

PETITIONER:
CHINGLEPUT BOTTLERS

Vs.

RESPONDENT:
MAJESTIC BOTTLING COMPANY

DATE OF JUDGMENT 15/03/1984

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
VARADARAJAN, A. (J)

CITATION:
1984 AIR 1030 1984 SCR (3) 190
1984 SCC (3) 258 1984 SCALE (1) 832
CITATOR INFO :
RF 1989 SC 49 (16,19)

ACT:

Constitution of India-Art. 226-High Court's Jurisdiction to issue writ of a mandamus in cases where duty sought to be enforced is of discretionary nature.

Natural Justice-Application of rules of natural justice to- cases which relate not to rights but to mere privileges of licences.

Tamil Nadu Arrack (Manufacture) Rules, '81-R. 7-Commissioner has no legal duty to grant licence-Approval of Staff Government is a pre-requisite for grant of licence-High Court cannot compel grant of licence by Commissioner by issuing writ of mandamus.

HEADNOTE:

On the surrender of the licence for the manufacture and supply of bottled arrack for the Chingleput District for the financial year 1982-83 by the then existing licensee, the Commissioner of Prohibition and Excise called for fresh applications from intending persons for the grant of licence under the Tamil Nadu Arrack (Manufacture) Rules, 1981 framed under the Tamil Nadu Prohibition Act, 1937. Two firms, namely, Majestic Bottling Company and Chingleput Bottlers, filed there applications and an enquiry with regard to them was held by the Assistant Commissioner. The Commissioner considered the report of enquiry, gave separate oral hearing to the two applicants and passed an order rejecting both the applications. As regards Majestic Bottling Company the Commissioner held that they did not satisfy the requirements of rr. 5(a) and 5(e). In the case of Chingleput Bottlers, he held that they did not satisfy the requirements of rr. 5(a), 5(c) and 5(e). While recording the finding in respect of Chingleput Bottlers, the Commissioner relied on a report of the Collector and other material gathered by him during the course of the enquiry, which included a representation from Majestic Bottling Company against the application of Chingleput Bottlers. Both the applicants filed petitions under Article 226 of the Constitution questioning the orders passed by the Commissioner.

A Single Judge of the High Court issued a writ of certiorari quashing the order of the Commissioner insofar as

he rejected the application of Majestic Bottling Company and also issued a writ of mandamus ordaining the Commissioner to grant the licence to Majestic Bottling Company. As regards Chingleput Bottlers, the Single Judge rejected their contention that the Commissioner had acted in breach of rules of natural justice by his failure to furnish them the report of the Collector and observed that nothing precluded them from seeking perusal of the records or from making a demand for a copy of the same.

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Both the applicants preferred appeals to the Division Bench. The State Government which was in possession of material adverse to the two partners of Majestic Bottling Company did not initially file a separate counter affidavit but only did so at the conclusion of the hearing. The Division Bench ruled that the order passed by the Commissioner must be adjudged by the reasons stated by him and those reasons cannot be supplemented by fresh reasons provided by the State Government in its belated affidavit and upheld the judgment of the Single Judge.

The State Government and Chingleput Traders filed appeals against the judgment of the Division Bench.

It was contended on behalf of the State Government that the grant of licence under r. 7 was subject to the prior approval of the State Government, that if the High Court was satisfied that the impugned order of the Commissioner was liable to be quashed on the ground that there was an error apparent on the face of the record, the proper course for it to adopt was to issue a writ of mandamus to the Commissioner to re-determine the question of grant of such privilege and that the High Court had no power to issue a writ of mandamus directing the Commissioner to grant the licence in favour of Majestic Bottling Company.

It was contended on behalf of Chingleput Bottlers that the Commissioner had acted in breach of rules of natural justice in not furnishing them a copy of the report submitted by the Collector and other material gathered by him during the course of the enquiry. Allowing the appeal of the State Government and dismissing the appeal of Chingleput Bottlers.

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HELD: 1. No mandamus will lie where the duty sought to be enforced is of a discretionary nature nor will a mandamus issue to compel the performance by a public body or authority of an act contrary to law. [198H-199A]

(a) In the instant case the Commissioner was under no legal duty to grant a licence to Majestic Bottling Company till he received the prior approval of the State Government under r. 7. Even assuming that the Commissioner recommended the grant of a licence to them under r. 7, the State Government were under no compulsion to grant such prior approval. The grant or refusal of such licence was entirely in the discretion of the State Government. The High Court had no jurisdiction to issue a writ of mandamus to the Commissioner to grant a licence to Majestic Bottling Company contrary to the provisions of r. 7. [199 A-C]

de Smith: Judicial Review of Administrative Action, 4th Ed. pp. 341 and 544; H.W.R. Wade: Administrative Law. 5th ed. p. 638; referred to.

(b) Absence of a specific plea in the nature of demurrer would not invest the High Court with jurisdiction to issue a writ of mandamus ordaining the Commissioner to grant a licence under r. 7 without the prior approval of the

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State Government which is a condition pre-requisite for the

grant of such privilege. The High Court was unduly technical in applying the rules of pleading and short-circuited the whole procedure upon a wrongful assumption of its own powers. The view taken by it is manifestly erroneous; otherwise, the statutory requirements of such prior approval of the State Government under r. 7 would be rendered wholly otiose. [201 C-E]

K.N. Guruswamy v. State of Mysore, [1955] 1 S.C.R. 305; and P. Bhooma Reddy v. State of Mysore, [1969] 3 S.C.R. 14; distinguished.

(c) It is not possible to accept the contention that no useful purpose would have been served by the High Court remitting the matter for the reconsideration of the Commissioner since it had already found that all the reasons that could be given for upholding the validity of the Commissioner's order were bad and unsustainable. This was not a case where it could be said that there was nothing for the State Government to consider while examining the question whether it should accord or refuse prior approval to the grant of licence to Majestic Bottling Company under r. 7. One of the relevant factors that the State Government had to take into consideration was whether the partners of that Company were persons who would abide by the provisions of the Act and the rules. The facts disclosed in the counter affidavit of the State Government lay a serious charge against the partners of that Company and it was permissible for the State Government to take those facts as justification for refusal to grant prior approval under r. 7. [202C, 203A-B, E-F]

(d) The proper course for the High Court to adopt was to issue a writ of mandamus directing the Commissioner to redetermine the question after following the procedure of r. 7 and in case he came to a decision to grant the licence in favour of Majestic Bottling Company, to refer the matter to the State Government for its prior approval. [206A-B]

M/s Hochtief Gammon v. State of Orissa, [1976] 1 S.C.R. 667; Padfield v. Minister of Agriculture, Fisheries and Food, L.R. [1968] A.C. 997: referred to.

