

Ashok Lanka & Anr vs Rishi Dixit & Ors on 11 May, 2005

Equivalent citations: AIR 2005 SUPREME COURT 2821, 2005 (5) SCC 598, 2005 AIR SCW 2676, (2005) 5 JT 395 (SC), 2005 (4) SLT 614, 2005 (6) SRJ 98, 2005 (5) SCALE 202, (2005) 3 MPHT 1, (2005) 5 SCJ 231, (2005) 5 SCALE 202

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Bench: N. Santosh Hegde, S.B. Sinha

CASE NO.:

Appeal (civil) 3279 of 2005

PETITIONER:

Ashok Lanka & Anr.

RESPONDENT:

Rishi Dixit & Ors.

DATE OF JUDGMENT: 11/05/2005

BENCH:

N. Santosh Hegde & S.B. Sinha

JUDGMENT:

J U D G M E N T IN & [Arising out of SLP (Civil) .of 2005 (CC No.4529)] W I T H CIVIL APPEAL NO. OF 2005 [Arising out of SLP.(Civil) . of 2005 (CC 4569)] I.A. NO. 1 IN & C.A. NO OF 2005 [Arising out of SLP (Civil) . .. /2005 (CC No.4571)] IA No.1 IN & C.A. No. OF 2005 [Arising out of SLP (Civil) /2005 (CC No.4579)] IA No. 1 IN & C.A. NO. OF 2005 [Arising out of SLP (Civil) /2005 (CC No.4598)] C.A. NO. OF 2005 [Arising out of SLP (Civil) No. 7802 of 2005] C.A. NO. OF 2005 [Arising out of SLP (Civil) No.8575 of 2005] IA. NOS. 1 & 2 IN & C.A. NO. OF 2005 [Arising out of SLP (Civil) .. . /2005 (CC No.5051)] C.A. NO. OF 2005 [Arising out of SLP(Civil) No.10422 of 2005] C.A NO. OF 2005 [Arising out of SLP (Civil) No.10457 of 2005] C.A. NO. OF 2005 [Arising out of SLP (Civil) No.10652 of 2005] C.A. NO. OF 2005 [Arising out of SLP (Civil) No. 10653 of 2005] IA NO. 1 IN & C.A. OF 2005 [Arising out of SLP (Civil) /2005 (CC No.5432)] IA NO.1 IN & C.A. OF 2005 [Arising out of SLP (Civil) .. . /2005 (CC No.5433)] S.B. SINHA, J :

Permission to file special leave petitions is granted.

Leave granted in all the special leave petitions.

INTRODUCTION The trade in country/foreign liquor is said to be res extra commercium. A citizen does not have any fundamental right to deal therewith. The

State alone has the exclusive privilege to deal in liquor from manufacture to distribution and from sale to consumption. It is for the State to part with its exclusive privilege for a price which is loosely called as 'excise duty'. The power of the State to control and regulate the trade in liquor is envisaged under Entry 8, List II of the Seventh Schedule of the Constitution of India. It may also impose excise duty as also countervailing duty in exercise of its legislative power under Entry 51, List 2 of the Seventh Schedule of the Constitution.

ACT AND THE RULES :

Trade in Country/Foreign Liquor is governed by the Chhattisgarh Excise Act, 1915 ('the Act', for short).

Section 7(e) of the Act provides that the State Government may, by notification, for the whole or for any specified part of the State, delegate to the Chief Revenue authority or the Excise Commissioner all or any of its powers under the said Act except the power conferred by Section 62 to make rules.

Section 62 of the Act empowers the State to frame rules for the purpose of carrying out the provisions thereof. Without prejudice to the generality of the said provisions, the State Government, inter alia, however, may make rules :

(e) regulating the periods and localities for which, and the persons or classes of persons to whom, licences for the wholesale or retail vend of any intoxicant may be granted, and regulating the number of such licences which may be granted in any local area;

(f) prescribing the procedure to be followed and the matters to be ascertained before any licence for such vend is granted for any locality;

(g) regulating the amount, time, place and manner of payment of any duty or fee or tax or penalty;

(h) prescribing the authority by, the form in which, and terms and conditions on and subject to which any licence, permit or pass shall be granted, any by such rules, among other matters

(i) fix the period for which any licence, permit or pass shall continue in force,

(ii) prescribe the scale of fees or the manner of fixing the fees payable in respect of any such licence, permit or pass.

(iii) prescribe the amount of security to be deposited by holders of any licence, permit or pass for the performance of the conditions of the same,

(iv) prescribe the accounts to be maintained and the returns to be submitted by licence-

holders, and

(v) prohibit or regulate the partnership in, or the transfer of, licenses."

Section 63 of the Act provides that all rules made and notifications issued thereunder shall be published in the Official Gazette, and shall have effect from the date of such publication or from such other date as may be specified in that behalf.

On or about 15.3.2002, the State Government in exercise of its aforementioned power made rules known as 'Chhattisgarh Excise Settlement of Licences for Retail Sale of Country/Foreign Liquor Rules, 2002' ('the Rules', for short). "Excise Year" has been defined in the Rules to mean the financial year commencing from 1st April to 31st March of the calendar year. Rule 4 provides for formation of groups of liquor shops; clause (iii) whereof prohibits an applicant/firm/company from obtaining licences for more than two groups of shops. Rule 5 provides for the period of licence which would be for an excise year or part thereof. Rule 8 provides for procedure for grant of licence, which reads as under :

"Procedure for grant of licence

(a) Whenever a new licence is proposed to be granted in an area or locality, the licensing authority shall invite the applications for this purpose after giving wide publicity through daily newspapers having circulation in that area.

(b) A list of shops of country/foreign liquor for which the licensing authority proposes to grant licence shall be exhibited along with shopwise licence fee minimum monthwise guaranteed quantity, security amount, and annual quantity in office of Collector, Tehsil, District Excise Officer/Asstt.

Commissioner excise and Deputy Commissioner Excise (Flying squad)

(c) Application for grant of license with application fee shall be submitted in the prescribed form as appended to these rules as annexure-4.

(d) The last date to be fixed for the receipt of application shall not be earlier than ten days with effect from the date of publication of the advertisement in the newspapers."

Eligibility conditions for applicant are laid down in Rule 9 which read as follows :

"Eligibility conditions for applicant. The applicant has to fulfil the following conditions for obtaining the licence for shop/Group of shops of Country/foreign liquor.

(a) Should be a citizen of India or a partnership firm whose partners are citizens of India. No change in partnership shall be allowed after settlement of shop(s) /group of shops except with the permission of the Excise Commissioner.

(b) Should be above 21 years of age.

(c) Should not be a defaulter/blacklisted or debarred from holding an excise licence under the provisions of any rules made under the Act.

(d) Has to submit an affidavit duly verified by public notary as proof of the following namely :

(1) That he possesses or has an arrangement for taking on rent suitable premises in that locality for opening the shops in accordance with the rules.

(2) That he possesses good moral character and have no criminal background and have not been convicted of any offence punishable under the Act or Narcotic Drugs And Psychotropic Substances Act, 1985 or any other law for the time being in force or any other cognizable and non-bailable offence.

(3) That in case he is selected as licensee he will furnish a certificate issued by Superintendent of Police of the district of which he is the resident, showing that he as well as his family members possess good moral character and have no criminal background or criminal record, within thirty days of grant of licence.

(4) That he shall not employ any salesman or representative who has criminal background as mentioned in clause (iii) or who suffer from any infectious or contagious disease or is below 21 years of age or a woman.

