

Chingleput Bottlers

Vs

Majestic Bottling Company

State of Tamil Nadu

Vs

Majestic Bottling Company

Civil Appeal Nos. 11970-11972 of 1983

(A. P. Sen, A. Varadarajan JJ)

15.03.1984

JUDGMENT

A. P. SEN, J. -

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

2. Put very shortly, the essential facts are these. On May 28, 1982, one O. H. Kumar carrying on business under the name and style of Messrs Three Star Bottling Company surrendered his licence for the manufacture and supply of bottled arrack for the Chingleput district for the financial year 1982-83. The Commissioner of Prohibition and Excise, Madras called for applications from intending person for the grant of the licence. In response to the notice issued by the Commissioner under rule 5 in from 1, namely, by J. Balaji, managing partner of Messrs Majestic Bottling Company on June 9, 1982 and by V. Ramabadran, managing partner of Messrs Chingleput Bottlers on June 14, 1982. The Commissioner issued a questionnaire and directed the Collector, Chingleput to have an enquiry held as regards the suitability of the applicants for grant of a licence. Pursuant thereto, the Collector had an enquiry held by he Assistant Commissioner (Excise) which lasted for four days i.e. from June 21 to June 24, 1982. After the prel

3. On July 5, 1982, the Commissioner separately head both J. Balaji and V. Ramabadran. At the hearing, the Commissioner recorded the statements of both J. Balaji and v. Ramabadran in support of their respective claims. On July 31, 1982 the Commissioner passed an order rejecting both the applications. As regards Messrs Majestic Bottling Company, the Commissioner held that their application was in order but that they did not satisfy the requirement of Rule 5 (a) and (e) of the Rules. As to their suitability under Rule 5 (a) he found that though the partnership had been formed prior to the date of the application i.e. on June 9, 1982, the firm actually got registered subsequent

thereto on June 23, 1982 and therefore there was on valid partnership in existence on June 14, 1982 i.e. on the date of the filing of the application. As regards Rule 5 (e), he held that there was no water facility in the lands owned by the partnership firm.

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

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

6. Both Messrs Majestic Bottling Company and Messrs Chingleput Bottlers filed separate petitions under Article 226 of the Constitution before the High Court questioning the validity of the order passed by the Commissioner. By his judgment dated June 13, 1983 a learned Single Judge held that the Commissioner was not justified in rejecting the application of Messrs Majestic Bottling Company on a wrongful assumption that they did not satisfy the requirement of Rule 5 (a) and (e) of the Rules. He held that the order was vitiated by an error apparent on the face of the record inasmuch as J. Balaji, managing partner of Messrs Majestic Bottling Company had produced record with regard to the availability of water. The learned Single Judge however set aside the finding of the Commissioner that the application made by Messrs Chingleput Bottlers was not in order because it was not accompanied by a solvency certificate holding that non-production of a solvency certificate would not entail a dismissal of the application

7. By his judgment, the learned Single Judge by the issue of a writ of certiorari quashed the impugned order of the Commissioner insofar as he rejected the application made by Messrs Majestic Bottling Company on the ground that there was an error apparent on the face of the record but instead of remitting the matter back to the Commissioner to reconsider the question of grant of such privilege, issued a writ of mandamus ordaining the Commissioner to grant the licence to Messrs Majestic Bottling Company. He further upheld the order of the Commissioner rejecting the application of Messrs Chingleput Bottlers for the grant of privilege on the ground that they were mere benamidars of the previous licensee.

8. Aggrieved by the judgment of the learned Single Judge, both the State Government and Messrs Chingleput Bottlers preferred appeals under Clause 15 of the Letters Patent. Upholding the judgment of the learned Single Judge the learned Judges of the Division Bench held that learned Single Judge was justified not only in quashing the same but in issuing a writ of mandamus directing the Commissioner to grant the licence in favour of Messrs Majestic Bottling Company without the prior approved of the State Government under Rule 7 of the Rules.