Gujarat State Financial Corpn. v. M/s. Lotus Hotels Pvt. Ltd., [1983] 3 S.C.C. 379; distinguished.

State of Tamil Nadu v. C. Vadiappan, [1982] 2 Mad. L.J. 30; and K. Ramaswamy v. Government of Tamil Nadu (Writ Appeal No. 368 of 1981); overruled.

2. It is a fundamental rule of law that no decision must be taken which will affect the rights of any person without first giving him an opportunity of putting forward his case. Strict adherence to the rules of natural justice is required where a public authority or body has to deal with rights. The audi alteram partem rule may not apply to cases which relate not to rights or legal expectation but to mere privilege or licence. An authority or body need not observe the rules of natural justice where its decision, although final, relates not to a 'right' but to a 'privilege' or 'licence'. All that is emphasised in such cases is that the applications for grant of privilege or licence must be considered fairly. There are no inflexible rules of natural justice of universal application. Each case depends on its own circumstances. Rules of natural justice vary with the varying constitutions of statutory bodies and the rules prescribed by the legislature under which they have to act. [209C-D-G, 213D-E-G]

The right to know the case to be met does not necessarily involve any right to know the source of adverse information or to confront the informants, for, in some

cases it would be quite proper for the authority to employ confidential sources. [210B-C]

Ridge v. Baldwin: L.R. [1964] A.C. 40; R. v. Gaming Board for Great Britain, [1970] 2 All E.R. 528; R. Surinder Singh Kanda v. Government of the Federation of Malaya, L-R. [1962] A.C. 322; Breen v. Amalgamated, Engineering Union, [1971] 2 Q.B. 175; Mac Innes v. Onslow Fane & Anr., [1978] 3 All E.R. 211. Kishan Chand Arora v. Commissioner of Police, [1961] 3 S.C.R. 135; and Nakkuda Ali v. M.F. De S. Jayaratne L.R. [1951] A.C. 66. referred to.

3. In the instant case there is nothing in the language of r. 7 to suggest that in refusing to grant the privilege, the Commissioner is obliged to act 'judicially'. The order refusing a licence under r. 7 is purely an administrative or executive order and is not open to appeal or revision. There is no lis between the Commissioner and the person who is refused such privilege. The power of refusal of licence unlike the power to grant is not subject to any pre-condition. The grant of a liquor licence under r. 7 does not involve any right or expectation but it is a matter of privilege. The Commissioner was under no obligation either to disclose the sources of information or the gist of the information that he had. All that was required was that he should act fairly and deal with the applications without any bias, and not in an arbitrary or capricious manner. The Commissioner was entitled to act on the report of the Collector and also on other material gathered by him during the course of the enquiry. It cannot be said that the Commissioner in dealing with the applications did not act fairly in not furnishing a copy of the report of the Collector or in taking a representation from Majestic Bottling Company. There is also no suggestion of any mala fides on the part of the Commissioner or the State Government. [213G-H, 214A-B, C-E, G-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1 1970-1 1972 of 1983

Appeals by Special leave from the] judgment and order dated the 27th July, 1983 of the Madras High Court in W. A. Nos. 523, 531 & 528 of 1983.

K.K. Venugopal and C. S. Vaidyanathan for the Appellants in CA-Nos. 1 1970-71183.

Sahnti Bhushan, A. T. M. Sampath and Mr. K. Subramaniam for the Respondents in CA. Nos. 1 1970-71/83.
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A.K. Sen and A.V. Rangam for the Appellant in CA. No. 1 1972 of 1983.

Soli J. Sorabjee A.T.M. Sampath and K. Subranmaniam for the Respondent in CA. 11972/83.

The Judgment of the Court was delivered by

SEN, J. These appeals by special leave directed against a judgment of a Division Bench of the Madras High Court dated July 7, 1983 upholding the judgment and order of a learned Single Judge dated June 13, 1983 relate to the grant of a licence for the manufacturing and supplying of bottled arrack to the wholesale and retail licensees for the Chingleput district under r. 7 of the Tamil Nadu Arrack (Manufacture) Rules, 1981 ('Rules', for short) framed under the Tamil Nadu Prohibition Act, 1937 ('Act' for short). These appeals raise separate and distinct questions and must therefore receive separate consideration.

Put very shortly, the essential facts are these. On May

28, 1982 one O.H. Kumar carrying on business under the name and style of Messrs Three Star Bottling Company surrendered his licence for the manufacture and supply of bottled arrack for the Chingleput district for the financial year 1 982.83. The Commissioner of Prohibition & Excise, Madras called for applications from intending persons for the grant of the licence. In response to the notice issued by the Commissioner under r. 3(2) of the Rules, there were two applications filed under r. 5 in Form 1, namely, by J. Balaji, managing partner of Messrs Majestic Bottling Company on June 9, 1982 and by V. Ramabadran, managing partner of Messrs Chingleput Bottlers on June 14, 1982. The Commissioner issued a questionnaire and directed the Collector, Chingleput to have an inquiry held as regards the suitability of the applicants for the grant of a licence. Pursuant thereto, the Collector had an inquiry held by the Assistant Commissioner (Excise) which lasted for four days i.e. from June 21 to June 24, 1982. After the preliminary inquiry and field inspection made by the Assistant Commissioner (Excise), the Collector forwarded his report dated July 2, 1982 to the Commissioner who fixed July 5, 1982 for oral hearing of the parties.

On July 5, 1982, the Commissioner separately heard both J. Balaji and V. Ramabadran. At the hearing, the Commissioner recorded the statements of both J. Balaji and V. Ramabadran in

195 support of their respective claims. On July 31, 1982 the Commissioner passed an order rejecting both the applications. As regards Messrs Majestic Bottling Company, the Commissioner held that their application was in order but that they did not satisfy the requirements of r. 5 (a), and (e) of the Rules. As to their suitability under r. 5 (a), he found that though the partnership had been formed prior to the date of the application i.e. On June 9, 1982 the firm actually got registered subsequent thereto on June 23, 1982 and therefore there was no valid partnership in existence on June 14, 1982 i. e. On the date of the filing of the application. As regards r. 5(e), he held that there was no water facility in the lands owned by the partnership firm.