(5) That no government dues are outstanding against him."

Rule 10 envisages formation of a District Level Committee; whereas Rule 11 provides for selection of licensees, clauses (b) and (c) whereof read thus :

"(b) The said committee shall select licensees from the list of applicants. In case more than one applicants are found suitable for any particular group of shops the committee shall select the licensee for such group of shops by lottery. In case the selected applicant does not deposit the required amount according to rule 13 and does not fulfil the prescribed formalities or is unable to arrange suitable premises for the shops within stipulated period, the licensing authority shall cancel the allotment and take steps for resettlement of the shops/group of shops..

(c) In case there is no application for a particular group of shops or no applicant is found suitable for a group of shops the licensing authority shall take immediate steps

for resettlement as per procedure laid down in rule 8."

Rule 13 provides for payment of licence fee and security amount, which reads as under :

"Payment of licence fee and security amount In case an applicant is selected as licensee, he shall deposit one month's amount of license fee and the security amount within three days of being informed of his selection. If he fails to deposit the amount of one month licence fee and security amount within prescribed period, his selection shall stand cancelled and the said licensee shall be debarred from holding any excise licence in future, anywhere in the State and his applications fee shall also stand forfeited. A consolidated list of such defaulters under this rule, along with their complete addresses shall be forwarded by the District Excise officer/Assistant Commissioner to the Excise Commissioner, who will circulate the consolidated list of the State to all the licensing authorities of the State."

Rule 23 provides for suspension and cancellation of the licence, in the event any of the conditions laid down therein is violated; clause (c) whereof is as follows :

"If the affidavit submitted by the licensee at the time of application is found incorrect and assertions made therein are found to be false.

In terms of the provisions of the said Rules, a format in which an application is to be filed is prescribed providing for filing of an affidavit duly verified by a public notary.

AMENDMENT IN THE RULES AND CIRCULARS ISSUED BY THE COMMISSIONER OF EXCISE :

On or about 9.3.2004, clause (c) of Rule 8 of the Rules was amended in the following terms :

"(c) the application form and affidavit as per format prescribed by the Excise Commissioner, along with application fee fixed under Rule 6 shall be submitted to the licensing authority of concerning district or grant of license for retail shops/group of country/foreign liquor, within the stipulated date and time."

Pursuant to or in furtherance of the said power conferred upon him, the Commissioner of Excise prescribed formats of application form and affidavit to be furnished with the application for country/foreign liquor shops/groups.

On or about 14.2.2004, a circular came to be issued by the Commissioner of Excise whereby and whereunder it was directed that the applicants were not required to file affidavits along with their applications as was laid down in the Rules; but such affidavits may be filed after their selection was made. Sub-clauses (1), (2) of clause 8 and clause 22 of the said circular read as follows :

"8. APPLICATION FOR ALLOTMENT OF COUNTRY/FOREIGN LIQUOR SHOP/GROUP :

(1) Application form for the year 2005-06 for country/foreign liquor retail shops/groups which has been amended and published in notification issued by this office is being enclosed and sent. Application for country/foreign liquor retail shop can be made by any applicant in the specified enclosed format only. Separate applications will be accepted for every group.

Application fee in accordance with the cost price of the concerned group should be in the form of bank draft/bankers cheque/bank's cash order from a nationalized bank/scheduled commercial bank or challan received after submitting the cash in the treasury is mandatory to be produced in original with the application. Applicant should not make any change or amendment in the format of application form and application form will be accepted in prescribed format only.

(2) For the year 2005-06, the Select Committee will make a draw using a computer and select first, second and third applicant. It will be mandatory for those selected first, second and third applicants to immediately produce an affidavit duly verified by a notary. Selected applicants should not make any changes or amendments to the format of the affidavit and the affidavit will be accepted in the specified format only. Format of the affidavit will be in accordance with the known format of 2004-05."

"22. AMENDMENT IN THE CHHATTISGARH EXCISE SETTLEMENT OF LICENCES FOR RETAIL SALE OF COUNTRY/FOREIGN LIQUOR RULES, 2002 :

For settlement of retail shops/groups of country/foreign liquor for the year 2005-06, under application system, aforesaid directions are being issued and accordingly proceedings shall be ascertained, even then where amendment is to be done in the Chhattisgarh Excise Settlement of Licences for retail sale of country/foreign liquor Rules, 2002, for that notification shall be sent severally. Similarly, for licence fees prescribed for the year 2005-06 for licence of F.L. 2 & F.L. 3, notification shall be sent separately."

TENDER PROCESS :

A notice inviting applications for grant of licence under the Act and the Rules was issued on 14.2.2005, clauses (2), (3), (4), (5) and (9) whereof are as under :

"2. As per the above programme, the Collector concerned shall publish the notice in his district on the date fixed, wherein in respect of retail country/foreign liquor shop/group, the minimum surety amount, duty amount, amount of licence fee annual revenue, 1/12th part of licence fee and 1/12th part of the duty amount on minimum surety amount and one month licence fee shall be mentioned.

3. For allotment of the country/foreign liquor retail shops/groups, only those persons/firms/companies shall submit the applications who are entitled for getting the excise licence under the C.G. Excise Act, 1915.

4. The applicants for allotment of country/foreign liquor retail shops/groups for the year 2005-06 shall get the prescribed proforma from the office of Assistant Excise Commissioner/District Excise Officer. On the prescribed proforma only, the applicant by typing or handwriting regarding the country/foreign liquor retail shop of the concerned district shall apply. For each group, the separate application will be accepted. Along with the application form, as per the cost, the application fees through the Draft/Bankers cheque/Cash Order of Bank of Nationalised Bank/Scheduled Commercial Bank or by cash, shall be submitted in the Treasury through original challan. The applicant shall not make any change or amendment in the prescribed proforma and the applications in prescribed form will be accepted only.

5. For the year 2005-06, the selection of first, second and third candidates will be made by computer through lottery system and they have to submit immediately the affidavit certified by the notary. The selected candidate shall not make any change or amendment in the affidavit and the affidavit will only be accepted in the prescribed form.

9. The allotment of shops/groups and their running for the year 2006-06 shall govern as per the C.G. Excise Act, 1915 and the rules framed thereunder and the Chhattisgarh Excise Settlement of Licences for retail sale of country/foreign liquor Rules, 2002 and the amended terms and conditions and the orders of the State Govt./Commissioner, Excise/Collector/Assistant Excise Commissioner/District Excise Officer."

Pursuant to or in furtherance of the said notice inviting applications, about 2,64,703,. applications were filed out of which about 3000 applications were rejected. Selection process began in different districts by the District Level Committees between the period from 9.3.2005 and 16.3.2005.

The Excise Rules were further amended on or about 22.3.2005 in the following terms :

"Raipur, the 22nd March, 2005 NOTIFICATION No.F-10/6/2005/CT/V(4).-In exercise of the powers conferred under Section (d), (e), (f), (g) and (h) of sub-clause(2) of sub-clause (3) of clause 62 of the Chhattisgarh Excise Act, 1915 (No.II of 1915), the State Government hereby makes the following amendment in the Chhattisgarh Excise Settlement of Licenses for retail sale of Country/Foreign Liquor Rules, 2002, namely :

AMENDMENT In the said rules, in rule 8, -

(i) The existing clause (C) shall be substituted by the following clause (C), namely :-

(C) The application form under rule-6 along with prescribed application fee shall be submitted to the Licensing Authority of the concerned district within prescribed date & time for grant of licence for retail shop/group of country/foreign liquor in the proforma prescribed by the Excise Commissioner.

