PETITIONER:
A.P. MANCHANDA

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT27/10/1993

BENCH:
AHMADI, A.M. (J)
BENCH:
AHMADI, A.M. (J)
PUNCHHI, M.M.

CITATION:
1994 SCC Supl. (2) 45

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1.The appellants were promoted under Rule 6(1) of the Haryana Service of Engineers, Class 11, Public Works Department (Irrigation Branch) Rules, 1970 (hereinafter called 'the Rules'). Since they belonged to the Haryana Public Works Department (Irrigation Branch) they were governed by source 4 of the said rules. Rule 7(3)(ii) is the other relevant rule which we must notice. It lays down the qualifications and says that no person shall be appointed from source 4 under Rule 6(1) unless he possesses the educational qualification set out therein and has the required experience. It further provides that he will have to pass the departmental examination within three years of such promotion otherwise he will be reverted to his original post and his seniority will be determined from the date of his passing the examination. The State contends that the appellants failed to pass the examination within three years as required by the said provision and, therefore, they were liable to be reverted. But it must be realised that ordinarily every year examinations were held twice and, therefore, the appellants would have had six chances to clear the examination within the period of three years. The appellants contend that in the year 1980 the examination ordinarily to be held in the month of November, was not held and it was held as late as August 1982 which examination the appellants successfully cleared. The word 'ordinarily' would indicate that it was not compulsory on the part of the State to hold the examination twice in a year but it must be realised that the appellants have passed the examination in August 1982 whereas they were reverted in October 1982 i.e. after they had cleared the examination. In that view of the matter there was no question of reverting them since they had qualified for promotion to the next higher post even on the terms of Rule 6(1), source 4, read with Rule 7(3)(ii) of the rules. Under the orders of the Court their reversion was stayed. It is an admitted position that they are

continuing to serve in the promotion post. We are, therefore, of the opinion since they had passed the examination in August 1982 and since the rules do not say that if they do not clear the examination within three years they will not be entitled to promotion for all times even if they clear the examination subsequently, they became ripe for promotion on clearing the examination held in August 1982 and, therefore, there was no need to revert them and in any case no such need now survives. It is another matter that under Rule 7(3)(ii) the question of seniority may have to be fixed in accordance with that rule but that is not an issue before us.

2. In the result the appeal is allowed accordingly with no order as to costs.

48

Advocates who appeared in this case :

G. Ramaswamy, Senior Advocate (E.M.S. Anam and George Poonthothan,
Advocates, with him) for the Appellants;

V.R. Reddy, Additional Solicitor General, A.S. Nambiar, Senior Advocate (M.A. Firoz, Advocate, with them) for the Respondents.

The Judgment of the Court was delivered by

R.M. SAHAI, J.- These are four appeals directed against judgment and order of the High Court of Kerala. The appellants are owners or proprietors of hotels and restaurants who were granted FL-3 licences under Rule 13(3) of the Kerala Excise Rules in October 1992 for the year 1992-93. Their licences were cancelled soon thereafter as in November 1992 the Government had taken a policy decision to cancel all Foreign Liquor (Hotel/Restaurant) Licences under Rule 13(3) of the Kerala Foreign Liquor Rules, 1974 to hotels/restaurants/tourist homes during the financial year 1992-93. They challenged the orders in the High Court by way of writ petitions. The petitions were dismissed on February 1, 1993. Two special leave petitions were filed against this order. One was numbered as 2310-17 of 1993 and the other as 3391 of 1993. Some other petitions came up for hearing before the High Court on March 4, 1993 which were decided on March 10, 1993. This order was challenged by Special Leave Petition (Civil) No. 4152 of 1993. In Special Leave Petition Nos. 2310-17 of 1993 and 3391 of 1993 a Bench of this Court on March 1, 1993 passed the following order:

> "Issue notice both on special leave petitions as well as on petitions for stay. Mr John Joseph on behalf of Mr P.K. Pillai accepts notice on behalf of Respondent 6. Dasti service is permitted additionally. There will be an interim stay which will enure only up to March 31, 1993 in respect of FL-3 licence for the year 1992-93 and the stay will not enure beyond that period.
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> It is open to the petitioners to approach the concerned authorities for renewal of the licence, if they are so entitled and the concerned authorities thereupon shall dispose of the application in accordance with law and on merits."