As regards Messrs Chingleput Bottlers, the Commissioner held that the application made by them was not in order because it was not accompanied by a solvency certificate and that there was no potable water available at the proposed site. He further held that there was only one and a half feet water in the well at the site and it was of poor quality. He also came to the conclusion that the application had not been made bona fide on behalf of the partnership firm but as benami for others. The Commissioner accordingly held that Messrs Chingleput Bottlers did not fulfil the requirement of r. 5(a), (c) and (e) of the Rules.

The finding of the Commissioner that Messrs Chingleput Bottlers were mere benamidars of O.H. Kumar, the previous licensee, was based on the report of the Collector and the other material gathered by him during the course of the inquiry.

Both Messrs Majestic Bottling Company and Messrs Chingleput Bottlers filed separate petitions under Art. 226 of the Constitution before the High Court questioning the validity of the order passed by the Commissioner. By his judgment dated June 13, 1983 a learned Single Judge held that the Commissioner was not justified in rejecting the application of Messrs Majestic Bottling Company on a wrongful assumption that they did not satisfy the

requirement of r. 5(a) and (e) of the Rules. He held that the order was vitiated by an error apparent on the face of the record inasmuch as J. Balaji, managing partner of Messrs Majestic Bottling Company had produced record with regard to the availability of water.

The Learned Single Judge however set aside the finding of the Commissioner that the application made by Messrs Chingleput

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Bottlers was not in order because it was not accompanied by a solvency certificate holding that non-production of a solvency certificate would not entail a dismissal of the application on that ground alone, as also the finding with regard to non-availability of water at the proposed site since the blending unit of Messrs Three Star Bottling Company was already functioning there. The learned single Judge rejected the contention of Messrs Chingleput Bottlers that the Commissioner had acted in breach of the rules of natural justice by his failure to furnish the report of the Collector observing that nothing precluded them from seeking perusal of the records; nor did they make a demand for it.

By his judgment, the learned Single Judge by the issue of a writ of certiorari quashed the impugned order of the Commissioner insofar as he rejected the application made by Messrs Majestic Bottling Company on the ground that there was an error apparent on the face of the record but instead of remitting the matter back to the Commissioner to re-consider the question of grant of such privilege, issued a writ of mandamus ordaining the Commissioner to grant the licence to Messrs Majestic Bottling Company. He further upheld the order of the Commissioner rejecting the application of Messrs Chingleput Bottlers for the grant of privilege on the ground that they were mere benamidars of the previous licensee. Aggrieved by the judgment of the learned Single Judge, both the State Government and Messrs Chingleput Bottlers preferred appeals under cl. 1 S of the Letters Patent. Upholding the judgment of the learned Single Judge the learned Judge of the Division Bench held that learned Single Judge was justified not only in quashing the same but in issuing a writ of mandamus directing the Commissioner to grant the licence in favour of Messrs Majestic Bottling Company without the prior approval the State Government under r. 7 of the Rules.

Before proceeding further, we would like to mention that the State Government did not file a separate counter. There was a counter-affidavit filed by R. Lakshmanan, Joint Commissioner (IV), Department of Prohibition & Excise, Madras on behalf of both the State Government as well as the Commissioner of Prohibition & . Excise seeking to support the impugned order passed by the Commissioner. In addition to the grounds mentioned by the Commissioner for the refusal of the applications for grant of privilege, there was an additional ground taken in paragraph 11 and it was alleged that J. Balaji, managing partner of Messrs Majestic Bottling Company and his other partner Smt. Shanthi, who incidentally is also his

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mother were the two erstwhile directors of Messrs Dhanalakshmi Chemical Industries Private Limited, Ranipet upto November 26, 1980 and there was prima facie evidence that the company had misused the large quantity of rectified spirit by diverting alcohol from industries to arrack production and therefore they were persons not likely to abide by the provisions of the Act and the Rules framed thereunder within the meaning of r. 5(b), and this would

have been a relevant point to be taken into consideration by the State Government in the matter of grant or refusal of prior approval under r. 7(1). It was alleged that these two persons were directors during the aforesaid period of misuse.

At the conclusion of the hearing of the appeals before the High Court, the State Government filed a supplementary affidavit of S. Ranganathan, Deputy Secretary to the State Government of Tamil Nadu, Department of Prohibition & Excise furnishing further and better particulars of the alleged misuse of rectified spirit by Messrs Dhanalakshmi Chemical Industries Private Limited which had put the State Government to a loss of revenue to the tune of Rs. 2 crores. It was averred that investigation into the case was almost complete and a prosecution was about to be launched against the Company and its directors, including J. Balaji and Smt. Shanthi, the two partners of Messrs Majestic Bottling Company. Inasmuch as no such objection was taken before the learned Single Judge, the learned Judges felt that it was not necessary for them to deal with the facts brought out in the two counter-affidavits. It appears that the learned Advocate-General also did not press the ground at the hearing of the appeals. The learned Judges held that the validity of the impugned order passed by the Commissioner must be adjudged by the reasons stated by him and cannot be supplemented by fresh reasons by the State Government in the shape of affidavit or otherwise.

There are really two questions that fall for determination. The first is as to the jurisdiction of the High Court to issue a writ of mandamus. It is said that the grant of licence under r. 7 is subject to the prior approval of the State Government and is in the discretion of the State Government. The High Court is not the granting authority and therefore had no power to issue a writ of mandamus directing the Commissioner to grant a licence to Messrs Majestic Bottling Company. The second question is whether the Commissioner acted in breach of the rules of natural justice in not furnishing

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to Messrs Chingleput Bottlers a copy of the report submitted by the Collector and other material gathered by him during the course of the inquiry tending to show that they were benamidars of one O.H. Kumar, the previous licensee. It is said that Messrs Majestic Bottling Company had at the separate hearing before the Commissioner submitted a brief styled as a representation containing several documents in opposition to the application made by Messrs Chingleput Bottlers on the ground that their application was benami without furnishing a copy of the same to them and this must have influenced the mind of the Commissioner. Even if the Commissioner was not acting in a judicial or quasi-judicial capacity, he was required to act fairly. The rules of natural justice therefore required that Messrs Chingleput Bottlers should not be deprived of this business without knowing the case they had to meet. Both the questions that arise will have to be dealt with separately.