9. Before proceeding further, we would like to mention that the State Government did not file a separate counter. There was a counter- affidavit filed by R. Lakshmanan, Joint Commissioner (IV), Department of Prohibition and Excise, Madras on behalf of both the State Government as well as the Commissioner of Prohibition and Excise seeking to support the impugned order passed by the Commissioner. In addition to the grounds mentioned by the Commissioner for the refusal of the

applications for grant of privilege, there was an additional ground taken in paragraph 11 and it was alleged that J. Balaji, managing partner of Messrs Majestic Bottling Company and his other partner Smt. Shanthi, who incidentally is also his mother, were the two erstwhile directors of Messrs Dhanalakshmi Chemical Industries Private Limited, Ranipet up to November 26, 1980 and there was prima facie evidence that the company had misused the large quantity of rectified spirit by diverting alcohol from industries to attack production and there

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

11. There are really two questions that fall for determination. The first is as to the jurisdiction of the High Court to issue a writ of mandamus. It is said that the grant of licence under Rule 7 is subject to the prior approval on the State Government and is in the discretion of the State Government. The High Court is not granting authority and therefore had no power to issue a writ of mandamus directing the Commissioner to grant a licence to Messrs Majestic Bottling Company. The second question is whether the Commissioner acted in breach of the rules of natural justice in not furnishing to Messrs Chingleput Bottlers a copy of the report submitted by the Collector and other material gathered by him during the course of the enquiry tending to show that they were benamidars of one O. H. Kumar, the previous licensee. It is said that Messrs Majestic Bottling Company had at the separate hearing before the Commissioner submitted a brief styled as a representation containing several documents in opposition to the

12. The first issue, as already, raises a question of prime importance and of some difficulty. It would therefore be convenient, in the first instance, to deal with the appeal preferred by the State Government. It is urged that the High Court had no jurisdiction to issue a writ of mandamus ordaining the Commissioner to grant a licence to Messrs Chingleput Bottlers under Rule 7 of the Rules without the prior approval of the State Government. It is said that although a writ of mandamus may be a necessary adjunct to a writ of certiorari, the proper course for the High Court to have adopted was, if it was satisfied that the impugned order of the Commissioner was liable to be quashed insofar as he rejected the application made by Messrs Majestic Bottling Company on the ground that there was an error apparent on the face of the record, to have issued a writ of mandamus to the Commissioner to redetermine the question as to the grant of such privilege. Reliance is placed on *de Smith's Judicial Review of Administrati*

13. In order that a writ of mandamus may issue to compel the Commissioner to grant the licence, it must be shown that under the Act and the Rules framed thereunder there was a legal duty imposed on the commissioner to issue a licence under Rule 7 of the Rules without the prior approval of the State Government and that Messrs Majestic Bottling Company had a corresponding legal right for its enforcement. No mandamus will lie where the duty sought to be enforced is of a discretionary nature nor will a mandamus issue to compel the performance by such public body or authority of an

act contrary to law. The Commissioner of Prohibition and Excise was under no legal duty to grant a licence to Messrs Majestic Bottling Company till it received the prior approval of the State Government under Rule 7. Even assuming that the Commissioner recommended the grant of a licence to them under Rule 7, the State Government were under no compulsion to grant such prior approval. The grant or refusal of such licence was entirely in

14. The learned Judges observed that in normal circumstances they would have upheld the objection of the learned Advocate-General as to the jurisdiction of the High Court to issue a writ of mandamus, but in view of the fact that the State Government had chosen not to file a separate return taking a specific plea that in the event of a writ of certiorari being granted, the Court should not issue a writ of mandamus for the grant of licence since the grant or refusal of licence was subject to the prior approval of the State Government under Rule 7 of the Rules. The learned Judges accordingly held that the learned Single Judge was justified in issuing a writ in the nature of mandamus directing the Commissioner to issue a licence in favour of Messrs Majestic Bottling Company in view of the fact that there were only two applicants in the filed and the application of Messrs Chingleput Bottlers having been rejected, the State Government had no other option but to make the grant in favour of Messrs Majestic Bottling

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

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

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

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

Mandamus is often used as an adjunct to certiorari. If a tribunal or authority acts in a matter where it has no power to act at all, certiorari will quash the decision and prohibition will prevent further unlawful proceedings. If there is power to act, but the power is abused (as by breach of natural justice or error on the fact of the record), certiorari will quash and mandamus may issue simultaneously to require a proper rehearing. An example is *Board of Education v. Rice* cited elsewhere; the Board's decision was ultra vires since they had addressed their minds to the wrong question; consequently it was quashed by certiorari and the Board were commanded by mandamus to determine the matter according to law, i.e. within the limits indicated by the House of Lords.

