STATE OF MADHYA PRADESH & ORS. A

v.

NANDLAL JAISWAL & ORS.

OCTOBER 24, 1986

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[P.N. BHAGWATI C.J.I. AND V. KHALID, JJ.]

Madhya Pradesh Excise Act, 1915, sections 13, 14 and 62(2)(h) read with Rule XXII of the Madhya Pradesh Excise Rules and Rules III to V of Distillery Warehouse Rules, Scope of—Disposal of licences of manufacture or sale of intoxicants—Whether it was obligatory on the part of the competent authority to adopt the "tender method" failing which the "auction", failing which again by fixed licence fee method and so on as prescribed in Rule XXII. C

Licences—Grant of D-2 licences as per the policy decision of the Government of Madhya Pradesh—Whether the licence granted create a monopoly in favour of the licencees. D

Policy decision of the State to privitise the liquor distilleries after careful consideration of all the facts emanating from the application of the Madhya Pradesh Distilleries Association—Whether the High Court could bifurcate it into two and strike down one part of the policy as bad. E

Industries (Development and Regulation) Act, 1951, Section 11—Whether non-obtaining a licence from the Central Government disentitled the setting up distilleries—Such a plea not taken in the High Court—Supreme Court will not consider a new plea in an appeal under Article 136 of the Constitution. F

Constitution of India, 1950, Article 14—Applicability of—Whether will apply to grant of liquor licences.

Laches in filing writ petition after the implementation of the policy decision dated 30.12.84—Seven licences acted upon and spent at least 1 to 5 crores and altered their position—Whether a writ could be granted. G

Practice and Procedure—Judgment writing—Objectionable remarks should be avoided—If any, be expunged.

Madhya Pradesh Excise Act, 1915 regulates the manufacture, sale and possession of intoxicating liquor in the State of Madhya Pradesh. H

A Section 14 deals with the establishment or licensing of distilleries and warehouses. The State Government has, in exercise of the power conferre under section 62, made several sets of Rules. Rule II of the Rules of General Application made inter alia under sub-section 2(h) of section 62 lays down "five years" as the maximum period for which wholesale licences for the manufacture supply and sale of liquor could be granted B Rule XXII provides for the manner in which licences for the manufacture or sale of intoxicants shall be disposed.

There were at all material times in the State of Madhya Pradesh nine distilleries for the manufacture of spirit which were established long back by the State Government under a licence issued by the Excise C Commissioner. These nine distilleries were located at Gwalior, Ujjain, Dhar Badwaha, Chhatisgarh, Bhopal, Seoni, Nowgaon (owned by private individuals always) and Ratlam (owned by the Government). So far as the first seven distilleries are concerned, the land and buildings in which they were housed belonged to the State Government and originally the plant and machinery also belonged to the State Government D but in course of time successive holders of the D-2 licences in respect of these distilleries replaced the plant and machinery. The practice followed by the Excise Department in regard to the working of these distilleries was to invite tenders for the wholesale supply of country liquor from these distilleries and the tenderers were requested to quote their rates for the wholesale supply of country liquor to the State E Government. Normally the lowest tenders were accepted but at times the State Government used to accept even higher tenders taking various relevant factors into account. The State of Madhya Pradesh was devided in several areas and a particular area was attached to each distillery for the wholesale supply of country liquor in that area. The person whose tender was accepted for any particular distillery was given a D-2 F licence for working the distillery and also a D-1 licence for wholesale supply of country liquor manufactured in that distillery to retail vendors in the area attached to the distillery. These licences in Forms D-1 and D-2 were ordinarily issued for a period of five years. Respondent Nos. 5 to 11 in the writ petition of *Nandlal Jaiswal* were the holders of D-1 and D-2 licences in respect of these distilleries for the period ending G 31st March, 1986. There were two districts, however, which were not attached to any distillery, namely, Jabalpur and Betul and so far as these two districts were concerned, a licence in Form D-1(s) to make wholesale supply of country liquor to retail vendors in these two districts was being given and for the period ending 31st March, 1986 it was issued in favour of Sagar Aggarwal. The country liquor required by H Sagar Agarwal for supply to retail vendors in Jabalpur and Betul Dis-

tricts was being obtained by him from the Ratlam Alcohol Plant at the rate of Rs.1.80 per proof litre but, the supply of country liquor from Ratlam Alcohol Plant was wholly inadequate and Sagar Agarwal was constrained to purchase country liquor from other sources at higher price in order to fulfil his commitment under D-1(s) licence.

Since the land and buildings in which the distilleries were housed belonged to the State Government the holder of D-2 licence in respect of any particular distillery had to pay rent for the land and buildings to the State Government at a rate agreed upon from time to time. So far as the plant and machinery of the distillery was concerned, originally it was installed by the State Government at its own cost but in course of time it had to be replaced and such replacement was allowed to be made by the holder of the D-2 licence for the time being. It was however a condition of D-2 licence that on the expiry of the period of licence, if fresh D-2 licence was not issued in favour of the existing licence holder, he would be bound to transfer the plant and machinery in favour of the new licence holder at a price to be determined by a Valuation Committee. Therefore, during the period of D-2 licence, the plant and machinery belonged to the licence holder for the time being. The licence holder was bound to manufacture country liquor in the distillery for which he was given D-2 licence and on the strength of D-2 licence supply country liquor so manufactured to retail vendors in the area attached to the distillery at the rate quoted in the tender and accepted by the State Government. The bottling and sealing charges were also fixed by the State Government from time to time and they were payable to the licence holder by the retail vendors.

The total capacity of all the nine distilleries were only 203 lakhs proof litres but even this capacity of production was not realised and the actual production fell short of this capacity. The result was short supply on many occasions leading to loss of licence fee as well as excise duty by the State Government.

The State Government in order to meet the requirement of the consuming public had actually to purchase liquor from other States as a higher price. Moreover, the consumption of liquor was growing from year to year and it was estimated that by the year 1991, the total consumption of country liquor would be likely to be in the neighbourhood of 482.36 lakhs of proof litres and by the turn of the century it was expected to be in the neighbourhood of 1696.80 lakhs proof litres. The existing nine distilleries were inadequate to meet this growing demand for country liquor. Further more the buildings in which these distil-

A leries were housed has become old and were in a state of disrepair and it was not easy for the State Government to maintain them in good condition without incurring heavy expenditure every year. The plant and machinery were also old and antiquated and it was necessary to instal new and modern plant and machinery having increased capacity to manufacture country liquor. Moreover, of seems that though the time
B of construction, these distilleries were away from the city or town, what had happened was that with the growth of population and haphazard and unplanned urban development, these distilleries had now come to be in the heart of the city or own and they created health hazards and pollution problems. There was a demand from all sections of the public living in surrounding area to move the distilleries away in order to
C avoid water and environmental pollution. It was in these circumstances, when the mind of the State Government was already exercised in respect of these matters that an application was made by M.P. Distillers' Association in July 1983 for transferring these distilleries to private ownership. The members of the M.P. Distillers' Association who were old distillers holding D-2 licence in respect of these distilleries offered to
D invest their own funds in the construction of new buildings and installation of latest plant and machinery with capacity to produce more country liquor in conformity with the standards laid down by M.P. Eradication of Pollution Board for Removal of Polluted water by constructing lagoons, etc., provided they were assured D-1 licence for the area attached to their respective distilleries.

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This application of M.P. Distilleries Association was examined by the State Government at different levels, cabinet sub-committees, special committee headed by Shri Vijayavargi, spot inspections. The Cabinet, sub committee invited representatives of the M.P. Distilleries Association, heard them before taking final decision in the matter.
F Finance department's objections and suggestions were taken note of. At the cabinet meeting held on 30th December 1984, the policy decision was taken to privitise liquor distilleries.

Pursuant to the policy decision dated 30th December, 1984 a Letter of Intent dated 1st February 1985 was issued by the State Govern-
G ment in favour of each of respondent Nos. 5 to 11 for grant of D-2 licence for the construction of a distillery at a new site for the purpose of manufacturing country liquor with effect from 1st April 1986 in lieu of the existing distillery in respect of which such respondent held D-2 and D-1 licences for the period ending 31st March 1986. The Letter of Intent set out various conditions subject to which D-2 licence was to be granted
H in favour of each of respondent Nos. 5 to 11 in W.P. No. 3718/85 before

the High Court. The licencee to whom the Letter of Intent was issued was required under cl. 2 of the Letter of Intent to construct the distillery on the land approved by the State Government and the M.P. Pollution Board. It was provided by cl. 12 of the Letter of Intent that the licensee shall make proper arrangements for treatment of effluents discharge under a scheme duly approved by the M.P. Pollution Board and that any direction issued by the excise Commission in this regard shall be binding on the licensee. Clause 14 of the Letter of Intent stipulated that the licensee shall be bound to complete construction of distillery and installation of plant and machinery as required by the Excise Commissioner well before 1st April 1986.

The Letter of Intent was followed by a Deed of Agreement dated 2nd February 1985 executed by and between the Governor of Madhya Pradesh acting through the Excise Commissioner and each of respondent Nos. 5 to 11. The Deed of Agreement recited that the Letter of Intent has been issued by the State Government for grant of D-2 licence for construction of distillery for manufacture of spirit with effect from 1st April 1986. Cl. 1 of the Deed of Agreement provided that the licensee shall be bound to take land on lease for a period of 30 years from the State Government, but this clause is not material because ultimately none of respondent Nos. 5 to 11 took land on lease from the State Government and each of them purchased his own land, the site of course being approved by the State Government.

Pursuant to the Letter of Intent and the Deed of Agreement each of respondent Nos. 5 to 11 selected with the approval of the State Government the new site at which the distillery should be located, purchased land at such new site, started constructing buildings for housing the distillery and placed orders for purchase of plant and machinery to be installed in the distillery.

This policy decision was challenged by Nandlal Jaiswal by filing W.P. No. 3718/85, by Sagar Agarwal by filing his W.P. No. 335/86 and by a firm called M/s Doongaji & Co. during the course of the arguments in the two writ petitions. All the three writ petitions were disposed of by a common judgment delivered by a Division Bench of the High Court consisting of Acting Chief Justice J.S. Verma and Justice B.M. Lal. Both the learned Judges, by separate judgments, substantially set aside the policy decision dated 30th December, 1984. Since the decision of the High Court for all practical purposes sent against the respondents, they preferred Civil Appeals No. 1622 to 1639 of 1986 before the Supreme Court by special leave. M/s Doongaji & Co. and Nand Lal

A Jaiswal also, to the limited extent that they are not succeed, filed special leave petitions Nos.6206 and 7440 of 1986.

Allowing CA Nos. 1622 to 1639/86 and dismissing the special leave petitions, the Court,

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HELD: 1.1 On a plain reading of Rule XXII that a licence for manufacture or sale of country liquor may be disposed of in any one of four different modes, viz., tender, auction fixed licence fee or such other manner as the State Government may by general or special order direct. These four different modes are alternative to one another and anyone of them may be resorted to for the purpose of disposing of a C licence. It is not necessary that the mode of disposal by tender must first be resorted to and if that cannot be acted upon, then only the mode of disposal by auction and failing that and not otherwise, the third mode of disposal by fixed licence fee and only in the event of it not being possible to adopt the first three modes of disposal, the last mode namely, "such D other manner as the State Government may by general or special order direct" should be adopted. This is plain and incontrovertible. [17B-D]

1.2 On a plain grammatical construction of Rule XXII, it is obvious that the Collector or an Officer authorised by him in that behalf can choose anyone of the four modes set out in that Rule. There is nothing in E the language of Rule XXII to justify the interpretation that an earlier mode of disposal set out in the Rule excludes a latter mode or that reasons must be specified where a latter mode is adopted in preference to an earlier one. The language of Rule XXII in fact militates against such construction. It is impossible to subscribe to the proposition that it is only when an earlier mode is not possible to be adopted for reasons to F be specified, that a latter one can be followed. The Collector or an Officer authorised by him can adopt anyone of the four modes of disposal of licence set out in Rule XXII, but, of course, whichever mode be adopted, the equality clause of the Constitution should not be violated in its application. [17F-H]

G 1.3 It is also clear from Rules III, IV and V that there are two purposes for which a licence in Form D-2 for construction and working of a distillery may be granted. It may be granted as an adjunct to the licence in Form D-1 under Rule IV or it may be granted as an independent licence under Rule V irrespective whether the grantee holds a licence under Rule V irrespective whether the grantee holds a licence in H Form D-1 or not. There are also two types of licences for wholesale

supply of country liquor to retail vendors, namely, licence in Form D-1 and licence in Form D-1(s). The licence in Form D-1 in clause 5 clearly contemplated that the holder of such licence must also have a licence in Form D-2. No one can have a licence in Form D-2. He must have a distillery in which he distils country spirit in order that he should be able to make wholesale supply of country liquor to retail vendors. If for any reason he is unable to obtain licence in Form D-2 for working a distiller, no licence in Form D-1 can be given to him and if he has such licence, it would become ineffective. It is for this reason that when a person is granted a licence in Form D-1 by the Excise Commission under Rule-III, he is also simultaneously granted a licence in Form D-2 under Rule IV and the period of both the licences is co-terminus. But, though a person cannot be granted a licence in Form D-1 unless he also obtains licence in Form D-2 the converse does not hold true. A licence in Form D-2 can be granted to a person under Rule V even though he does not hold a licence in Form D-1. Where a person is granted a licence in Form D-2 for working a distillery under Rule V, without having a licence in Form D-1 for wholesale supply of country liquor to retail vendors, he cannot make wholesale supply of country liquor manufactured by him to retail vendors but he can supply such country liquor to a person holding licence in Form D-1(s) or he can manufacture ractified spirit, denatured spirit or foreign liquor as contemplated in condition 3 of the licence in Form D-2. It is not necessary that a person a licence in Form D-2 must also simultaneously have a licence in Form D-1. [18A-F]

2. It is undoubtedly true that the recommendations of the Cabinet Sub-Committee which were accepted by the Cabinet in the policy decision dated 30th December 1984 provided that in the beginning, D-2 licence shall be granted for a period of 5 years and thereafter there shall be a provision for its renewal and for this purpose, necessary amendment in the M.P. Excise Act, 1915 or the Rules made under the Act shall be made. But, in fact no such amendment in the Act or the Rules was made by the State Government and when the Letter of Intent was issued and the Deed of Agreement was executed and even thereafter, the provisions of the Act remained unamended and Rule II of the Rules of General Application also continued to stand in its unamended form. It is obvious that without an amendment of Rule II of the Rules of General Application the maximum period for which D-2 licence could be granted to respondent Nos. 5-11 was only 5 years and there could be no provision for automatic renewal thereafter from year to year. It is therefore clear that whatever might have been the original intention. it was not effectuated by carrying out necessary amendment in the provi-

A sions of the Act or in Rule II of the Rules of General Application and the ultimate decision of the State Government was to grant D-2 licence for a limited period of 5 years. The provision of renewal every year was to operate within the span of 5 years itself and every year, the licence would be renewable on payment of licence fee of Rs.5,000 and due fulfilment of the conditions of the licence and the provisions of the Act B and the Rules. It is not possible to spell out from clause that the licence was to be granted for an initial period of 5 years and thereafter it was liable to be renewed from year to year. The so called concession made on behalf of the State Government and respondent Nos. 5 to 11 was, therefore, really not a concession at all but it was a stand taken in recognition of the correct position in regard to the grant of D-2 licence. The High Court, was in the circumstances, right in holding the grant of C D-2 licence to respondent Nos. 5-11 was for a maximum period of 5 years and it did not operate to create monopoly in their favour for an indefinite period of time. [37A-H]

