

Supreme Court of India

Madras City Wine Merchants' ... vs State Of Tamil Nadu And Anr on 27 July, 1994

Bench: S. Mohan, M.K. Mukherjee

CASE NO. :

Appeal (civil) 4981 of 1994

PETITIONER:

MADRAS CITY WINE MERCHANTS' ASSON. AND ANR.

RESPONDENT:

STATE OF TAMIL NADU AND ANR.

DATE OF JUDGMENT: 27/07/1994

BENCH:

S. MOHAN & M.K. MUKHERJEE

JUDGMENT:

JUDGMENT 1994 SUPPL. (2) SCR The Judgment of the Court was delivered by MOHAN, J. Leave granted.

The first appellant in C.A. No. 4981 of 1994 arising out of SLP(C) No. 9854 of 1993 is an Association registered under the Societies Registration Act. The members of the association have been granted licences to carry on business in the retail vending of India made foreign spirits (hereinafter referred to as 'I.M.F.S.').

The second appellant is a licensee of I.M.F.S. Shop No. 336 at No. 7, Thyagaraja Road, Madras - 17 for the year 1992-93.

The respondent, the Government of Tamil Nadu framed the Tamil Nadu Liquor (Licence and Permit) Rules 1981. Under these rules, Indian made foreign spirit and foreign liquor was to be sold only by persons who are granted licence for personal consumption. In the year 1989, the Government of Tamil Nadu decided to grant the privilege of selling by retail of I.M.F.S. and Beer through auction/tender system, Accordingly, the Government framed Tamil Nadu Liquor (Retail Vending) Rules 1989 by G.O. Ms. N, 506 Home (Prohibition) dated 15.4.1989. In the auction, the successful bidder was granted the licence to carry on the business of vending I.M.F.S. in retail in their respective shops. The licence was valid for a period of one year. Under the said Rules, it was provided for a renewal of the licence for two successive years on the licensee offering to pay 15% and 10% respectively more than the privilege amount at which the sale was confirmed in his favour during the previous years. Rule 13 contained all these clauses. Under Rule 14(3), a provision was made that it was open to the Licensing Authority to refuse the renewal by an order recording the reasons for refusal. However, before such refusal, the Licensing Authority was obligated to give a reasonable opportunity to the licensee of being heard.

The successful bidders obtained licences for the year 1989-90 and carried on the business. Most of them obtained renewal for the subsequent excise year 1991-92.

The Government issued orders in G.O. Ms. No. 90 Prohibition dated 21.4.1992 to the effect that fresh auction may be conducted for all the liquor retail vending shops whose licence period expires on or before 31.5.1992 as well as those licence period expires on or after 31.5.1992 by restricting the period of licence to 31.5.1992 and refunding the proportionate portion of the privilege amount. This course was adopted in order to facilitate the Government to evolve fresh scheme of upset price for auctioning of the liquor retail vending shops in the State.

The Notification also provided that the licence to be issued for the year 1992-93 shall be renewed for the second and third years after collecting increased privilege fees. The prescription relating to increased fees was provided under Rule 14(1) and (2) of the 1989 Rules made under the Tamil Nadu Prohibition Act, 1937, An ordinance was passed terminating the validity of licences which enured beyond 31st May, 1992 with the expiry of the said period. Subsequently, Tamil Nadu Act 42 of 1992 came into force with from 12.5.92. By this Act Section 23(b) of the Tamil Nadu Prohibition Act, 1937 was substituted. In accordance with G.O.Ms. No. 90, Prohibition, dated 21.4.92, auctions came to be conducted. The successful bidders were issued the licences. At that stage. the Government received representations from these dealers for the establishment of a bar within or adjoining licence premises. The Government forwarded these representations to the Commissioner of Prohibition and Excise and obtained necessary recommendations. Thereafter the Government framed Rules by G.O.Ms. No. 99, Prohibition. dated 26th May, 1992 known as Tamil Nadu Liquor (Retail Vending in Bar) Rules, 1992. Those Rules permitted to open a Bar within or adjoining licence premises. These Rules came into force on 1st June, 1992. Rule 3 provides for grant of privilege by issue of license to a person holding a licence granted under Rule 13 of the 1989 Rules for retail vending of liquor in the Bar. The Rules stated retail vending of liquor in open bottles, glasses or pegs for consumption in the Bar, Rule 4 required every person holding a licence granted under Rule 13 of 1989 Rules and who intends to obtain the privilege of retail vending of liquor in the Bar shall make an application in the prescribed form to the Licensing Authority for the grant of privilege and issue of licence for retail vending or liquor in the Bar. Every licensee of retail I.M.F.S. shop was entitled to apply for and obtain a Bar licence on payment of a licence fee and the privilege amount ranging from Rs. 18,750 to Rs. 75,000 depend-ing upon the area in which the shop was located.

The case of the appellant is, in order to obtain the privilege of vending I.M.F.S. in retail for the excise year 1992-93, the members of the first appellant Association increased their offer. This huge offer was to enable them to have a bar attached and thereby increased the volume of sale of liquor. On obtaining licences under retail vending rules, the members of the Appellant association spent considerable sums of money for acquiring the adjoining premises to locate the Bar in accordance with the Bar Rules, They were carrying on business in accordance with the rules with the fond hope of making good the investment and also earn a profit during the period to come.

It appears that the Government received various complaints. The drinking in the Bars led to law and order problem. Therefore, by impugned G.O. Ms. No. 44, Prohibition and Excise dated 3.3.1993, the Tamil Nadu Liquor (Retail Vending in Bar) Rules 1992 were rescinded with effect from 1.6.1993. The said G.O. was challenged before the High Court of Madras in W.P.'No. 7776/93. The writ petition was dismissed on the ground that the Court could not interfere with the policy decisions taken by the State, Aggrieved by the same, Writ Appeal No. 658/93 was preferred. By the impugned

judgment dated 13.6.1993, the writ appeal was dismissed holding that the policy of the Government is one step marching towards the total prohibition. The appellants could not base their case on legitimate expectation, nor was their any violation of Article 14 of the Constitution. Thus. the present civil appeals.

Ramanathapuram District Liquor Retail Sellers' Association has preferred Writ Petition (Civil) No. 648 of 1993 under Article 32 of the Constitution of India, challenging G.O. Ms. No. 44 dated 3.3.1993.

Mr. K. Parasaran, learned senior counsel, appearing for the appellants in Civil Appeal No. 4981 of 1994 arising out of SLP(C) No. 9854 of 1993 submits that change of policy must pass muster of Article 14 of the Constitution of India. When the State Government has permitted the sale of liquor, the change of policy can be tested on the touchstone of Article 14 of the Constitution of India. In 5.C. Advocates-on-Record Association v. Union of India, [1993] 4 SCC 441 at page 703, this Court has taken the view that due consideration of every legitimate expectation in the decision- making process is a requirement of the rule of non-arbitrariness. Again, in Kumari Shrilekha Vidyarthi v. State of U.P, [1990] Supp. 1 SCR 625 at 650 this Court has taken the view, a change in policy should not be done arbitrarily.

In support of this submission, reliance is placed on Halsbury's Law of England Vol. 1(1) Fourth Edition, Para 81 at page 151.

In this background of law, the facts require to be analysed.

