collector (District Magistrate) v. Raja Ram Jaiswal-(1985)3 SCC 1, Delhi Admn. v. Manohar Lal-(2002)7 SCC 222 and N.D.Jayal v. Union of India-(2004)9 SCC 362; NOIDA Entrepreneurs Assn. v. NOIDA-(2011) 6 SCC 508).

85. The Court can interfere only if the decision taken by the authority is found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and is not taken in public interest. A claim based on mere legitimate expectation, without anything more, cannot ipso facto give a right to invoke these principles-(Jasbir Singh Chhabra-(2010)4 SCC 192). Mere reasonable or legitimate expectation of a citizen may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny-(Food Corporation of India v. Kamdhenu Cattle Feed Industries-(1993)1 SCC 71; Jasbir Singh Chhabra supra).

86. Legitimate expectation cannot be upgraded to a legally enforceable right which it is not, as it is merely a part of the rule of non-arbitrariness to ensure procedural fairness of the decision. The requirement of public interest can outweigh the legitimate expectation of private persons and the decision of a public body on that basis is not assailable. (Ghaziabad Development Authority v. Delhi Auto & General Finance (P) Ltd.-(1994)4 SCC 42). As the decision of the Commissioner, in relocating un-disposed A-4 shops to areas wherein the petitioners A-4 shops are located, does not suffer from arbitrariness, is not in violation of Article 14 of the Constitution of India, and is taken in the larger public interest of enhancing public revenue, the doctrine of legitimate expectation has no application.

87. There is a distinction between a mere hope and a legitimate expectation-(R.Selvaraj supra; Madras City Wine Merchants Association supra). For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope. It cannot amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope, even leading to a moral obligation, is not a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and, therefore, does not amount to a right in the conventional sense-(Punjab Communications Ltd. v. Union of India-(1999)4 SCC 727, Chanchal Goyal(Dr.) v. State of Rajasthan-(2003)3 SCC 485, J.P. Bansal v. State of Rajasthan-(2003)5 SCC 134, State of Karnataka v. Umadevi-(2006)4 SCC 1, Kuldeep Singh v. Govt. of NCT of Delhi-(2006)5 SCC 702, Ram Pravesh Singh v. State of Bihar-(2006)8 SCC 381 and Sethi Auto Service Station v. DDA-(2009)1 SCC 180; Union of India v. Hindustan Development Corp.(1993)3 SCC 499; Jasbir Singh

Chhabra-(2010)4 SCC 192). Neither the Government nor the Commissioner have promised the petitioners that they would make profits from their business, of trading in liquor, for the Excise Year 2013-14.

88. The doctrine of legitimate expectation arises only in the field of administrative decisions. If the plea of legitimate expectation relates to procedural fairness there is no possibility of invoking the doctrine as against legislation-plenary or subordinate. If there is a change in policy, or in public interest the position is altered by a rule or legislation, no question of legitimate expectation would arise. (Madras City Wine Merchants' Assn.- (1994)5 SCC 509). The doctrine of legitimate expectation plays no role when the appropriate authority is empowered to take a decision by an executive policy or under law. The court leaves the authority to decide its full range of choices within the executive or legislative power. In matters of economic policy, the court gives a large leeway to the executive and the legislature. Granting licences is either by way of executive or legislative policy-(Bajaj Hindustan Ltd. v. Sr Shadi Lal Enterprises Ltd.-(2011)1 SCC 640). The decision taken by the Commissioner, to relocate some of the un-disposed A-4 shops, is in the exercise of the powers conferred under the amended Rule 4 of the 2012 Rules, which has the force of law. It is also in accordance with the Excise Policy framed by the Government for the Excise Year 2013-14 which was notified in G.O.Ms.No.358 dated 22.06.2013 and was published in the A.P. Gazette on 24.06.2013. The contention that the petitioners' legitimate expectation is violated thereby does not, therefore, merit acceptance.

XIX. IS FAILURE TO IDENTIFY AREAS, AT WHICH THE UNDISPOSED A-4 SHOPS SHOULD BE RELOCATED, BEFORE THE COMMENCEMENT OF THE EXCISE YEAR 2013-14, FATAL?

89. Learned Counsel for the petitioners would contend that, if the shops had been identified in June, 2013 itself, the exercise of issuing a notification undertaken in the beginning of the year, and the proposal to relocate undisposed A-4 shops had been brought to their notice, the petitioners would not have sought renewal; and, if another shop is now located in their area, the petitioners would not only suffer huge loss but their bank guarantees and licence fees would be forfeited in terms of Rule 16(8).