3.1 The High Court was not at all justified in splitting the policy D decision dated 30th December 1984 into two parts and in striking down the second part, while sustaining the first. The policy decision dated 30th December 1984 was a single integrated decision arrived at by the State Government taking a holistic view of all the aspects involved in the decision and it is difficult to appreciate how the High Court could sustaining one part of the policy and strike down the other. Either the E policy as a whole could be sustained or as a whole, it could be declared to be invalid, but certainly one part could not be sustained, whatever be the ground and the other pronounced invalid. That would be making a new policy for the State Government which it was not competent for the High Court to do. Once the High Court came to the conclusion that on account of delay or laches in the filing of the writ petitions or the F creation of third party rights in the meanwhile, the Court would not interfere with one part of the policy decision, the court could not interfere with the second part of the policy decision as well. The consequence of sustaining one part of the policy decision and striking down the other would not only be to create a new policy for the State Government but it would also cause considerable hardship and injustice to the G licensees and also result in public mischief and inconvenience detrimental to the interest of the State. Since the petitioners were guilty of enormous delay in filing the writ petitions and in the intervening period, the rights of respondents Nos. 5-11 were created in that they spent considerable amount of time, energy and resources and incurred huge expenditure in setting up the new distilleries, sustaining one part H of the policy decision while striking down the other would amount to

creating a new policy for the State Government and would also entail considerable hardship and inconvenience to respondent Nos. 5-11 and would also be detrimental to the interest of the State. [48H, 45F-46D] A

4. The policy decision dated 30th December 1984 can be given effect to without any new Rules being made by the State Government. There is nothing in the policy decision dated 30th December 1984 which is contrary to the Rules made under the Act. It is true that D-2 licence in its existing form does not contemplate construction of a distillery and that the Rules do not seem to have prescribed the form for a licence for constructing a distillery. But, merely because the form of a licence for constructing a distillery is not prescribed by the Rules, it does not mean that such a licence cannot be granted by the Excise Authorities. If the form of a licence is prescribed, then, of course, such form has to be followed, but if no form is prescribed, the only consequence is that the licence to be granted by the Excise Authorities need not conform to any particular form. Section 14 (c) of the Act clearly provides that the Excise Commissioner may license the construction and working of a distillery and there was, therefore nothing contrary to the Act or the Rules in the Excise Commissioner issuing Letter of Intent in favour of each of respondent Nos. 5-11 granting licence for construction of a new distillery. Rule XXII permits any one of four modes of disposal of licence to be adopted by the Excise Authorities and it does not prescribe that the fourth mode denoted by the words "such other manner as the State Government may by general or special order direct" can be resorted to only if the first three modes fail. Here in the present case, the policy decision dated 30th Decembe 1984 provided that respondent Nos. 5-11 who were the existing contractors, should be granted licence to construct new distilleries and D-1 and D-2 licences should be given to them for a period of five years for manufacturing liquor in such new distilleries and making wholesale supply of it to retail vendors in the areas attached to those distilleries. This manner of disposal of licences was clearly covered by the fourth mode of disposal set out in Rule XXII. [50B-F] B C D E F

State of Orissa & Ors. v. *Harinarayan Jaiswal & Ors.*, [1972] 3 SCR 784; *L.G. Chaudhari* v. *Secretary, L.S.G. Deptt. Govt. of Bihar & Ors.*, AIR 1980 SC 383, referred to. G

5. Supreme Court cannot permit any new plea as in this case, that non-obtaining a licence under the Industries (Development and Regulation) Act, disentitles setting up distilleries. The foundation for this contention should have been laid in the writ petitions and the necessary facts should have been pleaded in support of it. No such plea having H

A been raised and no such facts having been pleades in the writ petitions, the court cannot allow this contention to be raised. Moreover, it is clear from s.11 read with the definitions of "factory" and "industrial undertaking" contained in sub-sections (c) and (d) of s.3 of this Act that licence from the Central Government for setting up new distilleries would be necessary only if 50 or more workers were petitions. There is B nothing to show that 30 or more workers were going to be employed in the new distilleries. In fact old distilleries were also working without any licence from the Central Government, presumably because less than 50 workers were employed in such distilleries. [52E-G]

6. It is well settled that the power of the High Court to issue an appropriate writ under Art. 226 of the Constitution is discretionary and C the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactory explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. D The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extra ordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable E delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. However, this rule of laches or delay is not a rigid F rule which can be cast in a straight jacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But such cases where the demand of justice is so compelling that the High Court would be inclined to interfere inspite of delay or creation of third party rights would by their very nature be few G and far between. Ultimately, it would be a matter within the discretion of the Court. Ex-hypothese every discretion must be exercised fairly and justly so as to promote justice and not to defeat it. [41H-42C, F-G]

Here, the petitioners were guilty of enormous delay in filing the writ petitions inasmuch as during the intervening period the rights of H third parties had intervened and respondent Nos. 5-11 acting on the

basis of the policy decision dated 30th December, 1984, had incurred to expenditure towards setting up the distilleries. If the policy decision dated 30th December 1984 were now be set aside at the instance of the petitioners it would work immense hardship on the seven licensees and cause grave injustice to them, since enormous amount of time, money and energy spent by them in setting up the distilleries would be totally wasted. [41F-G, 45B]

Ramanna Dayaram Shetty v. *International Airport Authority of India & Ors.*, [1979] 3 SCR 1014; *Ashok Kumar Mishra & Anr.* v. *Collector Raipur & Ors.*, [1980] 1 SCR 491, referred to.

7. There is no fundamental right in a citizen to carry on trade or business in liquor. The State under its regulatory power has the power to prohibit absolutely every form of activity in relation to intoxicants—its manufacture, storage, export, import, sale and possession. No one can claim as against the State the right to carry on trade or business in liquor and the State cannot be compelled to part with its exclusive right or privilege of manufacturing and selling liquor. But when the State decided to grant such right or privilege to others the State cannot escape the rigour of Art. 14. It cannot set arbitrarily or at its sweet will. It must comply with the equality clause while granting the exclusive right or privilege of manufacturing or selling liquor. It is, therefore, not possible to uphold the contention of the State Government and respondent Nos. 5-11 that Art. 14 can have not application in a case where the licence to manufacture or sell liquor is being granted by the State Government. The State cannot ride roughshod over the requirement of that Article. [53G-54B]

7.2 But while considering the applicability of Art. 14 in such a case, the court must bear in mind, that having regard to the nature of the trade or business the court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor. The Court would in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy of regulating manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the court would hesitate to intervene and strike down that the State Government has done, unless it appears to be plaintly arbitrary, irrational or mala fide. In complex economic matters every decision is necessarily empiric and it is based on experimentation or what one may call "trial and error method" and therefore, its validity

A cannot be vested on any rigid a "priori" considerations or on the application of any straight jacket formula. The Court must while adjudging the constitutional validity of an executive decision relating to economic matters grant a certain measure of freedom or "play in the joints" to the executive. [54C-55C]

B 7.3 It is clear from cl.2 of the policy decision that the State Government envisaged the possibility of other liquor contractors making similar applications for licences to construct new distilleries and to manufacture and supply liquor from such new distilleries and hence provided that if any such applications are made, they should be disposed of by the Excise Department on merits on the basis of the principles "recommended by the sub-committee", that is on the basis C of the same principles on which the licences were decided to be granted to the existing contractors. If any liquor contractor makes an application for a licence to construct a new distillery on the same terms on which licences are granted to the existing contractor his application would have to be considered on merits by the Excise Authorities and the Excise D Authorities may, if they find the proposal suitable, grant to such liquor contractor licence to construct a new distillery along with D-2 licence on the same basis. The Excise Authorities may, in such event, either (i) direct such liquor contractor to manufacture ractified spirit, denatured spirit or foreign liquor in the new distillery for the remaining period of the D-1 and D-2 licences of the existing contractors and thereafter consider him along with other liquor contractors for grant of D-1 and D-2 E licences in respect of the new distillery or (ii) reduce and/or alter the area of supply of any of the existing contractors and grant D-1 license to such liquor contractor in respect of the carved out area. If the Cabinet decision dated 30th December 1984 while granting licences to the existing contractors leave it open to other liquor contracts to come in and F apply for similar licences, it cannot be said that Art. 14 is violated. [56C-G]

7.4 When the State Government is granting licence for putting up a new industry, it is not at all necessary that it should advertise and invite offers for putting up such industry. The State Government is entitled to negotiate with those who have come up with an offer to set up G such industry. [60C]

Har Shankar & Ors. etc. v. *Deputy Excise & Taxation Commissioner & Ors.*, [1975] 3 SCR 254; *R.K. Garg etc.* v. *Union of India & Ors. etc.* [1982] 1 SCR 1947, referred to.

H *Kasturi Lal Lakshmi Reddy* v. *State of J & K*, [1980] 3 SCR 1338, followed.

Metropolis Theatre Company v. *State of Chicago*, 57 Lawyers Edition 730, quoted with approval. A

8. Judges should not use strong and carping language while criticising the conduct of parties or their witnesses. They must act with sobriety, moderation and restraint. They must have the humility to recognise that they are not infallible and any harsh and disparaging strictures passed by them against any party may be mistaken and unjustified and if so, they may do considerable harm and mischief and result in injustice. Here, in the present case, the observations made and strictures passed by B.M. Lal J. were totally unjustified and unwarrented and they ought not to have been made. [66G-H] B

In the instant case, the words used in paras 1, 9, 17 to 19 and 34 of Lal J.'s judgment are undoubtedly strong and highly disparaging remarks attributing malafides, corruption and underheard dealing of the State Government which are not justified by the record. [62B] C

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1622-39 of 1986 D

From the Judgment and Order dated 28.3.86 of the High Court of M.P. at Jabalpur in Misc. Petition Nos. 3718/85, 335 & 785 of 1986.

K. Parasaran, Attorney General, A.M. Mathur and S.L. Saxena, Adv. Genl/Dy. Adv. Genl. of the State of M.P., G.L. Sanghi, F.S. Nariman, N.A. Modi, V.M. Tarkunde, A.B. Divan, Dr. L.M. Singhvi, Soli J. Sorabji, L.N. Sinha, S.N. Kacker, Narayan Nittar, G.S. Narayan, Pramod Swarup, D.P. Srivastava, V. Ravindra Srivastava, S.L. Athley, R.F. Nariman, A. Subba Rao, V.K. Munshi, I.B. Dadachanji, D.N. Misra, Shri Narain, S. Salve, L.S. Diwani, Mrs. A.K. Verma, K.K. Sinha, A. Mishra, A. Sapre, R.S. Singh and S.K. Singh for the appearing parties. E F

C.L. Sahu and Bharat Brewris for the Intervenor.

The Judgment of the Court was delivered by G

BHAGWATI, CJ: These appeals by special leave are directed against a judgment of the Madhya Pradesh High Court in what has come to be known as, M.P. Liquor case, brought before the High Court by way of three writ petitions under article 226 of the Constitution. Writ Petition No.3718 of 1985 was filed by one Nandlal Jaiswal H

on 28the November 1985 while writ petition No.335 of 1986 was filed by one Sagar Agarwal on 24th January 1986. Both these writ petitions were directed against the policy decision of the State of Madhya Pradesh contained in the Cabinet decision dated 30th December, 1984. The third writ petition, viz., writ petition No. 785 of 1986 was also filed challenging the same policy decision of the State of Madhya Pradesh by a firm called M/s Doongaji & Co. but it was filed much later at a time when arguments were actually going on in court in the first two writ petitions. The respondents in the first two writ petitions were not aware at that time that it was a writ petition which was filed by M/s Doongaji & Co. They thought that it was merely an intervention application since no notice was served upon them and they had also no opportunity of filing an affidavit in reply to that writ petition. All these three writ petitions were disposed of by a common judgment delivered by a Division Bench of the High Court consisting of Acting Chief Justice J.S. Verma and Justice B.M. Lal. Both the learned Judges, by separate judgments, substantially set aside the policy decision dated 30th December, 1984. Since the decision of the High Court for all practical purposes went against the respondents, they preferred Civil Appeals Nos. 1622 to 1639 of 1986 before this Court by special leave. M/s Doongaji & Co. and Nand Lal Jaiswal also, to the limited extent that they did not succeed, filed special leave petitions Nos. 6206 and 7440 of 1986. That is how the present appeals and special leave petitions have come up before us. The facts giving rise to these appeals and special leave petitions are material and need to be stated in some detail.

But, before we advert to the facts, it is necessary to set out the relevant provisions of Madhya Pradesh Excise Act, 1915 which is the statute regulating manufacture, sale and possession of intoxicating liquor in the State of Madhya Pradesh. Originally, this Act was enacted for the former Province of C.P. and Berar but subsequently, after the coming into force of the Constitution, it was extended to the State of Madhya Pradesh by M.P. Extension of Laws Act, 1958 and it was rechristened as M.P. Excise Act 1915. Section 2(13) of the Act defines 'liquor' to mean 'intoxicating liquor' and to include "spirits or wine, tari, beer, all liquid consisting of or containing alcohol, and any substance which the State Government may, by notification, declare to be liquor for the purpose" of the Act. The term "manufacture" is defined in Section 2(14) to include "every process, whether natural or artificial, by which any intoxicant is produced or prepared and also redistillation and every process for the rectification, flavouring, blending or colouring of liquor". There is also the definition of 'spirit' in section

2(17) which provides that "spirit" means any liquor containing alcohol obtainted by distillation whether it is denatured or not. Chapter IV of the Act is headed 'Manufacture, Possession and Sale' and that is the chapter with which we the concerned in the present appeals. Section 13 provides, inter alia, that no distillery or brewery shall be constructed or worked and no person shall use, keep or have in his possession any material, still utensil, implement or apparatus whatsoever for the purpose of manufacturing any intoxicant other than tari, except under the authority and subject to the terms and conditions of a licence granted in that behalf. It is also obligatory under this section to have a licence for manufacture of intoxicant and for bottling liquor for sale and no intoxicant can be manufactured and no liquor can be bottled for sale without such licence. Section 14 is a material section and it may, therefore, be reproduced in extenso:

> 14. *Establishment or licensing of distilleries and warehouses*
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> (a) establish a distillery in which spirit may be manufactured under a licence granted under section 13 on such conditions as the State Government may impose;
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> (b) discontinue any such distillery;
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> (c) licence, on such conditions as the State Government may impose, the construction and working of a distillery or brewery;
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> (d) establish or licence a warehouse, wherein any intoxicant may be deposited and kept without payment of duty, but subject to payment of such fees as the State Government may direct; and
>
> (e) discontinue any such warehouse

We may then refer to section 17 which provides inter alia that no intoxicant shall be sold except under the authority and subject to the terms and conditions of a licence granted in that behalf. The State Government obviously has the monopoly in regard to manufacture, possession and sale of liquor as held in several decisions of this Court. Section 18 recognises the power of the State Government to "lease to any person, on such conditions and for such period as it may think fit the right—(a) of manufacturing or of supplying by wholesale, or of both, or (b) of selling by wholesale or by retail, or (c) of manufacturing or of supplying by wholesale, or of both, and selling by retail, any

liquor or intoxicating drug within any specified area." There are no other sections in the Act material for our purpose until we come to section 62 which confers on the State Government the power to make Rules for the purpose of carrying out the provisions of the Act. Sub-section 2(h) of section 62 provides that the State Government may make Rules prescribing the authority by, the form in which, and the terms and conditions on and subject to which, any licence, permit or pass shall be granted and by such rules, among other matters, fix the period for which any licence, permit or pass shall continue in force.

The State Government has, in exercise of the power conferred under section 62, made several sets of Rules. Rule II of the Rules of General Application made inter alia under sub-section 2(h) of section 62, lays down the period of licence and clause (2) of this Rule provides: "Wholesale licences for the manufacture, supply and sale of liquor may be granted for any number of years not exceeding five, as the State Government may in each case decide." Rule XXII also framed under sub-section 2(h) of section 62 provides for the manner in which licences shall be granted and it reads as follows:

> "XXII. *Disposal of licences*— (1) Licence for the manufacture or sale of intoxicants shall be disposed of by tender, auction, fixed licence fee or in such other manner as the State Government may, by general or special order, direct.
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> Except where otherwise prescribed, licence shall be granted by the Collector or by an Officer authorised by him in that behalf."

Rules III to V of the Distillery and Warehouse Rules also made *inter alia* under sub-section 2(h) of section 62 deal with the subject of grant of licence and provide, in the following terms, for different kinds of licences which may be issued, viz., licences in Forms D-1, D-1(s) and D-2:

> "III. Subject to the sanction of the State Government, the Excise Commissioner may grant a licence in Form D-1 and Form D-1(s) for the wholesale supply of country spirit to retail vendors.
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> IV. The Collector may issue, on payment of a fee of Rs. 1000 a licence in Form D-2 for the construction and working of a distillery to any person to whom a wholesale supply licence has been issued.