(ii) After clause (C) the following clause (C-1) shall be added, namely :

(C-I) The first, second & third applicant selected for retail shop/group of country/foreign liquor by the selection committee after lottery drawn by computer must submit affidavit verified by the Notary in the prescribed proforma the next day during office hours.

2. This amendment shall be effective for the settlement of Licenses for retail sale shops of Country/Foreign liquor for the year 2005-06."

WRIT PROCEEDINGS :

The instant case originally arose out of a public interest litigation in Jitendra Pali vs. State of Chhattisgarh (WP No.706 of 2005). Subsequently, the other petitions came to be filed by candidates including Rishi Dixit vs. State of Chhattisgarh (WP No. 956 of 2005). Both the writ petitions were heard together and separate judgments were delivered in each of them. The judgment in WP No.956 of 2005 came to be passed by the High Court on 31.5.2005, which is the subject matter of appeal arising out of SLP (Civil) CC No 4529; while the judgment and order in WP No. 706 of 2005 came to be passed by the High Court on 8.4.2005 which is the subject matter of appeal arising out of SLP (Civil) No.8575 of 2005.

Originally in the said writ application the changes made in the selection process, namely, from manual to computer was in question; but an application for amendment of the writ petition was made on 9.3.2005 wherein it was contended that the selection process adopted by the State was vitiated, inter alia, on the premise that no affidavit was filed by the applicants as was mandatorily required by Rule 9 of the Rules.

The contention raised on behalf of the State after the amendment dated 22.3.2005 before the High Court was that Rule 9 was directory in nature and not mandatory and in any event, as the said rule was amended in consonance with the powers of the State regarding retrospective amendment of the Rules, the selection process was not vitiated. Now, this amendment validates with retrospective effect, the filing of affidavits after the selections are made.

Before we consider the judgment passed by the High Court, we may notice that an interim order was passed in the writ petition on 3.3.2005. On or about 7.3.2005, however, the said interim order was modified by the High Court directing :

"As mentioned above, in view of the return has been filed and the matter is to be heard and disposed of finally, we modify the earlier order of M.W.P. No. 593/2005, to the extent that the respondents may continue with the process of selecting the licensees, however, if before the disposal of this writ petition the process of selection of the licensees is completed, the respondents should not communicate the order of their selection to the selected licensees."

With a view to complete the narration of facts, we may also mention that several intervention applications were also filed by the alleged successful bidders.

HIGH COURT JUDGMENT :

The High Court upon analyzing the provisions of the Act and the Rules framed thereunder was of the opinion that the State was entitled to make the selection of the eligible candidates through computer. It was, however, opined that the District Level Committees did not make any scrutiny whatsoever to find out as to whether the applicants concerned satisfied the eligibility conditions laid down in Rule 9 or not, as no information was required to be furnished in the format prescribed by the Commissioner of Excise in that behalf. The High Court was further of the opinion that the disclosure of such information by the applicants even before the submission of applications were necessary so as to enable the authorities to satisfy themselves about the fulfillment of different eligibility conditions mentioned in Rule 9. Consequently, it was directed that a fresh selection be made in terms of the extant rules.

The High Court while rejecting the wider challenge on the legal policy, held : (a) The circular letter dated 14.2.2005 issued by the Commissioner of Excise was contrary to the Rules insofar as eligibility criteria laid down in Rule 9 thereof were dispensed with. (b) The applications filed by the applicants were not properly scrutinized, except the requirement of Rule 9(c), namely, whether the applicants were black-listed or otherwise not eligible. (c) While holding that the application fees to the extent of 77 crores earned by the State need not be refunded, it directed scrutiny of about 2.65 lakhs applications by the respective District Level Committees for their satisfaction that all eligibility requirements stand satisfied whereafter only the draw of lottery may take place.

The High Court, however, for the reasons stated in its judgment although not directed for calling for fresh applications but mandated the State to consider the necessary informations required from the applicants by way of affidavit before the candidates are selected for grant of liquor licence.

PROCEEDINGS BEFORE THIS COURT :

Applications for grant of special leave to appeal have been filed by the State of Chhattisgarh as also by several selected candidates. By an order dated 8.4.2005, this Court stayed the operation of the impugned order subject to the condition that if the Government desires to award the contract as an interim arrangement to the successful bidders, it shall do so only after obtaining the necessary approval of the Committee already constituted for consideration of these applications.

The said order was communicated on 9.4.2005. The applications of the selected candidates were scrutinized on 10.4.2005 and 11.4.2005 and licences were granted to the so-called successful bidders on 11.4.2005 and 12.4.2005.

SUBMISSIONS :

Mr. Ashok Desai, the learned Senior Counsel appearing on behalf of the State, would submit that the High Court fell in grave error in interpretation/construction of Rule 9 of the Rules inasmuch as it failed to take into consideration that whereas clauses (a) to (c) contained therein are mandatory in nature, clause (d) is directory in nature as the same was required to be fulfilled only upon the selection of the candidates concerned. The learned counsel placed strong reliance, in this behalf, on a decision of this Court in *Dr. Mahachandra Prasad Singh etc. vs. Chairman, Bihar Legislative Council and Others* [(2004) 8 SCC 747]. According to the learned counsel, the State, having the requisite power to amend the Rules with retrospective effect, issued the Notification dated 22.3.2005 which was retrospective in nature. [Reliance, in this connection, has been placed on *The State of Madhya Pradesh and Others vs. Tikamdas* (1975) 2 SCC 100]. It was contended that the High Court also failed to construe properly the effect of amended Rule 8 (c) in terms whereof affidavit to be verified before the public notary in the prescribed format was required to be filed on the day following the selection and, thus, the requirement of filing the affidavit along with application in terms of the said rule was dispensed with. In any view of the matter, the learned counsel would urge that having regard to the fact that all candidates including the writ petitioners before the High Court understood the rule in the same manner, namely, the affidavits were required to be filed after the selection process was over and, thus, did not choose to file any affidavit whatsoever and, thus, the rules should have been construed in such a manner. The learned counsel placed on strong reliance, in this connection, on *G.J. Fernandez vs. State of Karnataka and Others* [(1990) 2 SCC 488]. In any event, the same would amount to acquiescence on the part the writ petitioners. Strong reliance in this behalf has been placed on *Nain Sukh Das and Another vs. The State of Uttar Pradesh and Others* [(1953) SCR 1184]. It was submitted that the validity of the rules/circulars having not been challenged by the writ petitioners, the High Court fell in error in passing the impugned judgment. The learned counsel would argue that one of the applicants was a lawyer and others being interested persons, the writ petition in the nature of public interest litigation was not maintainable. The learned counsel would submit that having regard to the well-settled principles of law that the State despite Article 14 of

the Constitution of India has a greater play in the joints while parting with its exclusive privilege, non-compliance of Rule 9 could not be held to have vitiated the entire selection process. Reliance, in his behalf, has been placed on *State of M.P. and Others vs. Nandlal Jaiswal and Others* [(1986) 4 SCC 566].

In any view of the matter, Mr. Desai, would argue that it is not a fit case where the court should grant any relief in favour of the writ petitioners. Strong reliance, in this connection, has been placed on *K.N. Guruswamy vs. The State of Mysore and Another* [(1955) 1 SCR 305].