By G.O. Ms. No 90, Prohibition and excise dated 21.4.92 retail selling of liquor was permitted. Such licence holders were entitled to renewal as well On their representations the bars came to be permitted. Thereafter G.O.Ms. No, 99 dated 26.5.92 came to be passed enabling these licence holders to open Bars, It is noteworthy that under both the sets of Rules a provision is made for renewal. It was in the hope that Bar licence will be renewed for the subsequent years as well, each licensee spent huge amounts in opening the Bars. In such a case, the plea of legitimate expectation certainly will come to the rescue of the appellants. No doubt, the State can change its policy but it cannot be done arbitrarily as held in the above cases. Raising a hope in the retail vendors that they would be allowed to carry on vending in .Bars, renewal being a matter of course, suddenly to deny that privilege is arbitrary.

A privilege once accrued cannot be taken away. This is a clear implication of Section 8(3) of the Tamil Nadu General Clauses Act, More so, in a case like this where the Rules are prospective in nature such a legitimate expectation cannot be denied. Section 4 of the Tamil Nadu General clauses Act does not, in any way, militate against the operation of Section 8. If retail vending of liquor is permitted there cannot be anything wrong in selling the same liquor in the Bar.

Lastly, the learned counsel cites R. Vijaykumar v. The Commissioner of Excise, JT (1993) 6 S.C.325 and submits that even in policy matters Article 14 of the Constitution will apply.

Mr. R.K. Garg, learned counsel, appearing for the appellants in C.A. No. 4982 of 1994 arising out of SLP(C) No. 9957 of 1993 submits as follows:

The Prohibition Act provides for complete prohibition. However, the Government has reserved to itself the power to grant exemption in order to augment financial resources. The Government of Tamil Nadu in the year 1992-93 decided as a policy to provide for Bar licence attached to the retail shops in order to augment revenue on auctions of retail shops. This change in policy was notified before the auction for the year 1992-93 stating only retail vendors will be eligible for Bar licences. Out of the successful retail shop vendors 300 and odd applied and secured Bar licence in accordance with the definite condition of auction held in 1992-93 that licence for Bar attached to the shop will be granted after application was received and the prescribed fee was paid. The State of Tamil Nadu has, by this integrated new policy, escalated the bid amounts, in addition earned Bar Licence fees. Thus, it is submitted that the Rules relating to retail vending of IMFL and the Rules for sale of liquor in Bars attached to the shop formed a single integrated scheme. Such a trade was to go on for a period of 3 years with automatic yearly renewal on terms specified without fresh auction. The Government cannot destroy the integrated character of trade. This arbitrary action has resulted in unjust enrichment on the part of the Government and breach of faith bordering on fraud. No demonstrable basis was disclosed for such an action.

The Government illegally and arbitrarily delinked the retail sale from sale in the Bars. Such an integrated policy could not be so changed as to impose unjust back-breaking burdens on the retail vendors. This amounts to destruction of fairplay. It is also violative of Article 14 of the Constitution of India.

The impugned Notification dated 3rd of March, 1993 has to be tested on the following grounds :

1. Whether the Bar Rules could be rescinded arbitrarily?
2. Whether both the sets of Rules form integrated policy?
3. The State having made the retail vending licences part with huge amount in the hope they could have Bars if not bound to honour its commitment.

A change in policy affects not merely legitimate expectations but also credibility of State to act fairly and reasonably.

The impugned Notification is also arbitrary because no examination was undertaken warranting change of policy. No committee was appointed. No report was received before the impugned Notification was issued the State has proceeded on unfounded apprehensions relating to law and order.

It is violative of Article 14 of the Constitution because -

- (i) It is destructive of the principles of natural justice ;

(ii) it is not based on relevant considerations and fair determination of changed circumstances justifying prejudice and injury to the lawful interest of the retail vendors;

(iii) No damage to public policy is established requiring all Bars had to be closed.

In support of the above submissions Mr. R.K. Garg, learned counsel, cites *State of M.P. v. Nandlal Jaiswal*, [1986] 4 SCC 566. On the strength of this ruling it is submitted that an integrated policy cannot be broken.

On the question of legitimate expectation reliance is placed on *Council of Civil Service Unions v. Minister for the Civil Service*, (1984) 3 All ER 935, Mr. G.L. Sanghi, learned counsel, appearing for the State of Tamil Nadu traces the history relating to prohibition in Tamil Nadu. On 16th of July, 1991, the present Government, as a first step towards implementation of total prohibition policy in the State, brought complete prohibition in relation to manufacturing and trading of country liquor. This was done because the State took note of the serious social evil uprooting the family life of very many poor people in the State. Thereafter G.O.Ms. 90 dated 21.4.92 was passed enabling auction of liquor retail vending shops. At that point of time retail vending shops were not allowed to have Bar attached to the licence shops. They were to sell the liquor only in bottles. In the earlier year the total number of retail vending shops was 3, 049 whereas in the year 1992-93 the number of shops increased to 4, 216. There was also an increase in the revenue from 32 crores to 98 crores. This increase was due to the commercial expectation of the bidders and the heavy competition among them.

The Government also thought it fit that such shop owners who have licence might be allowed to have Bars attached to the shops. It was in this view the Bar licence was granted to those persons who held the licence for shops under Tamil Nadu (Liquor Retail Vending) Rules, 1989. The Government received various representations that such running of Bars attached to retail vending shops had become nuisance to the public particularly to the woman folk. Therefore, the Governor of Tamil Nadu in his speech made in the Legislative Assembly on 4.2.93 announced the policy decision of the Government to abolish Bars. It was under these circumstances, G.O.Ms. No. 44 dated 3.3.93 came to be passed discontinuing both the grant and renewal of Bar licences. This G.O. was unsuccessfully challenged before the High Court. It is submitted that only under the authority of rules the vendor was empowered to sell liquor. There are two different sets of Rules one of the year 1988 dealing with the retail vending of IMFS; 1992 Rules dealing with Bar licences. There is no question of these two different sets of Rules becoming an integrated scheme. That being so, the principle of *Nandlal's case* (supra) cannot apply. In the case of a statutory rule, no question of arbitrariness would arise. It is always open to State to change its policy. If the contention of the appellants is accepted it would amount to fettering the State from repealing a law. This Court in *Ghaziabad Development Authority v. Delhi Auto & General Financial Pvt. Ltd.*, JT (1994) 3 S.C. 275 has clearly pointed out the inapplicability of the doctrine of legitimate expectation. The same is the position here.

As regards the principle that the Government cannot claim any immunity from the doctrine of promissory estoppel and there is no obligation to act fairly and justly, reliance is placed on *Vasantkumar Radhakishan Vohra v. Board of Trustees of the port of Bombay*, [1991J 1 SCC 761.

The next submission of the learned counsel is, legislative action whether plenary or subordinate is not subject to natural justice. It has been so laid down in *Union of India v. Cyhnamide India Ltd.*, AIR (1987) SC 1802. To the same effect in *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*, [1985] 2 SCR 287 at page 347. The principle that subordinate legislation cannot be questioned on the ground of violation of the principle of natural justice, has been reiterated. In the case of liquor vending licences one can expect to have renewal on payment of 15 per cent or 10 per cent, as the case may be. But in a Bar licence there is no possibility of renewal of the privilege because Rule 6(l){c) States ; "A privilege .amount as may be fixed by the Government in this behalf." If, therefore, it is a privilege no question of right to renewal arises. Lastly, it is submitted that no representation was made. Therefore, the question of promisory estoppel cannot arise.

Mr. V.R. Reddy, learned Additional Solicitor General, submits that there is no scope in this case for contending that the principle of legitimate expectation would arise. *Union of India v. Hindustan Development Corpora- tion*. [1993] 3 SCC 499 is an authority for the proposition that this principle applies only to administrative decisions. When the State completely prohibited the manufacture and sale of country liquor it brought a windfall to those selling IMFS. This accounts for the increase in the excise revenue.