The first issue, as already indicated, raises a question of prime importance and of some difficulty. It would therefore be convenient, in the first instance, to deal with the appeal preferred by the State Government. It is urged that the High Court had no jurisdiction to issue a writ of mandamus ordaining the Commissioner to grant a licence to Messrs Chingleput Bottlers under r. 7 of the Rules without the prior approval of the State Government. It is said that although a writ of mandamus may be a necessary

adjunct to a writ of certiorari the proper course for the High Court to have adopted was, if it was satisfied that the impugned order of the Commissioner was liable to be quashed insofar as he rejected the application made by Messrs Majestic Bottling Company on the ground that there was an error apparent on the face of the record, to have issued a writ of mandamus Commissioner to redetermine the question as to the grant of such privilege. Reliance is placed on de Smith's Judicial Review of Administrative Action, 4th edn. at pp.341 and 544. The contention must, in our opinion, prevail.

In order that a writ of mandamus may issue to compel the Commissioner to grant the licence, it must be shown that under the Act and the Rules framed thereunder there was a legal duty imposed on the Commissioner to issue a licence under r. 7 of the Rules without the prior approval of the State Government and that Messrs Majestic Bottling Company had a corresponding legal right for its enforcement. No mandamus will lie where the duty sought to be enforced is of a discretionary nature nor will a mandamus
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issue to compel the performance by such public body or authority of an act contrary to law. The Commissioner of Prohibition & Excise was under no legal duty to grant a licence to Messrs Majestic Bottling Company till he received the prior approval of the State Government under r. 7. Even assuming that the Commissioner recommended the grant of a licence, to them under r. 7, the State Government were under no compulsion to grant such prior approval. The grant or refusal of such licence was entirely in the discretion of the State Government. The High Court had no jurisdiction to issue a writ of Mandamus to the Commissioner to grant a licence to Messrs Majestic Bottling Company contrary to the provisions of r. 7 of the Rules.

The learned Judges observed that in normal circumstances they would have upheld the objection of the learned Advocate General as to the jurisdiction of the High Court to issue a writ of mandamus, but in view of the fact that the State Government had chosen not to file a separate return taking a specific plea that in the event of a writ of certiorari being granted, the Court should not issue a writ of mandamus for the grant of licence since the grant or refusal of licence was subject to the prior approval of the State Government under r. 7 of the Rules. The learned Judges accordingly held that the learned Single Judge was justified in issuing a writ in the nature of mandamus directing the Commissioner to issue a licence in favour of Messrs Majestic Bottling Company in view of the fact that there were only two applicants in the field and the application of Messrs Chingleput Bottlers having been rejected, the State Government had no other option but to make the grant in favour of Messrs Majestic Bottling Company. Further, the learned Judges observed that to sustain the objection would be tantamount to allowing the State Government to sit in appeal over the judgment of the High Court. In substance, the learned Judges were of the view that failure of the State Government to take a specific plea as to jurisdiction precluded them from raising a question as to the jurisdiction of the High Court to issue a writ of mandamus. We are afraid, we cannot accept this line of reasoning.

It is true that sometimes it is prudent to couple a writ of certiorari with a writ of mandamus to control the exercise of discretionary power. The following illuminating passages from de Smith's Judicial Review of Administrative Action; 4th edn. at pp.341 and 544 pithily sum up the

function of a writ of mandamus;
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"It is now open to a court when granting certiorari to remit the matter to the authority with a direction to reconsider and to decide in accordance with the findings of the court. Apart from this, the role of the courts is limited to ensuring that direction has been exercised according to law. If, therefore, a party aggrieved by the exercise of discretionary power seeks an order of mandamus to compel the authority to determine the matter on the basis legally relevant considerations, the proper form of the mandamus will be one to hear and determine according to law; though by holding inadmissible the considerations on which the original decision was based the court may indirectly indicate the particular manner in which the discretion ought to be exercised. In practice the frontier between control of legality and control of the actual exercise of discretion remains indeterminate, for the courts are sometimes observed to cross the boundaries that they have set to their own jurisdiction."

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"The duty to observe these basic principles of legality in exercising a discretion is unlike the "duty" to apply the law correctly to findings of fact, prima facie enforceable by mandamus. Hence where an authority has misconceived or misapplied its discretionary powers by exercising them for an improper purpose, or capriciously, or on the basis of irrelevant considerations or without regard to relevant considerations it will be deemed to have failed to exercise its discretion or jurisdiction at all or to have failed to hear and determine according to law, and mandamus may issue to compel it to act in accordance with the law "

Professor H.W.R. Wade in his Administrative Law, 5th edn. at p. 638 also defines the purpose of a writ of mandamus in these words:

"Mandamus is often used as an adjunct to certiorari. If a tribunal or authority acts in a matter where it has no power to act at all, certiorari will quash the decision and prohibition will prevent further unlawful proceedings. If there is power to act, but the power is abused (as by breach of natural justice or error on the face of the record), certiorari will quash and mandamus may issue simultaneously to require a proper rehearing. An example is Board of Education v. Rice [1911] AC 179 cited elsewhere; the Board's

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decision was ultra vires since they had addressed their minds to the wrong question, consequently it was quashed by certiorari and the Board were commanded by mandamus to determine the matter according to law, i.e. within the limits indicated by the House of Lords."

In our judgment, the High Court exceeded its jurisdiction in issuing a writ of mandamus directing the Commissioner to grant a licence to Messrs Majestic Bottling Company without the prior approval of the State Government as enjoined by r. 7 of the Rules. The High Court was unduly technical in applying the rules of pleadings. Absence of a specific plea in nature of demurrer would not invest the High Court with jurisdiction to issue a writ of mandamus ordaining the Commissioner to grant a licence to Messrs Majestic Bottling Company under r. 7 of the Rules without

the prior approval of the State Government which was a condition pre-requisite for the grant of such privilege. It is regrettable that the High Court should have short-circuited the whole procedure upon a wrongful assumption of its own powers. The view taken by the High Court is manifestly erroneous. Otherwise, the statutory requirement of such prior approval of the State Government under r. 7 would be rendered wholly otiose.

We should not be understood as laying down an inflexible rule that the High Courts cannot, under any circumstances, regulate or control the manner of grant of a liquor licence by the issue of a writ of mandamus. It would all depend upon the facts and circumstances as to whether the High Court should issue a writ of mandamus or not. The grant of a liquor licence is a matter of privilege. In the very nature of things, the grant of refusal of licence is in the discretion of the State Government. Normally, where the statute vests a discretionary power upon an administrative authority, the Court would not interfere with the exercise of such discretion unless it is made with oblique motives or extraneous purposes or upon extraneous considerations. The present case does not fall within the rule laid down in K. N. Guruswamy v. The State of Mysore & ors and P. Bhooma Reddy v. State of Mysore & ors. The decisions in Guruswamy's and Bhooma Reddy's cases are both in consonance with the well-settled principle that the High Court can always issue a

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writ of mandamus under Art. 226 of the Constitution against a public authority to compel the performance of a public duty where such authority acts in violation of the law.