Mr. Dushyant A. Dave, learned Senior Counsel appearing on behalf of the Appellants in Civil Appeal arising out S.L.P. (CC No. 4571), while supplementing the arguments of Mr. Desai, pointed out that the amending rules having not been challenged and having regard to the fact that the requirement of filing an affidavit has not been given up, the High Court fell in error in holding Rule 9 as mandatory, despite the fact that the said requirement was to be complied with only at a later stage.

Mr. Ravi Shanker Prasad, the learned Senior Counsel appearing on behalf of the Appellants in Civil Appeal arising out of SLP No. 10653 of 2005 would contend that even the unamended Rule 9 envisaged filing of an affidavit at a post selection stage as would appear from the language used in clauses (a), (b) and (c) as contrasted from clause (d) thereof. The amendment in the rules, the learned counsel would contend, made the position patent when it was latent. Rule 9, as Mr. Prasad would argue, was required to be read with Rule 13 and so read it would be evident that the nature of requirement for filing an affidavit was only post selection.

Drawing our attention to the fact that the mode of selection through lottery is permissible in view of the decision of this Court in *Rajendra Singh vs. State of M.P. and Others* [(1996) 5 SCC 460], Mr. Prasad would contend that the requirement to comply with the rules should have been considered having regard to the changed mode of selection in terms of Rule 11(b). Public Interest Litigation, Mr. Prasad would urge, should not be entertained whereby the economic policy adopted by the State in the matter of vending liquor is challenged. Reliance, in this connection, has been placed on *Nandlal Jaiswal (supra)*. Mr. Prasad also placed strong reliance upon *Balco Employees' Union (Regd.) vs. Union of India and Others* [(2002) 2 SCC 333] in support of his contention that if the petitioner was not aggrieved, he cannot have locus standi to maintain a writ petition.

Mr. C.S. Vaidyanathan, the learned Senior Counsel appearing on behalf of the Appellants in Civil Appeal arising out of SLP (CC No.4579), would submit that the object of the Act and the rules framed thereunder being to augment the revenue and preventing adulteration of liquor; the state action can be challenged only if it is unfair in the sense that nobody was given an opportunity to participate in the auction. As in this case all persons were treated similarly in pursuance of or in furtherance of the

advertisement, insofar as no applicant had filed any affidavit, it cannot be said that anybody was prejudiced by reason of non-compliance of Rule 9. The learned counsel would also contend that the writ petitioner having himself not filed any affidavit, he is estopped and precluded from questioning the alleged violation of Rule 9, which only provides for compliance of a procedural requirement.

Mr. Mukul Rohtagi, the learned Senior Counsel appearing on behalf of the Appellants in Civil Appeal arising out of SLP (CC No.4569) would also contend that requirement of Rule 9(d) was only post selection.

Mr. Soli J. Sorabjee, the learned Senior Counsel appearing on behalf of the Respondents, on the other hand, would take us through various documents with a view to show that the District Level Committees after passing of this Court's order dated 8.4.2005 proceeded to consider the applications filed by the successful candidates in a post haste manner which would clearly demonstrate non-application of mind on their part. The learned counsel pointed out that in many cases there had been hardly any deliberation amongst the members of the committee; while in some cases even affidavits were not filed. Drawing our attention to Rule 11, the learned counsel would submit that in no case a summary report was prepared so as to enable the Scrutiny Committee to scrutinize the eligibility conditions. Mr. Sorabjee would argue that Rule 9 is mandatory in nature and, thus, all applications for grant of liquor licence would call for scrutiny. Even if such a consideration is read to be directory, no substantial compliance thereof having been made, it was argued, the entire selection process must be held to be vitiated in law. The learned counsel would contend that from the affidavit filed by the State, it would appear that the contents of the affidavits had not been verified in accordance with law and the contents thereof had ex-facie been accepted on a pre-supposition that they were correct although there exists no statutory rule empowering the Committee to raise such a presumption.

Dr. A.M. Singhvi, the learned Senior Counsel appearing on behalf of the some of the Respondents would urge that the functionaries of the State and/or the Selection Committees, having regard to the nature of transaction were required to verify the applications before selection. It was pointed out that despite the fact that the High Court by an order dated 7.3.2004 prohibited the State from disclosing the list of selected candidates, the so-called selected candidates filed applications for grant of special leave to appeal before this Court on the premise that they had been selected. It was submitted that the amendment carried out in Rule 9 on or about 9.3.2004 was wholly irrelevant. Drawing our attention to the judgment of the High Court, the learned counsel would submit that it has rightly been found that sub-rule (3) of Rule 9 compared to the old provisions contained therein in view of the language thereof clearly demonstrates that Rule 9 is mandatory in nature. The amendment made in Rule 9 by reason of the notification dated 22.3.2005, Dr. Singhvi would argue, cannot put the clock back as the entire selection process was completed by then.

Mr. G.L. Sanghi, the learned Senior Counsel appearing on behalf of some of the Respondents would submit that keeping in view the fact that while exercising its jurisdiction under the Act, the State is concerned with the maintenance of public health and, thus, Rule 9 should be held to be mandatory particularly having regard to the fact that such affidavit is also necessary for the purpose of exercise of power by the State for suspension and cancellation of licence in terms of Rule 23(1) (c) of the Rules.

Conditions conceived in Rule 9 being in public interest, Mr. Sanghi would contend, are mandatory in character. It was pointed out that whereas in terms of amendment dated 9.3.2004, the Commissioner of Excise had been empowered to prescribe the format, he had no jurisdiction to do away with or dilute the statutory requirements to file an affidavit as required by Rule 9 of the Rules.

Mr. Ravindra Shrivastava, the learned Senior Counsel appearing for the some of the respondents, would urge that the eligibility clauses contained in the Rules must be held to be mandatory in nature and in support thereof reliance has been placed on Ramana Dayaram Shetty vs. The International Airport Authority of India and Others [(1979) 3 SCR 1014] and R. Prabha Devi and Others vs. Government of India, Through Secretary, Ministry of Personnel and Training, Administrative Reforms and Others [(1988) 2 SCC 233].

Dr. Rajiv Dhawan, the learned Senior Counsel appearing on behalf of the writ petitioners/Appellants, would, inter alia, submit that the interpretation and/or construction of the rules must be made having regard to Article 47 of the Constitution of India vis-à-vis the doctrine of 'res extra commercium'. The learned counsel would contend that before the High Court a contention was raised that a solvency certificate should be directed to be filed along with the application for grant of licence as it would help in prevention of investment of black money in the trade. The learned counsel would urge that the courts in a situation of this nature will apply cautionary principles having regard to the fact that the activities of the State must be responsible in nature. Dr. Dhawan would submit that the rules have to be read as a whole and not in a manner which would give undue advantage to persons who were not fit to carry on the trade in liquor keeping in view the obnoxious nature thereof. The rules were required to be applied from stage to stage, it was argued, having regard to the purport and object thereof so that effective step may be taken by the Committee to weed out the unwanted applicants.