16. In our judgment, the High Court exceeded its jurisdiction in issuing a writ of mandamus directing the Commissioner to grant a licence to Messrs Majestic Bottling Company without the prior approval of the State Government as enjoined by Rule 7 of the Rules. The High Court was unduly technical in applying the rules of pleadings. Absence of a specific plea in the nature of demurrer would not invest the High Court with jurisdiction to issue a writ of mandamus ordaining the Commissioner to grant a licence to Messrs Majestic Bottling company under Rule 7 of the Rules without the prior approval of the State Government which was a condition pre-requisite for the grant of such privilege. It is regrettable that the High Court should have short-circuited the whole procedure upon a wrongful assumption of its own powers. The view taken by the High Court is manifestly erroneous. Otherwise, the statutory requirement of such prior approval of the State Government under Rule 7 would be rendered wholly otiose.

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

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

The Executive have to reach their decisions by taking into account relevant considerations. They should not refuse to consider relevant matter nor should they take into account wholly irrelevant or

extraneous consideration. They should not misdirect themselves on a point of law. Only such a decision will be lawful. The courts have power to see that the Executive acts lawfully. It is no answer to the exercise of that power to say that the Executive acted bona fide nor that they have bestowed painstaking consideration. They cannot avoid scrutiny by courts by failing to give reasons. If they give reasons and they are not good reasons, the court can direct them to reconsider the matter in the light of relevant matters, though the propriety, adequacy or satisfactory character of those reasons may not be open to judicial scrutiny. Even if the Executive considers it inexpedient to exercise their powers they should state their reasons and there must be material to show that they have considered all the relevant facts

19. This was not a case where it could be said that there was nothing for the State Government to consider as to whether it should accord or refuse prior approval to the grant of a licence to Messrs Majestic Bottling Company under Rule 7 of the Rules. The Commissioner by the impugned order rejected the applications for grant of a licence made by both Messrs Chingleput Bottlers and Messrs Majestic Bottling Company and therefore the stage was not reached. The stage for the State Government to reconsider the matter of grant of privilege under Rule 7 would only arise when the Commissioner makes a recommendation for the grant of a licence to Messrs Majestic Bottling Company. At that stage, the State Government would have to consider whether they should accord prior approval for the grant of such privilege to Messrs Majestic Bottling Company having regard to the matters specified in Rule 5 of the Rules and the conditions set out in Rule 6 (c), in view of the further facts brought out in the supplementary counter-a

20. In coming to the conclusion they did, the learned Judges have drawn sustenance from the decision of this Court in *Gujarat State Financial Corporation v. Lotus Hotels Pvt. Ltd.* and of the High Court in *the State of Tamil Nadu v. C. Vadiappan* in support of the view that the High Court had jurisdiction to issue a writ of mandamus directing the State of Tamil Nadu and the Commissioner of Prohibition and Excise to grant the privilege for the manufacture and supply of bottled arrack to Messrs Majestic Bottling Company for the Chingleput district under Rule 7 of the Rules. The decision in *Gujarat State Financial Corporation* case is clearly distinguishable and is not an authority for any such proposition. No such question arose in that case at all. There, the Court was dealing with a contract entered into by Hotels Private Limited for the purpose of setting up a 4-star hotel. The Company approached the Corporation for a loan of rupees 30 lacs and the Corporation sanctioned a loan of Rs. 29-93 lacs on certain terms and