On March 2, 1993 it is alleged that a statement was made on behalf of the State to the Press that the licence of the appellants shall not be renewed. However, since on March 1, 1993 this Court had permitted the appellants to approach the concerned authorities and yet a statement had been issued on behalf of the State Government the appellants approached the High Court, once again, for issue of direction to opposite

parties to renew the licences of the appellants for the years 1993-94. This petition was disposed of on March 30, 1993 directing the respondents to dispose of the applications for renewal filed by the appellants as directed by this Court in accordance with law and on merits. In pursuance of this order applications filed by the appellants for renewal of their licence for 1993-94 appears to have been forwarded by the Excise Commissioner to the Board of Revenue which in its turn returned it with instructions to dispose them of in the light of G.O. No. 179/92/TD dated November 9, 1992. On May 24, 1993 the Excise Commissioner rejected the applications for renewal in the light of G.O. dated November 9, 1992 as directed by the Board. This order has been challenged by a separate Special Leave Petition (C) No. 5808 of 1993 in which notice was issued on May 13, 1993. 49

2.Lengthy arguments were advanced by learned counsel for both the sides. One of the questions that was raised was if the appellants have a fundamental right to carry on trade in liquor. This question has been referred to a Constitution Bench by a Bench of three Judges of this Court in Civil Appeal Nos. 4708-12 of 1989. The Civil Appeal Nos. 6043-50 of 1993 arising out of SLP (C) Nos. 2310-17 of 1993; Civil Appeal No. 6051 of 1993 arising out of SLP (C) No. 3391 of 1993; and Civil Appeal No. 6052 of 1993 arising out of SLP (C) No. 4152 of 1993 are therefore directed to be tagged with Civil Appeal Nos. 4708-12 of 1989.

3.The appeal arising out Special Leave Petition (C) No. 5808 of 1993 is however confined to the short question if the opposite parties committed any error of law in rejecting the application filed by appellants for renewal of licence for 1993-94. Two basic attacks were made on the correctness of the order dated May 24, 1993. One, that the policy of the Government is not in consonance with practice. It was claimed that even though the State claimed implementation of directive principles of the Constitution it had liberalised import of arrack from outside the State. It was claimed that this unmistakenly demonstrates that the State was not interested in enforcing the policy of prohibition but only denying the right to carry on business to the appellants for extraneous reasons. The other ground was that the renewal of 381 licences who were similarly situated as the appellants was contrary both to the policy decision of Government and directive principles of the Constitution. It was also urged that the State being in contempt as it not only made statement to the press which was in direct conflict with the order issued by this Court but even rejected the applications filed by the appellants without examining them on merits was not liable to be heard. The State defended both its policy decision and the order.

4.Although we do not propose to decide if any statement was made on behalf of the State Government and it purported to interfere with the courts of justice as sufficient material has not been placed on record but we consider it necessary to record our disapproval of the nature of affidavit filed by the Secretary (Excise) on such an important issue. Paragraph 11 of the counter affidavit is reproduced below :

> "I submit that the allegation in Para 5 of Special Leave Petition No. 5808 of 1993 that 'the Government have made its mind clear, on the very next day of the order of this Hon'ble Court which was prominently flashed in all Malayalam newspapers in headline news, by the Hon'ble Chief Minister of the State making a

> statement to the Press that the licences of the petitioners will in no case be renewed for the year 1993-94', is a vague allegation. Since no paper report has been produced, the deponent is not in a position to verify the veracity of the allegation. However, I deny the imputation that the Government had a closed mind."

It has been repeatedly emphasised by this Court that averments in the affidavit should be clear and specific. To our dismay it is not only vague but highly unsatisfactory. An officer of such high stature has not cared to discharge his duty with responsibility. He did not come out clearly if the statement was made or not. A very flimsy pretext was advanced that the appellants did not produce newspaper reports. Even this much is not stated that no newspaper published in Malayalam carried such statement. We are constrained to observe that such affidavits instead of assisting in resolving the issues complicate them. It is
50
capable of creating reasonable apprehension in the mind of an ordinary citizen, that the opposite party did not decide their applications on objective considerations but on invisible yet apparent pressure from extraneous source. We stop here and say no more as in our opinion it is not necessary, for purpose of deciding this appeal.