90. As both the amended 2012 Rules, and the Excise policy for the year 2013-14, were published in the A.P.Gazette before the commencement of the Excise year 2013-14, the licensees cannot claim ignorance thereof before they participated in the selection process for grant of licenses. They had the option to opt out if the conditions were detrimental to their interest or were to their disadvantage. Having participated in the selection process, based on the extant rules and the Excise policy, it is not open to them to now turn around and contend that exercise of power, strictly in terms thereof, is illegal-(Devans Modern Breweries Ltd-(2004)11 SCC 26). Neither the Act nor the Rules obligated the petitioners to seek renewal of their licences, and they did so on their own volition. The State has not guaranteed the petitioners, either under the Act or the amended 2012 Rules or the Excise Policy for the year 2013-14, a specified sum as profit or a fixed return on their investment. In contracts entered into between the State and its citizens, pursuant to an auction, the State does not guarantee a profit to the licensees. There is no compulsion on anyone to enter into these contracts. It is voluntary on both sides. There is no warranty against incurring losses. It is a business for the licensees. Whether they make profit or incur loss is no concern of the State. In law, it is entitled to its money under the contract. It is not as if the licensees are going to pay more to the State in case they make substantial profits-(Asstt. Excise Commr. v. Issac Peter-(1994)4 SCC 104; Devans Modern Breweries Ltd). The right to carry on business, more so in the sale of liquor which is Res

extra commercium, does not carry with it any obligation on the State to guarantee the licensees a particular rate of return on their investment. Any person carrying on business may earn huge profits, or may suffer extensive losses. Neither does the State promise a businessman that it would make good the losses suffered by him nor would the businessman share his profits with the State if it is in excess of what he had earlier envisaged. Maybe the licensees were not wise in offering their bids. Many an unexpected development may occur which may either cause loss to the contractor or result in large profit. Such contracts do not imply a warranty-or a guarantee-of profit to the contractor. It is a business for him - profit and loss being normal incidents thereof-(Asst. Excise Commissioner-(1994)4 SCC 104).

91. Relocation of undisposed shops does not deprive the licensees of their right to carry on the trade in intoxicants for the duration of the licence period. This right to trade, during the period of the excise year, should not be confused with the right to make profits. Even assuming that, by reason of the new shops, the licensees may suffer in sales, it would not result in discrimination. The licensees were well aware that there may be an increase of shops in their area, on undisposed shops being relocated thereat, and that their sales may get reduced thereby. Neither the viability of liquor trade nor the profit or loss of the liquor vendor is of any concern of the State, and it confers privilege on fixed terms for a fixed period. It is for the participant to plan and participate in the purchase of the privilege-(R.Selvaraj supra & Issac Peter-(1994) 4 SCC 104). It is not open to the petitioners to now turn around and contend that undisposed A-4 shops should not be relocated in their areas as they may suffer losses thereby.

XX. HAS THE COMMISSIONER ABDICATED HIS POWERS UNDER RULE 4 AND SURRENDERED HIS DISCRETION TO HIS SUBORDINATES?

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93. The principles of administrative law, such as surrender of discretion and abdication of duty vitiating the decision, would apply in the case of exercise of power conferred by a statute or rules made thereunder or instruments which are statutory in character-(Irrigation Development Employees Association v. Govt. of A.P-2004(2)ALD 599 (DB)). Exercise of statutory power partakes a quasi-judicial complexion. In the exercise of such power, the authority cannot permit its decision to be influenced by the dictation of others as this would amount to abdication and surrender of its discretion. It would then not be the authority's discretion that is exercised, but someone else's. If an authority "hands over its discretion" to another body it acts ultra vires. Such interference by a person or body extraneous to the power is contrary to the nature of the power conferred on the authority-(State of U.P. v. Dharmander Prasad Singh-AIR 1989 SC 997).

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XXI. ARE DISTRICT COLLECTORS EMPOWERED TO ISSUE THE NOTIFICATION UNDER RULE 5(1) OF THE RULES?

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A.THE PROCEDURE PRESCRIBED BY STATUTORY RULES MUST BE STRICTLY ADHERED TO:

96. When a procedure has been laid down, the authority must act strictly in terms thereof-(Taylor v. Taylor-(1875)Ch.D.426). If a statute has conferred a power to do an act, and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted-(State of U.P. v. Singhara Singh-AIR 1964 SC 35; Dhanajaya Reddy v. State of Karnataka-(2001)4 SCC 9; Ramchandra Murarilal Bhattad v. State of Maharashtra-(2007)2 SCC 588; State of Gujarat v. Shantilal Mangaldas-AIR 1969 SC 634). Rule 5(1)of the 2012 Rules requires the notification in the District Gazette, inviting applications for grant of licences in the area/ locality, to be issued by the licencing authority. Rule 2(L) of the 2012 Rules defines "licensing authority" to mean the Prohibition & Excise

Superintendent of the concerned place in which the licensed shop is located. As the licencing authority is the Prohibition & Excise Superintendent, the impugned notifications issued by the District Collectors do not accord with Rule 5(1) of the 2012 Rules.