21. It is difficult to subscribe to the doctrine evolved by the High Court in *Vadiappan* case that the Commissioner is the 'sole arbiter' under Rule 7 of the Rules. It relied upon the earlier decision of the High Court in *K. Ramaswamy v. Government of Tamil Nadu* laying down that the proviso to Rule 6 of the Tamil Nadu Arrack (Supply by Wholesale) Rules, 1981 had to be understood strictly in negative sense. According to the High Court, at best it confers on the Government a power to veto. By itself, the High Court observed, "it does not make the Government a final arbiter between the competing claims". The High Court further observed in *Ramaswamy* case that "the weighing of the pros and cons and the consideration of the merits and demerits of the rival claimants remained, from first to last with the Commissioner as his sole responsibility" and that the requirement of the Government's proper approval under the proviso to Rule 6 of the Tamil Nadu Arrack (Supply by Wholesale) Rules, 1981 was no doubt a necessary

22. Nor can we subscribe to the contention that the Commissioner had no act under the directions and control of the State Government under sub-section (2) of Section 25-A of the Act while exercising his powers delegated under sub-section (1) of Section 17-C read with Section 25-A (1) in

the matter of grant of a liquor licence under Rule 7 of the Rules. It would not justify the High Court to issue a writ of mandamus to the Commissioner to grant a licence to Messrs Majestic Bottling Company under Rule 7 of the Rules without the prior approval of the State Government. Obviously, the State Government and the Commissioner cannot act de hors the scheme of the Act and the Rules framed thereunder. Further, the contention that the State Government had already made up their mind against the grant of such privilege to Messrs Majestic Bottling Company and that there was no occasion for the High Court to send back the case to the Commissioner as it would have amounted to the State Government being asked to sit in appeal

23. In the premises, it premises, it was not a proper exercise of jurisdiction for the High Court to have issued a writ of mandamus under Article 226 of the Constitution ordaining the Commissioner to grant a licence to Messrs Majestic Bottling Company under Rule 7 of the Rules without the prior approval of the State Government. In our opinion, the proper course for the High Court to adopt was to issue a writ of mandamus directing the Commissioner to redetermine the question after following the procedure of Rule 7 and in case he came to a decision to grant the licence in favour of Messrs Majestic Bottling Company, to refer the matter to the State Government for its prior approval. Otherwise Rule 7 of the Rules would be rendered completely otiose.

24. Turning to the appeal preferred by Messrs Chingleput Bottlers, learned counsel for them has mainly advanced a three-fold submission : (1) The Commissioner had acted in flagrant violation of the rules of natural justice in not furnishing to Messrs Chingleput Bottlers a copy of the report of the Collector and other extraneous material comprising a representation received from Messrs Majestic Bottling Company along with various other documents. Nor had he disclosed to them the substance of the report of the Collector or other information gathered by him irrespective of the source. (2) The impugned order passed by the Commissioner was vitiated by errors apparent on the face of the record. There was no factual basis for the assumption that the three persons from whom Messrs Chingleput Bottlers had taken the lease of the land on which the blending unit is located, viz. K. J. George, M. S. Visvambaram and E. K. Chandrasekaran, were real partners of Messrs Three Star Bottling Company. There was also no warrant for it and thus the procedure adopted was violative of Article 14. The observation made by the Commissioner that the deposit of Rs. 10,01,001 made by Messrs Chingleput Bottlers with the Indian Overseas Bank had not come from bona fide sources and that obviously there was some secret understanding between O. H. Kumar and Messrs Chingleput Bottlers was not based on any material at all. The Commissioner knew that O. H. Kumar, the previous licensee, was not in a position to advance rupees 10 lacs and odd to Messrs Chingleput Bottlers. Again, no such enquiry was made as to the financial capacity of Messrs Majestic Bottling Company. Further, the Commissioner had wrongly assumed that Messrs Chingleput Bottlers had given their address as " Ramabadran, c/o Messrs Three Star Bottling Company, Iyanchery" when no such address was ever furnished and therefore the impugned order is vitiated by an error apparent on the face of the record.

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

natural justice require that the information itself should be disclosed so that there is a fair opportunity of meeting the case.