It is urged on behalf of Messrs Majestic Bottling Company placing reliance on the decision of the House of Lords in Padfield v. Minister of Agriculture, Fisheries & Food and that of this Court in Messrs Hochtief Gammon v. State of Orissa & ors. following the same that, no doubt where the reasons given are bad and the authority had not taken into consideration the relevant matters or real grounds on which the order could have been passed, the Court can direct the authority to reconsider the matter in the light of such relevant matters. But it was urged that no useful purpose would be served in remitting the matter to the authority for reconsideration where all the reasons that can be given for upholding the validity of the order have been found by the Court to be bad and unsustainable. The submission] is that in such a case the Courts will not direct the authority to reconsider the matter for, then there is nothing to reconsider but the Court will direct the authority to carry out what it has by the impugned order refused to do. In Hochtief Gammon's case, this Court deduced the following principles from the decision of House of Lords in Padfield's case:

"The Executive have to reach their decisions by taking into account relevant considerations. They should not refuse to consider relevant matter nor should they take into account wholly irrelevant or extraneous consideration. They should not misdirect themselves on a point of law. Only such a decision will be lawful. The Courts have power to see that the Executive acts lawfully. It is no answer to the exercise of that power to say that the Executive acted bonafide nor that they have bestowed painstaking consideration. They cannot avoid scrutiny by courts by failing to give reasons. If they give reasons and they are not good reasons, the court can direct them to reconsider the matter in the light of relevant matters

though the propriety, adequacy or satisfactory character of these reasons may not be open to judicial scrutiny. Even if the Executive considers it inexpedient to exercise their powers they should state their reasons and there must be.. material to show that they have considered all the relevant facts.

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This was not a case where it could be said that there was nothing for the State Government to consider as to whether should accord or refuse prior approval to the grant of a licence to Messrs Majestic Bottling Company under r. 7 of the Rules. The Commissioner by the impugned order rejected the applications for grant of a licence made by both Messrs Chingleput Bottlers and Messrs Majestic Bottling Company and therefore the stage was not reached. The stage for the State Government to reconsider the matter of grant of privilege under r. 7 would only arise when the commissioner makes a recommendation for the grant of a licence to Messrs Majestic Bottling Company. At that stage, the State Government would have to consider whether they should accord prior approval for the grant of such privilege to Messrs Majestic Bottling Company having regard to the matters specified in r. 5 of the Rules and the conditions set out in r. 6(c), in view of the further facts brought out in the supplementary counter affidavit of Deputy Secretary to the State Government, Department of Prohibition & Excise in support of the objection raised in para 11 of the counter-affidavit. One of the relevant factors that the State Government must, as they should, take into consideration is the suitability of Messrs Majestic Bottling Company for the grant of licence as required under r. 5(a) and the other is whether J. Balaji, the managing partner and Smt. Shanthi the other partner, were persons who would abide by the provisions of the Act and the Rules made thereunder as enjoined by r. 5(b). The facts lay a serious charge that Balaji, managing partner of Messrs Majestic Bottling Company and his other partner Smt. Shanthi were directors of Messrs Dhanalakshmi Chemical Industries Private Limited, Ranipet upto November 26, 1980 and that there was prima facie evidence showing that the company had misused the rectified spirit issued to it causing a loss of revenue to the State Government to the tune of Rupees two crores or thereabout. It would be permissible for the State Government to take these facts as justification for refusal to grant prior approval under r. 7 of the Rules.

In coming to the conclusion they did, the learned Judges have drawn sustenance from the decision of this Court in Gujarat State Financial Corporation v. Messrs Lotus Hotels Private Limited and of the High Court in the State of Tamil Nadu & Anr. v. C. Vadiappan in support of the view that the High Court had jurisdiction to issue a writ of mandamus directing the State of Tamil Nadu and

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the Commissioner of Prohibition & Excise to grant the privilege for the manufacture and supply of bottled arrack to Messrs Majestic Bottling Company for the Chingleput district under r. 7 of the Rules. The decision in Gujarat State Financial Corporation's case (supra) is clearly distinguishable and is not an authority for any such proposition. No such question arose in that case at all. There, the Court was dealing with a contract entered into by the Gujarat State Financial Corporation with Messrs Lotus Hotels Private Limited for the purpose of setting up a 4-star hotel. The Company approached the Corporation for a loan of rupees 30 lakhs and the Corporation sanctioned a

loan of Rs. 29.93 lakhs on certain terms and conditions which the Company accepted. The Corporation however finally resolved not to disburse the loan to the Company whereupon the Company moved Gujarat High Court by a petition under Act. 226 for the issue of a writ of mandamus to direct the Corporation to disburse the loan. A learned Single Judge of the High Court issued the writ as prayed for and it was confirmed by a Division Bench. on appeal by the Corporation, this writ Court held that the High Court was justified in issuing the writ of mandamus. The decision in Gujarat State Financial Corporation's case, (supra) turned on the doctrine of promissory estoppel and it does not justify the conclusion reached by the learned Judges in the present case for the issue of a writ of mandamus. It is needless to stress that if the requirement of law was that the advance of loan to be sanctioned by the Gujarat State Financial Corporation was to be subject to the prior approval of the Reserve Bank of India, the decision of the Court would have been otherwise:

It is difficult to subscribe to the doctrine evolved by the High Court in Vadiappan's case, (supra) that the Commissioner is the 'sole arbiter' under r. 7 of the Rules. It relied upon the earlier decision of the High Court in K. Ramaswamy v. Government of Tamil Nadu & ors laying down that the proviso to r. 6 of the Tamil Nadu Arrack (Supply by Wholesale) Rules, 1981 had to be understood strictly in a negative sense. According to the High Court, at best it confers on the Government a power to veto. By itself, the High Court observed, 'it does not make the Government a final arbiter between the competing claims. The High Court further observed in Ramaswamy's case, supra, that 'the weighing of the pros and cons and the consideration of the merits and demerits of the rival clai-

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ments remained, from first to last with the Commissioner as his sole responsibility, and that the requirement of the Government's proper approval under the proviso to r. 6 of the Tamil Nadu Arrack (Supply by Wholesale) Rules 1981 was no doubt a necessary part of the validity of every licence, but 'the enabling power cannot be employed as a machinery for a review in every case but only as a check upon a possible abuse of its power by the Commissioner'. That approach of the High Court seems to run counter to the scheme of the Act and the Rules framed thereunder. The grant of a liquor licence under r. 7 is a matter of privilege of the State Government. The Commissioner merely exercises the delegated powers of the State Government. The ultimate responsibility for the grant of such privilege is with the State Government under r. 7 of the Rules.