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B. PETITIONERS CANNOT BLOW HOT AND COLD AT THE SAME TIME:

99. This, by itself, may not justify setting aside the impugned notifications as the petitioners are themselves beneficiaries of licences, granted to them for the Excise year 2012-13, on similar notifications being issued under Rule 5(1) by the District Collectors. A party cannot be permitted to "blow hot-blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of an order, he is estopped from denying the validity of, or the binding effect of, such an order upon himself-(Nagubai Ammal v. B. Shama Rao-AIR 1956 SC 593; CIT v. V. MR.P.Firm Muar-AIR 1965 SC 1216; Ramesh Chandra Sankla v. Vikram Cement-AIR 2009 SC 713; Pradeep Oil Corp. v. MCD-AIR 2011 SC 1869; Cauvery Coffee Traders v. Hornor Resources (International) Co. Ltd-(2011)10 SCC 420; V.Chandrasekaran v. Administrative Officer-(2012)12 SCC 133 & Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corp. Ltd-(2013)5 SCC 470). A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid and then turn around and say it is void for the purpose of securing some other advantage-(Verschures Creameries Ltd. v. Hull and Netherlands Steamship Co. Ltd-(1921)2 KB 608; Halsbury's Laws of England, 4th Edn., Vol.16; R.N.Gosain v. Yashpal Dhir-(1992)4 SCC 683; P.R.Deshpande v. Maruti Balaram Haibatti-(1998)6 SCC 507). Since the petitioners are themselves beneficiaries of the notifications issued earlier by District Collectors, and are being permitted to trade in liquor, criticism by such beneficiaries of the impugned notifications, also issued by the District Collectors, is not justified-(K.Muthusamy supra)

C. DISCRETIONARY JURISDICTION, UNDER ARTICLE 226 OF THE CONSTITUTION, IS NOT TO BE EXERCISED FOR THE MERE ASKING.

100. The contention that the notifications issued under Rule 5(1), inviting applications for the Excise year 2012-13, are not under challenge in these writ proceedings and this Court should not examine the validity of such notifications, but should set aside the impugned notifications issued by the District Collectors under Rule 5(1) for the Excise Year 2013-14, does not merit acceptance. A writ of mandamus is designed to promote justice (*ex debito justitiae*). The grant or refusal of the writ is at the discretion of the Court. While dealing with a writ petition, the court must exercise discretion taking into consideration a wide variety of circumstances, inter alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal-(Rajasthan State Industrial Development & Investment Corp. supra). The power conferred on the High Court, under Article 226 of the Constitution, is to advance justice and not to thwart it. The lookout of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of the law. If justice became the by product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law-(Roshan Deen v. Preeti Lal-(2002)1 SCC 100; Ramesh Chandra Sankla-AIR 2009 SC 713; State of U.P. v. District Judge, Unnao-AIR 1984 SC 1401). While examining the contention that the impugned notifications, issued by the District Collectors, must be set aside on the ground that no such power is conferred on them under Rule 5(1), it does not stand to reason that this Court should ignore or turn a blind eye to the fact that similar notifications were issued, for the Excise Year 2012-13, by District Collectors whereby A-4 shop licences were granted to the petitioners, and were renewed for the Excise Year 2013-14.

101. In the exercise of its discretionary jurisdiction under Article 226, it is open to the High Court to decline relief if the grant of relief would defeat the interests of justice or where the petitioner seeks to secure a dishonest advantage or perpetuate an unjust gain-(M.P.Mittal v. State of Haryana-(1984)4 SCC 371; Andhra Pradesh Wine Dealers Association v. Deputy Director of Income Tax(Investigation)-2005(4)Laws (APHC)106). Permitting the petitioners, who are beneficiaries of similar notifications issued by District Collectors, in the Excise Year 2012-13, to run A-4 shops for the Excise Year 2013-14, while at the same time setting aside the impugned notifications whereby others were granted licences for the relocated shops, would not only result in a premium being placed on the earlier illegal acts of the District Collectors but would also be against larger public interest.