26. In the file relating to Messrs Majestic Bottling Company there is a representation filed by J. Balaji, managing partner of Messrs Majestic Bottling Company, consisting of 131 pages and was apparently handed over by J. Balaji at the time of hearing before the Commissioner on July 5, 1982. The representation dated July 5, 1982 is in the form of a petition in continuation of the application for grant made on June 9, 1982. Regarding Messrs Chingleput Bottlers, certain objections are raised to the grant of licence. The objections are formulated in a document marked Annexure 'A'. It is alleged that the existing licensee O. H. Kumar is running the show under the name and style of Messrs Three Star Bottling Company which is under the control of three persons. It recites that now finding that O. H. Kumar could not get the present licence, they have set up Ramabadran who has himself shown his address as care of Messrs Three Star Bottling Company. This itself clearly shows that the applicant Ramabadran is a benamida

27. We do not think that the Commissioner was under an obligation to furnish Messrs Chingleput Bottlers with a copy of the report submitted by the Collector or of the representation made by Messrs Majestic Bottling Company. This equally applies to the two-page note appearing in the file of Messrs Chingleput Bottlers. It was quite proper for the Commissioner to make secret and discreet inquiries from confidential sources. There was no duty cast on him to disclose to Messrs Chingleput Bottlers the sources of Adverse information or to give them an opportunity to confront the informants. Rules of fair play only enjoin that Messrs Chingleput Bottlers should know the case against them. This apparently they did from the questionnaire issued by the Commissioner and the questions put by the Commissioner on July 5, 1982 on the basis of the information gathered by him. The Commissioner has relied upon the report of the Collector and the conclusions reached by the Collector are based on the statement of Ramabadran recor

28. The learned Judges repelled the contention of Messrs Chingleput Bottlers that the Commissioner acted in breach of the rules of natural justice by his failure to furnish them with a copy of the report of the Collector on the ground that there is no fundamental right in a citizen to carry on any trade in liquor. According to them, the Commissioner under the Rules performs an administrative function and having regard to the requirements of Rule 5 of the Rules, and in view of the fact that Messrs Chingleput Bottlers had neither a legal right nor a legal expectation that they would be granted the privilege, all that was required was that the Commissioner should act fairly in dealing with the application and not in a capricious or arbitrary manner. On the material on record, the learned Judges held that they were satisfied that the Commissioner acted fairly and reasonably and not arbitrarily or capriciously in coming to the conclusion that Messrs Chingleput Bottlers had not made the application on their own be

29. It is a fundamental rule of law that no decision must be taken which will affect the rights of any person without first giving him an opportunity of putting forward his case.

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

of natural justice are applicable. There is therefore the insistence upon the requirement of a "fair hearing".

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

32. There is authority for the proposition that an authority or body need not observe the rules of natural justice where its decision, although final, relates not to a 'right' but to a "privilege or licence". In a number of recent decisions, the courts have, while extending the protection of natural justice in the former category. All that is emphasized in such cases is that the applications must be considered fairly. In *R. V. Gaming Board for Great Britain, ex parte Benaim*, the Court of Appeal held that in refusing a certificate for reasons concerning the character and suitability of the applicants, the Board must act fairly and obey the broad principles of natural justice. In fact, it was held that they had done so since they had given the applicants full opportunity to know and contest the case against them, even though they had not revealed the sources of their information or given their reasons. It follows that the right to know the case to be met does not necessarily involve any right to know the sour

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

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

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

It is an error to regard Crockford's as having any right of which they are being deprived. They have not had in the past, chance-roulette, cheminde-fer, baccarat and the like - for their own profit. What they are really seeking is a privilege-almost, I might say, a franchise - to carry on gaming for profit, a thing never hitherto allowed in this country. It is for them to show that they are fit to be trusted with it.

34. In *Breen v. Amalgamated Engineering Union*, Lord Denning said :

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

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

35. In *McInnes v. Onslow Fane, Megarry, V. C.* has drawn a distinction between initial applications for grant of licence and the revocation, suspension or refusal to renew licences already granted. The learned Vice-Chancellor says that there is a substantial distinction between "application cases" and "forfeiture cases". He observes that while an applicant for grant of licence has neither a right to such

a grant nor a reasonable expectation that such grant would be made in his favour, but cancellation or forfeiture of an existing licence or refusal to renew a licence, involves a right to a hearing as the applicant has what may be called "reasonable expectation". Megarry, V. C. dealt with the question whether the grant or refusal of licence by the Board of Control is subject to any requirement of natural justice or fairness which would be enforced by the courts. In dealing with the nature of the right to claim a licence, he said that it was nothing but a privilege. The three distinct categories can best be