PUBLIC INTEREST LITIGATION :

It may not be necessary for us to consider as to whether the public interest litigation should have been entertained by the High Court or not. The High Court did entertain the public interest litigation without any objection and ultimately allowed the same. Furthermore it is well settled that even in a case where a petitioner might have

moved the court in his private interest and for redressal of personal grievances, the court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice. [See Guruyayoor Devaswom Managing Committee and Anr. Vs. C.K. Rajan and Others [(2003) 7 SCC 546 para 50] and Prahlad Singh vs. Col. Sukhdev Singh (1987) 1 SCC 727] ACQUIESCENCE :

When a public interest litigation was entertained the individual conduct of the writ petitioners would take a backseat. There cannot be any doubt whatsoever that in a given case a party may waive his legal right. In an appropriate case, the doctrine of acquiescence or acceptance sub silentio may also be invoked. [See Haryana State Coop. Land Dev. Bank vs. Neelam [2005 (2) SCALE 434], but the High Court, in the instant case, has gone into the question with a wider perspective. This Court is not only required to construe the provisions of the statute but also to take into consideration the subsequent events which took place vis-a-vis the action on the part of the State after passing of the interim order. The issue as regard application of acquiescence or waiver. therefore in our opinion has become irrelevant.

ANALYSIS OF THE RULES :

The Chhattisgarh Excise Act, 1915 and the rules framed thereunder are regulatory in nature. They are being so enacted so as to ensure public health as trade in liquor is considered to be obnoxious one. The State has a duty to see that its people do not consume spurious or adulterated liquor. The Act and the rules no doubt contain provisions for cancellation and/or suspension of the licence in the event the conditions laid down therein are violated, but it is beyond any cavil that before a licence is granted, the applicant must satisfy all the statutory conditions and meet the eligibility requirements. [See Ramana Dayaram Shetty (supra) and R. Prabha Devi (supra). Rule 8(e) provided for a requirement to furnish a bank draft from a nationalized bank as earnest money. Rule 9 of the Rules preserves all other eligibility requirements. The Circular dated 15.3.2003 dispensed with the requirements as contained in Rule 8(e) of the Rules. The number of outlets were increased by 92 from 812 to 904. The High Court has noticed that none of the eligibility requirements except those as contained in Rule 9(c) of the Rules had been observed by the Committee. The State has earned Rs. 77 crores from 2.65 lakhs applicants whose eligibilities were not verified.

Indisputably, the State while granting a licence in favour of a person dealing in liquor should ensure that the same is granted to a person who would be otherwise eligible to deal therewith.

The provisions of the Act and the Rules framed thereunder contain several restrictions and limitations which are imposed upon the applicants. The procedures for selection must be fair and in consonance with the provisions of the Act and the Rules.

The persons who fulfill the said eligibility criteria and satisfy the requirements laid down under the Act and the Rules only could file such applications which required scrutiny thereof so as to enable the statutory authorities to consider their cases for grant of licence. The advertisement issued by the State calls upon only such persons to file applications who are suitable therefor, which in turn would mean that the applicants must satisfy the authorities that they are eligible for grant of licence. The applicants must also demonstrate that they are suitable for grant of licence as in the event of their being found unsuitable, steps are required to be taken by the committee for resettlement of the shops, wherefor procedures laid down in Rule 8 were required to be complied with again.

Stricter restriction is contemplated in the matter of compliance of the terms and conditions of the licence. Rule 4 of the Rules permits not more than two groups to a single licensee.

Rule 9 provides that the eligibility conditions should be scrutinized before an application is made. Rule 9 is in two parts. It deals with the eligibility conditions of the applicant. It does not make any exception as regard fulfilment of different clauses inasmuch as the said rules begin with the expression "the applicant has to fulfil the following conditions". Such conditions are required to be fulfilled for obtaining the licence. Whereas clauses (a), (b) and (c) thereof are essential conditions which would debar a person from filing an application and if such an application is filed, the same would be liable to be rejected at the outset. An applicant having regard to the expressions used in clause (d) has to file an affidavit. Filing of such affidavit, therefore, is mandatory. However, affidavit is required to be filed by the applicant to show that : (i) he possesses or may arrange for taking on rent suitable premises; (ii) he possesses good moral character and has no criminal background and has not been convicted of any offence punishable under the Act or Narcotic Drugs and Psychotropic Substances Act, 1985 or any other law for the time being in force or any other cognizable and non-bailable offence. Clause (3) of sub-rule (d) of Rule 9 enjoins a duty upon the authorities to get the same verified whereupon only a certificate is required to be issued by the Superintendent of Police of the district of which he is the resident in the event his selection as a licensee showing that he as well as his family members possess good moral character and there is no criminal background or criminal record against them. Such certificate is required to be filed within thirty days from the grant of licence. He also in terms of the said clause (5) of sub-rule (d) of Rule 9 is to state that no government dues are outstanding against him.

Keeping in view that a large number of applications are required to be dealt with, the rules contemplate constitution of a committee comprising the Collector of the District and the District Excise Officer/Assistant Commissioner of the District, who would be the enforcing agency. Rule 11 provides for the mode and manner in which selection is to take place. Clause (a) thereof provides for preparation of a summary report by the Member Secretary for the purpose of placing it before the District Level Committee. Clause (b) thereof provides that in the event the Committee selects licensees from the list of the applicants and in the event more than one applicants are found suitable for any particular group of shops, the Committee shall select the licensee for such group of shops by lottery, in which event the selected applicant has to deposit the required amount according to Rule 13 and fulfill the other prescribed formalities including the requirement to comply with the provisions of clause (1) of sub-rule (d) of Rule 9. Clause (b) of Rule 11, therefore, presupposes that before a licence is granted the requirements contemplated therein should be complied with. A

candidate before selection must be found to be eligible therefor. It postulates that before the actual licence is granted, the conditions precedents as contained therein are required to be fulfilled, failing which the Committee must take steps for resettlement of shops or group of shops. The question of payment of licence fee or security amount arises when an applicant is selected for grant of licence in terms of Rule 13.

The Scrutiny Committee is also enjoined with a duty to see as to whether a person was a defaulter or not.

Rule 9, as it originally stood, thus, on proper construction must be held to have laid down that an affidavit was required to be filed by the applicant which is fortified by the fact that Rule 23(1)(c) contemplates that if the affidavit submitted by the licensees at the time of application is found incorrect and assertions made therein are found to be false, the Licensing Authority would be empowered to suspend or cancel the licence. The rule read as a whole, therefore, provided for filing of an affidavit at the time of grant of licence. Furthermore the very fact that a circular was issued by the Commissioner of Excise asking the applicants to file an affidavit after the selection process is over itself is a pointer to the fact that filing of such an affidavit along with the application was considered by all concerned to be necessary. The advertisement was also required to be issued in consonance with the rules and not in derogation thereof. It would, therefore, be not correct to contend that whereas clauses (a) to (c) of Rule 9 postulates compliance thereof at a pre-selection stage, clause (d) postulates compliance at the post-selection stage. The distinction between compliance of requirements at pre-selection and post-selection is also evident from reading Rule 9(d)(1)(2) and Rule 9(d)(3) separately, inasmuch whereas the former clearly postulates compliance at pre-selection stage, the latter deals with a situation which is post-selection.

The expression "has to submit an affidavit" ex facie is mandatory in nature and such affidavit necessarily has to deal with the requirements contained in clauses (1) and (2). If the rule making authority was of the opinion that such an affidavit was required to be filed at a later date and not with an application, it could have said so in express terms; as has been done in the case of sub-rule (3) of Rule 9. In fact, all the sub clauses were to be a part of affidavit as clauses (3), (4) and (5) would be only by way of undertaking, although the requirements of clauses (3) and (4) can be fulfilled after the grant of licence. The same should appear from the format of the affidavit itself.