102. The jurisdiction of the High Court, under Article 226 of the Constitution, is extraordinary, equitable and discretionary-(K.D. Sharma v. Steel Authority of India Ltd-(2008)12 SCC 481) and should be exercised in the larger interest of justice. While granting relief in favour of the applicant, the court must balance interests and equities. It can pass an appropriate order which justice may demand and equities may project. Courts of equity should go much further both to give and refuse relief in furtherance of public interest. Granting or withholding of relief may properly be dependent upon considerations of justice, equity and good conscience-(Ramesh Chandra Sankla126; Shiv Shankar Dal Mills v. State of Haryana-(1980)2 SCC 437). As the entire exercise of relocation of undisposed shops is to enable the Government to augment its revenue, I see no reason to exercise discretion, under Article 226 of the Constitution of India, to set aside the impugned notifications while at the same time permitting the petitioners to continue to carry on trade in IMFL and FL and reap the benefits of the earlier notifications issued, under Rule 5(1) by the District Collectors, for the Excise year 2012-13.

XXII. IS THE STATE, BY RELOCATING UNDISPOSED A-4 SHOPS, ENCOURAGING CONSUMPTION OF LIQUOR?

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105. Whether or not the undisposed A-4 shop should be relocated are matters of legislative or executive policy and this Court would not sit in judgment over the policy decisions of the State. The Excise Policy for the year 2014, while permitting the Commissioner to relocate undisposed shops, requires an intensive campaign to be undertaken to educate the public about the evil effects of drinking and for steps to be taken to initiate establishment of de-addiction centres in each district. The manner in which the revenue needs of the State should be balanced with the need to educate the public of the evil effects of drinking are also not for this Court to adjudicate in proceedings under Article 226 of the Constitution of India. This contention urged by the petitioners, who are carrying on trade in the sale of IMFL and FL in retail shops, is akin to the devil quoting the scriptures, and does not merit acceptance.

XXIII: CONCLUSION:

106. Viewed from any angle, I see no reason to exercise discretion, under Article 226 of the Constitution of India, to interfere. The Writ Petitions fail and are, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. No costs."

15. Coming to the other single judge expressions subsequent to

B.Venkateswarlu supra:-

15(a). In W.P.No.21073 of 2014, dt.26.09.2014, referring to Rules 4,5&16 of the Rules, 2012 in impugning the proposed relocation of one shop at No.84 within the 5k.m. belt area, in addition to the decision of Commissioner to establish three shops at Nos.124,125&130 of B.K.Samudram Mandal as impermissible, from the counter contest of the shop originally notified for Rayadurgam Municipality remained undisposed even during 2nd round call and thereby 3rd round notification is issued as Rule 16(9) contemplates levy of privilege fees with VAT, whenever the annual sales turnover of any licensee exceeds 7 times is not the sole guiding factor for relocation of undisposed shops in deciding to locate above 3 K.M away to the existing shops in B.K.Samudram Mandal, based on off take particulars and from the demand and the need as per statistics and from the consumption potential and as Govt. does not suffer revenue loss. It was observed that -

“Rule 4 clearly discloses that, subject to the overall guidance or directions of the Government, the Commissioner of Prohibition & Excise may fix the number of shops to be established in an area/locality before publishing the notification under Rule 5. However, the rule stipulates that, for arriving at a decision the Commissioner will have due regard to the requirement, public order, health, safety and other factors and then decide the total number of shops to be established in a particular area/locality. This is a very solitary guidance. The Commissioner of Prohibition & Excise may not fix the total number of shops to be established in an area/locality irrationally. *The Commissioner may not get guided in this exercise only by consideration of revenue generation. He has to take into account and consideration the potential consumption required of the locality, the public order, health and safety and other factors as he thinks fit. The guidance this rule offers is clear enough. If a densely populated locality where mostly working classes resist, the Commissioner will naturally take into account the public order, health and safety factors before authorizing establishment of shops there in such locality. In general, the potential consumption requirement of the locality is the guiding principle. When it goes to the question of safety, it is also important for the Commissioner to ensure that the potential consumers in a locality do not get dropped by spurious and adulterated intoxicants, for want of authorized retail vend of liquor. Retraction from illicit booze is certainly a factor which has its bearing in public order, health and safety factors.* Prior to issuance of the notification under Rule 5, the Commissioner may have genuinely and legitimately exported a license for a A-4 Shop at Rayadurgam to be picked up. But contrary to his expectations, the shop remained undisposed in the first two rounds. Therefore, he has now authorized its relocation from Rayadurgam to near Collectorate, Anantapur. The later part of Rule 4 of the Shop Rules clearly authorized the Commissioner of Prohibition & Excise to relocate any undisposed shops from any area/ locality as he thinks fit, though, the guidelines provided in the first part of Rule 4 while deciding a number of shops to be established are omitted in the later

part of Rule 4. But nonetheless, it is safe to assume that the same considerations can also guide and weigh on the mind of Commissioner of Prohibition & Excise public ordering for relocation of the undisposed shops. In my opinion, relocation of undisposed shops is a completely independent exercise and the only constraint, if I may say so, is to ensure that a total number of shops fixed by him prior to issuance of the first notification under Rule 5 may not get enlarged. In the process of relocation, the total number of shops authorized to be established at the first instance by the Commissioner will never get adulterated. They remain to be the same. Out of the total number of shops fixed by him, if some shops remain undisposed, the prospects of their relocation would never result in increasing or swelling of the total number of authorized shops. Therefore, the exercise of relocation of undisposed shops is a totally independent exercise and as the counter affidavit makes out, it was ordered keeping an eye on the potential consumption requirements near the Collectorate area of Anantapur limits.

