

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

JUDGMENT

**SMT. GANPATI BAI VS. STATE OF RAJASTHAN & ORS.
(S.B.CIVIL WRIT PETITION NO.6990/11)**

Dated:- 31st August,2012.

HON'BLE MR.JUSTICE SANGEET LODHA

Mr.Rajesh Joshi,for the petitioner.
Dr.Sachin Acharya,for the respondents.

Reportable

1. This writ petition is directed against order dated 27.7.11 of the District Excise Officer, Nagaur, whereby the license issued in favour of the petitioner under the provisions of Rajasthan Excise Act, 1950(in short "the Act") and the Rules made thereunder for retail sale of country liquor and Indian Made Foreign Liquor (IMFL) for local area comprising Gram Panchayat, Deh(Nagaur), for the period 1.4.11 to 31.3.12, stands cancelled. The petitioner has also challenged the condition no.8.6.3 of the license and circular dated 14.7.11 (Annex.8) issued by the Commissioner, Excise, Rajasthan, directing all the Additional Commissioners, Excise Zone and District Excise Officers to cancel the license in cases where after due inquiry, the dealer is found guilty of selling the liquor for the price exceeding maximum retail price. Besides,

the advertisement inviting application for grant of fresh license of the liquor shop operated by the petitioner for the remaining period i.e. 1.8.11 to 31.3.12 is also impugned in this petition.

2. The relevant facts in nutshell are that the petitioner was granted a license by the respondents authorising her to sell the country liquor as well as IMFL, in the group area Gram Panchayat, Deh (Nagaur). The petitioner deposited the guarantee amount, the license fee for sale of country liquor and also deposited composite fee for sale of IMFL. The license issued in favour of the petitioner contains inter alia the condition no.8.6.3 which reads as under:-

"यदि अनुज्ञाधारी विभाग द्वारा निर्धारित अधिकतम खुदरा मूल्य से अधिक मूल्य पर मदिरा बेचते हुए पाया जाता है तो यह अनुज्ञा पत्र की शर्तों का उल्लंघन की श्रेणी में आएगा जिस हेतु उसका अनुज्ञा पत्र निरस्त किया जाएगा।"

3. On 21.7.11, the petitioner's business premises was inspected twice, firstly, by the Excise Inspector and then by the Special team from the office of Additional Excise Commissioner, Ajmer Zone, Ajmer. During the first inspection made, certain contravention of the conditions of the license such as non availability of the stock register and inspection register, the salesman being not in proper uniform etc. were found. It is alleged that during the second inspection made by the Special team, the salesman was found selling the liquor at the price

exceeding MRP in violation of the condition no.7.5 and 8.6.3 of the license and circular no. 64 issued by the Excise Commissioner.

4. The petitioner was served with two notices, one being No. Spl-1 dated 22.7.11 issued by the Excise Inspector, Circle Nagaur for alleged violation of the provisions of Section 58(c) of the Act in respect of the illegalities , irregularities noticed during the first inspection made by him and another being no. 901 dated 22.7.11 issued by the District Excise Officer, Nagaur in respect of the case registered for sale of the liquor at the price exceeding MRP in violation of condition no. 7.5 and 8.6.3 of the license and circular no.64 issued by the Commissioner, Excise, Rajasthan. The present matter relates to the second notice issued as aforesaid whereby the petitioner was directed to remain present in the office of the District Excise Officer on 26.7.11 to submit her explanation, if any.