Supporting the argument of Mr. G.L. Sanghi that the principle of natural justice is not applicable to legislative acts *H.S.S.K. Niyami v. Union of India*, AIR (1990) SC 2128 is cited.

With regard to the applicability of Section 8 of the Tamil Nadu General Clauses Act it is submitted that the repeal shall not affect the previous operation of the repealed law, has no application to the present case. The citation in this behalf is *Indira Sohanlal v. Custodian of Evacuee Property, Delhi*, [1955] 2 SCR 1117.

Before we go into the questions of law arising in this case, we will briefly trace the legislative history leading to the impugned order.

Thanks to the courage and wisdom of Mr. C. Rajagopalachari (Rajaji), prohibition came to be introduced in his own native District of Salem in the year 1937 by enacting Madras (later Tamil Nadu) Prohibition Act of 1937. By stages it was extended throughout the State in 1948. So much so the Gandhian ideal of the abolition of evil of drinking was realised. To recall the father of the Nation Mahatma Gandhi:

"Nothing but ruin stares a nation in the face that is prey to the drink habit."

In this Act two important Sections for our purposes are sections 54 and 55. They are quoted in full :

"54. Power to make Rules, (1) The State Government may make rules for the purpose of carrying into effect the provisions of this Act.

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

(a) for the issue of licences and permits and the enforcement of the conditions thereof :

(aa)prescribing the penalty for wastage or shortage of spirits in excess of the prescribed limits at such rate not exceeding twice the normal rate of excise duty or fee that would be payable on the quantity of the spirits lost in excess of the prescribed limits;

NOTES : Clause (aa) inserted by Act 68 of 1986

(b) prescribing the powers to be exercised and the duties to be performed by paid and honorary Prohibition Officers in furtherance of the objects of the Act;

(bb) prescribing the ways in which the duty under section 18-A may be levied;

NOTES Clause (bb) inserted by Act 19 of 1948

(c) Determining the local jurisdiction of police and Prohibition Officers in regard to inquiries and the exercise of preventive and investigating powers;

(d) authorizing any officer or person to exercise any power or perform any duty under this Act;

(e) prescribing the powers and duties of prohibition committees and the members thereof and the intervals at which the members of such committees shall make their reports ;

(f) regulating the delegation by the Commissioner or by collectors or other district officers of any powers conferred on them by or under this Act;

(g) regulating the cultivation of the hemp plant, the collection of those portions of such plant from which intoxicating drugs can be manufactured and the manufacture of such drugs therefrom;

(h) declaring how denatured spirit shall be manufactured;

(i) declaring in what cases of" classes of cases and to what authorities appeals shall lie from orders, whether original or appellate, passed under this Act or under any rule made thereunder, or by what authorities such orders may be revised, and prescribing the time and manner of presenting appeals, and the procedure for dealing therewith;

(i) for the grant of batta to witnesses, and of compensation for loss of time to persons released under sub- section (3) of section 38 on the ground that they have been improperly arrested, and to persons charged before a Magistrate with offences under this Act and acquitted;

(k) regulating the power of Police and Prohibition Officers to summon witnesses from a distance under section 42;

(l) for the disposal of articles confiscated and of the proceeds thereof;

(m) for the prevention of the use of medicinal or toilet preparations for any purpose other than medicinal or toilet purposes and for the regulation of the use of any liquor or drug exempted from all or any of the provisions of this Act :

(n) for the proper collection of duty on all kinds of liquor or drugs;

(nn) for exemption from, or suspension of the operation of any rule made under this Act;

(o) for all matters expressly required or allowed by this Act to be prescribed.

NOTES : Clauses (m) (n) (o) inserted by Act 8 of 1958 and clause (nn) added by Act 1 of 1975 with effect from 1.9.1974.

(2-A) A rule or notification under this Act may be made or issued so as to have retrospective effect on and from a date not earlier than, -

(i) the 1st of September, 1973, in so far as it relates toddy; and

(ii) the 1st of September, 1974, in so far as it relates to any liquor other than toddy.

NOTES ; Sub-section 2-A inserted by Act 1 of 1975,

(iii) the 1st May, 1981, in so far as it relates to the matters dealt with in sections 17-B, 17-C, 17-D, 17-E, 18-B and 18-C.

NOTES : Item (iii) added by Act 51 of 1981 Provided that a notification issued under sub- section (1) of section 16 may have retrospective effect from date not earlier than 1st November 1972 :

Provided further that the retrospective operation of any rule made or notification issued under this Act shall not render any person guilty of any offence in regard to the contravention of such rule or the breach of any of the conditions subject to which the exemption is notified in such notification when such contravention or breach occurred before the date on which the rule or notification is published, as the case may be.

NOTES : The proviso's inserted by Act 68 of 1986 (3) All rules made under this Act shall, as soon as possible after they are made, be placed on the table of both the Houses of the Legislature shall be subject to such modifications by way of amendments or repeal as the Legislative Assembly may make within fourteen days on which the House actually sits either in the same session or in more than one session.

NOTES : Sub-section 3 added by Act 8 of 1958."

"55, Publication of Rules and Notifications, All rules made and notifications issued under this Act shall be published in the Official Gazette and upon such publication, shall have effect as it enacted in



this Act." (Emphasis supplied) The operation of the Prohibition Act was temporarily suspended in August 1971. However, prohibition was re-introduced in August 1972 by abolition of toddy shops and in September 1974 by abolition of arrack shops. Even while the prohibition was enforced the sale of IMFS continued in licenced shops to permit holders.

In May 1981, once again sale of toddy and arrack was permitted. The manufacture of IMFS was also permitted. Concerning the sale of IMFS the Tamil Nadu Liquor (Licence and Permit) Rules, 1981 were framed. In the year 1989 the Tamil Nadu Liquor (Retail Vending) Rules, 1989 (For short, Retail Vending Rules) were framed by which the 1981 Rules were repealed in so far as they related to the retail vending of IMFS and Beer. Rule 3 of these Rules states the privilege of selling liquor in licence shops would be available to persons by auction. The privilege amount was determined in that auction. The State was enabled under Rule 4(1) to fix the maximum number of shops to be established in the State.

Prior to the auction, notice of auction in Form No.1 has to be published in Tamil and English dailies. As per Rule any person intending to participate in the auction has to deposit an earnest money of Rs. 10,00 in an area falling within the limits of the Municipal Corporation or Municipality; a sum of Rs. 7,500 in other areas. Rule 8 requires offer by tender in sealed cover as prescribed in form IV. After the confirmation of sale of privilege the auction purchaser has to make an application in form VI for the grant of licence. The Licensing Authority after verifying various factors, as may be necessary for satisfying itself, as to the suitability of the auction purchaser, grants a licence within three days of the order of confirmation of sale. The licence so granted shall remain valid for a period of one year ending with 31st May of succeeding year.

From the above procedure the following is clear :

1. Even if one happens to be the successful bidder in the auction, it does not automatically entitle him to a licence.
2. The licensee once granted is valid for only one year ending with 31st of May of succeeding year. In this regard Rule 14 of the Retail Vending Rules is relevant which is extracted below :

"Renewal of licence -

(1) If a licence intends to renew the licence for the second year he shall apply at least 30 days before the date of expiry of the licence for renewal in Form VIII after remitting -

(i) an application fee of Rs. 100 (Rupees One hundred only):

(ii) the licence fee of Rs. 2,500 (Rupees two thousand and five hundred only); and

(iii) the privilege amount determined at fifteen percent centum more than the privilege amount at which the sale of the privilege was confirmed in the previous year.