Nor can we subscribe to the contention that the Commissioner had to act under the directions and control of the State Government under sub-s. (2) of s. 25A of the act while exercising his powers delegated under sub-s (1) of s. 17C read with s. 25A (1) in the matter or grant of a liquor licence under r. 7 of the Rules. It would not justify the High Court to issue a writ of mandamus to the Commissioner to grant a licence to Messrs Majestic Bottling Company under r. 7 of the Rules without the prior approval of the State Government. Obviously, the State Government and the Commissioner cannot act de hors the scheme of the Act and the Rules framed thereunder. Further, the contention that the State Government had already made up their mind against the grant of such privilege to Messrs Majestic Bottling Company and that there was no occasion for the High Court to send back the case to the Commissioner as it would have

amounted to the State Government being asked to sit in appeal over the judgment of the High Court, cannot be accepted. We regret to say, the High Court has tried to circumvent the whole procedure by issuing a writ of mandamus directing the Commissioner to grant a licence under r. 7 without the prior approval of the State Government. As already stated, the grant of a licence under r. 7 of the Rules is a privilege. There are no charges of mala fides on the part of the State Government. There is no suggestion that the State Government had already made up their mind. This is also not a case where the rules of necessity require recourse to a writ of mandamus to command the issue of a licence without conforming to the procedure prescribed under r. 7.

In the premises, it was not a proper exercise of jurisdiction for the High Court to have issued a writ of mandamus under Art. 226

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of the Constitution ordaining the Commissioner to grant a licence to Messrs Majestic Bottling Company under r. 7 of the rules without the prior approval of the State Government. In our opinion, the proper course for the High Court to adopt was to issue a writ of mandamus directing the Commissioner to redetermine the question after following the procedure of r. 7 and in case he came to a decision to grant the licence in favour of Messrs Majestic-Bottling Company, to refer the matter to the State Government for its prior approval. Otherwise r. 7 of the Rules would be rendered completely otiose.

Turning to the appeal preferred by M/s Chingleput Bottlers, learned counsel for them has mainly advanced a three-fold submission: (1) The Commissioner had acted in flagrant violation of the rules of natural justice in not furnishing to Messrs Chingleput Bottlers a copy of the report of the Collector and other extraneous material comprising of a representation received from Messrs Majestic Bottling Company along with various other documents. Nor had he disclosed to them the substance of the report of the Collector or other information gathered by him irrespective of the source. (2) The impugned order passed by the Commissioner was vitiated by errors apparent on the face of the record. There was no factual basis for the assumption that the three persons from whom Messrs Chingleput Bottlers had taken the lease of the land on which the blending unit is located, viz, K.J. George, M/s. Visvambaran and E.K. Chandrasekaran, were real partners of Messrs Three Star Bottling Company. There was also no warrant for the suspicion cast by the Collector in his report that Messrs Chingleput Bottlers were mere benamidars of one O.H. Kumar, proprietor of Messrs Three Star Bottling Company, the existing licensee, on the ground that they had entered into an agreement to purchase the blending unit from him. The function of the Commissioner in making the grant of privilege under r. 7 of the Rules of being a quasi judicial nature, the Commissioner could not act on unwarranted conjectures and mere surmises. (3) The Commissioner had not acted fairly inasmuch as he adopted a double standard. For a secret inquiry was conducted against Messrs Chingleput Bottlers for adjudging their suitability for the grant of privilege while no such inquiry was made against Messrs Majestic Bottling Company. The Commissioner had thus treated Messrs Chingleput Bottlers and Messrs Majestic Bottling Company on an unequal footing and thus the procedure adopted was violative of Art. 14. The observation made by the Commissioner that the deposit of Rs. 10,01,001 made by

Messrs Chingleput Bottlers with

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the Indian overseas Bank had not come from bona fide sources and that obviously there was some secret understanding between O.H. Kumar and Messrs Chingleput Bottlers was not based on any material at all. The Commissioner knew that O.H. Kumar, the previous licensee, was not in a position to advance rupees 10 lakhs and odd to Messrs Chingleput Bottlers. Again, no such inquiry was made as to the financial capacity of Messrs Majestic Bottling Company. Further, the Commissioner had wrongly assumed that Messrs Chingleput Bottlers and given their address as 'Ramabadran, c/o Messrs Three Star Bottling Company, Iyanchery' when no such address was ever furnished and therefore the impugned order is vitiated by an error apparent on the face of the record.

In support of the contention that the Commissioner acted in violation of the rules of natural justice, the learned counsel contends that Messrs Chingleput Bottlers had a right to be heard. It is urged that there was clear breach of the principle of audi alteram partem in as much as neither a copy of the report of the Collector was furnished to Messrs Chingleput Bottlers nor a copy of the representation submitted by Messrs Majestic Bottling Company against the grant of licence to them. The argument is that a hearing where a party does not know the case he has to meet is no hearing at all, while the learned counsel concedes that the right to know the case to be met does not necessarily involve any right to know the sources of adverse inference or to confront informants, for in many cases it will be quite proper for the authority to employ confidential sources, the rules of natural justice require that the information itself hold be disclosed so that there is a fair opportunity of meeting the case.

In the file relating to Messrs Majestic Bottling Company there is a representation filed by J. Balaji, managing partner of Messrs Majestic Bottling Company, consisting of 131 pages and was apparently handed over by J. Balaji at the time of hearing before the Commissioner on July 5, 1982. The representation dated July 5, 1982 is in the form of a petition in continuation of the application for grant made on June 9, 1982. Regarding Messrs Chingleput Bottlers, certain objections are raised to the grant of licence. The objections are formulated in a document marked Annexure 'A'. It is alleged that the existing licensee O.H. Kumar is ruling the show under the name and style of Messrs Three Star Bottling Company which is under the control of three persons, namely, K.J. George, M.S. Visvambaran and E.K. Chandrasekaran. It recites that now find-

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ing that O.H. Kumar could not get the present licence, they have set up Ramabadran who has himself shown his address as care of Messrs Three Star Bottling Company. This itself clearly shows that the applicant Ramabadran is a benamidar of Messrs Three Star Bottling Company. In support of the assertion that Ramabadran is a benamidar of O.H. Kumar, there is a copy of the judgment of the High Court of Madras in Writ Petition No. 1239 of 1961 filed along with other papers. In the file relating to Messrs Chingleput Bottlers there is a two-page note which formulates certain objections to the grant of privilege to Messrs Chingleput Bottlers. It was obviously handed over by J. Balaji, managing partner of Messrs Majestic Bottling Company to the Assistant Commissioner (Excise) during his inspection of the blending unit or before the Collector before the submission of his

report.