5. The petitioner filed a reply to the notice dated 22.7.11 issued by the District Excise Officer, Nagaur for alleged violation of the condition nos. 7.5/8.6.3 and the circular no.64 issued by the Excise Commissioner stating therein that she being a lady is not in position to look after the day to day business and therefore, the same was entrusted to the salesman Khivraj s/o Balaram Jat, whose 'Naukarnama' was duly sanctioned, however,

on account of death of his grand father, he was not available and therefore, on 11.7.11, 'Naukarnama' of one Shri Rameshwar Jat s/o Narayan Ram was got sanctioned temporarily. It was alleged that the rate list was handed over to the salesman and sale conditions were also explained to him. The petitioner alleged that the salesman appears to have acted in connivance with and under the influence of the liquor smugglers, who are exerting pressure upon the petitioner to give up the shop. The petitioner submitted that she had always sold the liquor on MRP and given a business as high as 228 per cent of the guarantee amount in the preceding months and therefore, looking to the totality of the facts and circumstances of the case, she deserves leniency in the matter of punishment.

6. After consideration of the reply submitted by the petitioner as aforesaid, the District Excise Officer opined that by virtue of the provisions of Section 6 of the Act , the license holder is liable for the acts of his servants and therefore, since the sale of the liquor has been effected on the price exceeding MRP in violation of condition no.8.6.3 and the circular of the Excise Commissioner EC-64, letter No.846 dated 14.7.11 and therefore, the license is liable to be cancelled. The explanation submitted by the petitioner was not found sufficient to prove her innocence and the said authority being not satisfied with the explanation

submitted, directed the cancellation of the license, vide impugned order dated 27.7.11, at the risk of the petitioner, the license holder. The earnest money deposited by the petitioner was also ordered to be forfeited. Hence, this petition.

7. Learned counsel for the petitioner submitted that before taking the drastic action of cancelling the license, no inquiry worth the name was conducted by the District Excise Officer. It is submitted that the copy of the inspection memo and other material on the basis of which the notice was issued to the petitioner for alleged violation of condition no.7.5/8.6.3 of the license and circular no.64 EC issued by the Excise Commissioner, were never supplied to the petitioner. Learned counsel submitted that as a matter of fact, the notice was issued for initiating the legal proceedings and not for cancellation of the license as such and therefore, before taking the action, it was incumbent upon the licensing authority to consider the explanation submitted by the petitioner and if the explanation furnished was not found satisfactory, a proper inquiry into the allegations levelled was required to be conducted. Learned counsel submitted that even the Constable Surendra Singh who alleged to have purchased the Whisky and Beer and the salesman from whom the liquor was purchased, were not examined as witnesses. Learned counsel submitted that the impugned action of the respondent

authority in straight away cancelling the license without giving a proper opportunity of hearing to the petitioner, is ex facie violative of principle of natural justice. Learned counsel submitted that as a matter of fact, the condition no.8.6.3 incorporated in the license runs contrary to the provisions of Section 58(C) of the Act wherein, the maximum penalty provided for the breach of condition of the license is the fine which may extend to Rs.5,000/- and therefore, the action of the respondents in cancelling the license for the alleged violation is ex facie without jurisdiction. Learned counsel submitted that the entire proceedings for cancellation of the petitioner's license appears to have been taken in hot haste manner with a priori conclusion to cancel the license inasmuch as, the first inspection was carried out at 10.45 AM and the second at 12 PM on 21.7.11 itself. The notices were issued to the petitioner on 22.7.11 seeking her explanation, if any, by 26.7.11 and on 27.7.11 , the order impugned cancelling the license was issued and surprisingly enough on the very next day, fresh auction notice dated 28.7.11 was issued which was published in the newspaper on 29.7.11 for auction to be held on 1.8.11. Learned counsel submitted that the treatment meted out to the petitioner is ex facie arbitrary and discriminatory inasmuch as, many more dealers were found selling the liquor at the price exceeding the

MRP yet, no action cancelling their license has been taken by the respondents. In this regard, the attention of the court was drawn to the details of the irregularities alleged to have been committed by a few dealers set out in para no.6 of the additional affidavit filed on behalf of the petitioner. Accordingly, it is submitted by the learned counsel that viewed from any angle, the order impugned cancelling the license of the petitioner is not sustainable in the eye of law. Regarding the circular dated 14.7.11, learned counsel submitted that Excise Commissioner had no jurisdiction to abdicate the power of the District Excise Officer by issuing directions to cancel the license on the breach of condition No.8.6.3. Learned counsel submitted that the directions issued by the Excise Commissioner as aforesaid controlling the authority of the District Excise Officer, a quasi judicial authority, vested with the power to take the penal proceedings against the erring licensee are absolutely without jurisdiction. Learned counsel submitted that condition no.8.6.3 incorporated in the license in violation of provisions of the Act and the Rules also deserves to be deleted.