The question as to whether a statute is mandatory or directory would depend upon the statutory scheme. It is now well known that use of the expression "shall" or "may" by itself is not decisive. The court while construing a statute must consider all relevant factors including the purpose and object the statute seeks to achieve. [See P.T. Rajan Vs. T.P.M. Sahir (2003) 8 SCC 498 and U.P. State Electricity Board Vs. Shiv Mohan Singh and Anr. (2004) 8 SCC 402.

Furthermore, filing of an affidavit in the prescribed format is a statutory requirement under the Rules. Filing of such an affidavit is necessary as in the event the same on verification is found to be incorrect, not only the deponent can be proceeded against but his licence would also be liable to be cancelled. Filing of an affidavit under the Rules is, therefore, mandatory in character.

The Commissioner of Excise issued a circular letter dated 14.2.2005 which power evidently he did not possess in terms of Section 7 of the Act. Although the State may delegate its power to the Commissioner of Excise, such a delegation cannot be made in relation to the matters contained in the rule making power of the State. The matters which are, therefore, outside the purview of the rules only could be the subject-matter of delegation in favour of the Commissioner of Excise. The Commissioner of Excise is a statutory authority. He is bound to exercise his power only within the four- corners of the Act or the rules framed thereunder and not de' hors the same.

Mr. Desai is also not correct in his submission that clause 22 of the said circular contemplates a future amendment in the rules. Even if the same contemplates a future amendment, the same would not sub-serve the statutory requirements inasmuch as the Commissioner of Excise was not supposed to know as to how the existing rules would be amended and whether the same would be applied prospectively or retrospectively. The Court cannot draw a presumption that the Commissioner of Excise could proceed on a pre-supposition that his action in issuing a circular contrary to rules would stand ratified by retrospective operation of the rules. A statutory authority, it is trite, must exercise his jurisdiction with the four-corners of the statute and cannot deviate or depart therefrom.

It is interesting to note that the Rules were amended only for one excise year. The rule making power should be exercised having regard to the policy to be adopted by the State. Such a policy may vary from time to time. Having regard to the exigency for the situation, rule may also be amended but we do not see any reason as to why an attempt should be made to amend the rule only with a view to justify an illegal action on the part of the Commissioner of Excise for the year 2005-06. Although the validity of the rules have not been challenged, the court cannot shut its eyes from considering this aspect of the matter. We are not oblivious of the fact that framing of rules is not an executive act but a legislative act; but there cannot be any doubt whatsoever that such subordinate legislation must be framed strictly in consonance with the legislative intent as reflected in the rule making power contained in Section 62 of the Act.

By reason of the amendment carried out in the rules in terms of the notification dated 9.3.2004, the Commissioner of Excise was empowered to prescribe a format of the application form and affidavit. Such an application or affidavit could be filed within the date and time stipulated by him but the same would not mean that while prescribing a format in respect of an application form or affidavit, he became authorized to dilute the statutory requirements or dispense with the same. No exception can although be taken as regard the format relating to the applications, strong exception has to taken as regard the format of the affidavit. Clauses 5 and (6) of the affidavit are as under :

"(5) That the Deponent neither owes any dues to the government or public works nor his name exists in the black list and neither he has been debarred to acquire excise licence under Chhattisgarh Excise Act, 1915 and rules made thereunder and amended Chhattisgarh Excise Settlement for License for Retail Sale of Country/Foreign Liquor Rules, 2002."

(6) That the Deponent bears good moral character. He has not been held guilty of non-bailable offence under Chhattisgarh Excise Act, 1915 or Narcotics Drugs and Psychotropic Substances Act, 1985 or any other procedure or law promulgated that time."

A bare comparison of the said clauses with Rule 9 would demonstrate that the same do not satisfy the statutory requirements ARE THE AMENDING RULES RETROSPECTIVE :

At this juncture, we may notice the effect of the amendment effected in terms of the notification dated 22.3.2005. But before we proceed to do so, it may be noticed that indisputably the entire selection process was over by 16.3.2005.

By reason of the said notification, clause (c) of Rule 8(1) was substituted. The substituted provisions lay down that the application form prescribed in terms of Rule 6 together with the prescribed application fee shall be submitted in the proforma prescribed by the Commissioner of Excise.

Yet again clause (C-1) was added after clause (c) providing that the first, second and third applicants selected must submit an affidavit duly verified by the public notary in the prescribed proforma next day during office hours. The notification does not state that the amendment will have a retrospective effect. In absence of any express provisions contained in the notification, the court will not ordinarily presume the same to be retrospective in nature.

A statute must be read reasonably. A statute should not read in such a manner which results in absurdity. A statute, on its plain language, although postulates a prospective operation, it cannot be held to be retrospective only because it would apply for the excise year for which applications were invited despite the fact that the selection process made thereunder is over. The State is bound by the terms of the advertisement and the rules existing at that time. The statutory authorities and the applicants are expected to follow the law as it stood thence. No step could be taken on the pre-supposition that the rule would be amended. It is also not a case where draft rules were already in existence and such draft rules had been applied, which could otherwise be permissible in law. But a situation of this nature is not contemplated in law.

Mr. Desai would argue that as amendment has to be effective for the settlement of licence for country/foreign liquor retail shops for the year 2005-06, the same may be held to be retrospective in nature. Even for the said purpose, it was expected of the rule making authority to say so expressly.

A rule may not be challenged as ultra vires the Act, but its interpretation can certainly be an issue. The rule if given retrospective effect would become unworkable and would not be capable of being given effect to. A rule cannot be framed keeping in view that the Commissioner has issued certain circular which is illegal. By reason of a rule making power, an invalid action on the part of the Commissioner of Excise cannot be validated.

If a selection process is over upon following a procedure which is illegal, by reason of a rule making power the same cannot be rendered valid simply by directing that the same shall govern the selection of applicants for grant of licence under the Act for the year 2005-06.

The question as to whether it can be given effect to or not is, thus, required to be judged on its own without reference to the circular issued by the Commissioner of Excise. Cassus Omissus, it is well known, cannot be supplied by the court. [See P.T. Rajan vs. T.P.M. Sahir and Others (2003) 8 SCC 498] We have noticed hereinbefore that despite the fact that the order of injunction was issued by the High Court while modifying the interim order on 7.3.2005, the State was asked not to publish the selection list. The contentions raised in the petitions for grant of special leave to appeal, however, leave no manner of doubt that such selection list whether in violation of the order of the High Court or otherwise had been published. If the said rules are considered to be retrospective, admittedly, the affidavits had not been filed on the next day of such selection and, thus, the rules are not capable of being implemented.

Different situations may arise in different cases in the matter of grant of injunction as was noticed by this Court in Deoraj vs. State of Maharashtra and Others [(2004) 4 SCC 697] stating :

"12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of the main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favour of the applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the court may put the parties on such terms as may be prudent."

Even the manner in which the interim order of this Court is given effect leaves a lot to be desired. It is not in dispute that the order of this Court dated 8.4.2005 was communicated on 9.4.2005. 10.4.2005 was a Sunday and, therefore, it was not expected that the services of the public notary would be available, or the stamp would be available on that day for affirming affidavits. The affidavit filed on behalf of the State clearly shows that on 09.04.2005 itself, that is the day on which the order by this Court was communicated, the concerned persons were informed as regard their selection, if not prior thereto. The State's letter dated 9.4.2005 relating to Application No.01010140 shows that thereby one Ramesh Prasad Dheemar was informed that he had been selected for Desi/English wine shop/Circle Tikrapara Circle as a first licensee. Even the unnecessary stipulations had not been scored out therefrom. He was not asked to file an affidavit by 10.4.2005. He was merely asked to deposit 1/12th part of the payable duty as yearly security within three days and

1/12th part of yearly licence fee by 30.4.2005, whereafter licence was to be granted to him. We fail to understand as to how without making a scrutiny as regard compliance of conditions, licences were granted on 11.4.2005 and 12.4.2005. The affidavit of the State reveals :

"That the process of selection of Applicants under the Circular dated 14.2.2005 had already been completed on 16.3.2005 and a list of the Applicants selected after the draw of lotteries had been submitted before the Hon'ble Chhattisgarh High Court on 22.3.2005. A typed copy of the list of successful Applicants as submitted before the Hon'ble Chhattisgarh High Court is annexed hereto and marked as Annexure "RCG-2".