V. Subject to sanction of the State Government the Excise Commissioner may issue a licence in Form D-2 for the construction and working of a distillery on payment of a fee of Rs. 1000."

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It is clear on a plain reading of Rule XXII that a licence for manufacture or sale of country liquor may be disposed of in any one of four different modes, viz., tender, auction, fixed licence fee or such other manner as the State Government may by general or special order direct. These four different modes are alternative to one another and any one of them may be resorted to for the purpose of disposing of a licence. It is not necessary that the mode of disposal by tender must first be resorted to and if that cannot be acted upon, then only the mode of disposal by auction and failing that and not otherwise, the third mode of disposal by fixed licence fee and only in the event of it not being possible to adopt the first three modes of disposal, the last mode, namely, 'such other manner as the State Government may by general or special order direct'. This would seem to be plain and incontrovertible but Mr. Justice B.M. Lal has rather curiously in his judgment held that these four modes of disposal are inter-related and "failing in one of the clauses, the next is to be acted upon and for applying the fourth clause, it is incumbent for the State to specify the manner by general or special order and this also includes "specifying how and why the other three clauses are not possible to be acted upon which compels to take resort to the fourth clause". This view taken by Mr. Justice B.M. Lal in regard to the interpretation of Rule XXII is obviously unsustainable. It is indeed surprising how such a view could possibly be taken. On a plain grammatical construction of Rule XXII it is obvious that the Collector or an Officer authorised by him in that behalf can choose any one of the four modes set out in that Rule. There is nothing in the language of Rule XXII to justify the interpretation that an earlier mode of disposal set out in the Rule excludes a latter mode or that reasons must be specified where a latter mode is adopted in preference to an earlier one. The language of Rule XXII in fact militates against such construction. It is impossible to subscribe to the proposition that it is only when an earlier mode is not possible to be adopted for reasons to be specified, that a latter one can be followed. The Collector or an Officer authorised by him can adopt any one of the four modes of disposal of licence set out in Rule XXII, but, of course, whichever mode be adopted, the equality clause of the Constitution should not be violated in its application.

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A It is also clear from Rules III, IV and V which we have set out above, that there are two purposes for which a licence in Form D-2 for construction and working of a distillery may be granted. It may be granted as an adjunct to the licence in Form D-1 under Rule I'' or it may be granted as an independent licence under Rule V irrespective B whether the grantee holds a licence in Form D-1 or not. There are also two types of licences for wholesale supply of country liquor to retail vendors, namely, licence in Form D-1 and licence in Form D-1(s). The licence in Form D-1 in clause 5 clearly contemplates that the holder of such licence must also have a licence in Form D-2. No one can have a licence in Form D-1 unless he has simultaneously a licence in Form D-2. He must have a distillery in which he distils country spirit in order C that he should be able to make wholesale supply of country liquor to retail vendors. If for any reason he is unable to obtain licence in Form D-2 for working a distillery, no licence in Form D-1 can be given to him and if he has such licence, it would become ineffective. It is for this reason that when a person is granted a licence in Form D-1 by the D Excise Commissioner under Rule III, he is also simultaneously granted a licence in Form D-2 under Rule IV and the period of both the licences is co-terminus. But, though a person cannot be granted a licence in Form D-1 unless he also obtains licence in Form D-2, the converse does not hold true. A licence in Form D-2 can be granted to a person under Rule V even though he does not hold a licence in Form E D-1. Where a person is granted a licence in Form D-2 for working a distillery under Rule V, without having a licence in Form D-1 for wholesale supply of country liquor to retail vendors, he cannot make wholesale supply of country liquor manufactured by him to retail vendors but he can supply such country liquor to a person holding licence in Form D-1(s) or he can manufacture ractified spirit, denatured spirit F or foreign liquor as contemplated in condition 3 of the licence in Form D-2. It is not necessary that a person holding a licence in Form D-2 must also simultaneously have a licence in Form D-1.

It is in the context of these provisions of the Act and the Rules G that we must consider the facts of this case. There were at all material times in the State of Madhya Pradesh nine distilleries for the manufacture of spirit, which were established long back by the State Government under a licence issued by the Excise Commissioner. The names and other particulars of these distilleries are set out in the following table:-

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Name of Distillery	*Production capacity in proof litres*	*Production 81-82*	*Production 82-83*
1. Gwalior	15 lacs	—	9 lacs
2. Ujjain	13 lacs	10 lacs	10 lacs
3. Dhar	15 lacs	9 lacs	12 lacs
4. Badwaha	20 lacs	12 lacs	14 lacs
5. Chhatisgarh	30 lacs	29 lacs	25 lacs
6. Bhopal	12 lacs	9 lacs	11 lacs
7. Seoni	20 lacs	18 lacs	19 lacs
8. Nowgaon (owned by private individual)	8 lacs	3 lacs	4 lacs
Total:	133 lacs	90 lacs	104 lacs
9. Ratlam Alcohol Plant (owned by Govt.	70 lacs	39 lacs	67 lacs
Total:	203 lacs	129 lacs	171 lacs

We are concerned in these appeals with only the first seven distilleries since the Nowgaon Distillery has always been owned and worked by a private firm and the Ratlam Alcohol Plant is owned by the State Government and is managed by the M.P. State Industries Corporation and the impugned policy decision dated 30th December, 1984 does not concern these last two distilleries. So far as the first seven distilleries are concerned, and hereafter whenever we refer to distilleries we shall be referring only to these seven distilleries, the land and buildings in which they were housed belonged to the State Government and originally the plant and machinery also belonged to the State Government but in course of time successive holders of the D-2 licences in respect of these distilleries replaced the plant and machinery. The practice followed by the Excise Department in regard to the working of these distilleries was to invite tenders for the wholesale supply of country liquor from these distilleries and the tenderers were requested to quote their rates for the wholesale supply of country liquor to the State Government. Normally the lowest tenders were accepted but at times the State Government used to accept even higher tenders taking various relevant factors into account. The State of Madhya Pradesh was divided in several areas and a particular area was attached to each

A distillery for the wholesale supply of country liquor in that area. The person whose tender was accepted for any particular distillery was given a D-2 licence for working the distillery and also a D-1 licence for wholesale supply of country liquor manufactured in that distillery to retail vendors in the area attached to the distillery. These licences in Forms D-1 and D-2 were ordinarily issued for a period of five years. B Respondent Nos.5 to 11 in the writ petition of *Nandlal Jaiswal* were the holders of D-1 and D-2 licences in respect of these distilleries for the period ending 31st March, 1986. There were two districts, however, which were not attached to any distillery, namely, Jabalpur and Betul and so far as these two districts were concerned, a licence in Form D-1(s) to make wholesale supply of country liquor to retail ven- C dors in these two districts was being given and for the period ending 31st March, 1986 it was issued in favour of Sagar Aggarwal. The country liquor required by Sagar Agarwal for supply to retail vendors in Jabalpur and Betul Districts was being obtained by him from the Ratlam Alcohol Plant at the rate of Rs. 1.80 per proof litre but, as will be presently seen, the supply of country liquor from Ratam Alcohol D Plant was wholly inadequate and Sagar Agarwal was constrained to purchase country liquor from other sources at higher price in order to fulfil his commitment under D-1(S) licence.

Since the land and buildings in which the distilleries were housed belonged to the State Government, the holder of D-2 licence in respect E of any particular distillery had to pay rent for the land and buildings to the State Government at a rate agreed upon from time to time. So far as the plant and machinery of the distillery was concerned, originally it was installed by the State Government at its own cost but in course of time it had to be replaced and such replacement was allowed to be made by the holder of the D-2 licence for the time being. It was F however a condition of D-2 licence that on the expiry of the period of licence, if fresh D-2 licence was not issued in favour of the existing licence holder, he would be bound to transfer the plant and machinery in favour of the new licence, holder at a price to be determined by a Valuation Committee. Therefore, during the period of D-2 licence, the plant and machinery belonged to the licence holder for the time G being. The licence holder was bound to manufacture country liquor in the distillery for which he was given D-2 licence and on the strength of D-2 licence supply country liquor so manufactured to retail vendors in the area attached to the distillery at the rate quoted in the tender and accepted by the State Government. The bottling and sealing charges were also fixed by the State Government from time to time and they H were payable to the licence holder by the retail vendors. It may be

pointed out that at the material time the bottling and sealing charges were fixed at 80 paise per bottle which came to Rs.3.40 per proof litre.

Now, the total capacity of all the 9 distilleries including Nowgaon Distillery and Ratlam Alcohol Plant was only 203 lacs proof litres but even this capacity of production was not realised and the actual production fell for short of this capacity. The total production of country liquor from all the 9 distilleries in the year 81-82 came to only 129 lacs proof litres and though in the year 1982-83 there was some improvement, the total production did not go beyond 171 lacs proof litres. The result was short supply on many occasions leading to loss of licence fee as well as excise duty by the State Government. The State Government, in order to meet the requirement of the consuming public, had actually to purchase liquor from other States at a higher price. Moreover, the consumption of liquor was growing from year to year and it was estimated that by the year 1991, the total consumption to country liquor would be likely to be in the neighbourhood of 482.36 lacs proof litres and by the turn of the century it was expected to be in the neighbourhood of 1696.80 lacs proof litres. Obviously, the existing 9 distilleries were totally inadequate to meet this growing demand for country liquor. Furthermore, the buildings in which these distilleries were housed had become old and were in a state of disrepair and it was not easy for the State Government to maintain them in good condition without incurring heavy expenditure every year. The plant and machinery were also old and antiquated and it was necessary to instal new and modern plant and machinery having increased capacity to manufacture country liquor. Moreover, it seems that though at the time of construction, these distilleries were away from the city or town, what had happened was that with the growth of population and haphazard and unplanned urban development, these distilleries had now come to be in the heart of the city or own and they created health hazards and pollution problems. There was a demand from all sections of the public living in surrounding area to move the distilleries away in order to avoid water and environmental pollution. It was in these circumstances, when the mind of the State Government was already exercised in respect of these matters that an application was made by M.P. Distillers' Association in July 1983 for transferring these distilleries to private ownership. The members of the M.P. Distillers' Association who were old distillers holding D-2 licence in respect of these distilleries offered to invest their own funds in the construction of new buildings and installation of latest plant and machinery with capacity to produce more country liquor in conformity with the standards laid down by M.P. Eradication of Pollution Board for

A Removal of Polluted water by constructing lagoons, etc., provided they were assured D-1 licence for the area attached to their respective distilleries.

This application of M.P. Distillers Association was examined by the State Government at different levels. The Excise Commissioner B submitted his opinion to the Separate Revenue Department stating that "it would be more appropriate to hand over the Government distilleries to private ownership because thereby the Government will get additional income from the sale of buildings, land, etc., of the distilleries and at the same time the distillers will pay more heed to the distilleries buildings, etc., due to transfer of the distilleries to private ownership and they will instal the latest machinery and implements as C a result of which there will be an increase in liquor production and supply of liquor as per requirement of the State Government and at the same time they will be liable for solving the problem of pollution." The Revenue Department, after obtaining the Report from the Excise Commissioner examined the matter carefully from various aspect. But D since several points required consideration such as whether the distilleries should be transferred to private ownership during the period of the subsisting contracts, and if so, what would be the legal consequences and whether the distilleries should be allowed to continue at the same place or should be transferred to new sites in view of the problem of pollution and the question of transfer of distilleries to private E ownership was itself an important policy issue, the Separate Revenue Department referred the matter to the Chief Minister with a suggestion that a high level committee should be appointed for the purpose of examining the various issues. The State Government accordingly under the orders of the Chief Minister constituted a Cabinet Sub-Committee consisting of Ministers of Separate Revenue Department, F Major and Minor Irrigation Department, Commerce and Industry Department and Rehabilitation and Environment Department and four highly placed officers, namely, Chief Secretary, Secretary, Separate Revenue Department, Secretary Finance Department and Excise Commissioner were directed to assist the Cabinet Sub-Committee. The Separate Revenue Department submitted a note for G the consideration of the Cabinet Sub-Committee and this note formulated various issues arising for consideration and set-out various aspects relating to these issues so as to form the basis for discussion. These issues may be summarised as follows:

(1) Whether the transfer of ownership of Government dis- H tilleries should be made during the present contract period only or on the commencement of new contract?

(2) Necessity of spot inspection of distilleries and survey of buildings and change of their place? A

(3) Policy to be adopted for transfer of buildings and lands of distilleries?

(4) Establishment of proper machine and implements for manufacture of liquor in the distilleries for use of Mahuwa product in the State? B

(5) Determination and question of fixing prices of liquor under the new management?

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The Cabinet Sub-Committee at its meeting held on 27th June 1984 considered these issues and after discussion came to the conclusion that in view of the problem of pollution, it should first of all be examined "as to which distillery is to be transferred from the existing site and which distillery is to be maintained at the present site" and in order to determine this question, the Cabinet Sub-Committee constituted a Committee headed by Shri Vijayvargi Special Secretary, Separate Revenue Department. The Vijayvargi Committee was also authorised to select new sites for the distilleries which in its opinion required to be removed from the existing sites on account of the problem of pollution. The Vijayvargi Committee thereafter made spot inspection of all the 9 distilleries in the State and submitted its report to the Cabinet Sub-Committee on 18th July 1984. This Report was a detailed and exhaustive Report and it was pointed out in this Report that 5 distilleries, namely, Bhopal, Ujjain, Badwaha, Seoni and Bhilai were required to be removed to new sites on account of the problem of pollution, but so far as the remaining two distilleries at Gwalior and Dhar were concerned, it was not necessary to remove them from their present sites, though in regard to Dhar Distillery, it was necessary to fix lagoon plant for removing pollution. The Vijayvargi Committee also stated in its Report that it was necessary to make arrangement in regard to polluted water thrown out from Nowgaon and Ratlam Distilleries.

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The Cabinet Sub-Committee at its meeting held on 21st July 1984 considered the Report of the Vijayvargi Committee and decided to accept it wholly. The Cabinet Sub-Committee directed that an estimate of the cost involved in setting up the Bhopal, Ujjain, Badwaha, Seoni and Bhilai distilleries at the new sites should be worked out by the Excise Commissioner as also by the M.P. Consultancy Organisa-

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A tion and the valuation of the lands and buildings of Gwalior and Dhar distilleries, which according to the Vijayvargi Report, were not necessary to be shifted to new sites, should also be got done by the Collectors concerned on the basis of prevailing market rates. It was also directed by the Cabinet Sub-Committee that an estimate of sales of country liquor projected in the next 20 years should be got made and it B should also be examined whether such future demand could be met by the present distilleries and on this basis how many distilleries in the public cooperative and private sectors would be necessary to be established. Pursuant to this direction, an estimate of the cost likely to be incurred in establishment of Bhopal, Ujjain, Badwaha, Seoni and Bhilai distilleries at the new sites including purchase of land, construc- C tion of buildings, setting up of modern plant and machinery and arrangement for lagoon for polluted water thrown out by the distilleries, was prepared by the Excise Commissioner and the Report made by the Excise Commissioner showed that, according to this estimate, the likely cost would be in the neighbourhood of Rs.20 crores 60 lakhs. The Excise Commissioner also estimated the likely increase in con- D sumption of liquor in the next 20 years and in his Report gave figures showing that at the end of 20 years the annual requirement of liquor in the State would be 2967 lacs proof litres and that the total established capacity of all the 9 distilleries taken together would not be sufficient to meet this growing requirement of liquor consumption. So far as the valuation of the land and buildings of Gwalior and Dhar distilleries E was concerned, no report was submitted by the concerned Collectors until the next meeting of the Cabinet Sub-Committee.