8. On the other hand, Dr.Sachin Acharya, learned counsel appearing for the respondents in the first instance submitted that the order impugned passed by the District Excise Officer is appealable before the Excise Commissioner under Section 9A of

the Act and therefore, in view of availability of effective and efficacious alternative remedy under the relevant statute, there is no reason as to why the petitioner should be permitted to invoke the extra ordinary jurisdiction of this court under Article 226 of the Constitution of India and therefore, the writ petition deserves to be dismissed on this count alone. In this regard, learned counsel has relied upon a decision of the Hon'ble Supreme Court in the matter of Titaghur Paper Mills vs. State of Orissa, (1983) 2 SCC 433.

9. Learned counsel submitted that when the petitioner entered into contract, she was aware of all the conditions and therefore, she cannot be permitted to wriggle out of the same and assailed the validity thereof by invoking writ jurisdiction of this court. In this regard, learned counsel has relied upon a decisions of this court in the matter of "*Lekhraj v. State of Rajasthan*", (1987) 1 RLR 661 and "*Tara Singh v. State of Rajasthan & Ors.*", 2009(3) DNJ, 1446 and the decision of the Hon'ble Supreme Court in the matter of "*Bharthi Knitting Company v. DHL World Wide Express Courier*", (1996) 4 SCC, 704.

10. Learned counsel submitted that the proceedings under Section 34 and 58 of the Act run parallel to each other; while Section 58(c) deals with imposition of penalty, Section 34

provides for cancellation of license in case of any of the condition of license being violated. Learned counsel submitted that at the time of incorporation of Section 58(c), there was no prescribed MRP on liquor and therefore, the condition no.8.6.3 was incorporated in the conditions of the license. Accordingly, it is submitted that the provisions of Section 58(c) are not attracted in the matter and therefore, the violation of the said condition by the petitioner which entails cancellation of the license cannot be compounded. Learned counsel submitted that the condition no.8.6.3 has been incorporated pursuant to policy decision taken by the Government and violation thereof entails the cancellation of license. Learned counsel urged that the policy decision taken by the Government cannot be interfered with by this court. In this regard, learned counsel has relied upon a decision of the Hon'ble Supreme Court in the matter of "*Kuldeep Singh v. Government of NCT of Delhi*", (2006) 5 SCC, 702. Learned counsel submitted that condition no.8.6.3 is prescribed by the Commissioner exercising the powers conferred by Section 42 of the Act and therefore, it cannot be said that the incorporation of the condition travels beyond the scope of Section 58(c) of the Act. Learned counsel submitted that the State is empowered to impose restrictions and limitations on trade in liquor by way of subordinate legislation and even by executive order. In this

regard, learned counsel has relied upon a decision of the Hon'ble Supreme Court in the matter of "*Khoday Distilleries Ltd. & Ors. vs. State of Karnataka & Ors.*" (1995) 1 SCC 574.

11. Learned counsel submitted that even Rule 77 D of the Rajasthan Excise Rules, 1956("the Rules") clearly mandates that power of compounding can be exercised only with the previous sanction of the Excise Commissioner and therefore, the circular issued by the Excise Commissioner directing the cancellation of the license in case of sale of the liquor on the price exceeding MRP cannot be faulted with. Learned counsel submitted that the cancellation of the license is justified also by virtue of provisions of Section 34(c) of the Act.