That, accordingly based on the result of the selection process, the Collectors of all Districts in the State called upon the selected Applicants to submit affidavit in the prescribed format. The affidavits submitted were duly processed/scrutinized by the District Level Committee constituted in each district as per Rule 10 of the 2002 Rules (comprising of the Collector as the Chairman and Assistant Commissioner/District Excise Officer as the Member Secretary). The licences were thereafter granted on 11.4.2005/12.4.2005 subject to the condition that the same were only temporary and were granted under an interim arrangement and were subject to further orders to be passed by this Hon'ble Court. Thus, the temporary licences for the year 2005-06 for running country/foreign liquor retail shops in the State have been issued after following the process prescribed in the 2002 Rules and after scrutiny of affidavits and consequent approval by the Committee already formed under the Rules, as had been directed by this Hon'ble Court. An English translated copies of the information received from each of the 16 districts in the State granting temporary licences to the successful Applicants is enclosed hereto and filed as Annexure "RCG-3 (Colly.)".

We have noticed hereinbefore that even in the notice, the selected candidates had not been asked to submit affidavits in the prescribed format. It is not expected of the statutory functionaries to ask the selected candidates to comply with the requirements orally. It is beyond our comprehension as to why such a post haste action was taken by the State.

Our attention has been drawn to the following charts prepared by the Respondents :

"EXAMPLES OF SAME ADDRESS OF DIFFERENT FAKE SELECTED APPLICANTS OF RAIGARH, CHAMPA JANJGIR AND KAWARDHA DISTRICTS 3, Shankar Nagar Raipur Near Dr Anoop Verma, Katora Talab, Civil Lines, Raipur Behind Prince Hotel, Katora Talab, Civil Lines Raipur 27, Kholi Vikas Nagar, Bilaspur Near Chandnia Para, Canal, Janjgir Pg Names Pg Names Pg Names Pg Names Pg Names Raj Kr.

Singh Rajendra Prajapati Vikas Jaiswal Rakesh Singh Ram Bachan Yadav Munna Gupta Surendra Lal Jitendra Singh Babloo Kr. Rai Santosh Kumar Jai Prakash Singh Shiv Narayan Jaiswal Urmila Devi Jitendr Singh Guddu Moar Satish Singh Vinay Gupta Raghven dra Kumar Singh Vinod Pandey Avadh Narayan Shukla Shyam Lal Gupta Jagdish Yadav Buntty Singh Jamat Mandir Para, Kavardha 30, Block B, Quarter Mohalla, RSB Tower, Taarbahar, Bilaspur Lochan Nagar, P.S. Chakradhar

Nagar, Dist.

Raigarh Punjabi Colony, Dayal Band, Bilaspur Nehru Nagar, Bilaspur Pg Names Pg Names Pg Names Pg Names Pramod Singh Parikha Paswan Ashok Kumar Singh Surjit Singh Bhatia Sushil Kumar Shailendra Singh Stayender Singh Lakshmi Prasad Ravindra Nath Upadhyaya Manoj Singh Santosh Kumar Shiv Narayan Jaiswal Umesh Singh Dharmendra Singh Munna Singh Pursuram Ward FCI Gowdown Bhatapara, Raipur Shankar Nagar, Dist. Janjgir 1/73, Near Ranjit Singh Dhaba, Shivrinarayan, Tehsil Navagarh, Dist.

Janjgir 5/12, Bazar Para, Dhara Dwar, Dist.

Janjgir Chanpa H. No.190 Pratap Ganj Thana Sarngarh, Raigarh Pg Names Pg Names Pg Names Pg Names Pg Names Sanjiv Kumar Gupta Raja Piyush Narayan Mahendra Singh Parmeshwar Singh Santosh Kr. Singh Dashrat Yadav Kamakhya Narayan Singh Arvind Singh Santu Singh Dilipdas Sanjiv Kr.

Lakshmi Padma Gupta Vishnu Singh Uday Singh Abhimanu Gupta From a perusal of the aforementioned charts, it would appear that different persons belonging to different communities had filed different applications showing the same address. Even persons having the same name had filed more than one application.

Mr. Desai submitted that these allegations give rise to separate cause of actions. We do not agree.

Although we do not intend to put a seal of finality on the said issue, we are constrained to observe that having regard to the actions of the statutory functionaries, the entire exercise of the scrutiny as regard ascertainment of the eligibility of the candidates vis-à-vis selection process is required to be undertaken again by the Selection Committee. Furthermore, this Court is entitled to take into consideration subsequent events so as to do the complete justice to the parties. [See Board of Control for Cricket, India & Anr. Vs. Netaji Cricket Club & Ors. [2005 (1) SCALE 121]. When this Court passed an interim order it was expected that the statutory requirements therefore, shall be complied with. Even if Rule 9 is held to be directory, substantial compliance thereof was necessary. A mandatory statute requires strict compliance whereas a directory statute requires substantial compliance. Even if a statute is directory, the State cannot say that the requirements contained therein do not envisage compliance thereof. The authorities of the State cannot raise a plea that they would not even notice the inherent defects contained in the application. They could not proceed on a presupposition, for which there is no legal sanction, that contents of the affidavit would be correct. No summary report required to be prepared by the Member Secretary for its placement before the Committee appears to have not been prepared. The Rules postulate that each and every application must be examined carefully. Mere fact that a large number of

applications have been filed, as a result whereof the State had been able to obtain crores and crores of rupees by itself did not entitle the State to dispense with the statutory requirements. The application fees were not meant to be utilized for the purpose of earning revenue but to meet the administrative charges required therefore. Application fees cannot be equated with tax.

Undoubtedly, the state has the exclusive privilege to deal in liquor but it has also to be borne in mind that it has a constitutional and legal duty to safeguard the public interest and public health. The conditions for grant of licence as laid down in the statute are required to be observed only with a view to sub serve the constitutional goal and not to subvert the same.

An affidavit required to be filed in whatever format it may be must disclose all the informations required under the law which would enable the statutory authorities to verify the same. Licences to deal in liquor cannot be granted on mere asking by a person and only because he is in a position to fulfil the requirements as regard deposit of licence fee and other charges. Undoubtedly, the State is entitled to raise its revenue but it is also obligated to fulfil its constitutional and statutory duties.

PRECEDENTS RELIED UPON ON BEHALF OF THE APPELLANTS :

In the *Nandlal Jaiswal* (supra), whereupon Mr. Desai placed strong reliance, this Court was concerned with grant of licences for running distilleries. Therein, this Court observed that the legislature should be allowed some play in the joints because it has to deal with complex problems but it did not say that a statutory authority while exercising its statutory functions may do away with or dilute the statutory mandates.