(2) If a licensee intends to renew the licence for the third year, he shall apply at least 30 days before the date of expiry of the licence for renewal in Form VII after remitting -

(i) an application fee of Rs. 100 (Rupees one hundred only);

(ii) the licence fee of Rs. 2,500 (Rupees two thousand and five hundred only) and

(iii) the privilege amount determined at ten percent centum more than the privilege amount at which the sale of the privilege was confirmed in the previous year.

Proviso omitted, (3) If the licensing authority decides not to renew the licence, he may refuse renewal by an order recording the reasons for refusal: (Emphasis supplied) Provided that the licensing authority shall give a reasonable opportunity of being heard to the licensee before such refusal.

(4) If a licence is not renewed, the licence fee remitted by the licensee shall be refunded to him,"

What is important to be noted here is, under Rule 14(3) of the said Rules the Licensing Authority is empowered either to renew or not to renew the licence. Therefore, there is no automatic renewal. These Rules were approved on 15.4.89 by G.O. Ms. 506, Home, Prohibition and Excise dated 15th April, 1989.

The present Government assumed office in June 1991. On 16th July, 1991 complete prohibition of manufacture and trade in country liquor was imposed. Undoubtedly, this was a step in furtherance of Article 47 of the Constitution of India. On 21. 4.92, by G.O. Ms. 90 the Government ordered the auction of retail vending shops throughout the State. The sale of liquor was to be in bottles. At this stage, no Bar was allowed to be attached to the licence shop of retail vending. For the excise year 1992-93 the number of shops increased and the excise revenue also correspondingly increased. As rightly urged by learned Additional Solicitor General this increase was due to the total prohibition of country liquor, namely, toddy and arrack. The retailers made a representation that they could be allowed to have Bar attached to the shops. It was in these circumstances, G.O. Ms. No.99, Prohibition and Excise Department dated 26th May, 1992 came to be passed. It must be made clear at this stage that these Rules called Tamil Nadu Liquor (Retail Vending in Bar) Rules, 1992 deal only with the Bar regulating the issue of licence and the privilege of retail vending of liquor in the Bar. The Rules came into force on 1st June, 1992. Under rule 4(a) it is only a person holding a licence granted under Rules 13 of Retail Vending Rules, 1989 who can make an application for the grant of privilege and issue of licence for retail vending of liquor in the Bar.

The privilege amount varied from place to place from Rs. 18, 750 to Rs. 75,000.

The period of licence was co-terminus with the period of licence issued for vending liquor. Rule 6 dealing with renewal of licence is important. Clauses 1, 2 and 4 of Rule 6 are quoted hereunder :

"6. Renewal of licence :

1. If the licensee intends to renew the licence for the second term he shall apply not later than thirty days before the date of expiry of the licence issued under rule 4 inform III together with the following amount :

a. an application for Rs, 100 (Rupees One hundred only);

b. a licence fee of Rs. 500 (Rupees Five hundred only) c. A privilege amount as may be fixed by the State Government in the behalf.

2. If the licensee intends to renew the licence for the third term, he shall apply not later than thirty days before the date of expiry of the licence renewed, in Form III.....

3. The licensing authority may refuse the renewal of a licence by an order in writing for reasons to be recorded therein;

Provided that the licensing authority shall give a reasonable opportunity of being heard to the licensee before such refusal."

It has to be carefully noticed that under Rule 6(1)(c) the privilege amount may be fixed by the State Government in that behalf. Further there is power to refuse renewal; of course, for valid reasons subject to right of appeal and revision under Rules 16 and 17. On 4th February, 1993 the Governor of Tamil Nadu made the following address:

"Prohibition as a key issue of State Policy is a Constitutional directive. Honourable Members of the House are aware that the Government, under the leadership of the Chief Minister Dr, J. Jayalalitha, implemented as its first decision the abolition of cheap liquor shops throughout the State, in keeping with its announced policy of prohibition, although this involved an annual loss of revenue of Rs. 390 crores. The drive against bootlegging and illicit liquor was intensified with the formation of the Prohibition Enforcement Wing. The Chief Minister's drive against erring officials resulted in a noticeable reduction in the incidence of illicit liquor. A massive multi-media propaganda offensive against the evils of liquor has also been launched. We have decided to give a decisive edge to the offensive against illicit liquor by strengthening further the Prohibition Enforcement Wing at a cost of Rs, 7 crores. With one enforcement unit in each Police sub division, the Enforcement Wing will act effectively against the anti-social elements engaged in the illicit liquor trade. This Government places the highest emphasis on the welfare of the people, revenue considerations yielding place to consideration of maximum social good. Members of the House will wholeheartedly welcome the decision of the Government to withdraw the licences for bars attached to foreign spirit shops with effect from the excise year commencing from June, 1993."

Pursuant to this, the impugned G.O.Ms, 44, Prohibition and Excise Department came to be passed on 3rd March, 1993. That reads as under:

"Prohibition and Excise (vi) Department

G.O.Ms. No.44

Dated : 3.3.1993

Read; -

G.O. Ms, No. 99, Prohibition Excise,

dated 26.5.1992

ORDER

The Government have decided to discontinue the grant-ing/renewal of licences for bars attached to the Indian Made Liquor retail vending shops under the Tamil Nadu Liquor (Retail Vending in Bar) Rules, 1992 with effect from the excise year commencing from the 1st June, 1993.

2. The following Notification will be published in the Tamil Nadu Government Gazette.

Notification In exercise of (he powers conferred by Sections 1.7-C, 17-D, 21 and 54 of the Tamil Nadu Prohibition Act. 1937 (Tamil Nadu Act X of 1937), The Governor of Tamil Nadu hereby rescinds the Tamil Nadu Liquor (Retail Vending in Bar) Rules, 1992, with effect on and from the 1st June, 1993.

(By Order of the Governor) K. Malaisamy, Secretary to Govt."

the effect of the above C.O. is, on and from 1st June, 1993 the Tamil Nadu Liquor (Retail Vending in Bar) Rules, 1992 came to be rescinded. Both the learned Single Judge and the Division Bench of the High Court under the impugned judgment have upheld the validity of G,O. Ms. No. 44 dated 3rd March, 1993. In the light of the above discussion the correctness of the following contentions may be examined :

1. Whether the Tamil Nadu Liquor (Retail Vending) Rules, 1989 (For short Retail Vending Rules) and Tamil Nadu Liquor (Retail Vending in Bar Rules, 1992 (for short Bar Rules ) form an integral scheme?

2, Whether the appellants can claim the benefit of the doctrine of legitimate expectation?

3, Whether under the impugned G.O. by rescinding of the Bar Rules-

(a) The State has not acted fairly;

(b) violation of Article 14, the action being arbitrary?

4. Whether the appellants could claim the benefit of Section 8 of the Tamil Nadu General Clauses Act?

Point No. 1:

In view of what is stated above, it is clear that privilege of retail vending could only be under licence. Such a licence is obtained after a successful bid. The mere success in the bid does not ensure the privilege. Still, as seen above, even after the confirmation of sale the auction purchaser will have to apply in form No. VI to the Licensing Authority for the grant of licence along with the requisite fee. It is only after the Licensing Authority is satisfied as to the suitability of the auction procedure for the grant of licence, such a licence is granted. The period of licence is one year. No doubt, Rule 14 provides for renewal on payment of 15 per cent of the privilege amount for the first renewal and 10 per cent more for the second renewal. Here again, there is an automatic renewal because of the power contained under Rule 14(3) enabling the Licensing Authority to refuse. Thus, the Liquor Vending Rules completely take care of vending providing for each detail.