We do not think that the Commissioner was under an obligation to furnish Messrs Chingleput Bottlers with a copy of the report submitted by the Collector or of the representation made by Messrs Majestic Bottling Company. This equally applies to the two-page note appearing in the file of Messrs Chingleput Bottlers. It was quite proper for the Commissioner to make secret and discreet inquiries from confidential sources. There was no duty cast on him to disclose to Messrs Chingleput Bottlers the sources of adverse information or to give them an opportunity to confront the informants. Rules of fairplay only 'enjoin' that Messrs Chingleput Bottlers should know the case against them. This apparently they did from the questionnaire issued by the Commissioner and the questions put by the Commissioner on July 5, 1982 on the basis of the information gathered by him. p The Commissioner has relied upon the report of the Collector and the conclusions reached by the Collector are based on the statement of Ramabadran recorded by the Assistant Commissioner(Excise). Further, at the hearing on July 5, 1982, the Commissioner recorded the statement of Ramabadran, managing partner of Messrs Chingleput Bottlers. There was no occasion for the Commissioner to have recorded the statement of Ramabadran over again unless this was to give him an opportunity to explain the substance of the report of the Collector or other information gathered by him irrespective of the source.

The learned Judges repelled the contention of Messrs Chingleput Bottlers that the Commissioner acted in breach of the rules of natural justice by his failure to furnish them with a copy of the

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report of Collector on the ground that there is no fundamental right in a citizen to carry on any trade in liquor. According to them, the Commissioner under the Rules performs an administrative function and having regard to the requirements of r. 5 of the Rules, and in view of the fact that Messrs Chingleput Bottlers had neither a legal right nor a legal expectation that they would be granted the privilege all that was required was that the Commissioner should act fairly in dealing with the application and not in a capricious or arbitrary manner. On the material on record, the Learned Judges held that they were satisfied that the Commissioner acted fairly and reasonably and not arbitrarily or capriciously in coming to the conclusion that Messrs Chingleput Bottlers had not made the application on their own behalf, but benami for others and in rejecting their application for the privilege for setting up a blending unit for arrack. Incidentally, they pointed out that Messrs Chingleput Bottlers did not specifically make a grievance of the fact in the writ petition that principles of natural justice had not been complied with. It is a fundamental rule of law that no decision must be taken which will affect the rights of any person without first giving him an opportunity of putting forward his case.

There has ever since the judgment of Lord Reid in *Ridge v Baldwin*, supra, been considerable fluctuation of judicial opinion in England as to the degree of strictness with which the rules of natural justice should be extended, and there is growing awareness of the problems created by the extended application of principles of natural justice, or the duty to act fairly, which tends to sacrifice the administrative efficiency and despatch, or frustrates the object of the law in question. Since this Court had held that Lord Reid's

judgment in Ridge v. Baldwin would be of assistance in deciding questions relating to natural justice, there is always "the duty to act judicially" whenever the rules of natural justice are applicable. There is therefore the insistence upon the requirement of a "fair hearing".

In the light of the settled principles, we have to see whether the Commissioner acted in breach of the rules of natural justice or fairplay in passing the impugned order.

There is authority for the proposition that an authority or body need not observe the rules of natural justice where its decision, although final, relates not to a 'right' but to a 'privilege or licence' In a number of recent decisions, the Courts have, while extending

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the protection of natural justice in the former category of claims, denied such protection to the latter category. All that is emphasized in such cases is that the applications must be considered fairly. In R.V. Gaming Board for Great Britain ex parte Bneaim & Khaida the Court of Appeal held that in refusing a certificate for reasons concerning the character and suitability of the applicants, the Board must act fairly and obey the broad principles of natural justice. In fact, it was held that they had done so since they had given the applicants full opportunity to know and contest the case against them, even though they had not revealed the sources of their information or given their reasons. It follows that the right to know the case to be met does not necessarily involve any right to know the source of adverse information or to confront the informants, for in some cases it would be quite proper for the authority to employ confidential sources.

The Master of Rolls referred to the contention advanced by counsel appearing for the applicants that they ought not to be deprived of the chance to get licence for the gaming business without knowing the case they had to meet. The counsel criticized especially the way in which the Board proposed to keep that confidential information and relied on some words of his in R. Surinder Singh Kanda v. Government of the Federation of Malayaa where he had said:

"That the Judge or whoever has to adjudicate must not hear evidence or receive representation from one side behind the back of the other."

Lord Denning rejected the contention by observing that 'the counsel had put his case too high'. The learned Master of Rolls then observed:

"It is an error to regard Crockford's as having any right of which they are being deprived. They have not had in the past, and they have not now, any right to play these games of chance-roulette, cheminde-fer, baccarat and the like for their own profit. What they are really seeking is a privilege-almost, I might say, a franchise-to carry on gaming

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for profit, a thing never hitherto allowed in this country. It is for them to show that they are fit to be trusted with it."

In Brren v. Amalgamated Engineering Union. Lord Denning said:

"If a man seeks a privilege to which he has no particular claim-such as an appointment to some post or other- then he can be turned away without a word."

The Master of Rolls went on to say that nonetheless statutory and in some cases domestic bodies must act fairly and this may involve a hearing. although it is not clear from the judgment whether the duty applies where an initial

application is being considered or only where an existing privilege is being terminated.

In *McInnes v. Onslow Fane & Anr.* 2 Megarry, V.C. has drawn a distinction between initial applications for grant of licence and the revocation, suspension or refusal to renew licences already granted. The learned Vice-Chancellor says that there is a substantial distinction between 'application cases' and 'forfeiture cases'. He observes that while an applicant for grant of licence has neither a right to such a grant nor a reasonable expectation that such grant would be made in his favour, but cancellation or forfeiture of an existing licence or refusal to renew a licence, involves a right to a hearing as the applicant has what may be called 'reasonable expectation'. Megarry, V.C. dealt with the question whether the grant or refusal of licence by the Board of Control is subject to any requirement of natural justice or fairness which would be enforced by the courts. In dealing with the nature of the right to claim a licence, he said that it was nothing but a privilege. The three distinct categories can best be discerned in his own words:

"First, there are what may be called the forfeiture cases. In these, there is a decision which takes away some existing right or position, as where a member of an organization is expelled or a licence is revoked. Second, at the other extreme there are what may be called the application cases. There are cases where the decision merely refuses to grant the applicant the right or position that he seeks, such as membership

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of the organization, or a licence to do certain acts. Third, there is an intermediate category, which may be called the expectation cases, which differ from the application cases only in that the applicant has some legitimate expectation from what has already happened that his application will be granted. This head includes cases where an existing licence holder applies for a renewal of his licence, or a person already elected or appointed to some position seeks confirmation from some confirming authority.