5.The rules do not appear to make any distinction between renewal of a licence and its grant. We find some merit in the submission of the learned Additional Solicitor General that renewal or fresh grant normally is not dealt with by the same yardstick, yet we do not consider it necessary to pronounce on it as validity of the G.O. issued on November 9, 1992 is subject-matter of challenge in other appeals which we have directed to be heard along with other appeals pending before Constitution Bench. As stated earlier we are concerned in this appeal only with correctness of the order dated May 24, 1993. The opposite parties have rejected the applications filed by the petitioners on the ground that the State Government having taken a policy decision on November 9, 1992 not to issue licences the appellants were not entitled to claim renewal. The order was attempted to be justified by the learned Additional Solicitor General as according to him the appellants formed a separate class inasmuch as they were issued licences in 1992-93 and, therefore, they could not claim to be in the same group as other licensees who were operating from before. According to him since there were two groups or class of persons, one, who were operating from before and the other who were granted licences in the year 1992, the opposite party did not commit any error of law in rejecting the applications of appellants or acted discriminately in renewing the licences of others. We again do not propose to decide this issue in detail or examine it extensively as the validity of the G.O. has been referred to the Constitution Bench. Suffice it to say that the classification which can be sustained must have a reasonable nexus with objective sought to be achieved by the impugned action. The reason for not renewing the licence of the appellants was the prohibition policy that the State is envisaging to enforce. We may agree that this is a valid ground for reducing the number of licensees in the State. We may also agree that such steps can be taken in stages and not at one stroke, but the facts are otherwise. As stated earlier the consumption of liquor has gone up. The volume of imported arrack has been enhanced. Therefore except for the appellants who are 21 in number the

State could not point out any circumstance which could establish that the policy of prohibition was being enforced or implemented in the State. True, that some public-interested persons are agitating but the validity of the State action has to be judged on positive steps taken by the State for enforcing the policy. But in the affidavits filed by the State no material has been brought on record to show that any concrete step has been taken in this regard. Moreover the appellants are hoteliers who were granted licence for promoting tourism. No figure has been furnished about traffic in these hotels. The agitation must be against consumption of liquor. How is the State curtailing it by permitting import of arrack has not been explained. In fact it is not disputed in the affidavit filed by the Excise Secretary that import was permitted under new Abkari policy adopted from April 1, 1993 as the State presumed that contractors were purchasing spirit clandestinely and such clandestine imports were adversely affecting State revenue. The affidavit asserts that it "was to get over the above problem in a logical manner that Government
51
desired to make a realistic assumption of consumption". So on the one hand the Government is taking the realistic view by permitting import of arrack which is consumed more by common man and its quota in 1992-93 was one crore bulk litres and on the other cancelling licence of 21 persons in the entire State of Kerala who were granted licence for promoting tourism as it would help in achieving the prohibition policy. We do not comment any further on it. The appellants who were granted licence in 1992-93 and those who are granted licence and are operating from before are hoteliers and are required under rules to conform to two star hotel standard. Both are required to promote tourism. In all respects their licences are same. Further the State does not appear to follow a consistent and uniform policy. In June 1992 it announced its intention not to issue any licence, 'afresh' from September 18, 1991 but it did not adhere to it and within a month it issued another order in February 1992 deciding to grant the privilege of selling liquor for promotion of tourism. In November 1992 it decided to cancel all licences issued in current year. If the licences issued in 1993-94 to licensees operating from before and to the appellants were issued afresh as the rules do not make distinction between renewal and fresh grant then all licensees were on same footing and the attempt to pick and choose the appellants, in our opinion, was contrary to rules without any valid justification.

6.For these reasons appeals arising out of Special Leave Petition Nos. 2310-17, 3391 and 4152 of 1993 are directed to be tagged with Civil Appeal Nos. 4708-12 of 1989.

7.Civil Appeal No. 6042 of 1993 arising out of SLP (Civil) No. 5808 of 1993 is allowed. The respondents are restrained from interfering in the carrying on of appellants as FL-3 licensees subject to complying with other conditions and payment of annual rental proportionately till their application for grant of licence are decided on merits as directed by this Court on March 1, 1993 without adverting to order dated November 9, 1992 or till the policy decision is enforced uniformally. Parties have to bear their own costs.
52