The Bar Rules under Rule 4(a) lay down a qualification that only a person holding a vending licence could seek a Bar licence. These Rules also talk of renewal of licence under Rule 6. As seen above, such a renewal is not automatic for two reasons :

(1) The privilege amount is to be fixed by the State; and (2) under Rule 6(4) there is a power of refusal.

These are two sets separate Rules. One which deals with retail vending of IMFS the other with the Bar. It is incorrect to contend that both these Rules form an integrated scheme. Merely because for obtaining the Bar licence, one must be a holder of retail vending licence, they cannot become integrated scheme. Each set of Rules take care of different situations. Therefore, we reject the argument of Mr. R.K. Garg that they form integrated scheme. Nandlal's case (supra) has no application since that was a case of an integrated scheme which is not so here.

Point No.2 :

We will briefly deal with the doctrine of legitimate expectation. It is not necessary to refer to large number of cases excepting the following few:

On this doctrine Clive Lewis in 'Judicial Remedies in Public Law at page 97 states thus :

"Decisions affecting legitimate expectation -

In the public law field, individuals may not have strictly enforceable rights but they may have legitimate expectations. Such expectations may stem either from a promise or a representation made by a public body, or from a proviso practice of a public body, The promise of a hearing before a decision is taken may give rise to a legitimate expectation that a hearing will be given. A past practice of consulting before a decision is taken may give rise to an expectation of consultation before any future decision is taken. A promise to confer, or past practice of conferring a substantive benefit, may give rise to an expectation that the individual will be given a hearing before a decision is taken not to confer the benefit. The actual enjoyment of a benefit may create a legitimate expectation that the benefit will not be removed without the individual being given a hearing. On occasions, individuals seek to enforce the promise of expectation itself, by claiming that the

substantive benefit be conferred. Decisions affecting such legitimate expectations are subject to judicial review."

In *Council of Civil Service Unions v. Minister for the Civil Service*, [1984] 3 All ER 935 at pages 943-44 it is stated thus :

"But even where a person claiming some benefit or privilege has no legal right to it, as a matter of private law, he may have a legitimate expectation of receiving the benefit or privilege, and, if so, the courts will protect his expectation by judicial review as a matter of public law. This subject has been fully explained by Lord Diplock in *O'Reilly v. Mackman*, [1982] 3 All ER 1124 = (1983) 2 AC 237 and I need not repeat what he has so recently said. Legitimate, or reasonable, expectation may arise either from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue. Examples of the former type of expectation are *Re Liverpool Taxi Owners' Association* [1972] 2 All ER 589, (1972) 2 QB 299 and *A-G of Hong Kong v. Ng Yuen Shiu*, [1983] 2 All ER 346 = (1983) 2 AC 629. (I agree with Lord Diplock's view, expressed in the speech in this appeal, that 'legitimate' is to be preferred to 'reasonable' in this context, I was responsible for using the word 'reasonable' for the reason explained in *Ng Yuen Shiu*, but it was intended only to be exegetical of 'legitimate.') An example of the latter in *R v. Hull Prison Board of Visitors, ex p. St. Germain*, [1979] 1 All ER 701, [1979] QB 425, approved by this House in *O'Reilly v. Mackman*, [1982] 3 All ER 1124 at 1126 = [1983] 2 AC 237 at

274."

In *Halsbury's Laws of England* Vol. 1(1) Fourth Edition Para 81 at pages 151-52 it is stated thus :

"81 Legitimate expectations. 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.

*O'Reilly v. Mackman*, [1983] 2 AC 237 at 275, HL; *A-G of Hong Kong v. Ng Yuen Shiu*, [1983], 2 AC 629, [1983] 2 All ER 346, PC; *Council of Civil Service Unions v. Minister for the Civil Service*, [1985] AC 374, [1984] 3 All ER 935, H.L. The expectation must plainly be a reasonable one: *A-G of Hong Kong v. Ng Yuen Shiu* supra. It seems that a person's own conduct may deprive any expectations he may have of the necessary quality of legitimacy : *Cinnamond v. British Airports Authority*, [1980] 2 All ER 368, [1980] 1 WLR 582, CA.

The expectation may arise either from a representation or promise made by the authority, *R v. Liverpool Corpn. ex p. Liverpool Taxi Fleet Operator's Association*, [1972] 2 QB 299, [1972] 2 All ER 589, CA; *A-G of Hong Kong v. Ng Yuen Shiu*, [1983] 2 AC 629, [1983] 2 All ER 346, PC; *Council of Civil Service Unions v. Minister for the Civil Service*, [1985] AC 374 = [1984] 3 All ER 935, HL; *R. v. Home Secretary, ex P. Oloniluyi*, [1988] Times, 26 November, CA; *R. v. Brent London Borough Council, ex P. Macdonagh*, [1989] Times, 22 March. Al- though there is an obvious analogy between the doctrines of legitimate expectation and of estoppel, the two are distinct, and detrimental reliance upon the representation is not a necessary ingredient of a legitimate expectation; see *R. v. Secretary*

of State for the Home Department, ex p Khan, [1985] All ER 40 at 48, 52, [1984] 1 WLR 1337 at 1347, 1352, CA; and see para 23 ante. In relation to Inland Revenue extra - statutory concessions and assurances, see R v. A-G, ex p ICI pic, [1986] 60 TC 1; R v. HM Inspector of Taxes, Hull, ex p Bnmfteld, [1988] Times, 25 November; and R v. IRC, ex p MFK Underwriting Agencies Ltd., [1989] Times, 17 July; of Re Preston, [1985] AC 835, [1984] 2 All ER 327, HL.) including an implied representation, [R v. Secretary of State for the Home Department, ex p Khan, [1985] 1 All ER 40, [1984] 1 WLR 1337, CA (setting out criteria for exercise of discretion in guidance letter given to prospective adoptive parents of children requiring entry clearance led to legitimate expectation that clearance would be granted where those criteria were satisfied. See also R v. Powys County Council, ex p Howner [1988] Times, 28 May; and R v. Brent London Borough Council, ex p Macdonagh, [1989] Times 22 March. In R v. Brent London Borough Council, ex p gunning, [1986] 84 LGR 168 the court appears to have relied in part on what were in effect express or implied representations by the Secretary of State (contained in departmental circulars) that there would be consultation, although the duty to consult was being imposed upon the local authority.] or from consistent past practice.

O'Reilly v. Mackman, [1983], 2 AC 237 at 275, [1982] 2 All ER 1124 at 1126-1127, HL; Council of Civil Service Unions v. Minister for the Civil Service, [1985], AC 374, [1984] 3 All ER 935, HL; R v. Brent London Borough Council, ex p Gunning, [1986] 84 LGR 168; R v. Secretary of State for the Home Department, ex p Ruddock, [1987] 2 all ER 1025, [1987] 1 WLR 1482.

It is not clear to what extent a legitimate expectation may arise other than by way of a representation or of past practice; neither factor would seem to have been present in J? v. Secretary, of State for Transport, exp Greater London Council, [1986] OB 556=[1985] 3 All ER 300. See also note 8 infra. However, procedural duties imposed as a result of looking at all the surrounding circumstances will normally be treated as illustrations of the general duty to act fairly in all the circumstances (see para 84 post) rather than of a legitimate expectation; of R. v. Great Yarmouth Borough Council, ex p Botton Bros Arcades Ltd, [1988] 56 p & CR 99 at 109; and see Re Westminster City Council (1986) AC 668 at 692-693, [1986] 2 All ER 278 at 288-289, HL, per Lord Bridge of Harwich, dissenting on another point.