12. Learned counsel submitted that the petitioner had admitted the guilt in her reply to the show cause notice and therefore, she is estopped from raising the pleas against her own admission. Learned counsel submitted that the plea raised by the petitioner that she was not aware about antecedents of the servant Rameshwar Lal, is not sustainable in view of the provisions of Section 6 of the Act. Learned counsel submitted that aforesaid grounds sought to be raised before this court were never raised by the petitioner before the respondent authority and therefore, she cannot be permitted to raise new grounds before this court.

13. Learned counsel submitted that the contention of the

learned counsel for the petitioner regarding violation of the principles of natural justice is also not tenable inasmuch as, the question as to what extent, principles of natural justice are required to be complied with to depend upon the facts situation obtaining in each case. The principles of natural justice are not required to be complied with when it will lead to an empty formality. Learned counsel urged that the genesis of the action contemplated, the reasons therefor and the reasonable possibility of prejudice are some of the factors which should weigh with the court in considering the effect of the violation of the principles of natural justice. In this regard, learned counsel has relied upon the decisions of the Hon'ble Supreme Court in the matter of "*State of Karnataka & Anr. v. Mangalore University Non Teaching Employees' Association & Ors.*", (2002) 3 SCC, 302 and "*Rajendra Singh v. State*", 1996(5) SCC 460. Learned counsel urged that at no point of time, the petitioner applied for supply of copy of inquiry report and other documents and since, in the instant case, the petitioner had admitted the guilt, no further opportunity of hearing was required to be extended to the petitioner. In support of the contentions, learned counsel has relied upon a decision of the Hon'ble Supreme Court in the matter of "*Syndicate Bank & Ors. v. Venkatesh Gururao Kurati*", (2006) 3 SCC 150.

14. Accordingly, it is submitted that the order impugned passed by the respondent authority after objective consideration of the material on record, does not suffer from any infirmity or illegality so as to warrant interference by this court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India.

15. I have given my thoughtful consideration to the rival submissions, the material on record, the relevant provisions of the Act and Rules and the decisions cited at the bar .

16. The first question which comes for consideration before this court is as to whether on the facts and circumstances of the case, notwithstanding the availability of remedy of appeal under the relevant statute against the order impugned, the petitioner is entitled to invoke the extra ordinary jurisdiction of this court under Article 226 of the Constitution of India ?

17. Indisputably, the license of the petitioner has been cancelled by the respondent authority on account of alleged violation of the condition no. 7.5/8.6.3 of the license which according to the respondent has been incorporated in the license conditions by the Excise Commissioner in exercise of the power conferred by Section 42 of the Act, keeping in view the policy decision of the Government in this regard. It is also not in dispute that as per the condition no.8.6.3 and in terms of the

circular no.64 EC issued by the Excise Commissioner, if the license holder is found selling the liquor at the price exceeding the MRP prescribed , it entails cancellation of license. A perusal of circular no.64 EC dated 14.7.11 reveals that the general directions have been issued by the Excise Commissioner to all the Additional Commissioners and District Excise Officers in terms that if a person is found guilty of selling the liquor at the price exceeding MRP , the license issued should be cancelled and if the directions issued are not complied with, the proceeding shall be initiated against the concerned officer. In considered opinion of this court, in view of the directions issued by the Commissioner as aforesaid, the licensing authority is left with no other alternative but to cancel the license if a dealer is found guilty of violation of the condition no.8.6.3 of the license. A fortiori, a perusal of the order impugned reveals that the District Excise Officer has proceeded to cancel the license of the petitioner for violation of condition no.8.6.3, adhering to the directions issued by the Excise Commissioner vide circular dated 14.7.11, *ibid*. In this view of the matter, if in the instant case, the petitioner is relegated to the remedy of appeal against the order impugned passed by the District Excise Officer, it would amount to asking him to assail the validity of the directions issued by the Excise Commissioner, by issuing the circular dated