The Cabinet Sub-Committee thereafter met on 10th August 1984 and at this meeting the Cabinet Sub-Committee considered the report of the Excise Commissioner in regard to the estimated cost of estab- F lishing Bhopal, Ujjain, Badwaha, Seoni and Bhilai distilleries at new sites as also the estimated increase in consumption of liquor over the next 20 years and after discussing all the various related issues, the Cabinet Sub-Committee arrived at certain decisions which are set out in paragraph 3 of the proceeding of this meeting which form part of the record. It is not necessary here to set out these decisions, because G ultimately they culminated in the recommendations made by the Cabinet Sub-Committee to which we shall presently make reference. But at this meeting the Cabinet Sub-Committee decided to invite representatives of the M.P.Distillers Association and to give them a hearing before taking final decision in the matter.

H The representatives of the M.P. Distillers Association met the

members of the Cabinet Sub-Committee at the meeting held on 31st August 1984. These representatives made various suggestions to the Cabinet Sub-Committee and these suggestions included inter alia the suggestion that even Gwalior and Dhar distilleries should be transferred to new sites since the problem of pollution, though not pressing at the present moment, was bound to arise after 5 or 7 years, but if the existing lands and buildings of these two distilleries were to be transferred, such transfer should be made on the basis of their book value and not at the market price. It was also pleaded by these representatives that if the distilleries were going to be transferred to private ownership, such transfers should be effected in favour of the existing contractors and not outsiders. Some suggestion was also made on behalf of these representatives that compensation should be paid by the State Government, to the existing contractors for the expenditure incurred by them in construction of roads, molasses collection pits, wharehouses etc. These suggestions were considered and examined by the Cabinet Sub--Committee.

Before the next meeting of the Cabinet Sub-Committee was held on 20th September 1984, a letter dated 10th Sept. 1984 was submitted by the Finance Department in which two points were raised by the Finance Department. One was that "transfer of distilleries should be made by getting the comparative bids offered and it should be given to the highest bidder" and the other was whether on transfer to private ownership the distillers "would be required to obtain any permission under the Industries Development and Regulation Act and if permission is not granted, whether any problem would arise out of it." The Cabinet Sub-Committee at the meeting held on 20th September 1984 discussed these two points and so far as the first point was concerned, the Cabinet Sub-Committee came to the conclusion that "the transfer of distilleries should be made only to the present contractors and their present supply area should be attached with them" and with regard to the second point, the Cabinet Sub-Committee felt that since the distilleries which were going to be established at the new sites were in lieu of the present distilleries, it may not be necessary to obtain fresh licence under the Industries Development and Regulation Act but if fresh licence was required, it should be the responsibility of the distillers to obtain the same. The Cabinet Sub-Committee also took various other decisions which are set out in paragraph 4 of the proceedings of this meeting held on 20th September 1984. It is not necessary to reproduce these decisions, but it may be pointed out that the request of the representatives of the M.P. Distillers Association that the land and buildings of the Gwalior and Dhar distilleries may be transferred at

book value and not at market value was rejected and the Cabinet Sub-Committee decided that the transfer should be at the prevailing market price. The Cabinet Sub-Committee, however, agreed that "if any distiller wants a change of place in the future, the decision about it would be taken by the Separate Revenue Department". The Cabinet Sub-Committee also recommended that an agreement should be executed in writing between the distillers and the Excise Department in which it should be provided that on the construction of the distillery and the installation of the plant and machinery, the distiller shall be entitled to obtain D-2 licence in respect of the distillery. It was decided at this meeting that the draft Report of the Cabinet Sub-Committee shall be finalised in accordance with the decisions taken at the various meetings of the Cabinet Sub Committee.

The Report of the Cabinet Sub-Committee was thereafter finalised and after setting out the history of the discussions that preceded the preparation of the Report, it proceeded in paragraph 17 to make the following recommendations:

A. *Transfer of ownership of distilleries*

(1) All the Government distilleries shoul l be transferred to the contractors concerned whose contracts are current for the periods from 1.7.1981 to 31.3.1986.

(2) The present buildings, lands of Gwalior and Dhar Distilleries should be transferred as per the price of the present market rates reported by the Committees formed under the Chairmanship of the Regional Commissioners after receiving the same from the distilleries and no concession should be given therein.

(3) There should be an agreement with the Distillers who are allotted lands for establishing distilleries at the new sites to the effect that the Government will be bound to issue them D-2 licence after the construction of buildings and fitting of plant, on fulfilling all terms and conditions.

B. *Allotment of lands for construction of distilleries at the new places*

(4) Generally a principle should be accepted in connection with the price of land to be allotted to the distillers at those

five places whose distilleries are to be transferred at any other place that if the land to be allotted is a Government land, its market value plus 20% of its market price and the amount so arrived at should be treated as the premium of that land and on that basis ground rent should be fixed as per rules. The land should be given on 30 years' lease.

(5) If the land to be allotted is a non-Government land and if it is to be allotted after acquisition, then as a result of acquisition the compensation to be paid plus 20% and the amount that would be arrived at should be treated as premium of that land and after taking ground rent as per rules the land should be given on 30 years' lease.

(6) The directions of the Industries Department in connection with allotment of land should also be kept in view.

(7) No financial aid should be given by the Government to the distillers for payment of premium, etc., of the land.

(8) If the land allotted is used for any other purpose than the purpose for which it is allotted, the land would automatically stand diverted to the State Government. Such a provision should be made in the terms and conditions of the lease deed.

C. *Letter of Intent, for grant of D. 2 Licences*

(1) D-2 licences should be granted alongwith letter of intent only to those distillers to whom land is allotted for construction of distilleries. The Sub-Committee also feels that the distilleries to be constructed at the new sites shall be in lieu of the present distillery. Therefore, this will not be necessary to obtain licences from the Central Government. But, for any other reason, if any licence is compulsory under the rules, Acts of the Government of India or the State Government, the distiller shall be liable to obtain it. The State Government will send their applications with recommendations to the Government of India.

D. *Construction of Lagoon, etc., for making arrangement for passing water from distilleries*

(11) It will be obligatory for the distillers while constructing the distilleries to observe the standards fixed by the M.P. Eradication of Pollution Board for removing the polluted water and the environment clean and to construct Lagoon, etc. for the same.

(12) It should also be mentioned in the letter of intent that the distillers shall make similar arrangement in the distilleries that would be transferred to the distillers at their present site only. Without such arrangement D-2 licence should not be given to the distillers.

E. *Construction of Laboratories for Liquor test*

(13) The distillers shall be compulsorily required to construct a laboratory for examination of liquor in the distillery. It will also be compulsorily required to construct a laboratory for examination of liquor in the distillery. It will be compulsory to construct laboratory for liquor test in the distilleries which are to be transferred to the distillers at the existing spot only.

F. *Arrangement for manufacturing liquor from Mahuwa*

(14) The plants for manufacturing liquor from Mahuwa also should be established by the distillers for manufacturing liquor from Mahuwa in all the distilleries in the State so that, if it is necessary, liquor should be manufactured from Mahuwa and the Mahuwa produced in the State should be properly used within the state only and they should get reasonable price for the Mahuwa purchased by them at the support price of MARPED or Vano Upaj Vyaper Sangh. For each distillery 7½% liquor should be manufactured from Mahuwa of its total productive capacity and it should be mentioned in D-2 licence.

G. *Period of D-2 licences*

(15) In the beginning D-2 licence (Distillery Licence) should be granted for five years and thereafter there should be a provision for its renewal. Necessary amendment in the Excise Act or Rules for the same should be made.

H. *Fixation of liquor price*

(16) The Sub-Committee was apprised of the system of fixation of cost of liquor in the State of U.P., West Bengal and Maharashtra States. Prices fixed in Uttar Pradesh by calling tenders whereas in Maharashtra under Eythule Alcohol Price Control Order on the recommendation of the State Government, the prices of liquor are fixed by the Government of India. In West Bengal, for fixation of prices a Committee is formed consisting of a Chartered Accountant a cost Accountant and a Senior Officer of the Excise Department. In the opinion of the committee, prima facie, the system being adopted in the West Bengal was found more scientific and appropriate and it was recommended to adopt this method. Action be taken after obtaining necessary details in connection with this system and after the distilleries are transferred to private ownership, the prices should be fixed every year.

(17) On transfer to private ownership, the rates proposed by the Committee to be brought into effect from 1.4.1986 should be fixed finally after discussing the same between the State Government and the distillers. Till the final rates are not fixed the present rates of the distilleries shall be maintained as they are and after that only it should be adjusted against the new rates.

(18) The present system of connecting the area of supply for each distillery shall be maintained in future also as it is. It would be proper to maintain the present right of reduction or increase in the supply regions of any distillery which is with the State Government/Excise Commissioner, as it is.

I. *Control of Excise Department on the Distilleries*

(12) Even after the transfer of distillaries to private ownership, there should be control of the Excise Department over them as per the present system and for this purpose if any amendment is found necessary, it should be made in the Excise Act/Rules.

The Finance Department, however, submitted a Report raising 5

A points against the recommendations made in the Report of the Cabinet Sub-Committee. These points were answered by the General Administration Department in the summary prepared by it for submission to the Cabinet. These points together with the answers given by the General Administration Department may be reproduced as follows:

B "*Point No. 1*

The distilleries which are to be transferred to the private distilleries on account of the problem of pollution, it is not proper to transfer to them the land and buildings.

C *Answer*

In this connection it is pertinent to note that the Cabinet Sub-Committee has only reommended transfer of Gwalior and Dhar distilleries to the existing distillers. Looking to the problem of pollution, other five distilleries
D have been recommended to be transferred at the new sites and their construction and establishment in the private ownership. Hence, the question of transfer of land and buildings of these distilleries does not arise. It is clear that the lands and buildings of the present five distilleries will be of the State Government and they can be used for Govern-
E ment purposes. So far as the transfer of Gwalior and Dhar distilleries and their lands and buildings are concerned, the said distillers have made applications to the State Government that they also intend to establish distilleries at the new sites. If the State Government decides to establish these distilleries at other places, the question of transfer of
F lands and buildings of these distilleries does not arise.

Point No.2

A serious thought should be given to the question that the State Government should give an undertaking to the distil-
G lers that the State Government shall purchase liquor from them for ever and for that purpose no tender will be invited.

Answer

H With regard to this point, it would be proper to make

mention of the fact that the distillers whom the land will be allotted for the construction of new distilleries, they will only be granted D-2 licence and letters of intent will be issued in that regard. D-2 licence is granted for the manufacture of liquor. D-1 licence relates to the supply and rates of the same. According to the present arrangement, the State Government purchase liquor from those contractors who are granted licences for the same and in case of any short supply on account of some reason, liquor is imported from other States. This arrangement should also be made for future also. As far as the ceiling of tender is concerned, it is with regard to rates of liquor. On this point, a note has been given against point Nos.4 and 5.

Point No.3

As there is a possibility of increases of consumption of liquor in future, and the increased quantity of liquor will have to be purchased by the State Government from the present contractors, that will amount to monopoly system and the contractors may put the State Government into trouble at any time. For this purpose, the State Government should possess a right of granting D-2 licence to any other distiller.

Answer

In this connection, it should be mentioned that during the existence of the contract, if there is an increase in the consumption of liquor the supply of the same is done by the contractors or from outside. This arrangement shall be continued in future also. As for as grant of D-2 licence to other distillers is concerned, it will be given to them according to the requirement. The Sub-Committee has not made such a recommendation that apart from the existing distillers, no other person should be granted D-2 licence.

Here a question may arise that on the conferral of private rights on the distilleries and in case of absence of favourable conditions or difference of opinion about the fixation of prices of liquor, the distillers taking advantage of their proprietory rights may not close the distilleries? Ordinarily, no such imagination can be made because after

investing such a huge amount the intention of the distillers is to gain profits. For that purpose, their effort would be to constantly run the distilleries and for meeting such an eventuality some arrangement should be made in the agreement that could be entered with the distillers so that the distilleries can be taken over the State Government.

Point No.4

The Sub-Committee has recommended that for the supply of liquor the rates of the same may be fixed by a Committee consisting of a Chartered Accountant, a cost accountant and a senior Officer of the Excise Department. The Finance Department has suggested that in this Committee, representatives of the Finance Department and the Separate Revenue Department and the representative of the Separate Department should be its Chairman which would fix the rates on the basis of principles.

Answer

This suggestion is capable of being accepted. It may be pertinent to mention here that the Sub-Committee was apprised of the different systems adopted by different States with regard to supply rates. The Sub-Committee has recommended the system prevalent in West Bengal because the Sub Committee felt that this system is more scientific and fit. The Sub Committee has also mentioned that after obtaining further information about this system, action should be taken and after transfer of the distilleries into private ownership the prices should be fixed every year. Presently, the prices of liquor are fixed for a period of five years.

Point No.5

There should be competition which can be achieved through tender system. Hence, for fixing prices, tender system should be adopted and nobody should be given to say that the rates have been fixed arbitrarily.

Answer

As mentioned in recommendation No. 17 of the Sub

Committee dated 1.4.86, the rates to be made effective from 1.4.86 will be proposed by a Committee which will be given effect to after discussion (negotiations) with the State Government and the distillers. The Sub Committee has also made a recommendation that till the time the final rates are not fixed, till that period the respective distilleries will maintain their existing rates and after that they will adjust against the new rates. Hence, it will be clear that according to the new system fixation of prices will be fixed by calling tenders. For the present supply rates, tenders are invited and on that basis after negotiations with the distillers the final rates are fixed."

The summary alongwith the Report of the Cabinet Sub Committee and all other papers and proceedings leading upto the making of the Report were all placed before the Cabinet at the meeting held on 30th December 1984 when the following decision was taken:

"1. Looking to different angles of the subject, the recommendations of the Cabinet Sub-Committee should be endorsed.

2. If some such similar matters are put up, the department on the basis of the principles should take decisions."

Pursuant to this policy decision dated 30th December 1984 a Letter of Intent dated 1st February 1985 was issued by the State Government in favour of each of respondent Nos. 5 to 11 for grant of D-2 lincence for the construction of a distillery at a new site for the purpose of manufacturing country liquor with effect from 1st April 1986 in lieu of the existing distillery in respect of which such respondent held D-2 and D-1 licences for the period ending 31st March 1986. The Letter of Intent set out various conditions subject to which D-2 licence was to be granted in favour of each of respondent Nos. 5 to 11. Clause (1) of the Letter of Intent prescribed the following condition:

1. (a) The licence shall be granted for a period of five years commencing from 1-4-1986, subject to the payment of licence fees of Rupees Twenty Five thousand in advance and such security as may be prescribed by the Excise Commissioner for due observance of rules, and conditions of licence.

(b) It will be the responsibility of the licensee to obtain

a licence/permission, if any required by the State Governmet or Government of India.

(c) The licence shall be further subject to renewal every year on payment of a licence fees of Rs. Five thousand in advance and subject to due observance of the provisions of the Excise Act and rules made there-under and conditions of the licence.

The licensee to whom the Letter of Intent was issued was required under Clause 2 of the Letter of Intent to construct the distillery on the land approved by the State Government and the M.P. Pollution Board. It was provided by Clause 12 of the Letter of Intent that the licensee shall make proper arrangements for treatment of effluents discharge under a scheme duly approved by the M.P. Pollution Board and that any direction issued by the Excise Commissioner in this regard shall be binding on the licensee. Clause 14 of the Letter of Intent stipulated that the licensee shall be bound to complete construction of distillery and installation of plant and machinery as required by the Excise Commissioner well before 1st April 1986.

The Letter of Intent was followed by a Deed of Agreement dated 2nd February 1985 executed by and between the Governor of Madhya Pradesh acting through the Excise Commissioner and each of respondent Nos. 5 to 11. The Deed of Agreement recited that the Letter of Intent has been issued by the State Government for grant of D-2 licence for construction of distillery for manufacture of spirit with effect from 1st April 1986. Clause 1 of the Deed of Agreement provided that the licensee shall be bound to take land on lease for a period of 30 years from the State Government, but this clause is not material because ultimately none of respondent Nos. 5 to 11 took land on lease from the State Government and each of them purchased his own land, the site of course being approved by the State Government. Clause 2 of the Deed of Agreement is rather material and it may be reproduced in full:—

> 2. "The Govt. shall be bound to sanction D-2 licence in favour of the Licensee who has been granted letter of intent to manufacture spirit w.e.f. 1-4-86 in lieu of CHHATTISGARH DISTILLERY situated at INDUSTRIAL ESTATE BHILAI for a period of 5 years subject to renewal every year on payment of Licence Fee Rs.5,000 and on due fulfilment of the conditions of the licence and the provisions of M.P. Excise Act 1915 and the Rules made thereunder."