The existence of a legitimate expectation may have a number of different consequences: it may give locus standi to seek leave to apply for judicial review;

(O'Reilly v. Mackman, [1983] 2 AC 237, 275, [1982] 3 All ER 1124-1127; HL; Council of Civil Service Unions v. Minister for the Civil Service, [1985] AC 374 at 408, [1984] 3 AU ER 935 at 949, HL, per Lord Diplock; Re Findlay [1985] AC 318, [1984] 3 AU ER 801 at 830, HL.) It may mean that the authority ought not to act so as to defeat the expectation without some overriding reason of public policy to justify its doing so;

R. v. Liverpool Corpn. ex p Liverpool Taxi Fleet Operators' Association, [1972] 2 OB 299, [1972] 2 All ER 589, CA; R v. Secretary of State for the Home Department. exp Ruddock, [1987] 2 All ER 1025, [1987] 1 WLR 1482, and cf HTV Ltd v. Price Commission, [1976] ICR 170, CA. But where the/expectation arises out of an administrative authority's existing policy, it can only be that the

policy for the time being in existence will be fairly applied, and cannot be invoked to prevent a change of policy fairly carried out: *Re Findlay* [1985] AC 318 at 338, [1984] 3 AU ER 801 at 830, HL; *R v. Secretary of State for the Environment, ex p Barratt (Guildford) Ltd*, [1988] Times 3 April; and see *R v. Secretary of State for the Home Department, ex p Ruddock* supra.

or it may mean that, if the authority proposes to defeat a person's legitimate expectation, it must affirm him an opportunity to make representations on the matter.

*A-G of Hong Kong v. Ng Yien Shiu*, [1983] 2 AC 629 = [1983] 2 All ER 346, PC; *Council of Civil Service Unions v. Minister for the Civil Service*, [1985] AC 374, [1984] 3 All ER 935, HL; *R v. Secretary of State for the Home Department, ex p Khan*, [1985] 1 All ER 40, [1984] 1 WLR 1337, CA, Sometimes the expectation will itself be of consultation or the opportunity to be heard; *R v. Liverpool Corpn., ex p Liverpool Taxi, Fleet Operators' Association*, [1972] 2 QB 299, [1972] 2 All ER 589, CA; *A-G of Hong Kong v. Ng Yien Shiu* supra; *Council of Civil Service Unions, v. Minister for the Civil Service* supra; and see *Ltyod v. McMahon*, [1987] AC 625 at 715 1 All ER 1118 at 1170-1171, HL, per Lord Templeman (legitimate expectation is just a manifestation of the duty to act fairly). But the scope of the doctrine goes beyond the right to be heard; *R v. Secretary of State for the Home Department, ex p Ruddock*, [1987] 2 All ER 1025, [1987] 1 WLR 1482. See also *R. v. Bamet London Borough Council, ex p Pardes House School Ltd*, [1989] Inde-pendent, 4 May; and *R v. Powys County Council, exp Homer*, [1988] Times, 28 May. There is, however, a legitimate expectation of reappointment to a public body: *R v. North East Thames Regional Health Authority, ex p de Groot*, [1988] Times, 16 April.

the courts also distinguish, for example in licensing cases, between original applications, applications to renew and revocations; a party who has been granted a licence may have a legitimate expectation that it will be renewed unless there is some good reason not to do so, and may therefore be entitled to greater procedural protection than a mere applicant for a grant.

*McInnes v. Onslow Fane*, [1978] 3 All ER 211 at 218, (1978) 1 WLR 1520 at 1529; *Schmidt v. Secretary of State for Home Affairs*, (1969) 2 Ch 149, [1968] 3 All ER 795, CA (legitimate expectation of foreign alien that residence permit will not be revoked before expiry but not of renewal); *Breen v. Amalgamated Engineering Union*, (1971) 2 OB 175, [1971] 1 All ER 1148, CA (legitimate expectation that winner of trade union election would be confirmed in his post by relevant committee); *R v. Bamsley Metropolitan Borough Council, ex p Hook*, [1976] 3 All ER 452, [1976] 1 WLR 1052, CA. Where there has previously been no general system of control, an existing trader does not have a legitimate expectation of being granted a licence when such a system is introduced; *R. v. Bristol City Council, ex p Pearce*, [1985] 83 LGR 711.

There cases of this Court may now be seen.

a State of H.P. v, Kailash Chand Mahajan, [1992] Supp. 2 SCC 351 at pages 386-87 in a judgment to which one of us was a party it was stated thus:



"It might be urged by the tenure of appointment there is a right to continue; the legitimate expectation has come to be interfered with. In a matter of this kind, as to whether legitimate expectation could be pleaded is a moot point. However, we will now refer to Wade's Administrative Law (6th edn.) wherein it is stated at pages 520-21, as under:

"Legitimate expectation : positive effect. - The classic situation in which the principles of natural justice apply is where some legal right, liberty or interest is affected, for instance where a building is demolished or an office-holder is dismissed or a trader's licence is revoked. But good administration demands their observance in other situations also, where the citizen may legitimately expect to be treated fairly. As Lord Bridge has explained :

Re Westminster CC, (1986) AC 668 at 692, Lord Diplock made a formal statement in the Council of Civil Service Unions case (below) at 408, saying that the decision must affect some other person either -

(a) by altering rights or obligations of that person which are enforceable by or against him in private law; or (b) by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him more rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.

This analysis is 'classical but certainly not exhaustive' : R v. Secretary of State for the Environment ex. p. Nottinghamshire CC, [1986] AC 240 at 249 (Lord Scarman). One case which does not seem to be covered is that of a first-time applicant for a licence (below, p.559).

The Courts have developed a relatively novel doctrine in public law that a duty of consultation may arise from a legitimate expectation of consultation aroused either by a promise or by an established practice of consultation".

In a recent case, in dealing with legitimate expectation in R v. Ministry of Agriculture, Fisheries and Food, ex pane Jaderow Ltd., [1991] 1 All ER 41, it has been observed at page 68:

"Question II: Legitimate expectation: It should be pointed out in this regard that, under the powers reserved to the member states by Article 5(2) of Regulation 170 of 1983, fishing activities could be made subject to the grant of licences which, by their nature, are subject to temporal limits and to various conditions. Further-more, the introduction of the quota system was only one event amongst others in the evolution of the fishing industry, which is characterised by instability and continuous changes in the situation due to a series of events such as the extensions, in 1976, of fishing areas to 200 miles from certain coasts of the Community, the necessity to adopt measures for the conservation of fishery resources, which was dealt with at the international level by the introduction of total allowable catches, the arguments about the distribution amongst the member states of the total allowable catches available to the Community, which were finally distributed on

the basis of a reference period which ran from 1973 to 1978 but which is reconsidered every year.

In those circumstances, operators in the fishing industry were not justified in taking the view that the Community rules precluded the making of any changes to the conditions laid down by national legislation or practice for the grant of licences to fish against national quotas as the adoption of new conditions compatible with Community law.

Consequently, the answer to this question must be that community law as it now does not preclude legislation or a practice of a member state whereby a new condition not previously stipulated is laid down for the grant of licences to fish against national quotas."