14.7.11 before himself. Thus, the fact situation obtaining in the case, can be better explained by the observations of the Hon'ble Supreme Court in "*Ram and Shyam Co. v. State of Rajasthan*", AIR 1985 SC,1147 in terms that "The cliché of appeal from Caesar to Caesar's wife can only be bettered by appeal from one's own order to oneself". Moreover, in the instant case, the petitioner has assailed the validity of condition no.8.6.3 incorporated in the license as also the circular dated 14.7.11 issued by the Excise Commissioner being contrary to the provisions of the Act and the Rules made thereunder and therefore, even otherwise the petitioner cannot be relegated to the remedy of appeal under the relevant Statute. In view of foregoing discussion, the preliminary objection raised by the petitioner is found to be not sustainable.

18. Coming to the merits, in order to appreciate the controversy involved in the present petition, it will be appropriate to refer to the Scheme underlying the various provisions of the Act governing the sale of the liquor, issuance of the license and conditions thereof. As per provisions of Section 8 of the Act, the control of the administration of the Excise Department subject to the directions of the State Government vests in the Excise Commissioner. Section 20 of the Act mandates that no excise article shall be sold without a license

from the Excise Commissioner or any Excise Officer duly empowered in that behalf. Further, Section 21 mandates that no liquor shall be bottled for sale and no excisable article shall be sold otherwise than in accordance with the terms and conditions of the license granted in that behalf. Thus, the State has exclusive privilege to carry on business in liquor and nobody has any right to trade in liquor except under the license issued by the State Government in accordance with the procedure laid down under the provisions of the Act and the Rules made thereunder.

19. The licenses, permits and passes, to be issued under the Act are governed by the provisions of Section 31 to 38 incorporated in Chapter VI of the Act. As per Section 31 (c) every license permit or pass granted under the Act shall be granted subject to such restrictions and on such conditions as the State Government may prescribe by Rules either generally or for any class of licenses, permits or passes or as the State Government may direct for any particular license, permit or pass. As per provisions of sub-Section (2) of Section 9 of the Act, the State Government may delegate to the Excise Commissioner such power of the State Government conferred by the Act as it may specify except the powers to make Rules thereunder. Thus, conjoint reading of provisions of Section 31(c) and Section 9(2) of the Act, makes it abundantly clear that the matter with regard

to the restriction on and conditions of license, permit or pass to be granted under the provisions of the Act shall be prescribed and regulated by the Rules to be framed by the State Government either generally or for any class of licenses, permits or passes as the State Government may direct. It is true that Section 42 deals with the power of Excise Commissioner to make Rules with the previous sanction of the State Government and clause (e) thereof empowers him to make Rules prescribing the restriction under and condition on which any license, permit or pass may be granted. But then, such power of prescribing the restriction or conditions on which the license, permit or pass may be granted, can only be exercised by the Excise Commissioner with the previous sanction of the State Government. Needless to say that while exercising rule making power under Section 42 of the Act, no rule can be framed by the Excise Commissioner contrary to the Rules already framed by the State Government laying down restrictions and conditions of license, permit or passes granted under the Act.

20. It is not the case of the respondents that the condition no.7.5/8.6.3 breach whereof entails the cancellation of license has been incorporated in the license issued by way of the Rules framed by the State Government or by the Excise Commissioner with the previous sanction of the State Government. Thus, it is

not in dispute that the condition incorporated in the license as aforesaid has been imposed by the Excise Commissioner on his own without framing rules with previous sanction of the State Government, only by way of an executive order.