It was provided by Cluase 4 of the Deed of Agreement that the licensee shall be bound to manufacture country spirit in the distillery from mahuwa also and the country spirit made from mahuwa shall not be less than 7.5% of the total production in the distillery. So far as the pricing of country liquor made from mahuwa, khandsari molasses or mill molasses was concerned, Clause 6 of the Deed of Agreement provided as follows:— A B

> "The rate of country spirit made from Mahuwa, Khandsari molasses or mill Molasses shall be determined every year by the State Govt. on the basis of the recommendation of the committee constituted by the State Govt. in this behalf. The cost price so determined shall be final and binding on the Licensee." C

The other clauses of the Deed of Agreement are not material and we need not refer to them in detail beyond merely stating that they were introduced in the Deed of Agreement in conformity with the policy decision dated 30th December 1984. D

Pursuant to the Letter of Intent and the Deed of Agreement each of respondent Nos.5 to 11 selected with the approval of the State Government the new site at which the distillery should be located, purchased land at such new site, started constructing buildings for housing the distillery and placed orders for purchase the plant and E machinery to be installed in the distillery. Some of the plant and machinery started arriving and it began to be installed in the distillery. There was some dispute between the parties as to how much amount each of respondent Nos. 5 to 11 had expended by the time the first writ petition came to be filed by Nand Lal Jaiswal but it could not be seriously contested that considerable amount of money had already F been spent by respondent Nos. 5 to 11 in acquiring land, constructing buildings, placing orders for purchase of plant and machinery and taking other necessary steps before 28th November 1985 when Nand Lal Jaiswal filed the first writ petition. There is evidence to draw that considerable more progress had been made by respondent Nos. 5 to 11 in this direction by the time the second writ petition came to be filed by G Sagar Agarwal. Each of them had, on a conservative estimate, spent over one or two crores of rupees by the time Nand Lal Jaiswal and Sagar Agarwal filed these writ petitions challenging the policy decision dated 30th December 1984. On the filing of these writ petitions, an application for stay was made but it was rejected by the High Court with the result that the work of setting up the distilleries continued H

space and the distilleries were almost complete by the time decision came to be given by the High Court disposing of these writ petitions.

When the writ petitions were argued before the High Court, one of the questions seriously debated was whether under the policy decision dated 30th December 1984, D-2 licence was to be granted to each of respondent Nos.5 to 11 only for a limited period of 5 years commencing from 1st April 1986 or it was to be granted for a minimum period of five years with a clause for automatic renewal from year to year after the expiration of the period of five years so that all other persons would be totally excluded from entering the field and a monopoly would be created in favour of respondent Nos.5 to 11 for all time to come so far as D-2 licence for manufacturing liquor in the distillery was concerned. The petitioners relied on clause 1 of the Letter of Intent in support of their contention that a monopoly was sought to be created in favour of respondent Nos.5 to 11 for maufacturing liquor in the distilleries respectively set up by them by granting D-2 licence which was renewable every year after the expiration of the initial period of 5 years without any limitation of time and this was clearly arbitrary and irrational so as to be violative of Article 14 of the Constitution. This contention was negatived by the Division Bench and particularly by Acting Chief Justice, J.S. Verma in view of the categorical statement made on behalf of the State Government by the learned Advocate-General as also by the learned Advocates appearing on behalf of respondent Nos.5 to 11 that under the policy decision dated 30th December, 1984, D-2 licence was to be granted only for a maximum period of 5 years "subject to its renewal within the period of 5 years on the terms and conditions" mentioned in the Letter of Intent and "there was no undertaking on the part of the State Government" to grant, by way of renewal or otherwise D-2 licence after the expiry of the period of 5 years commencing from 1st April 1986. The learned Attorney General, appearing on behalf of the State Goverment, as also the learned advocates appearing on behalf of respondent Nos.5-11, reiterated the same stand before us namely, that there was no commitment on the part of the State Government to grant D-2 licence beyond the maximum period of 5 years and that the provision in regard to renewal from year to year was to operate within this period of 5 years. The learned counsel appearing on behalf of the petitioners, however, urged that this concession made on behalf of the State Government and respondent Nos.5-11 was of no avail, since it was contrary to the terms of the policy decision dated 30th December 1984 and the provision in the Letter of Intent and, in any event, the validity of the policy decision dated 30th December 1984 could be tested only

on its own terms and if it was otherwise invalid, the concession made on behalf of the State Government and respondent Nos.5-11 could not save it. We do not think that this contention urged on behalf of the petitioners is well-founded. It is undoubtedly true that the recommedations of the Cabinet Sub-Committee which were accepted by the Cabinet in the policy decision dated 30th December 1984 provided that in the beginning, D-2 licence shall be granted for a period of 5 years and thereafter there shall be a provision for its renewal and for this purpose, necessary amendment in the M.P. Excise Act, 1915 or the Rules made under the Act shall be made. But, it is significant to note that no such amendment in the Act or the Rules was made by the State Government and when the Letter of Intent was issued and the Deed of Agreement was executed and even thereafter, the provisions of the Act remained unamended and Rule II of the Rules of General Application also continued to stand in its unamended form. It is obvious that without an amendment of Rule II of the Rules of General Application, the maximum period for which D-2 licence could be granted to respondent Nos.5-11 was only 5 years and there could be no provision for automatic renewal thereafter from year to year. It is, therefore, clear that whatever might have been the original intention, it was not effectuated by carrying out necessary amendment in the provisions of the Act or in Rule II of the Rules of General Application and the ultimate decision of the State Government was to grant D.2 licence for a limited period of 5 years. This would also seem to be clear beyond doubt if we examine closely clause 2 of the Deed of Agreement. This clause provided in terms clear and explicit that the State Government shall be bound to grant D-2 licence to the licensee "for a period of 5 years subject to renewal every year on payment of licence fee of Rs.5,000 and on the fulfilment of the conditions of the licence and the provisions of the M.P. Excise Act, 1915 and the rules made thereunder". Obviously the provision of renewal every year was to operate within the span of 5 years itself and every year, the licence would be renewable on payment of licence fee of Rs.5,000 and due fulfilment of the conditions of the licence and the provisions of the Act and the Rules. It is not possible to spell out from this clause that the licence was to be granted for an initial period of 5 years and thereafter it was liable to be renewed from year to year. This so called concession made on behalf of the State Government and respondent Nos.5-11 was, therefore, really not a concession at all but it was a stand taken in recognition of the correct position in regard to the grant of D-2 licence. The High Court was, in the circumstances, right in holding that the grant of D-2 licence to respondent Nos.5-11 was for a maximum period of 5 years and it did not operate to create monopoly in their favour for an indefinite period of time.

A The High Court and particularly the Judgment of the Acting Chief Justice J.S.Varma with Justice B.M. Lal divided the policy decision dated 30th December 1984 into two parts. The first part according to the High Court related "to the grant for construction of the new distilleries by the existing contractors" and the other part related "to the grant of licence for manufacture and wholesale supply of liquor B with effect from 1st April 1986 to the existing contractors on construction of new distilleries by them". The High Court first took up for consideration the question of validity the first part and held that having regard to the inordinate delay in the filing of the writ petitions no interference was "called for with the grant to this extent". The High Court observed and we are quoting here in full what the High Court has said in regard to the first part since that contains the finding C of the High Court on the question of delay:—

> "In our opinion, the delay in bringing these petitions to challenge the grant made to the existing contractors who are respondents in these petitions for construction of the D new distilleries, is not adequately explained and, therefore, it would not be appropriate to interfere with the grant to this extent since at this stage, particularly when the constructions by the respondents are nearly complete. We have, therefore, reached the conclusion that without expressing any opinion about the validity of the scheme relating E to the grant only to the existing contractors for construction of the new distilleries, no interference with the grant to this extent alone should be made in these petitions on the short ground that there is unexplained delay in challenging the grant to this extent in these petitions and during the intervening period, the new distilleries have almost been F completed, if not wholly completed and any interference with the grant to this extent will result in needless complications. For this reason alone, we decline to examine the validity of grant made in favour of the respondents only to the extent it permits them to construct the new distilleries. In our opinion, the facet of promissory estoppel relied on G against the petitioners on the basis of their conduct is applicable only to this extent."

The High Court then proceeded to consider the question of validity of the second part relating to the grant of licences for manufacture and wholesale supply of country liquor to the existing contractors and held H that this part of the policy decision dated 30th December 1984 contra-

vening Article 14 of the Constitution and was therefore liable to be struck-down as invalid. The High Court took the view that the existing contractors cannot be said to constitute a distinct class by themselves so that grant of D-1, D-2 licences to them for manufacture and wholesale supply of country liquor to the exclusion of other persons could be justified under the equality clause of the Constitution. Though the High Court did not say so in express terms the view taken by it seem to be that the grant of D-1, D-2 licences given thrown open for all intending applicants and no one should have been excluded from consideration for the grant which means that the proposed grant of D-1, D-2 licences should have been advertised so that one and all could compete for the grant by filing their tenders or by bidding at an auction. The High Court in this view set aside the grant of D-1, D-2 licences to respondent Nos.5 to 11 but since there are no other distilleries apart from those constructed by respondent Nos.5 to 11 and country liquor under D-1, D-2 licences could be manufactured and supplied only from those distilleries, the High Court evolved a new formula namely, that the persons to whom D-1, D-2 licences may be granted on the basis of tender or auction should be entitled to take over the distilleries constructed by respondent Nos.5 to 11 at a proper value assessed by the State Government. The High Court accordingly allowed the writ petitions to this limited extent and directed that each party shall bear and pay its own costs of the writ petitions. The questions is whether this view taken by the High Court is correct.

Before we proceed to consider this question, we may point out that Acting Chief Justice, J.S. Verma, who delivered the main judgment in the writ petitions, did not make any comments against the conduct of the State Government in granting to the existing contractors the right to construct distilleries and manufacture and make wholesale supply of country liquor from such distilleries but merely proceeded to invalidate what he called the second part of the policy decision dated 30th December 1984 on the ground that it violated Article 14 of the Constitution. But Justice B.M. Lal delivered a separate concurring opinion and in this opinion, he made certain observations which have been strongly objected to by the learned Attorney General appearing on behalf of the State of Madhya Pradesh. It is necessary to set out in extenso what the learned Judge has said in this connection because an application has been made to us by the learned Attorney General that the objectionable remarks made by the learned Judge should be expunged:

"This new mischievous device gives scope to respondents

No.5 to 11 to monopolize the entire trade of liquor distillery in Madhya Pradesh and also make the State dance at their tips while fixing the rates according to their wishes.

However, it appears that the sinister of under-hand dealing of the agreement has persuaded the State Government to make the statement before this court during the course of second day of arguments, that they have reduced the period of the agreement dated 2.2.1985 from 30 years to a mere of 5 years period i.e. w.e.f. 1.4.86 to 31.3.1991 with no condition of renewing it thereafter without adhering to the provisions of rule XXII (Supra). By making this statement at the bar, I presume that, the State is trying to minimise the extent of depletion of public revenue, but still the loss of 56 crores, as argued by Shri Venugopal, continues if licence in D-1 form is granted to the respondents Nos.5 to 11 even for a period of five years.

Making any relaxation in contracts illegally arrived at by violating statutory provisions of rule XXII (Supra) which gives abnoxious smell of malafide involving public revenue in crores, then, in my opinion, even for a moment it cannot be allowed to stand in the eye of law.

It appears that by reducing the period of 30 years to a mere five years period, the State still wants to extend benefit to respondents 5 to 11, so that the amount so far spent by them in working out the contract in approaching the concerning authorities of the State may be compensated. Why this undue favour is being tried to be extended to the respodents Nos.5 to 11, speaks in itself in volume and is really a matter of the domain of the State Government.

The facts relating to under hand dealing brought to our notice during the course of arguments by pointing out from the record are so startling."

These are undoubtedly strong and highly disparaging remarks attributing mala fides, corruption and underhand dealing to the State Government. Are they justified by the record, is a question which we have to consider.

We may first consider the question of laches or delay in filling the

writ petitions because that is the question which has been decided by the High Court against the petitioners and the petitioners have challanged the correctness of the finding reached by the High Court of this point. The policy decision impugned in the writ petitions was taken 30th December, 1984. The Letter of Intent was issued in favour of each of respondent Nos. 5 to 11 on 1st February 1985 and the Deed of Agreement was executed on 2nd February 1985. Each of respondents nos. 5 to 11 thereafter proceeded to purchase land where the new disilleries were to be located and incurred large expenditure in purchase of such land and security deposit in a fairly large amount was also paid by each of respondents Nos.5 to 11. Thereafter civil construction work for putting up the distillery buildings was entrusted to reputed builders and various steps were taken by each of respondents Nos.5 to 11 for obtaining requisite permission/consent from Madhya Pradesh Pradushan Nivaran Mandal. The construction of the distillery buildings was started and in many cases considerable progress was made in the construction. Each of respondents Nos. 5 to 11 also placed orders for plant and machinery and this too involved considerable amount of expenditure. All this had to be done with quick despatch because the distilleries were required to be ready for production by 1st April 1986. Each of respondent Nos. 5 to 11 worked indefeatably, ceaselessly and in all earnestness and spent considerable time, energy and resources in setting up the distilleries at the new sites and by the time the writ petitions came to be filed each of respondent Nos. 5 to 11 had spent at least Rs.1.5 crores it not more, on acquisition of land, purchase of plant and machinery, construction of distillery buildings and other incidental and ancillary expenses. The first writ petition was filed by Nand Lal Jaiswal on 28th November, 1985 about 11 months after the date of the impugned policy decision, while the second writ petition came to be filed by Sagar Agarwal even later on 24th January 1986 and the third writ petition of M/s Doongaji & Co. was filed when the hearing of the first two writ petitions was actually going on in the High Court. There can be no doubt that the petitioners were guilty of gross delay in filing the writ petitions with the result that by the time the writ petitions came to be filed, respondent Nos.5 to 11 had, pursuant to the policy decision dated 30th December 1984, altered their position by incurring huge expenditure towards setting up the distilleries.

Now, it is well settled that the power of the High Court to issue an appropriate writ under article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent of the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in

filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is excercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasised time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal. We may only mention in the passing two decision of this Court one in *Ramanna Dayaram Shetty* v. *International Airport Authority of India & Ors.*, [1979] 3 SCR 1014 and the other in *Ashok Kumar Mishra & Anr.* v. *Collector Raipur & Ors.*, [1980] 1 SCR 491. We may point out that in R.D. Shetty's case (supra), even though the State action was held to be unconstitutional as being violative of Article 14 of the Constitution, this Court refused to grant relief to the petitioner on the ground that the writ petition had been filed by the petitioner more than five months after the acceptance of the tender of the fourth respondent and during that period, the fourth respondent had incurred considerable expenditure, aggregating to about Rs.1.25 lakhs, in making arrangements for putting up the restaurant and the snack bar of course, this rule of laches or delay is not a rigid rule which can be cast in a straitjacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But, such cases where the demand of justice is so compelling that the High Court would be inclined to interfere inspite of delay or creation of third party rights would by their very nature be few and for between. Ultimately it would be a matter within the discretion of the Court ex-hypothese every discretion must be exercised fairly and justly so as to promote justice and not to defeat it.