In *G.J. Fernandez* (supra), again this Court was interpreting the conditions of NIT and not the statutory rules. It is only in the fact situation obtaining therein it was observed that the way in which the tender documents issued by it had been understood and implemented by the KPC had been explained in its 'note', which sets out the general procedure which the KPC was following in regard to NITs issued by it from time to time. The said decision has no application in a case requiring compliance of statutory requirements.

In *Dr. Mahachandra Prasad Singh* (supra), this Court was concerned with interpretation of an election of the Bihar Legislative Council Members (Disqualification on Ground of Defection) Rules, 1994. While considering the submission that an affidavit which is required to be filed in terms of sub- rule (6) of Rule 6 of the Rules, the Court held that the provisions thereof are not so mandatory in nature that even a slight infraction of the Rules would render the entire proceedings initiated by the Chairman invalid or without jurisdiction. It was in that sense the provisions were held to be directory in nature. We may notice that in terms

of the Civil Procedure (Amendment) Act, 2002, a plaint must be verified by an affidavit, which is mandatory in nature.

In Nain Sukh Das (supra) this Court was concerned with a case where the election of the municipal member was sought to be set aside on the ground of alleged violation of Article 15(1) of the Constitution. In that case it was held that the petitioners therein never asserted their rights by taking appropriate proceedings to get the bar under Article 15(1) removed and in that situation, this the Court did not exercise its jurisdiction under Article 32 of the Constitution stating:

" It may be, as we have already remarked, that the petitioners could claim such relief as rate-payers of the Municipality in appropriately framed proceedings, but there is not question of enforcing petitioners' fundamental right under article 15(1) or article 14 in such claim. There is still less ground for seeking relief on that basis against respondent 3 who is only a nominated member "

The said decision has no application in the instant case.

In K.N. Guruswamy (supra), the appellant therein sought to enforce his right in obtaining a contract to which he was entitled to but no relief was granted as the excise year had already expired. Issuance of such a writ was found to be resulting in futility. Such is not the case herein.

In Rajendra Singh (supra), this Court held that the jurisdiction of the High Court under Article 226 is not intended to facilitate avoidance of obligations voluntarily incurred, though the licensees are not precluded from seeking to enforce the statutory provisions governing the contract.

The writ petitioners herein filed a writ at a pre-selection stage and furthermore have not sought for enforcement of the contract.

In Balco Employees' Union (supra), this Court was concerned with an economic policy of the State which is not the case herein.

Furthermore, it is now beyond any cavil that economic policies of the State although ordinarily would not be interfered with, but the same is not beyond the pale of judicial review. [See Cellular Operators Association of India and Others vs. Union of India & Others (2003) 3 SCC 186] It is also not a case where no relief can be granted to the writ petitioners, as was done in the case of K.N. Guruswamy (supra), having regard to the fact situation obtaining therein.

SHOULD WE ISSUE GUIDELINES :

Before parting, we make it clear that in these appeals we did not go into the larger question raised by Dr. Dhawan that the State must insist for a solvency certificate keeping in view the similar provisions contained in the statutes enacted by the other States, nor this Court, as at present advised, is inclined to issue the requisite

guidelines therefor.

There cannot, however, be any doubt or dispute that having regard to the several decisions of this Court, e.g. *The State of Bombay vs. R.M.D. Chamarbaugwala* [(1957) SCR 874], *M/s Fatehchand Himmatlal and Others etc. vs. State of Maharashtra etc.* [(1977) 2 SCC 670], *Khoday Distilleries Ltd. and Others vs. State of Karnataka and Others* [(1995) 1 SCC 574], *B.R. Enterprises etc. vs. State of U.P. and Others etc.* [(1999) 9 SCC 700], *State of A.P. and Others vs. McDowell & Company and Others* [(1996) 3 SCC 709], *State of Punjab and Another vs. Devans Modern Breweries Ltd. and Another* [(2004) 11 SCC 26], trade in liquor is considered to be *res extra commercium* although tobacco produce has not been declared so. [See *Godawat Pan Masala Products I.P. Ltd. and Another vs. Union of India and Others* [(2004) 7 SCC 68]. The State while exercising its power of parting with its exclusive privilege to deal in liquor has a positive obligation that any activity therein strictly conforms to the public interest and ensures public health, welfare and safety. Strict adherence to the requirement to comply with the statutory provisions must be considered from that angle.

CONCLUSION :

The question, however, which now falls for consideration is as to what order should be passed in the peculiar facts and circumstances of this case.

In this case the mode of selection is in question. All the parties participated in the selection process. Some of them became successful. They had not complied with the statutory requirements not because they were not willing to do so but because the statutory authorities were not correctly advised. The conduct of the statutory authorities although must be deprecated but that by itself, in our opinion, may not come in the way of the successful candidates in getting the just relief.

Keeping in view the peculiar facts and circumstances of this case, we intend to issue the following directions :

- i) The Member Secretary shall scrutinize all the applications of the successful candidates afresh and prepare a summary report within one week from date.
- ii) Irrespective of the format prescribed by the Commissioner of Excise, each of the selected candidates must file an appropriate affidavit, which would be in strict compliance of the requirement of Rule 9.
- iii) Such affidavits must be filed before the respective committees within one week from date, the contents whereof would be verified in terms of Order 6 Rule 15 of the Civil Procedure Code. The said affidavits shall be scrutinized by the Committee so as to enable them to arrive at a finding as to whether the applicants fulfil the eligibility

criteria and are otherwise suitable for grant of licence under the Act and the rules.

iv) The writ petitioners or any other person in the locality may file appropriate applications before the said Committee with a view to show that the selected candidates do not fulfill the eligibility criteria or are debarred or are otherwise unsuitable from obtaining a licence under the Act.

v) Such objections may also be filed within two weeks from date. The Committee may consider the said objections and, if necessary, may call for further or better particulars from the selected candidates so as to satisfy themselves about their eligibility etc.

vi) The respective District Level Committees shall strictly verify and scrutinize the affidavits as also other documents furnished by the said applicants so as to arrive at a decision that the statutory requirements have been complied with upon application of their mind.

vii) The members of the Committee are made personally liable to see that all statutory requirements are complied with. They would strictly apply the statutory provisions as regard eligibility and suitability of the candidates.

viii) The aforementioned exercise by the Committee should be completed within one month. In the event, any affidavit filed by a selected candidate either pursuant to this order or filed earlier in the format prescribed by the Commissioner of Excise is found to be incorrect, strict action in accordance with law shall be taken against him

ix) The Superintendent of Police of each district within whose jurisdiction the selected candidates ordinarily reside shall verify the antecedents and other relevant particulars of the selected candidates vis-à-vis their eligibility/suitability to obtain a licence and submit a report to the Committee by 12.6.2005 which would be strictly in terms of sub-rule (3) of Rule 9. While issuing such a certificate in favour of the selected candidates by 12.6.2005, he shall also file a copy of the report before the Committee.

x) We direct the Chief Secretary of the State and Commissioner of Excise to act strictly in accordance with law and oversee the functioning of the Scrutiny Committees.

xi) If the State and the Commissioner of Excise come across misconduct on the part of any of the officers including the members of the Committee, strict action must be taken against the concerned officer.

xii) The selected candidates in the meanwhile may carry on the trade in liquor pursuant to the licence granted in their favour but the same shall be subject to this

order as also the decision of the Scrutiny Committee.

The Writ Petitioners and the Respondents shall be at liberty to mention before the High Court for appropriate order(s).

These appeals are disposed of on the aforementioned terms. No costs.