21. In Khoday Distilleries's case (supra), relied upon by the learned counsel appearing for respondents, while dealing with the power of the Government to impose limitations and restrictions on the trade or business in potable liquor, the Hon'ble Supreme Court observed:

"64. The last contention in these groups of matters is whether the State, can place restrictions and limitations under Article 19(6) by subordinate legislation. Article 13(3) (a) of the Constitution states that law includes "any ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law". Clauses (2) to (6) of Article, 19 make no distinction between the law made by the legislature and the subordinate legislation for the purpose of placing the restrictions on the exercise of the respective fundamental rights mentioned in Article 19(1)(a) to (g). We are concerned in the present case with clause (6) of Article 19. It will be apparent from the said clause that it only speaks of "operation of any existing law insofar as it imposes ..." "from making any law imposing" reasonable restrictions on the exercise of the rights conferred by Article 19(1)(g). There is nothing in this provision which makes it imperative to impose the restrictions in question only by a law enacted by the legislature. Hence the restrictions in question can also be imposed by any subordinate legislation so long as such legislation is not violative of any provisions of the Constitution. This is apart from the fact that the trade or business in potable liquor is a trade or business in res extra commercium and hence can be regulated and restricted even by executive order provided it is issued by the Governor of the State. We, therefore, answer the question accordingly." (emphasis added)

22. It is to be noticed that in the instant case, as per the provisions of Section 31(c) of the Act, the restrictions and the conditions of the license, permit or pass to be granted to carry on the trade in liquor are required to be prescribed by the State Government by rules either generally or for any class of licenses, permits or passes or as the Government may direct for any particular license, permit or pass. As noticed above, the condition in question has not been prescribed by the State Government while framing the Rules and it is also not the case of the respondents that the same has been prescribed by an executive order issued by the Governor of the State rather, the condition had been incorporated by the Excise Commissioner on his own. In this view of the matter, the decision of the Hon'ble Supreme Court in Khoday Distilleries' case (supra) does not help the respondents in any manner.

23. But then, it is to be noticed that earlier by virtue of provisions of Section 39 of the the Standards of Weights and Measures Act, 1976 read with Rule 23 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 ("the Rules of 1977"), no retail dealer or other person including manufacturer, packer, importer and wholesale dealer was permitted to make any sale of any commodity in packed form at a price exceeding the retail price thereof. Now, though, the Rules

of 1977 stands repealed by Rule 34 of Legal Metrology (Packaged Commodities) Rules, 2011("the Rules of 2011"), framed under the provisions of Legal Metrology Act, 2009, but a similar provision stands incorporated in terms of 18 of the Rules of 2011 which prohibits sale of any of commodity in packed form at a price exceeding the retail price thereof. Suffice it to say that even otherwise, the license holder is not entitled to sale the liquor in the packed form at the price exceeding MRP and thus, the prohibition on sale of liquor in the packed form at the price not exceeding the MRP may be treated to be an implied condition of the license. In this view of the matter, condition no.7.5 and 8.6.3 of the license, so far as it provides for sale of the liquor on a price not exceeding the MRP, cannot be said to be illegal or ultra vires.

24. Now, the question remains for consideration is whether the act of the Excise Commissioner in providing for cancellation of license mandatorily on breach of conditions incorporated with regard to sale of liquor on the price not exceeding the MRP, as aforesaid, is ultra vires.

25. Section 34(c) of the Act provides that in the event of any breach by the holder of license, permit or pass or by his servant or by anyone acting on his behalf with his express or implied permission of any of the terms and conditions of the license,

permit or pass subject to such restrictions and conditions, as may be prescribed by the State Government, the authority granting any license, permit or pass under the Act may cancel or suspend the same. But, again the cancellation of the license in case of a breach of any condition of the license is not automatic and it is not the mandate of the provisions incorporated that the violation of the conditions of the license shall entail cancellation of the license ipso facto. The condition of the violation of the license may also be dealt with in terms of provisions of Section 58(c) of the Act by imposing the fine which may extend to Rs.5,000/-. That apart, as per the mandates of Section 70 of the Act, the Excise Commissioner or any other Excise Officer specially empowered by the State Government in this behalf may accept from any person whose license, permit or pass is liable to be cancelled or suspended or who is reasonably suspected or having committed on payment of some of money as specified by way of composition.

26. Thus, the condition no.7.5/8.6.3 of the license incorporated under the order of the Excise Commissioner providing for cancellation of license mandatorily in case of breach thereof, runs contrary to the provisions of the Act and the Rules and therefore, deserves to be declared ultra vires.