Here, obviously, there was considerable delay on the part of the

petitioners in filing the writ petitions and in the intervening period, respondent Nos.5 to 11 acquired land, constructed distillery buildings, purchased plant and machinery and spent considerable time, money and energy towards setting up the distilleries. These circumstances would, in our opinion, be sufficient to disentitle the petitioners to relief under Article 226 of the Constitution. The petitioners however contended that they were not aware of the policy decision dated 30th December 1984 nor had they any knowledge of the fact that the right to construct distilleries and to manufacture and supply wholesale country liquor from such distilleries was granted to the existing contractors and it was only when they came to know about this that they immediately proceeded to file the writ petitions. Now, it is difficult to believe that the petitioners were not aware of the policy decision dated 30th December 1984. The consideration of this matter started as far back as July 1983 and there were prolonged and wide ranging deliberations lasting several months, coupled with spot inspections by the Vijayvargi Committee and the Excise Department and it was after considerable discussion and deliberation that the policy decision was arrived at on 30th December 1984. The petitioners were, on their own showing, liquor contractors by profession and they were "associated with the trade of country liquor in the State since the last several years" and it would be wholly unrealistic and naive to suppose that the petitioners were not aware of the change in the policy which was being discussed at various levels over a period of almost 12 months and which was ultimately brought about by the policy decision dated 30th December 1984. Those who are in the liquor trade would immediately know what is happening and whether any change is taking place in the policy in regard to grant of licences for manufacture and wholesale supply of country liquor. It is also difficult to believe that the petitioners did not know that new distilleries were being constructed at new sites by respondent Nos.5 to 11. The feigned ignorance of the petitioners is completely exposed by the letter dated 1st April 1985 addressed by Sagar Agarwal to the Commissioner of Excise where it has been stated categorically:—

> "I have learnt that in order to prevent pollution the Government has taken a decision to transfer the distilleries from the densely populated areas and to establish them in areas having less thinner population. Government deserves to be congratulated for this decision in the face of pollution prevailing throughout the world.
>
> For this work existing distillers have taken a decision

A to construct new distilleries at their own cost and they are being granted long-term permanent type licences for the same. Besides this, the existing supply areas would be kept in tact with existing distillers."

This letter clearly shows that Sagar Agarwal very well knew about the B policy decision dated 30th December 1984 and that he was aware that long-term permanent licences were being granted to the existing contractors for constructing new distilleries and operating the same. It may also be pointed out that there was considerable publicity in newspapers in regard to the construction of new distillery at village Khapri in Chhatisgarh area and information to that effect appeared in the C issues of Yugdhar dated 7th June 1985, Navbharat dated 8th June 1985 and Amrit Sandesh. There was also information in regard to transfer of the Badawah distillery to village Khodi in the issue of Nai Dunia published from Indore on 12th July 1985. Of course, the petitioners have stated in their affidavits that they did not see this newspaper publicity but it is difficult to accept their statement. We may also point D out that, apart from the letter dated 1st April 1985, there was also another letter dated 25th September 1985 addressed by Sagar Agarwal to the Commissioner of Excise where he made a specific reference to the policy decision dated 30th December 1984 which shows that in any event, Sagar Agarwal knew specifically about the policy decision as far back as 25th September, 1985 and yet no action was taken by him until E 24th January 1986. M/s Doongaji & Company also knew by April 1985 that the distilleries were being given 'permanently' to the existing contractors, vide their letter dated 12th April 1985 addressed to the Chief Secretary, Government of U.P. The next letter in point of time, namely, that dated 17th May 1985 addressed by M/s Doongaji & Company to the Prime Minister, also shows that M/s Doongaji & Company F were aware by this time that the distilleries were being given 'permanently' to the existing contractors. M/s Doongaji & Company addressed another letter to the Prime Minister on 7th November 1985 in which they once again complained that the distilleries were being made 'permanent' to the existing contractors. Now if Sagar Agarwal and M/s Doongaji & Company knew as far back as April 1985 that the G distilleries were being given in private ownership to the existing contractors, it is difficult to believe that Nand Lal Jaiswal who is also in the liquor trade for years did not known about it. In fact, every person in the liquor trade would have know about this change in policy which had been made by the State Government under the policy decision dated 30th December 1984. We do not therefore see any reason to up H set the finding of the High Court that the petitioners were guilty of

enormous delay in filing the writ petitions and that in the meanwhile, during the intervening period, the rights of third parties had intervened in that respondent Nos.5 to 11, acting on the basis of the policy decision dated 30th December 1984, had incurred huge expenditure towards setting up the distilleries. If the policy decision dated 30th December 1984 were now to be set aside at the instance of the petitioners, it would work immense hardship on respondent Nos. 5 to 11 and cause grave injustice to them, since enormous amount of time, money and energy spent by them in setting up the distilleries would be totally wasted. Obviously, respondent Nos.5 to 11 would not have proceeded with the work of setting up the distilleries by spending considerable time and energy and incurring huge expenditure, if the writ petitions had been filed in time, for in that event they would have known that they would be running a serious risk of losing time, money and resources in case the writ potitions were allowed. But since no writ petitions were filed by any liquor contractors challenging the policy decision dated 30th December 1984 for well nigh over 10 months, respondent Nos.5 to 11 could not be blamed for embarking on the task of setting up the distilleries pursuant to the policy decision dated 30th December 1984. It would be most inequitous now to tell respondent Nos. 5 to 11 that they policy decision dated 30th December 1984 was unconstitutional and void and that all the time and energy spent and the enormous expenditure incurred by them in setting up the distilleries is therefore futile and they cannot be permitted to enjoy its benefits.

The High Court, however, fell into an error in splitting up the policy decision dated 30th December 1984 into two parts, one part relating to the grant for construction of new distilleries by the existing contractors and the other part relating to the grant of licences for manufacture and wholesale supply of liquor to the existing contractors on construction of new distilleries by them and in holding that delay on the part of the petitioners in filing the writ petitions disentitled them to relief in respect of only the first part and not in respect of the second. The High Court took the view that by reason of the delay in filing of the writ petitions, the petitioners could not be permitted to assail the grant made to the existing contractors for construction of new distilleries but so far as the grant of licences for manufacture and wholesale supply of liquor from the new distilleries was concerned, the challenge to the same was not precluded by the doctrine of laches or delay and taking this view, the High Court proceeded to hold that the grant of licences for manufacture and wholesale supply of liquor made to the existing contractors was violative of the equality clause of the Con-

A stitution. This view taken by the High Court is in our opinion plainly erroneous. The policy decision dated 30th December 1984 was a single integrated decision arrived at by the State Government taking a holistic view of all the aspects involved in the decision and it is difficult to appreciate how the High Court could sustain one part of the policy and strike down the other. Either the policy as a whole could be B sustained or as a whole, it could be declared to be invalid, but certainly one part could not be sustained, whatever be the ground and the other pronounced invalid. That would be making a new policy for the State Government which it was not competent for the High Court to do. Once the High Court came to the conclusion that on account of delay or laches in the filing of the writ petitions or the creation of third party rights in the meanwhile, the Court would not interfere with one part of C the policy decision, the Court could not interfere with the second part of the policy decision as well. The consequence of sustaining one part of the policy decision and striking down the other would not only be to create a new policy for the State Government but it would also cause considerable hardship and injustice to respondent Nos. 5 to 11 and D also result in public mischief and inconvenience detrimental to the interest of the State.

In the first place, under the policy decision dated 30th December 1984, new distilleries were to be constructed by the existing contractors, not with a view to making them available for manufacturing E liquor to any other person who might give a more acceptable bid or tender for D-1 and D-2 licences in the open market, but in order that the existing contractors who put up the new distilleries should be able to manufacture liquor and make wholesale supply of it under D-1 and D-2 licences to be granted to them for a period of 5 years. The grant of D-1 and D-2 licences to the existing contractors for a period of 5 years F for manufacturing liquor in the new distilleries constructed by them and supply it in wholesale to retail vendors, was an integral part of the policy decision dated 30th December 1984. If D-1 and D-2 licences were not be granted to the existing contractors but they were to be disposed of by auction or tender to any one who offers the most favourable rate, why should the existing contractors or for the matter G of that any one, spend so much time, energy and resources and incur so much expenditure for constructing the distjlleries. Obvisouly the inducement to the existing contractors for constructing new distilleries at enormous cost was that they would be granted D-1 and D-2 licences at least for a period of 5 years. Otherwise, we do not see why they should agree to construct new distilleries spending so much time and H energy and incurring such huge expenditure. Moreover, according to

the policy decision dated 30th December 1984, the rate chargeable for supply of liquor manufactured in the new distilleries was to be determined from year to year by an Expert Committee appointed by the State Government, but if such rate were to depend on the bid which may be made at the auction or tender and obviously the auction or tender could take place only at the end of 3 or 5 years and not from year to year—the entire policy of rate fixation laid down by the State Government would be set at naught. What would happen in effect is that the old policy which was being followed up to 31st March 1986 and which was sought to be changed by the State Government would be revived but now the distilleries forming the subject matter of that policy would not be the old distilleries of which the land and building belonged to the State Government and the plant and machinery was subject to transfer at a valuation but the new distilleries constructed by the existing contractors with their own monies and resources under the Letter of Intent dated 1st February 1985 and the Deed of Agreement dated 2nd February 1985, neither of which provided for transfer of the land and building or the plant and machinery to any other person who might be granted D-1 and D-2 licences as a result of auction or tender. The entire policy of the State Government contained in the policy decision dated 30th December 1984 would be frustrated and a new policy would be made out which patently the High Court has no jurisdiction or power to do.

Secondly, it is obvious that respondent Nos. 5 to 11 took tremendous trouble by way of acquiring land, constructing buildings, purchasing and installing plant and machinery and procuring and utilising large resources in setting up new distilleries with a view to working them and manufacturing liquor for wholesale supply at such rate or rates as may be fixed by the Expert Committee appointed by the State Government. Now if D-1 and D-2 licences are not granted to them but are disposed of through auction or tender to another person the entire effort put in by them would be wasted and they would be disappointed of a legitimate expectation created by the policy decision dated 30th December 1984 which remained unchallenged for a period of over 10 months. There can be no doubt that this would cause considerable hardship and inconvenience to respondent Nos. 5 to 11. Moreover, it is difficult to see how D-1 and D-2 licences could be disposed of in favour of the most acceptable bidder or tenderer, when such bidder or tenderer has no distillery in which he can manufacture liquor. D-1 licence, as we have pointed out above, cannot be granted to a person who does not hold D-2 licence and the grant of D-2 licence postulates that a distillery would be available to the licencee where he

A can work for manufacturing liquor. Here, barring the new distilleries which are being set up by respondent Nos. 5 to 11 and the Ratlam and Nowgaon distilleries, there are no other distilleries in the State of Madhya Pradesh where liquor can be manufactured and hence D-1 and D-2 licences cannot be granted to any person other than respondent Nos. 5 to 11, unless the new distilleries constructed by respondent B Nos. 5 to 11, are transferred to such other person either by agreement or after acquisition by the State Government. We can plainly rule out the possibility of any agreement on the part of respondent Nos. 5 to 11 to transfer the new distilleries to any other person to whom D-1 and D-2 licences may be granted by the State Government and the only alternative left open to the State Government would therefore be to acquire the new distilleries. But that would again frustrate the policy C of the State Government to transfer the distilleries to private ownership and the old policy would be revived, though in a different garb. Moreover, the State Government would have to produce over 40 crores of rupees by way of compensation for the acquisition of the new distilleries and that would be a heavy drain on the public revenues D which might otherwise be used for developmental and welfare activities. Further more, the entire process of acquisition would take considerable time, may be years, and during this period, there would be no production of liquor and the State Government would have to purchase liquor from outside the State at higher prices in order to satisfy the demand of the consuming public, resulting in loss of licence E fee as well as excise duty. Even if the person to whom D-1 and D-2 licences may be granted agrees to set up a new distillery, it would take considerable time and during the period taken up in the construction of the new distillery, the State Government would lose revenue. Of course, it may be urged that if respondent Nos. 5 to 11 are not granted D-1 and D-2 licences but such licences are granted to any other person F or persons who offer a more acceptable bid or tender, respondent Nos. 5 to 11 would be constrained to transfer the new distilleries to such other person or persons because otherwise the new distilleries in their hands would remain idle investment. But the State Government cannot wait for such chance to materialise and in the meanwhile, lose public revenue.

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We have therefore no doubt that the High Court was not at all justified in splitting up the policy decision dated 30th December 1984 into two parts and in striking down the second part, while sustaining the first. The Policy decision dated 30th December 1984 was one integrated policy decision and it could either be sustained or struck down H as a whole. We must accordingly hold that since the petitioners were

guilty of enormous delay in filing the writ petitions and in the intervening period, the rights of respondents Nos 5 to 11 were created in that they spent considerable amount of time, energy and resources and incurred huge expenditure in setting up the new distilleries and sustaining one part of the policy decision while striking down the other would amont to creating a new policy for the State Government and would also entail considerable hardship and inconvenience to respondent Nos. 5 to 11 and would also be detrimental to the interest of the State, it would be unjust and inequitous to grant relief to the petitioners against the policy decision and the petitioners must in the circumstances be held to be disentitled to relief in respect of the policy decision in its entirity. On this ground alone we would dismiss the writ petitions and allow the appeals of the State Government and respondent Nos. 5 to 11.

But since considerable arguments were advanced before us in regard to the validity of the policy decision dated 30th December 1984 with reference to Article 14 of the Constitution, we shall proceed to consider this question. It would, however, be convenient if we first examine two minor contentions urged on behalf of M/s. Doongaji & Co. as they are relatively unimportant and can be briefly disposed of in a few words. The first contention raised by the learned counsel appearing on behalf of M/s. Doongaji & Co. was that it was not competent to the State Government to give effect to the policy decision dated 30th December 1984 until after the publication of Rules made for that purpose under section 62(2) (h) of the Act. The learned counsel pointed out that D-2 licence in its existing form does not contemplate any construction licence at all: it is only a licence to manufacture liquor and not a licence to construct a distillery and hence without publishing Rules relating to licence for construction of a distillery, the State Government could not implement the change of policy under the policy decision dated 30th December 1984. This argument was elaborated by the learned counsel by putting forward the following contention which we may reproduce in his own words: "Rule XXII contemplates the disposal of licences either by tender, auction or fixed licence fee or in such other manner as the State Government may by general or special order direct. It does not enable the State Government without publishing the rules to licence construction and working of a distillery under a changed policy: i.e. a policy which does not involve tender, auction or fixed licence fee. Any other construction would render the last clause of Rule XXII as ultra vires section 62(2)(h) and section 63 read with section 7(c)." The learned counsel also urged that "the decision of the Cabinet in a meeting of the

A Cabinet is not an Order" within the meaning of Rule XXII and since no order under that Rule was produced, the Letter of Intent and the Deed of Agreement were without the authority of law as being in contravention of that Rule. We do not think this contention has any substance. It is a contention of despair. It is difficult to understand why the policy decision dated 30th December 1984 cannot be given effect to
B without any new Rules being made by the State Government. There is nothing in the policy decision dated 30th December 1984 which is contrary to the Rules made under the Act. It is true that D-2 licence in its existing form does not contemplate construction of a distillery and that the Rules do not seem to have prescribed the form for a licence for constructing a distillery. But, merely because the form of a licence for
C constructing a distillery is not prescribed by the Rules, it does not mean that such a licence cannot be granted by the Excise Authorities. If the form of a licence is prescribed, then, of course, such form has to be followed, but if no form is prescribed, the only consequence is that the licence to be granted by the Excise Authorities need not conform to any particular form. Section 14(c) of the Act clearly provides that
D the Excise Commissioner may license the construction and working of a distillery and there was, therefore, nothing contrary to the Act or the Rules in the Excise Commissioner issuing Letter of Intent in favour of each of respondent Nos. 5-11 granting licence for construction of a new distillery. Rule XXII, as we have already pointed out, permits any one of four modes of disposal of licence to be adopted by the Excise
E Authorities and it does not prescribe that the fourth mode denoted by the words "such other manner as the State Government may by general or special order direct" can be resorted to only if the first three modes fail. Here, in the present case, the policy decision dated 30th December 1984 provided that respondent Nos. 5-11, who were the existing contractors, should be granted licence to construct new distil-
F leries and D-1 and D-2 licences should be given to them for a period of five years for manufacturing liquor in such new distilleries and making wholesale supply of it to retail vendors in the areas attached to those distilleries. This manner of disposal of licences was clearly covered by the fourth mode of disposal set out in Rule XXII. We fail to understand why any further Rules were necessary to be made by the State
G Government in order to give effect to this policy decision arrived at by the State Government on 30th December, 1984. The fourth mode of disposal set out in Rule XXII was, in our opinion, sufficient to permit disposal of licences in the manner set out in the policy decision dated 30th December 1984. The argument that there was no general or special order made by the State Government pursuant to the policy deci-
H sion dated 30th December 1984 which would bring the case within the

fourth mode set out in Rule XXII is equally futile. When the policy decision dated 30th December 1984 was arrived at by the State Government itself, there could be no need for separate general or special order to be made by the State Government in that behalf. This would seem to be clear on principle, but we find that there is a decision of this Court in *State of Orissa & Ors.* v. *Harinarayan Jaiswal & Ors.*, [1972] 3 SCR 784 where the same view has been accepted. There, the section which came up for consideration was section 29 of the Bihar and Orissa Excise Act, 1915. Sub-section (2) of this section provided that the sum payable to the State Government in consideration of the grant of an exclusive privilege to manufacture and supply or liquor shall be determined as follows: "by calling tender or by auction or otherwise as the State Government may, by general or special order, direct." The State Government adopted the method of selling the exclusive privilege by private negotiations and this was challenged on behalf of the petitioners on the ground that the Government could sell the exclusive privilege by private negotiations only if an order was made under section 29 sub-section (2) that the privilege in question shall be sold by private negotiations and no such order having been made by the State Government, the sale effected by the State Government was invalid. This challenge was negatived by Hegde, J., speaking on behalf of the Court in the following words:

> "In the cases of public auctions or in the case of calling for tenders, orders from the Government directing its subordinates to notify or hold the auctions or call for tenders is understandable. Public auctions as well as calling for tenders are done by subordinate officials. Further due publicity is necessary in adopting those methods. To require the Government to make an order that it is going to sell one or more of the privileges in question by negotiating with some one is to make a mockery of the law. If the Government can enter into negotiation with any person, as we think it can, it makes no sense to require it to first make an order that it is going to negotiate with that person. We must understand a provision of law reasonably. Section 29(2)(a) does not speak of any order. It says that "the State Government may by general or special order direct". The direction contemplated by that provision is a direction to subordinate officials. It is meaningless to say that the Government should direct itself."