First, there are what may be called the forfeiture cases. In these, there is a decision which takes away some existing right or position, as where a member of an organisation is expelled or a licence is revoked. Second, at the other extreme there are what may be called the application cases. These are cases where the decision merely refuses to grant the applicant the right or position that he seeks, such as membership of the organisation, or a licence to do certain acts. Third, there is an intermediate category, which may be called the expectation cases, which differ from the application cases only in that the applicant has some legitimate expectation from what has already happened that his application will be granted. This head includes cases where an existing licence-holder applies for a renewal of his licence, or a person already elected or appointed to some position seeks confirmation from some confirming authority.

36. The learned Vice-Chancellor went on to say that there was a substantial distinction between forfeiture cases and application cases. In forfeiture cases, there is a threat to take something away for some reason. In such cases, the right to an unbiased tribunal, the right to notice of the charges and the right to be heard in answer to the charges which were the three features of natural justice are plainly apt. In application cases, on the other hand, nothing is being taken away, and in all normal circumstances there are no charges, and so no requirement of an opportunity of being heard in answer to the charges. Indeed, there is the far wider and less defined question of the general suitability of the applicant for membership or a licence. The distinction is well recognized, for in general it is clear that the courts will require natural justice to be observed for expulsion from a social club, but not on an application for admission to it. The intermediate category i.e. of the expectation cases, may at lea

37. In such cases, Megarry, V. C. felt that much help cannot be had from discussing whether 'natural justice' or 'fairness' was the more appropriate term. He observes that if one expects that natural justice is a flexible term. He observes that if one expects that natural justice is a flexible term which imposes different requirements in different cases, it is capable of applying appropriately to the whole range of situations indicated by the terms such as 'judicial', 'quasi-judicial' and 'administrative'. The content of the 'duty to act fairly' did not impose on the Board to give either oral hearing to the applicant or to disclose the case against him nor was it under any obligation to give reasons for a decision. The learned Judge then went on to say that there was no obligation for the Board to give the applicant even the gist of the reasons while they refused his application, or proposed to do so, and added :

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

In such cases, the right to hearing has been denied on the ground that the claim or interest or legitimate expectation is a mere 'privilege' or 'licence'. This is in consonance with the decision of a

Constitution Bench of this Court in *Kishan Chand Arora v. Commissioner of Police, Calcutta* following the judgment of the Privy Council in *Nakkada Ali v. M. F. De S. Jayaratne* case.

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

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

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

41. It must follow that the grant of a liquor licence under Rule 7 of the Rules does not involve any right or expectation but it is a matter of privilege. The Commissioner was therefore under no obligation either to disclose the sources of information or the gist of the information that he had. All that was required was that he should act fairly, and deal with the applications without any bias, and not in an arbitrary or capricious manner. There is no suggestion of any *mala fides* on the part of the Commissioner or the State Government. The Commissioner heard both the parties after he had an enquiry made through the Collector to adjudge their suitability for the grant of the licence. The Commissioner had issued a questionnaire and had the material collected by the Collector. The Commissioner was entitled to act on the report of the Collector and also on other material gathered by him during the course of the enquiry. There is no requirement under the Act for a confronted hearing like the hearing contemplated

42. The High Court could not have in proceedings under Article 226 of the Constitution interfered with the impugned order of the Commissioner merely because on a reappraisal of the evidence it might have come to a contrary conclusion. There was no error of jurisdiction on the part of the Commissioner nor was the impugned order vitiated by any error apparent on the face of the record. The finding reached by the Commissioner that the application made by Messrs Chingleput Bottlers was not made *bona fide* on their own account but as *benami* for others is a finding based on appreciation of evidence. The Commissioner was entitled to rely upon the facts found by the Collector. It may be pointed out that the Collector's report is entirely based on the statement of V. Ramabadrán, managing partner of Messrs Chingleput Bottlers. The High Court was therefore justified in dismissing the appeal preferred by Messrs Chingleput Bottlers.

43. In the result, the appeal preferred by the State Government must succeed and is allowed. The

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

44. There shall be no order as to costs.

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