27. Coming to the validity of the circular issued by the Excise

Commissioner, suffice it to say that the condition no.7.5/8.6.3 of the license to the extent it provides for cancellation of license mandatorily on breach thereof having been found ultra vires, the circular dated 14.7.11 issued by the Excise Commissioner directing all the Additional Excise Commissioners and the District Excise Officers to cancel the license of the license holder on the breach of the said condition also deserves to be quashed.

28. There is yet another aspect of the matter. It is pertinent to note that under the provisions of Section 34, the matter with regard to cancellation and suspension of the license in the event of breach by the holder of such license or by a servant or by anyone acting on his behalf with his express or implied permission of any of the terms or conditions of such license has to be dealt with by way of appropriate proceedings by the licensing authority. Undoubtedly, the proceedings in terms of provisions of Section 34 is quasi judicial proceedings and the appropriate decision regarding the breach has to be taken by the licensing authority only. Obviously, the decision regarding the penal action being taken against the license holder for breach of the any of the conditions of the license has to be taken by the licensing authority independently and the same cannot be controlled or circumscribed by the dictates of the higher authority. A bare perusal of the circular dated 14.7.11 makes it

abundantly clear that the power of the licensing authority to take independent decision regarding the penal action stands abdicated inasmuch as, the directions are issued in terms that in case of breach of condition of 8.6.3 in case of license of country liquor and 7.5 in case of license for IMFL/Beer, the license has to be cancelled mandatorily. The matter does not end at this, it has been further made plain by way of the said circular that defiance of the instructions issued as aforesaid shall entail disciplinary proceedings against the officer concerned. It is not even disputed before this court by the counsel for the respondents that in view of the circular issued by the Excise Commissioner, the licensing authority is left with no judicial discretion in the matter of action against license holder in case of breach of the said conditions being proved. In this view of the matter, the circular dated 14.7.11 issued by the Commissioner taking away the judicial discretion of the licensing authority empowered to take decision regarding the appropriate action against the license holder found to be guilty of breach of condition of license cannot be countenanced by this court and the same having been issued acting without jurisdiction, deserves to be quashed.

29. Apparently, the order impugned cancelling the license has been passed by the licensing authority abiding by the directions issued by the Excise Commissioner as aforesaid and therefore, it

is a clear case of abdication of power by the disciplinary authority in favour of the Excise Commissioner and therefore, the order impugned also deserves to be quashed on this count alone.

30. This takes this court to consider the contention of the learned counsel that the petitioner cannot be permitted to wriggle out of contractual terms and conditions.

31. In Lekhraj's case (supra), inter alia the validity of conditions incorporated with regard to purchasing of liquor at the prices fixed under Issue Price Rules was questioned. The court observed that the licensees having voluntarily entered into contract and having enjoyed the license for their benefit would not be permitted to avoid their contractual obligations.

32. In Tara Singh's case (supra), the petitioner therein did not disclose the pendency of criminal case against him and therefore, taking into account the fraudulent conduct of the petitioner aimed at misleading the department, the liquor license issued in his favour was cancelled by the District Excise Officer. The court observed while upholding the cancellation of license, observed:

"15. The suggestion as made that furnishing of false information is not a ground for cancellation of license merely with reference to Section 34 of the Act of 1950 and Clause 8 of the format of license remains incorrect and incomplete too. Apart from Section 34, Section 35 of the Act of 1950 indicates the powers with the concerned authority to cancel the license

for any reason other than those specified in Section 34; the fundamental difference being that for cancellation under Section 34, the holder of license would not be entitled to any compensation nor to refund of any fees paid whereas under Section 35, license could be cancelled with provision for refund of the fees after deducting the amount due to the Government. In fact, the earlier order dated 30.3.2009 had been made by the DEO while directing refund of the license fees."