This decision provides a complete answer to the contention urged on

behalf of M/s. Doongaji & Co. based on the language of the last clause of Rule XXII. It is true that what has been produced before the Court by way of policy decision dated 30th December 1984 is the decision of the Cabinet and if its production had been objected to on behalf of the State Government, a question would perhaps have arisen whether it is barred form the scrutiny of the Court under clause (3) of Article 163 of the Constitution. But, it has been produced by the petitioners without any objection on the part of the State Government and once it is produced, the Court is entitled to look at it and it clearly contains the decision of the State Government and must be held to fall within the last clause of Rule XXII. This view finds complete support from the decision of this Court in *L.G. Chaudhari* v. *Secretary, L.S.G. Deptt., Govt. of Bihar & Ors.*, AIR 1980 SC 383.

The learned counsel appearing on behalf of M/s Doongaji & Co. also raised another contention based on the provisions of the Industries (Development & Regulation) Act, 1951. The argument of the learned counsel was that respondent Nos. 5-11 were not entitled to set up new distilleries at the new sites without obtaining a licence from the Central Government under Section 11 of this Act and since there was nothing to show that they had obtained such licence before setting up the new distilleries, their action in setting up the new distilleries was illegal and could not give rise to any rights in their favour. But, this contention is also unsustainable. In the first place, no such contention was raised in the writ petitions and neither the State Government nor respondent Nos. 5-11 had any opportunity of answering such contention. This contention is based on facts and we cannot permit the petitioners to raise it for the first time in the present appeals. The foundation for this contention should have been laid in the writ petitions and the necessary facts should have been pleaded in support of it. No such plea having been raised and no such facts having been pleaded in the writ petitions, we cannot allow this contention to be raised before us. Moreover, it is obvious from section 11 read with the definitions of 'factory' and 'industrial undertaking' contained in sub-sections (c) and (d) of section 3 of this Act that licence from the Central Government for setting up new distilleries would be necessary only if 50 or more workers would be working in such distilleries and here in the present writ petitions, there is nothing to show that 50 or more workers were going to be employed in the new distilleries. We were told at the Bar that in fact old distilleries were also working without any licence from the Central Government, presumably because less than 50 workers were employed in such distilleries. This contention of the learned counsel on behalf of M/s Doongaji & Co. must also, therefore, be rejected.

That takes us to the next contention urged on behalf of the petitioners in regard to the validity of the policy decision dated 30th December 1984 tested with reference to Article 14 of the Constitution. The High Court, of course, declined to interfere with what it called the first part of the policy decision on account of laches or delay on the part of the petitioners but came to the conclusion that the second part of the policy decision was violative of the equality clause. The High Court observed that the policy decision dated 30th December 1984 "in so far as it relates to the grant of licences for manufacture and wholesale supply of country liquor ..... contravenes Article 14 of the Constitution and interference to that extent is called for". The argument which found favour with the High Court was, and that is the argument which was reiterated before us on behalf of the petitioners, that the policy decision dated 30th December 1984 that licence to construct new distilleries should be given only to the existing contractors and D-1 and D-2 licences to manufacture and supply it in wholesale to retail dealers liquor in such new distilleries should be granted to them alone to the exclusion of other liquor contractors without holding auction or inviting offers which would give an opportunity to all liquor contractors interested in setting up new distilleries and manufacturing and supplying liquor to complete for the grant of such licences, was arbitrary and irrational and there was no valid justification for selectively preferring the existing contractors to other liquor contractors for grant of such licences. This contention, plausible though it may seem at first blush, is, in our opinion, wholly untenable. There are two very effective answers to it given by the learned Attorney General and the learned counsel for Respondent Nos. 5-11 and we shall immediately proceed to discuss them.

But, before we do so, we may at this stage conveniently refer to a contention of a preliminary nature advanced on behalf of the State Government and respondent Nos. 5-11 against the applicability of Article 14 in a case dealing with the grant of liquor licences. The contention was that trade or business in liquor is so inherently pernicious that no one can claim any fundamental right in respect of it and Article 14 cannot therefore be invoked by the petitioners. Now, it is true, and it is well settled by several decisions of this Court including the decision *in Har Shanker & Ors. etc.* v. *Deputy Excise & Taxation Commissioner & Ors.*, [1975] 3 SCR 254 that there is no fundamental right in a citizen to carry on trade or business in liquor. The State under its regulatory power has the power to prohibit absolutely every form of activity in relation to intoxicants—its manufacture, storage, export, import, sale and possession. No one can claim as against the

A State the right to carry on trade or business in liquor and the State cannot be compelled to part with its exclusive right or privilege of manufacturing and selling liquor. But when the State decides to grant such right or privilege to others the State cannot escape the rigour of Article 14. It cannot act arbitrarily or at its sweet will. It must comply with the equality clause while granting the exclusive right or privilge of
B manufacturing or selling liquor. It is, therefore, not possible to uphold the contention of the State Government and respondent Nos. 5-11 that Article 14 can have no application in a case where the licence to manufacture or sell liquor is being granted by the State Government. The State cannot ride roughshod over the requirement of that Article."

C "But, while considering the applicability of Article 14 in such a case, we must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor. The Court would, in view of the inherently pernicious nature of the commodity allow a large measure of latitude
D to the State Government in determining its policy of regulating, manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the court would hesitate to intervene and strike down what the State Government has done, unless it appears to be plainly arbitrary, irrational or mala fide." We had occasion to consider
E the scope of interference by the Court under Article 14 while dealing with laws relating to economic activities in *R.K. Garg etc.* v. *Union of India & Ors. etc.* [1982] 1 SCR 947. We pointed out in that case that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. We observed that the legislature should be allowed some
F play in the joints because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. We quoted with approval the following admonition
G give by Frankfurter, J. in *Morey* v. *Dond,* (354 US 457):

> "In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the
H power to destroy, not to reconstruct. When these are added

to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events-self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability." A

What we said in that case in regard to legislation relating to economic matters must apply equally in regard to executive action in the field of economic activities, though the executive decision may not be placed on as high a pedestial as legislative judgment in so far as judicial deference is concerned. We must not forget that in complex economic matters every decision is necessarily empiric and it is based on experimentation or what one may call 'trial and error method' and, therefore, its validity cannot be tested on any rigid a 'priori' considerations or on the application of any straight-jacket formula. The court must while adjudging the constitutional validity of an executive decision relating to economic matters grant a certain measure of freedom or play in the 'joints' to the executive. "The problem of Government" as pointed out by the Supreme Court of the United States in *Metropolis Theatre Company* v. State of *Chicago*, 57 Lawyers Edition 730 "are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not discernible, the wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void." The Government, as was said in Permian *Basin Area Rate cases* 20 Lawyers Edition (2d) 312, is entitled to make pragmatic adjustments which may be called for by particular circumstances. The Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more sceintific or logical. The Court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide. It is against the background of these observations and keeping them in mind that we must now proceed to deal with the contention of the petitioners based on Article 14 of the Constitution. B C D E F G

The first answer to the contention of the petitioners is, and this in our opinion is a fatal answer, that no liquor contractors have in fact been excluded from consideration under the policy decision dated 30th December 1984. It is undoubtedly true that, on the application of the existing contractors, the State Government decided to grant to them licences to construct new distilleries in lieu of the old distilleries in H

A Gwalior, Ujjain, Dhar, Badwaha, Chattisgarh, Bhopal Seoni as also to give them D-1 and D-2 licences to manufacture liquor in such new distilleries and to sell it in wholesale to retail vendors in the respective areas attached to such new distilleries and it might appear on a superficial reading of the policy decision dated 30th December 1984 that the entire cake was handed over to the existing contractors and all other B liquor contractors were left out and they were denied an opportunity of asking for similar licences. But this view, in our opinion, is based on a misreading of the policy decision dated 30th December 1984. It ignores clause 2 of the policy decision which clearly provides that "if some such similar matters are put up, the department on the basis of the principles recommended by the Cabinet Sub-Committee should C take decisions". It is clear from this clause that the State Government envisaged the possibility of other liquor contractors making similar applications for licences to construct new distilleries and to manufacture and supply liquor from such new distilleries and hence provided that if any such applications are made, they should be disposed of by the Excise Department on merits on the basis of the principles D "recommended by the Sub-Committee" that is, on the basis of the same principles on which the licences were decided to be granted to the existing contractors. It is therefore impossible to see how it can at all be contended that other contractors were excluded from consideration for the grant of licences for new distilleries. If any liquor contractor makes an application for a licence to construct a new distillery E on the same terms on which licences are granted to the existing contractor his application would have to be considered on merits by the Excise Authorities and the Excise Authorities may, if they find the proposal suitable, grant to such liquor contractor licence to construct a new distillery along with D-2 licence on the same basis. The Excise Authorities may, in such event, either (1) direct such liquor contractor F to manufacture rectified spirit, denatured spirit or foreign liquor in the new distillery for the remaining period of the D-1 and D-2 licences of the existing contractors and thereafter consider him along with other liquor contractors for grant of D-1 and D-2 licences in respect of the new distillery or (2) reduce and/or alter the area of supply of any of the existing contractors and grant D-1 licence to such liquor contractor in G respect of the carved out area. If the Cabinet decision dated 30th December 1984 while granting licences to the existing contractors leaves it open to other liquor contractors to come in and apply for similar licences, it is difficult to see how the challenge based on Article 14 can be sustained.

H This view taken by us is sufficient to dispose of the contention

based on Article 14. But apart from this answer to the contention which has found acceptance with us, there is another answer which is equally strong and cogent. Let us consider the circumstances under which the policy decision dated 30th December 1984 came to be taken. The propsal which ultimately culminated in the policy decision was first initiated in July 1983 by the M.P. Distillers Association, which was of course an association of existing distillers, making a representation to the State Government for privatisation of the distilleries. The situation which prevailed at that time in regard to the distilleries was quite disturbing. Whatever might have been the position at the date when the distilleries were constructed, considerable human habitation had grown around them over the years and, barring Gwalior and Dhar distilleries, all the other distilleries were in thickly populated localities and even so far as Gwalior and Dhar distilleries were concerned, it was apprehended that within 5 or 7 years they would also be in the same unhappy situation. The result was that the working of the distilleries at the old sites was causing serious air, water and environmental pollution. The note prepared by the separate Revenue Department for the consideration of the Cabinet Sub-Committee as also the Report of the Vijayvargi Committee clearly showed that there was considerable air and water pollution on account of dirty water flowing out of the distilleries and fouling air and water. There was not enough space at the old sites for constructing lagoons for removal of the polluted water coming out of the distilleries. It was therefore necessary to transfer the distilleries to new sites which would be away from human habitation and where the distilleries could be constructed keeping in mind the standards fixed by the M.P. Pradushan Nivaran Mandal for removal of polluted water and keeping the environment clean and wholesome. Moreover, the total capacity of the distilleries including Ratlam Alcohol plant and Nowgaon distillery was only 203 lakhs proof litres and even this quantity of production was not being reached largely on account of old plant and machinery. The result was short supply of country liquor leading to loss of licence fee as well as excise duty on the part of the State Government. Moreover, the estimated consumption of liquor in the State was likely to be around 482.36 lakhs proof litres by the year 1991 and by the turn of the century it was expected to reach the startling figure of 1696.80 lakhs proof litres. The existing distilleries were obviously incapable of meeting this growing demand for country liquor. The plant and machinery of the distilleries had became antiquated and worn-out and the licensees for the time being had no incentive to replace it by modern plant and machinery. The buildings in which the distilleries were housed had also become old and dilapidated and the State Government was not in a position to

A maintain them in good condition and obviously the licencees for the time being were also not interested in keeping the buildings in good state of repair because the buildings did not belong to them. It was therefore absolutely essential to construct new distilleries with modern technologically advanced plant and machinery at new sites where there would be no problem of air or water pollution. The question was as to B how this should be done whether the new distilleries should be constructed by the State Government or whether they should be placed in the private sector. The proposal made by M.P. Distillers Association was that the distilleries should be transferred to private ownership and they offered to take over the existing distilleries. The Cabinet Sub-Committee considered this question in all its aspects and reached the C conclusion that it would be better to entrust the construction of the new distilleries to the private sector rather than ask the State Government to do so. There are four very good reasons why the Cabinet Sub-Committee took this view. In the first place, the distilleries were in private ownership in almost all the States barring the State of M.P. and there was no reason why the State of M.P. should not fall in line D with what was happening in the other States. Secondly, the State Government would have to invest about Rs.50 crores, in any event more than Rs.40 crores, if the State Government had to construct and cut up new distilleries. This large amount would become available for other developmental and welfare programme, if, instead of the State Government the private sector was entrusted with the task of construction E of new distilleries. Thirdly, the State Government would not have to incur any recurring expenditure on maintenance of the buildings and the plant and machinery, because in the event of construction of the new distilleries being entrusted to private entrepreneurs, maintenance of buildings as well as plant and machinery would become their responsibility and moreover they would have real interest in keeping and F maintaining them in good condition. And lastly, the land and buildings in which the distilleries were then housed would become available to the State Government for sale and, situated as they were in thickly populated areas, they would fetch a very handsome price which would go to augment the resources of the State Government. The State Government for these reasons thought it desirable that the construc- G tion of new distilleries should be in the private sector and, after discussion with the M.P. Distillers Association the State Government decided to entrust the construction of new distilleries to the existing contractors who had already offered to take over the distilleries.