What Rule 16(9) of the Shop Rules sets out is a privilege fee at 8% together with Value Added Tax becomes chargeable once an A-4 Shop Licensee exceeds his annual turn-over of 7 times the license fee. That is a contingency. The liability to pay the privilege fee would occasion only upon the contingency of the licensee exceeding the sales turn over of 7 times the license fee, but not otherwise. Therefore, in my opinion, Rule 16(9) of the Shop Rules does not offer any guidance for regulating the exercise contained in the later part of Rule 4 of the Shop Rules.

I am therefore, of the opinion that the petitioner cannot raise any legitimate objection to the decision of the Commissioner for relocating the undisposed shop from Rayadurgam Municipal Area near to Collectorate of Anantapur Limits. It is all the more so when there is no fundamental right guaranteed to the petitioner to carry on business in intoxicants.

I am also convinced that the distance of more than 3 kms between the shop regulated where the petitioner has established his shop and the proposed shop now also works against the equities if any to be taken into consideration."

15(b). In W.P.Nos.21555 & 30901 of 2014, dt.24.10.2014, referring to Rules 4,5&16 of the Rules, 2012 in impugning the proposed relocation of one shop at G.S.L.No.182 of 5th ward, in addition to the decision of Commissioner to establish six shops at G.S.L.Nos.140 to 145 of ward Nos.6-8 of Allagadda Nagarpanchayat area for Excise year, 2014-15 as impermissible with say of in the earlier excise years there were only five licenced shops, from the counter contest of at ward No.5 there is no shop or bar and the nearest shop is located 600 metres away to the proposed relocated undisposed shop of 4th round notification and there is a special gap for potentiality and from existing shops turnover also exceeded 11.91 times of licence fees and the decision taken after careful examination of the relevant factors. The court therefrom

dismissed the writ petition holding nothing to interfere or continue the interim order of suspension.

15(c). In *Obili Kusumar Vs the Govt. of A.P.*¹⁰ (W.P.No.21410 of 2014, dt.27.12.2014), on the facts where the writ petitioner is a licensee of one of the notified A4 shops at S.No.162 for Mantada village, Krishna District, from out of 173 shops notified in Machilipatnam Division, 24 shops remained unsold and the Commissioner issued notification on 25-07-2014 inviting bids for 22 undisposed shops and on the same day by another notification No.32/2014, the proposed undisposed Shop S.No.168 to relocate at Gopavanipalem, from originally of Mudunuru Village, was notified which is at a distance of two kilometres from his shop, with the contention of the relocation would seriously affect the petitioner and is impermissible for the Commissioner did not take into consideration any of the factors enumerated in Rules 4 & 16(9) of the Rules. The learned Govt. pleader submitted report for said relocation to justify the same. From rival contentions placed reliance on the above expressions in W.P.35116/2013 (*B.Venkateswarlu supra*) and W.P.21073/2014 and by referring to Rules 4, 5 & 16(9) of the Rules, 2012, it was held from para 10 onwards that:

“10. I have considered both the said contentions and in my view, the arguments based upon the interpretation of Rule 4 of the Rules has to be appreciated in its proper object and purport. It is no doubt true that while fixing number of shops, the Commissioner shall take into consideration requirement of public order, health, safety and other factors, which he thinks appropriate and decide the area/locality where the shop has to be located and it is thereafter the shop has to be notified under Rule 5 of the Rules. As mentioned above, Rule 4 of the Rules has undergone the amendment under G.O.Ms.No.357 Revenue (Excise-II) Department, dated 22-06-2013.

11. The amended Rule 4 of the Rules reads as follows:-
Establishment of Shops:- ‘Subject to such directions, which the Government may issue in this regard from time to time, the Commissioner of Prohibition and Excise, having due regard to the requirement, public order, health, safety and other factors as he thinks fit, may fix the number of shops to be established in an area/locality before the publication of notification under Rule 5 and

¹⁰ 2015(2) ALD 628=2015(4) ALT 532

may relocate any un-disposed shops from any area/locality as he thinks fit'.