The learned Vice-Chancellor went on to say that there was a substantial distinction between forfeiture cases and application cases. In forfeiture cases, there is a threat to take something away for some reason. In such cases, the right to an unbiased tribunal, the right to notice of the charges and the right to be heard in answer to the charges which were the three features of natural justice are plainly apt. In application cases, on the other hand, nothing is being taken away, and in all normal circumstances there are no charges, and so no requirement of an opportunity of being heard in answer to the charges. Indeed, there is the far wider and less defined questions of the general suitability of the applicant for membership or a licence. The distinction is well recognized, for in general it is clear that the Courts will require natural justice to be observed for expulsion from a social club, built not on an application for admission to it. The intermediate category i.e. Of the expectation cases, may at least in some respects be regarded as being more akin to forfeiture cases than application cases; for although in form there is no forfeiture but merely an attempt at acquisition that fails, the legitimate expectation of a renewal of the licence or confirmation of the membership is one which raises the question of what it is that has happened to make the applicant unsuitable for the membership or licence for which

he was previously thought suitable.

In such cases, Megarry, V.C. felt that much help cannot be had from discussing whether 'natural justice' or 'fairness' was the more appropriate term. He observes that if one expects that natural justice is a flexible term which impose, different requirement in different cases, it is capable of applying appropriately to the whole range of situations indicated by the terms such as 'judicial,' 'quasi-judicial' and 'administrative'. The content of the "duty to act fairly" did not impose on the Board to give either oral hearing to the

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applicant or to disclose the case against him nor was it under any obligation to give reasons for a decision. The learned Judge then went on to say that there was no obligation for the Board to give the applicant even the gist of the reasons while they refused his application, or proposed to do so, and added.

The concepts of natural justice and the duty to be fair must not be allowed to discredit themselves while ranking unreasonable requirements and imposing undue burdens."

In such cases; the right to hearing has been denied on the ground that the claim or interest or legitimate expectation is a mere 'privilege or licence'. This is in consonance with the decision of a Constitution Bench of this Court in *Kishan Chand Arora v. Commissioner of Police, Calcutta* following the judgment of the Privy Council in *Nakkuda Ali v. M.F. De S. Jayaratne's* case.

It is beyond the scope of the present judgment to enter into a discussion on the apparent conflict between the decision of the Privy Council in *Nakkuda Ali's* case and the observation of Lord Reid in *Baldwin's* case. It would appear that the long line of cases beginning with *Baldwin's* case and ending with *D'arcy Ryan's* case are cases dealing with interference with property rights, deprivation of membership of professional or other non-statutory bodies, dismissal from office, imposition of penalties and deprivation of advantages etc. Both the Privy Council as well as this Court have required strict adherence to the rules of natural justice where a public authority or body has to deal with rights. But the principle that there was a duty to observe the *audi alteram partem* rule may not apply to cases which relate not to rights or legal expectations but to mere privilege or licence.

It is now well-settled that while considering the question of breach of the principles of natural justice, the Court should not proceed as if there are inflexible rules of natural justice of universal application. Each case depends on its own circumstances. Rules of natural justice vary with the varying constitutions of statutory bodies and the rules prescribed by the legislature under which they have to act.

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There is nothing in the language of r.7 of the Rules to suggest that in refusing to grant the privilege, the Commissioner is obliged to act 'judicially'. The order refusing a licence under r.7 is purely an administrative or executive order and is not open to appeal or revision. There is no lis between the Commissioner and the person who is refused such privilege. The power of refusal of licence unlike the power to grant is not subject to any pre-condition.

It must follow that the grant of a liquor licence under r.7 of the Rules does not involve any right or expectation but it is a matter of privilege. The Commissioner was

therefore under no obligation either to disclose the sources of information or the gist of the information that he had. All that was required was that he should act fairly, and deal with the applications without any bias, and not in an arbitrary or capricious manner.

There is no suggestion of any mala fides on the part of the Commissioner or the State Government. The Commissioner heard both the parties after he had an inquiry made through the collector to adjudge their suitability for the grant of the licence. The Commissioner had issued a questionnaire and had the material collected by the Collector. The Commissioner was entitled to act on the report of the Collector and also on other material gathered by him during the course of the inquiry. There is no requirement under the Act for a confronted hearing like the hearing contemplated between rival claimants for the grant of a stage carriage permit under the Motor Vehicles Act, 1939 into their respective merits and demerits. The Commissioner separately heard both the parties and had their statements recorded with respect to all the relevant aspects. It cannot be said that the Commissioner in dealing with the applications did not act fairly in not furnishing a copy of the report of the Collector or in taking a representation from Messrs Majestic Bottling Company.,

The High Court could not have in proceedings under Art. 226 of the Constitution interfered with the impugned order of the Commissioner merely because on a reappraisal of the evidence it might have come to a contrary conclusion. There was no error of jurisdiction on the part of the Commissioner nor was the impugned order vitiated by any error apparent on the face of the record. The finding reached by the Commissioner that the application made by Messrs Chingleput Bottlers was not made bona fide on their own

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account but as benammi for others is a finding based on appreciation of evidence. The Commissioner was entitled to rely upon the facts found by the Collector. It may be pointed out that the Collector's report is entirely based on the statement of V. Ramabadrana, managing partner of Messrs Chingleput Bottlers. The High Court was therefore justified in dismissing the appeal preferred by Messrs Chingleput Bottlers.

In the result, the appeal preferred by the State Government must succeed and is allowed. The judgment and order passed by the High Court for the issue of a writ or mandamus directing the Commissioner of Prohibition & Excise, Madras is set aside and the case is remanded to the Commissioner for a decision afresh according to law. For the reasons stated, the appeal filed by Messrs Chingleput Bottlers must fail and is dismissed.

There shall be no order as to costs.

S.R.

C.As. 11970-71/83 dismissed
and C.A.11972/83 allowed

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