Thus, it will be clear even legitimate expectation cannot preclude legislation," In *Food Corporation of India v. M/S. Kamdhenu Cattle Feed Industries*, JT (1992) 6, 259 at 264 this Court observed thus :

"The mere reasonable or legitimate expectation of a citizen, in such a situation, 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 the 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 matter would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent"

In *Union of India v. Hindustan Development Corporation*, JT (1993) 3 S.C. 15 at pages 50-51 this Court observed thus ;

"It has to be noticed that the concept of legitimate expectation in administrative law has now, undoubtedly, gained sufficient importance. It is stated that "Legitimate expectation" is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action and this creation takes its place beside such principles as the rules of natural justice, unreasonableness, the fiduciary duty of local authorities and "in future", perhaps, the principle of proportionality." A passage in *Administrative Law*, Sixty Edition by H.W.R. Wade page 424 reads thus :

"These are revealing decisions. They show that the courts now expect government departments to honour their published statements or else to treat the citizen with the fullest personal consideration. Unfairness in the form of unreasonableness here comes close to unfairness in the form of violation of natural justice, and the doctrine of legitimate expectation can operate in both contexts. It is obvious, furthermore, that this principle of substantive, as opposed to procedural, fairness may undermine some of the established rules about estoppel and misleading advice, which

tend to operate unfairly. Lord Scarman has stated emphatically that unfairness in the purported exercise of a power can amount to an abuse or excess of power, and this seems likely to develop into an important general doctrine."

Another passage at page 522 in the above book reads thus:

"It was in fact for the purpose of restricting the right to be heard that 'legitimate expectation' was introduced into the law. It made its first appearance in a case where alien students of 'scientology' were refused extension of their entry permits as an act of policy by the Home Secretary, who had announced that no discretionary benefits would be granted to this sect. The Court of Appeal held that they had no legitimate expectation of extension beyond the permitted time, and so no right to a hearing, though revocation of their permits within that time would have been contrary to legitimate expectation. Official statements of policy, therefore, may cancel legitimate expectation, just as they may create it, as seen above. In a different context where car-hire drivers had habitually offended against airport byelaws, with many convictions and unpaid fines, it was held that they had no legitimate expectation of being heard before being banned by the airport authority.

There is some ambiguity in the dicta about legitimate expectation, which may mean either expectation of a fair hearing or expectation of the licence or other benefit which is being sought. But the result is the same in either case; absence of legitimate expectation will absolve the public authority from affording a hearing.

(emphasis supplied)"

Again, at pages 56-57 it is observed thus :

".....A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfill. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectations, in the first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the courts cannot interfere with a decision. In a given case whether there are such facts and cir-cumstances giving rise to a legitimate expectation, it would primarily be a question of fact. If these tests are satisfied and if the court is satisfied that a case of legitimate expectation is made but then the next question would be whether failure to give an opportunity of hearing before the decision affecting such legitimate expectation is taken, has resulted in failure of justice and whether on that ground the decision should be quashed. If that be so then what should be the relief is again a matter which depends on several factors. " (Emphasis supplied) Again at pages 57-58 it is observed thus :

"Legitimate expectations may come in various forms and owe their existence to different land of circumstances and it is not possible to give an exhaustive list in the context of vast and fast

expansion of the governmental activities. They shift and change so fast that the start of our list would be absolute before we reached the middle. By and large they arise in cases of promotions which are in normal course expected, though no guaranteed by way of a statutory right, in cases of contracts, distribution of largess by the Government and in somewhat similar situations. For instance in cases of discretionary grant of licences, permits of the like, carries with it a reasonable expectation, though not a legal right to renewal or non- revocation, but to summarily disappoint that expectation may be seen as unfair without the expectant person being heard, But there again the court has to see whether it was done as a policy or in the public interest either by way of G.O., rule or by way of a legislation. If that be so, a decision denying a legitimate expectation based on such grounds does not qualify for interference unless in a given case, the decision or action taken amounts to an abuse of power. Therefore the limitation is extremely confined and if the according of natural justice does not condition the exercise of the power, the concept of legitimate expectation can have no role to play and the court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. For instance if an authority who has full discretion to grant a licence and if he prefers an existing licence holder to a new applicant, the decision cannot be interfered with on the ground of legitimate expectation entertained by the new applicant applying the principles of natural justice, It can therefore be seen that legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. It would thus appear that there are stronger reasons as to why the legitimate expectation should not be substantively protected than the reasons as to why it should be protected. In other words such a legal obligation exists whenever the case supporting the same in terms of legal principles of different sorts, is stronger than the case against it. As observed in Attorney General for New South Wales' case "To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law." If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles." (Emphasis supplied) For the above it is clear that 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 ;
- (c) Such an expectation must be reasonable.

However, 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.

The licence under the Bar Rules of 1992 is for a period of one year. That could be renewed, as seen above only on a privilege amount, as may be fixed by the State Government, in this behalf. This is unlike the case of the retail vending licence wherein the renewal is contemplated on payment of 15 per cent more than the privilege amount at which the sale of the privilege was confirmed in the previous year". This is as regards the second year. Likewise, 10 per cent more than the privilege amount for the third year. Therefore, the position is entirely different giving no room for any expectation. At best, it could be a hope. On this aspect we can usefully refer to *Director of Public Works v. HO PO Sang*, [1961] 2 All E.R. 721. at page 730 it was observed thus :

"It was submitted on behalf of the lessee that, after the director had given notice (see s.3A(2) of his intention to give a re-building certificate, some kind of a right (even though one that might be defeated) to such a certificate was then acquired by the lessee. Their Lordships cannot accept this view. After the director gave notice of his intention to issue a certificate, there could have been no giving of it until certain conditions were satisfied. The lessee was under obligation to give notices as required by s.3B(1). Had there been no appeals by tenants and sub-tenants and had the time for appeals expired, the director would then have been in a position to give a certificate. Had those been the circumstances than inas-much as the director had indicated what his intention was, doubt- less he would in fact have given his certificate. But the ordinance did not impose an obligation on the director to give a certificate in accordance with his declared intention unless and until certain conditions were satisfied. Though, in the events that happened, this point does not call for decision, it would not seem that, in any circumstances, any right to a certificate could arise at least until, after notices given, the time for appeals by tenants and sub-tenants went by without there being any appeal. In a case, however, where (as in the present case) the giving of notices under s.3B(1) resulted in appeals by way of petition to the governor, followed by a cross-petition to the governor presented by the applicant, then any decision as to the giving of a re-building certificate no longer rested with the director. In the present case, the position on Apr. 9, 1957, was that the lessee did not and could not know whether he would or would not be given a re-building certificate. Had there been no repeal, the petitions and cross-petition would in due course have been taken into consideration by the Governor in Council. There-after there would have been an exercise of discretion. The governor would not have directed either that a certificate be given or be not given, and the decision to the Governor in Council would have been final. In these circumstances, their Lordships conclude that it could not properly be said that, on Apr. 9, the lessee had an accrued right to be given a re-building certificate. It follows that he had no accrued rights to vacant possession of the premises. It was said that there were accrued rights to a certificate, and, consequently, to possession, subject only to the risk that these rights were not defeated. In their Lordships' view, such an approach is not warranted by the facts. On Apr. 9 the lessee had no right. He had no more than a hope that the Governor in Council would give a favourable decision. So the first submission fails." (Emphasis supplied) It has already been seen that under Rule 4(a) of the Bar Rules the eligibility of such a licence is possession of a retail vending licence. The period of licence was for one year ending by 31st May, 1992. The speech of the Governor which we have extracted above was made on 4th February, 1993. The impugned G.O, had come to be passed on 3rd March, 1993. The important point to be noted here is

long before the Bar licensee could apply for renewal (Rule 6 talks of 30 days before the expiry of the licence) the policy decision has been taken not to renew.

Having regard to what is stated above, it is clear that there was absolutely no promise of renewal at all.