12. A bare reading of the amended Rule 4 of the Rules goes to show that before publication of Notification under Rule 5 of the Rules, the Commissioner shall take into consideration the requirement of public order, health, safety and other factors, which he thinks appropriate and decide the area/locality where the shop has to be located. At a later stage, when an undisposed shop is to be relocated, the Commissioner has to take into consideration all the factors as mentioned under Rule 4 of the Rules including the factors relating to existing shop in the vicinity of the proposed location and thereafter may take appropriate decision. The Commissioner undoubtedly would also take into consideration the viability of existing shop while ordering relocation.

13. From a reading of the counter affidavit and the contentions of the learned Government Pleader, as noted above, it is evident that relocation of shop at Gopavanipalem is not an exercise done for the first time and in the previous excise years also, shops were notified and located therein. That apart, the specific averment in the counter affidavit that the petitioner's shop at Mantada is two kilometres away from Gopavanipalem also is not controverted and in view of that, the contingency of the petitioners business being affected by relocation of the shop was also taken into consideration while ordering relocation. In view of the distance and potentiality as mentioned in the counter affidavit, it does not appear that the petitioner's business would be any way affected by relocation of the said shop. Since the Commissioner passed orders basing on the reports of his subordinate officers in support of such relocation, it cannot be said that the Commissioner has not taken into consideration all the factors as are required to be taken into consideration in terms of Rule 4 of the Rules. Therefore, the 1st contention raised by the learned counsel for the petitioner is, therefore, rejected.

14. So far as the contention of Rule 16(9) of the Rules is concerned, in my view, there is a complete misunderstanding of purport of the said Rule inasmuch as any licensee in a given excise year may be able to achieve business turnover as contemplated under Rule 16(9) of the Rules, but that by itself cannot be taken as a criteria for determining the viability of shop at a new location. It cannot be disputed that viability of a shop and its potential profitability are two different aspects all together. While viability of a shop may not depend on the achievability of seven times turnover to the annual licence fee and the viability can be assessed and sustained even if the turnover exceeds the minimum expected turnover.

15. Rule 16(9) of the Rules contemplates a situation where the licensee runs his business into a huge turnover exceeding seven times the annual licence fee but that by itself it cannot be presumed that by granting a licence, every licensee will exceed the turnover of seven times the annual licence fee. In any case, vending of liquor is a privilege which the State Government extends to the licensee and is otherwise is a matter of business prospects of a licensee and it cannot be said that the licensee is entitled to have as much as turnover as possible and that cannot be diminished by relocating other shop even at a distance of two kilometres. The contentions based on the said Rule were also rejected by this Court in the decisions cited above in W.P.No.21073 of 2014, dated 26-09-2014 and the same contention was also considered by another learned Single Judge in W.P. No. 35116 of 2013 and batch, dated 05-03-2014 and ultimately, the entire batch of writ petitions were dismissed.

16. It is evident from the above that the population of the village is the criteria and not with reference to Gram Panchayat. Similarly, under Rule 16(9) of the Rules, the licence fee is determined on the

basis of population and keeping that in view, Rule 16(9) of the Rules cannot have any relevance with regard to issue of relocation.

17. In the facts and circumstances of the case, I am therefore unable to state as to how the petitioner could successfully challenge the impugned Notification based on the contention relating to Rule 16(9) of the Rules. The 2nd contention is, therefore, also liable to be rejected and is accordingly rejected.

18. Accordingly, the writ petition is dismissed. No order as to costs."

16. From the above, for nothing to repeat the facts of the cases on hand, from the expressions supra it is crystal clear that Rule 16(9) of the Rules does not offer any guidance for regulating the exercise contained in the later part of Rule 4 of the Rules and out of the total number of shops fixed under Rule 5 of the Rules, if some shops remain undisposed, the exercise of relocation of such undisposed shops can be done by the Commissioner including with reference to the reports of his subordinate officers in support of such relocation. Once the Commissioner passed orders basing on the same, it cannot be said that the Commissioner has not taken into consideration of the factors required to be taken in terms of Rule 4 of the Rules. In fact, among the A.P.Excise (Grant of licence of selling by shop conditions licence) Rules 2012, vide G.O.Ms.391 R&E(EX-II) Dept. Dt.18.06.2012, made under sections 72, 17, 28 and 29 of the Act and in supercession of the earlier Rules issued in G.O.Ms. No.998, REV(Ex.11) Dept. Dt.24.05.2005 and further added by G.O.Ms.No.357 REV.Ex.II Dept. Dt.22.06.2013 and further amended by G.O.Ms.No.112, dt.22.03.2017, including on the difference between establishing of/ relocation of and shifting of licensed liquor shops, Rule 4 speaks on Establishment of Shops that, subject to such directions, which the Government may issue in this regard from time to time, the Commissioner of Prohibition and Excise, having due regard to the requirement, public order, health, safety and other factors as he thinks fit, may fix the number of shops to be established in a Mandal/Nagar-Panchayat/Municipality/Municipal-