33. As noticed above, the restriction imposed by the Excise Commissioner to the extent of providing for the automatic cancellation of license on breach of condition 8.6.3 in case of license of country liquor and 7.5 in case of license for IMFL/Beer is found to be ultra vires and therefore, the contention raised as aforesaid regarding binding nature of the said condition in the garb of contractual obligation is also devoid of any merit. For the parity of reasons, the decisions cited by learned counsel appearing for the respondents are not applicable to the facts of the present case.

34. Coming to the denial of adequate opportunity of hearing to the petitioner, it is pertinent to note that as a result of second inspection, vide notice dated 22.7.11 (Annex.5), the petitioner was directed to show cause as to why an appropriate legal proceedings may not be initiated against her for alleged violation of condition no.7.5/8.6.3 of the license and circular no.64 issued by the Excise Commissioner. It is not the case of the respondent that any notice containing the statement of allegations was ever served upon the petitioner. A bare perusal of the notice reveals

that it in no manner suggests that the proceedings with regard to cancellation of the license in terms of provisions of Section 34 was initiated against the petitioner. In this view of the matter, in considered opinion of this court, without initiating the appropriate proceedings for the cancellation of the license against the petitioner in terms of provisions of Section 34 of the Act, straight away the order impugned passed cancelling her license taking the reply to the notice submitted by the petitioner to be admission of guilt on her part, is ex facie illegal, arbitrary and violative of elementary principles of natural justice.

35. The contention of the learned counsel that the petitioner having admitted the guilt and having not asked for any documents, no prejudice has been caused to her is also devoid of any substance. It is pertinent to note that in the reply filed , the petitioner has clarified the position regarding the incident alleged to have occurred and had taken a categorical stand that mischief might have committed by the salesman, who was temporarily employed, in connivance with the liquor smugglers who were exerting pressure upon the petitioner to close the shop. The petitioner has nowhere admitted in unequivocal terms that there was deliberate breach of condition on her part through her servant rather, she stated that on the facts and circumstances of the case, she will make efforts that such mistake is not repeated.

If the licensing authority was not satisfied with the explanation furnished by the petitioner and was of the view that the proceedings regarding cancellation of the license deserves to be initiated then it was under an obligation to initiate the proceedings by issuing appropriate notice in this regard and furnishing the relevant documents forming the basis for action against the petitioner. Thus, on the facts and in the circumstances of the case, in considered opinion of this court, the petitioner has not been afforded an adequate opportunity of hearing by the licensing authority and therefore, the order impugned deserves to be quashed being violative of principles of natural justice.

36. For the aforementioned reasons, the writ petition succeeds, it is hereby allowed. The condition no. 7.5 of license of IMFL and condition no. 8.6.3 of license of country liquor incorporated by the Excise Commissioner is held to be illegal and ultra vires to the extent it provides for cancellation of license mandatorily in case of breach of condition with regard to sale of liquor at the price exceeding MRP. However, the said condition prohibiting the sale of liquor at the price exceeding MRP is held to be valid. The circular no.64 EC dated 14.7.11 issued by the Excise Commissioner directing all the Additional Commissioners and District Excise Officers to cancel the license of liquor

mandatorily on the breach of condition no.7.5 and 8.6.3 as aforesaid is quashed. The order impugned dated 27.7.11 passed by the District Excise Officer, Nagaur cancelling the license of the petitioner is also quashed. It is made clear that it will be open for the licensing authority to initiate the proceedings against the petitioner for alleged breach of condition no.7.5 or 8.6.3, as the case may be in accordance with law. Needless to say that the petitioner shall be afforded an adequate opportunity of hearing and shall be furnished the relevant documents on the basis of which the allegations are sought to be levelled against her. The licensing authority shall apply its mind independently to the evidence coming on record and take appropriate decision in accordance with law. It will be open for the petitioner to apply for compounding of breach in terms of provisions of Section 70 of the Act. No order as to costs.

(SANGEET LODHA),J.