There was also one other factor which, according to the State H Government and respondent Nos. 5 to 11, weighed with the State

Government in arriving at the decision to entrust the construction of new distilleries to the existing contractors instead of inviting offers by advertisement and that factor was that the licences of the existing contractors were coming to an end on 31st March, 1986 and it was therefore necessary that the new distilleries should be ready for manufacture of liquor before 1st April, 1986. The construction of new distilleries was a time-consuming job because it involved selection of appropriate land, approval of the authorities to the land selected, entrustment of contract for construction to a competent contractor, obtaining of sanction of the municipal and other authorities to the plans acquisition of materials and construction of buildings placing of orders for modern sophisticated plant and machinery and installation of such plant and machinery in the distilleries. This whole process was bound to take considerable time and the State Government could not therefore be faulted if they negotiated with the existing contractors who had come forward with a positive offer and entrusted the construction of new distilleries to them so that they could be ready for manufacture by 1st April 1986. Moreover it may be noted that no other person with experience of working a distillery had come forward with an offer to set up a new distillery. It is not possible to believe that when the existing contractors who were members of M.P. Distillers Association had made an offer to the State Government to set up new distilleries and considerable deliberations and detailed enquiries were going on at the highest level for deciding whether the new distilleries should be handed over to the private sector and negotiations were actually being carried on with the M.P. Distillers Association in that behalf the other liquor contractors were not aware of any such proceedings. Even after the policy decision dated 30th December, 1984 was reached by the State Government, neither Nandlal Jaiswal nor M/s Doongaji & Co. made any application for grant of licence to construct a new distillery on the same terms on which licences were decided to be granted to the existing contractors. It is true that Sagar Aggarwal did make an offer but it may be noted that in the first place he was at no time a D-2 licencee and he had no experience of working a distillery and secondly, his main interest was in having D-1(S) licences for Jabalpur and Betul districts. It is also significant that while taking a decision to grant licences to the existing contractors to put up new distilleries, the State Government did not wish to create a monopoly in favour of the existing contractors and the State Government therefore, when entering into the Deed of Agreement, limited the duration of D-2 licence to be granted to each of the existing contractors to five years and also left it open to other distillery contractors to come in on the same terms. In fact the learned Attorney General

A frankly stated that if M/s Doongaji & Co. made an application for a licence to construct a new distillery on the basis as others, his application would be considered by the State Government. We fail to appreciate how in these circumstances it can at all be contended that the policy decision dated 30th December, 1984 taken by the State Government was arbitrary or irrational so as to be violative of Article B 14 of the Constitution.

We may also point out that when the State Government is granting licence for putting up a new industry, it is not at all necessary that it should advertise and invite offers for putting up such industry. The State Government is entitled to negotiate with those who have come C up with an offer to set up such industry. This principle was clearly and unequivocally accepted by this Court in *Kasturi Lal Lakshmi Reddy* v. *State of Jammu & Kashmir*, [1980] 3 SCR 1338 where contracts entered into by the state Government with three manufacturers giving them the right to set up factories in the State for the manufacture of rosin, turpentine and other derivatives and making available to them an D assured suply of 4,000, 3,500 and 8000 metric tonnes of rosin per year by giving them tapping contract were challenged as violative of Article 14 of the Constitution on the ground that the State Government had not issued any advertisement inviting offers for award of tapping contract or stating that the tapping contract would be given to any party who would be prepared to put up a factory for manufacture of rosin, E turpentine and other derivatives within the State and thereby equality of opportunity to compete for obtaining such contracts was denied to other persons. This Court speaking through one of us (Bhagwati, J., as he then was) pointed out:-

F "The pre-dominant purpose of the transaction was to ensure setting up of a factor by the 2nd respondents as part of the process of industrialisation of the State and since the 2nd respondents for that purpose. If the State were giving tapping contract simplicitor there can be no doubt that the State would have to auction or invite tenders for securing the highest price, subject, of course, to any other G relevant overriding considerations of public weal or interest, but in a case like this where the State is allocating resources such as water, power, raw materials etc. for the purpose of encouraging setting up of industries within the State, we do not think the State is bound to advertise and tell the people that it wants a particular industry to be set H up within the State and invite those interested to come up

with proposals for the purpose. The State may choose to do so, if it thinks fit and in a given situation, it may even turn to be advantageous for the State to do so, but if any private party comes before the State and offers to set up an industry, the State would not be committing breach of any constitutional or legal obligation if it negotiates with such party and agrees to provide resources and other facilities for the purpose of setting up the industry. The State is not obliged to tell such party; "Please it. I will first advertise, see whether any other offers are forthcoming and then after considering all offers, decide whether I should let you set up the industry". It would be most unrealistic to insist on such a procedure, ... The State must be free in such a case to negotiate with a private entrepreneur with a view to inducing him to set up an industry within the State and if the State enters into a contract with such entrepreneur for providing resources and other facilities for setting up an industry, the contract cannot be asailed as invalid so long as the State had acted bona fide, reasonably and in public interest. If the terms and conditions of the contract or the surrounding circumstances show that the State has acted mala fide or out of improper or corrupt motives or in order to promote the private interests of some one at the cost of the State, the Court will undoubtedly interfere and strike down State action as aribitrary, unreasonable or contrary to public interest. But so long as the State action is bona fide and reasonable, the Court will not interfere merely on the ground that no advertisement was given or publicity made or tenders invited."

Here, in the present case, the pre-dominant purpose of the policy decision dated 30th December, 1984 was to ensure construction and setting up of new distilleries with modern technologically advanced plant and machinery at new sites where there would be no possibility of air and water pollution and if for achieving this purpose the State Government considered the offer of the existing contractors and negotiated with them and ultimately decided to grant to them licences for construction of new distilleries on the terms and conditions set out in the recommendations of the Cabinet sub-Committee it is difficult to see how, in view of the decision in *Kasturi Lal Lakshmi Reddy's* case (supra) the State Government could be said to have acted arbitrarily or capriciously in violation of Article 14 of the Constitution. The con-

A tention of the petitioners based on Article 14 of the Constitution must therefore stand rejected.

Before we part with this case we must express our strong disapproval of the observations made by B.M. Lal, J. in paragraph 1,9, 17,18, 19 and 34 of his concurring opinion. The learned Judge made
B sweeping observations attributing mala fides, corruption and underhand dealing to the State Government. These observations are in our opinion not at all justified by the record. In the first place it is difficult to appreciate how any such observation could be made by the learned Judge without any foundation for the same being laid in the pleadings. It is true that in the writ petitions the petitioners used words such as 'mala fide', 'Corruption' and 'corrupt practice', but the use of such
C words is not enough. What is necessary is to give full particulars of such allegations and to set out the material facts specifying the particular person against whom such allegations are made so that he may have an opportunity of controverting such allegations. The requirement of law is not satisfied in so far as the pleadings in the present case are
D concerned and in the absence of necessary particulars and material facts, we fail to see how the learned Judge could come to a finding that the State Government was guilty of factual mala fides, corruption and under-hand dealings. The learned Judge observed that amount was spent by respondent Nos. 5 to 11 "in working out the contract in approaching the concerned authorities of the State". This observations
E carried a direct allegation that money passed from respondent Nos. 5 to 11 to "the concerned authorities" for getting the licences. But no such allegation was at any time made by the petitioners and when the petitioners did not make any such allegation in the pleadings, nor even stated as to which authority took monies by way of illegal gratification, it is difficult to understand how the learned Judge could possibly make
F such an observation. The petitioners also did not make any specific imputation of under hand dealing in the writ petitiones and yet the learned Judge inexplicably came to the conclusion that the State Government was guilty of 'sinister underhand dealing'. The learned Judge was clearly not justified in doing so.

G But, quite apart from this objection based on lack of proper and adequate pleading, we think that even on merits the observations made by B.M. Lal, J. were clearly unjustified. There is not an iota of evidence to establish or even asmuch as to indicate that the State Government was actuated by any collateral purpose or was guility of any 'sinister underhand dealing' or was prompted by any currupt
H motive in reaching the policy decision dated 30th December, 1984.

What the learned Judge has said is based entirely on conjecture and suspicion—and approach which does not go well with judicial disposition of a case. There are two important factors which throw considerable light in determining whether a policy decision is *mala fide* or motivated by improper considerations. One relates to the manner and method of reaching the policy decision and the other to the circumstances in which the policy decision is taken and the considerations which have entered into the making of it. Now, it is clear from the detailed statement of facts which we have given at the commencement of this judgment that the entire process commencing with the representation of the M.P. Distillers' Association in July 1983 and culminating in the policy decision dated 30th December 1984 was spread over a period of about 17 months and it included gathering of information, on-spot inspection of the sites, collegiality of deliberations, candour of inter-departmental and intra-departmental communication and a dialectical interaction of different multilateral viewpoints. The policy decision was an informed and reasoned decision arrived at after detailed inquiries, fact-finding efforts and reports spreading over a period of more than a year and a half. Several queries and issues were raised by the Finance Department boldly and fearlessly and these queries and issues were fully and frankly dealth with, clarifications were given and the entire matter was fully considered. There was no attempt at any stage of suppress discussion and debate or to avoid or side-track or push under the carpet any doubts or questions raised by any of the parties involved in the deliberations. It is also significant that the policy decision was not arrived at by a single individual in the secrecy of his chamber but it was by the entire Cabinet and it was based on the recommendations made by the Cabinet Sub-Committee which was composed of four Ministers assisted by officers from different departments belonging to the highest scholars of the civil service. It may also be noted that the Cabinet Sub-Committee considered the matter from different angles, obtained relevant information, sent a Committee of officers for spot inspection, took stock of the valuation and the likely investment, reviewed the problem and worked out the solution and made its recommendations to the Cabinet. The entire proceedings of the Cabinet Sub-Committee were before the Cabinet including the reasons for which the recommendations were made and it was after considering these recommendations that the Cabinet reached the policy decision. The entire proceedings show that there was complete openness of discussion and deliberation. There was no suddenness of decision, no impulsive caprice or arbitrariness in reaching the decision. The policy decision was plainly and avowedly an informed and institutionalised decision and the manner in

A which it was reached is clearly indicative that it was neither mala fide nor guided by any corrupt or collateral considerations.

We have already discussed the circumstances under which the policy decision dated 30th December, 1984 came to be made. We need not repeat what we have said in the preceding paragraphs in regard to B the making of the policy decision and the circumstances under which it was made. These circumstances plainly and unmistakably point to the bona fides of the policy decision. It is not possible to discern any mala fides or any improper or corrupt motive on the part of the State Government in reaching the policy decision. It is significant to note that the State Government did not concede whatever was demanded C by the existing contractors. The existing contractors wanted the land and buildings of the existing distilleries to be transferred to them at a valuation but the Cabinet Sub-Committee did not agree to this suggestion and insisted that the existing contractors whould have to acquire land at new sites, construct buildings for setting up new distilleries, and the land and buildings in which the existing distilleries were D housed would come back to the State Government. The Cabinet Sub-committee also insisted on the existing contractors to make the necessary arrangements for removing air and water pollution in the new distilleries as also to construct a laboratory with modern equipment. The State Government also changed the mode of rate fixation. Originally the rates for supply of liquor to the retail vendors were fixed on E the basis of tenders every five years with the result that the rates accepted by the excise authorities on the basis of the tenders continued to prevail for a period of five years. Now it is a fallacy to assume that the lowest rates quoted by the tenderers would necessarily be the cheapest and the best. If the tenderers form a syndicate they can push up the rates for supply of liquor and in fact it is obvious from the rates F which were accepted by the excise authorities for the five year period, 1st April, 1981 to 31st March, 1986, that these were not the most reasonable rates. The Cabinet Sub-Committee therefore felt that the system of rate fixation prevalent in West Bengal was the most beneficial to the State Government because it provided for rate fixation by an expert Committee which would take into account the escalation or G de-escalation in the price of raw materials, varying labour cost and fluctuating market conditions every year and arrive at a reasonable rate, fair both to the licencee and to the State Government. The Cabinet-Committee also did not recommend taking over of the plant and machinery of the old distilleries from the existing contractors against payment of its value with the result that the old plant and H machinery remained with the existing contractors and obviously it

would have no value because they would not be able to sell it to any one and it would be dead junk in their hands and the price paid by them to the out-going licences would be totally lost. It is indeed difficult to see how it can at all be said that in making its recomendations, the Cabinet Sub-Committee was guilty of any mala fides or under-hand dealing or was actuated by any corrupt motive. The Cabinet merely accepted the recomendations made by the Cabinet Sub-Committee and in fact when the deed of Agreement came to be executed with each of the existing contractor the State Government actually introduced a provision that D-2 licences would be given only for a period of five years. We are therefore unable to appreciate how B.M. Lal, J. could possibly pass strictures against the State Government attributing mala fides, under-hand dealing and corruption to the State Government.

We may also in this connection refer to an allegation made by Sagar Aggarwal that by reason of the policy decision dated 30th December, 1984 the State Government would incur a loss of about Rs. 56 crores. This allegation did not find favour with Acting Chief Justice J.S. Verma but it seemed to have impressed B.M. Lal, J. because he categorically stated in paragraph 17 of his concurring opinion that even if D-1 licences were granted to respondent Nos. 5 to 11 only for a period of five years the State Government would suffer a loss of Rs. 56 crores. We find it difficult to understand how B.M. Lal, J. could possibly come to a conclusion that the State Government would be incurring a loss of Rs. 56 crores by the policy decision dated 30th December, 1984. The figure of Rs. 56 crores was arrived at by Sagar Aggarwal on the assumption that if instead of granting licence to the existing contractors to construct new distilleries and giving them D-1 and D-2 licences for a period of five years, D-1(S) licence was granted to him for the entire territory of the State of Madhya Pradesh and he was able to get liquor from the Ratlam Alcohol plant at the rate of Rs. 1.80 per proof litre in sufficient quantity so as to be able to supply liquor to retail vendors in the entire State he would be able to save for the State Government a sum of Rs. 56 crores on the basis that otherwise a rate of Rs. 4 per proof litre would be charged by the existing contractors. This assumption is, in our opinion, wholly unfounded. It is totally absurd and chimerical. In the first place, the Ratlam Alcohol plant was unable to supply the requirements of even Jabalpur and Betul districts and during the period ending 31st March 1986 Sagar Aggarwal himself had to purchase liquor from outside at higher rates in order to satisfy the requirements of these two districts for which he held D-1(S) licence. If that be so, how could Ratlam

A Alcohol plant which could not produce more than 60 lakh proof litres at the outside, possibly supply liquor for the whole of the territory of the State. If Ratlam Alcohol plant could be made to supply the requirement of the entire State there would be no need for any other distillery at all. But obviously the capacity of the Ratlam Alcohol plant was very limited and it was not able to achieve production on up to this B capacity. Secondly, it was decided that the Ratlam Alcohol plant would manufacture only ractified spirit for making masala liquor which was more popular and which brought greater revenue to the State and obviously therefore Ratlam Alcohol plant could not be available for producing ordinary liquor for supply to the retail vendors. Thirdly, it is difficult to understand how the learned Judge could assume that Sagar Aggarwal would continue to get liquor from Ratlam C Alcohol plant at the rate of Rs. 1.80 per proof litre. The rate for supply of liquor by the Ratlam Alcohol plant would naturally depend upon varying market conditions. And lastly we fail to understand how the learned Judge could proceed on the assumption that a rate of Rs.4 per proof litre would be fixed by the Export Committee for supply of D liquor by the existing contractors from the new distilleries. We do not know what rate would be fixed by the Expert Committee. That would depend upon diverse considerations and of course one of the considerations would certainly be that Sagar Aggarwal had offered minus 2.31 rupees per proof litre while taking D-1(S) licences for Jabalpur and Betal districts. The figure of Rs.56 crores put forward by Sagar E Aggarwal and accepted by the learned Judge was clearly hypothetical and based on assumptions which were totally unwarranted. We do not think that the learned Judge was right in observing that the public exchequer would incur a loss of Rs.56 crores by the policy decision dated 30th December, 1984 and that the policy decision was therefore vitiated by mala fides or under-hand dealing or improper or corrupt F motive.

We may observe in conclusion that Judges should not use strong and carping language while criticising the conduct of parties or their witnesses. They must act with sobriety, moderation and restraint. They must have the humility to recognise that they are not infallible G and any harsh and disparaging strictures passed by them against any party may be mistaken and unjustified and if so, they may do considerable harm and mischief and result in injustice. Here, in the present case, the observations made and strictures passed by B.M. Lal, J. were totally unjustified and unwarranted and they ought not to have been made.

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We must therefore hold that the High Court was in error in allowing the writ petitions even to a limited extent. We accordingly allow the appeals of the State Government and respondents Nos. 5 to 11 and dismiss the writ petitions. The special leave petitions of M/s. Doongaji & Co. and Nand Lal Jaiswal will also stand dismissed. We would however on the facts and circumstances of the present case make no orders as to costs. A B

S.R. Appeals allowed and Petitions dismissed.