Corporation-(substituted for the words an area/locality) before the publication of notification under Rule 5 and may re-locate any undisposed shops any where in the State(substituted for the words from any area/locality) as he thinks fit. The fixation of the number of shops, their location and grouping are considered by the legislative delegate to be matters of such vital importance in Excise administration that the power in this regard is vested in the Excise Commissioner. It is crystal clear of the amendment takes away any scope for contention, leave about no ambiguity after the expression in B.Venkateswarlu supra on the power of the Commissioner to relocate any where in the State from use of the words from any area/ locality it is made clear of relocate any undisposed shops any where in the State.

17. What Rule 28(3) speaks is on shifting of the licenced premises that may be permitted for valid reasons within the same notified Mandal/ Nagar Panchayat/ Municipality/ Municipal Corporation, subject to conditions as may be specified by the Commissioner of Prohibition & Excise and subject to payment of 1% of licence fee or Rs.25,000/- whichever is higher. Therefore, shifting is different from relocation and the limitation for shifting are not there for relocation is crystal clear from reading of the 2 rules keeping in juxtaposition.

18. *What the proviso to amended Rule 28 speaks further is that Provided that the Commissioner of Prohibition and Excise may consider and permit for valid reasons shifting of the licenced premises of Shop located in the 2 KM belt area from the periphery of a Municipality or 5 KM belt area from the periphery of a Municipal Corporation within the same belt area from the periphery of a Municipality or a Municipal Corporation only, without affecting the total number of notified shops in the Mandal/ Nagar Panchayat/ Municipality/ Municipal Corporation*

subject to conditions as may be specified by the Commissioner of Prohibition & Excise and subject to payment of 1% of licence fee or Rs.25,000/- whichever is higher.

19. As per Section 3 of the Act Commissioner shall be the chief controlling authority in all matters connected with the administration of this Act subject to the general or special orders of the Government. It is only these un-disposed A-4 shops which the amended Rule 4 empowered the Commissioner to relocate for augmenting State revenue through collection of licence fees. Section 28 covers Forms and conditions of licence etc. speak that every permit issued or licence granted under this Act shall be issued or granted on payment of such fees, for such period, subject to such restrictions and conditions, and shall be in such form and shall contain such particulars, as may prescribed.

20. As held in B.Venkateswarlu supra the Rule 4 leaves it to the discretion of the Commissioner to decide the place where an undisposed A-4 shop should be relocated having due regard to the requirement of public order, health, safety and other factors. The Commissioner's power further under Rule 18(2), to permit APBCL to open outlets, is also neither limited by any area/locality restrictions nor is his power confined only to grant of permission in such places where an A-4 shop licence could not be disposed of or where a cancelled licence could not be re-allotted. The only limitation on his power is his satisfaction that granting such permission is in public interest. The words "anywhere in the State" were even used in Rule 18(2). The Commissioner thus not only has the power to permit APBCL to open outlets anywhere in the State, but also has the power to relocate un-disposed A-4 shops from any area as he thinks fit within the State by virtue of Rules 4 r/ w 5 & 18, but for to shifting covered by Rule 28. Thus the twin objects sought to be

achieved by relocation of shops is (i) to generate more revenue for the State and (ii) to ensure that, even after relocation, both the existing and the relocated A-4 shops achieve, on an average, a turnover of seven times the annual licence fee and, thereby, achieve a reasonable return on their investment, from the combined reading of Rules 4 r/ w 5 & 16.

21. It is settled law that no citizen of this country has any fundamental right to trade in intoxicating liquors. Dealing in intoxicating liquors is considered to be *res extra commercium* because of its vicious and pernicious nature. Therefore, the manner and extent of regulation of trade and business of manufacture, production, consumption and sale rest in the discretion of the governing authority. The licensee has to conduct his business and trade subject to such terms and conditions as may be prescribed by the statute, rules and the licencing conditions. The licensee has no other right or privilege except that is specifically granted to him by the authority. The State can impose limitations and restrictions on the trade or business in potable liquor as a beverage which restrictions are in nature different from those imposed on the trade or business in legitimate activities and goods and articles which are *res extra commercium*. The restrictions and limitations on the trade or business in potable liquor can again be both under Article 19(6) or otherwise. The restrictions and limitations can extend to the State carrying on the trade or business itself to the exclusion of and elimination of others and/ or to preserving to itself the right to sell licences to do trade or business in the same, to others. The decision taken by the Commissioner, to relocate some of the un-disposed A-4 shops impugned in question is in exercise of the powers conferred on him by the State under the amended Rule 4 of the 2017 Rules which have the force of law and same is in accordance with the current Excise