It was by a Rule (subordinate legislation) in exercise of the powers conferred by Sections 17-C, 17-D, 21 and 54 of the Tamil Nadu Prohibition Act, 1937 licences under Bar Rules came to be granted. Those Rules have been repealed by exercise of the same powers under Sections 17-C, 17-D, 21 and 54 of the Prohibition Act. Therefore, this is a case of legislation. 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 whatever of invoking the doctrine as against the legislation. However, Mr. K. Parasaran, learned senior counsel relies on Supreme Court Advocates-on-Record Association v. Union of India, [1993] 4 SCC 441. At page 703 what is stated is this :

"Due consideration of every legitimate expectation in the decision making process is a requirement of the rule of non-arbitrariness' and, therefore, this also is a norm to be observed by the Chief Justice of India in recommending appointments to the Supreme Court. Obviously, this factor applies only to those con-sidered suitable and at least equally meritorious by the Chief Justice of India, for appointment to the Supreme Court."

This principle of non-arbitrariness cannot apply to a change of policy by legislation. Concerning the applicability of non- arbitrariness and change of policy learned counsel has cited R. Vijaykumar v. The Commissioner of Excise, JT (1993) 6 S.C. 325. That case dealt with discrimination between licensees. Hence, the same is not applicable. As a matter of fact in the affidavit filed on behalf of the State of Tamil Nadu dated 8th July, 1993 it is inter alia stated thus :

"On complaints received from the public, some time in February, 1993 itself the Government had decided not to renew the licences for bar attached to the retail vending shops. This was also announced in the Governor's speech and made public on 4.2.1993.

That on 3.3.1993 the Government by G.O.Ms. No.44 announced that as a matter of policy the Government would not renew licences to the bar attached with the vending shop with effect from 1.6.1993."

For all these reasons, we have no hesitation in coming to the con-clusion that the doctrine of legitimate expectation cannot arise at all in this case.

The effect of accepting the argument of the appellants would be, as rightly urged by Mr. G.L. Sanghi, learned counsel appearing for the State of Tamil Nadu the power of the State will be fettered not to repeal a particular law, however, much public interest may require the repeal.

Question No.3 : Whether rescinding of the Bar Rules is arbitrary ?:

It is a settled principle that legislative action, plenary or subordinate, is not subject to natural justice. In *Indian Express News Papers (Bombay) Pvt. Ltd, v. Union of India*, [1985] 2 SCR 287 at pages 347-48 it is stated thus:

"This subordinate legislation cannot be questioned on the ground of violation of principles of natural justice on which administrative action may be questioned has been held by this Court in *The Tulsipur Sugar Co, Ltd. v. The Notified Area Committee, Tulsipur*, [1980] 2 SCR 1111, *Rameshchandra Kachardas Porwal & Ors. v. State of Maharashtra & Ors etc.*, [1981] 2 SCR 866 and in *Bates v. Lord Hailsham of St Marylebone & Ors.*, [1972] 1 WLR 1373. A distinction must be made between delegation of a legislative function in the case of which the question of reasonableness cannot be enquired into and the investment by statute to exercise particular discretionary powers. In the latter case the question may be considered on all grounds on which administrative action may be questioned, such as, non- application of mind, taking irrelevant matters into consideration, failure to take relevant matters into consideration, etc. etc. On the facts and circumstances of a case, a subordinate legislation may be struck down as arbitrary or contrary to statute if it fails to take into account very vital facts which either expressly or by necessary implication are required to be taken into consideration by the statute or, say, the Constitution. This can only be done on the ground that it does not conform to the statutory or constitutional requirements or that it offends Article 14 or Article 19(1)(a) of the Constitution, It cannot, no doubt, be done merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court considers relevant."

The same principle is reiterated in *Union of India v. Cynamide India Ltd.*, AIR (1987) SC 1802 which is referred to with approval in *H.S.S.K. Niyami v. Union of India*, AIR (1990) SC 2128.

When the State has received complaints that the consumption of liquor in bars resulted in law and order problems, womanfolk being harassed, certainly, in public interest it could take a decision to repeal the grant of Bar licences. There is nothing unreasonable. It is not necessary as Mr. Garg contends that a committee ought to have been appointed and a report obtained before such a repeal. It is a matter of policy which the Government alone is competent to formulate. The State Government knows how best to augment its revenue.

As we have seen above, if there is no promise or right of renewal and if the policy decision has been taken under the impugned G.O. long before the licensee could apply for renewal what is the unfairness that could be complained of? In our considered view, none. From this point of view, we find the ruling in *Vasantkumar Radhakishan Vira v. Board of Trustees of the Port of Bombay*, [1991] 1 SCC 761 is not applicable to the present case.

Question No. 4 : Benefit under Section 8 of the General Clauses Act?

We have already noted that Section 54 of the Prohibition Act is a rule- making section. The Rules and the Notification require to be published in the official gazette. Upon such publication, they shall have effect as if enacted in the parent act. The High Court on the question of applicability of Section 8 of the Tamil Nadu General Clauses Act has stated thus :

Section 4 of the Tamil Nadu General Clauses Act makes Chapter II applicable to all Tamil Nadu Acts after the commencement of the said Act unless a contrary intention appears in such Acts, Section 8 of the Tamil Nadu General Clauses Act is subject to Section 4 of that Act and the new enactment can expressly or by necessary implication exclude the operation of Section 8. Reading Sections 4 and 8 together, there can be no doubt that an enactment which repeals an earlier enactment can exclude any of the provisions of Chapter II of the Tamil Nadu General Clauses Act. The impugned G.O. has rescinded the Tamil Nadu Liquor (Retail Vending in Bar) Rules 1992 with effect on and from 1st June, 1993. Hence the repealed rules ceased to be in existence after 31.5.1993. The privilege and the licence granted to the petitioner were admittedly for one year ending with 31.5.1993. Under the repealed rules they were obliged to apply for renewal and the renewal was not automatic. The application for renewal had to be considered under the rules by the concerned authority and appropriate orders should be passed. Once the rules are repealed, with the expiry of

31.5.92, there could be no question of considering any application for renewal for a period subsequent to that date. What all section 8 of the Tamil Nadu General Clauses Act preserves or protects are the rights acquired under the repealed Act. In other words, the petitioners licence for the period upto 31-5-1993 remained undisturbed or unaffected by the impugned G.O. It is not as if the same right or privilege can operate beyond 31.5.1993 as though by an order of renewal. If the right or privileges cannot on its own force subsist when the impugned G.O. comes into force the provisions of Section 8 of the Tamil Nadu General Clauses Act cannot give a fresh lease of life to such right or privilege or alter the period of its validity. Hence, the contention based on the provisions of the General Clauses Act has to fail."

We are in entire agreement with this line of reasoning.

In this connection, the reliance placed by the learned Additional Solicitor General on *Indira Sohanlal v. Custodian of Evacuee Property, Delhi*, [1955] 2 SCR 1117 is fully justified. At page 1118 it is stated thus :

"(iv) that the scheme underlying s.58(3) is that every matter to which the new Act applies has to be treated as arising, and to and to be dealt with, under the new law except in so far as certain consequences have already ensued or acts have been completed prior to the new act, to which it is the old law that will apply."

If, therefore, as pointed out above, no right or privilege could operate beyond 31.5.1993, the benefit of Section 8 of the Tamil Nadu General Clauses Act cannot be had before we leave the case on post - scriptum :

"Intoxicating drinks have produced evils more deadly, because more continuous, than all those caused to mankind by the great historic scourges of war, famine, and pestilence combined,"

William Gladstone.



In view of the foregoing discussion the appeals and writ petition deserve to be dismissed. Accordingly they are dismissed. However, in the circumstances of the case, there shall be no order as to costs.