Policy framed by the Government for the relevant Excise Year in question and as per said policy decision of the State taken in the larger public interest of enhancing public revenue. The shifting nearby to shop of existing licensee or relocation of undisposed A4 shop nearby to shop of existing licensee no way tantamount to taking away the licence. Even with regards the new shops, in the relocated areas, there is no discrimination shown by the State as the existing licensees are not being deprived of their rights to vend liquor in retail. Relocation of undisposed shops does not deprive the licensees of their right to carry on the trade in intoxicants for the duration of the licence period. This right to trade, during the period of the excise year, should not be confused with the right to make profits. It cannot be contented of said decision is vitiated by any arbitrariness in the facts supra much less to say any violation of any self serving legitimate expectation. The wide discretion conferred on the Commissioner supra neither explicitly, nor by necessary implication, requires compliance with principles of natural justice before its exercise. Even assuming that, by reason of the new shops, the licensees may suffer in sales, it would not result in discrimination. They had the option to opt out if the conditions were detrimental to their interest or were to their disadvantage, since Section 33 enables (subject to Section 17) the licensee to surrender the licence with one month's notice in writing given by him to the Superintendent of his intention to surrender the same, but the licence fee proportionate to the unexpired portion of the term of the licence for which it would have been current but for such surrender shall not be refunded.

22. The grant of licence for the sale of liquor would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the State Government has done unless it

appears to be plainly arbitrary, irrational or malafide. Court would not, ordinarily, examine in judicial review proceedings under Article 226 of the Constitution of India, policy choices of the Executive. In fact, a writ of mandamus is designed to promote justice (*ex debito justitiae*). While dealing with a writ petition, the court must exercise discretion taking into consideration a wide variety of circumstances, inter alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal. In the exercise of its discretionary jurisdiction under Article 226, it is open to the High Court to decline relief if the grant of relief would defeat the interests of justice or where the petitioner seeks to secure a dishonest advantage or perpetuate an unjust gain. The jurisdiction of the High Court, under Article 226 of the Constitution, is extraordinary, equitable and discretionary and should be exercised in the larger interest of justice. It is settled law that this Court in a judicial review proceeding under Article 226 of the Constitution is more concerned with the decision making process and it does not act as a Court of appeal against the orders passed by the statutory authorities. For that the proper remedy is in fact provided by Section 64 of the Act for any aggrieved to maintain Revision to Government, since Government may, either suo-mottu or on an application call for and examine the records of any officer in respect of any decision, order or other proceedings made under this Act, including those relating to the grant, issue or refusal of a licence, or permit, for the purpose of satisfying themselves as to correctness, legality or propriety of any such decision or order or as to the regularity of such proceedings and if in any case, it appears, to them that such

decision, order or proceedings should be modified, annulled, reversed or remitted for reconsideration they may pass order accordingly.

23. Having regard to the above and the facts from the material on record clearly show the decision of the Commissioner is after application of mind to the facts within the excise policy and covered by the Rules and in exercise of the powers conferred on him also after considering the reports of the subordinate officers as to the viability for the undisposed shops to be allotted in support of such relocation, which is within the allocation covered by Rule 5, in achieving the twin objects by such relocation of shops (i) to generate more revenue for the State and (ii) to ensure that, even after relocation, both the existing and the relocated A-4 shops achieve, on an average, a turnover of seven times the annual licence fee and thereby, achieve a reasonable return on their investment, from the combined reading of Rules 4 r/ w 5 & 16 and in due regard to the requirement of public order, health, safety and other factors in public interest, it cannot be said that the Commissioner has not taken into consideration all the factors as are required to be taken into consideration in terms of Rules 4 & 5 of the amended Rules and as such, there is nothing to entertain the writ petitions in interfering with the decision of the Commissioner in the relocation of the undisposed shops in question, but for if at all any of the petitioners' remedy including for the so called shifting is to approach the revision authority under Section 64 of the Act supra for the Government to entertain without reference to period of limitation by virtue of this order if any such revisions are chosen to file within one week from the date of receipt of this order to decide on own merits.

24. Accordingly and in the result, all the writ petitions are disposed of instead of dismissal since giving liberty to invoke revision remedy if at all. No costs.

25. Consequently, miscellaneous applications if any shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:20.02.2018

Vvr/ ska

Note: L.R. copy to be marked.

Vvr/ ska

