FULL BENCH

Before Mehar Singh, S. B. Capoor and J. S. Bedi, JJ.

PRITPAL SINGH,—*Petitioner.*

versus

THE CHIEF COMMISSIONER OF DELHI, AND ANOTHER,—*Respondent*

Civil Writ No. 474-D of 1964.

1965

February, 3rd.

Punjab Excise Act (I of 1914) as extended to Delhi—Object and purpose of—S. 3(14)—Notification No. F. 10(27)/61-Fin. (E) (i,) dated 7th December, 1961, and corrigendum Notification No. F. 10(27)/61-Fin (E) (ii), dated 13th December, 1961, issued under—Whether valid—Delhi Intoxicating Spirituous Preparations, Import, Export, Transport, Possession and Sales Rules, 1952, as amended up to 13th December, 1961—Rules 2, 3, 3-A 4, 5-A, 7, 9, 10(E), 12, 13, 14, 17-A 23(ii) and 24—Whether valid.

(1) A.I.R., 1958, Patna, 113.

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Held, that the Punjab Excise Act, 1914, when applied to Delhi, was extended without the preamble, but the provisions of the Act make it clear that it deals not only with the matter of excise revenue but also with regulation and control of import, export, transport, manufacture, sale, and possession of liquor. The policy of the Act is thus clear that the objects to be achieved are not confined merely to the collection of excise revenue but it is intended to regulate and control liquor in almost all its aspects, and that obviously is with a view not only to safeguard the matter of collection of the excise revenue but also in public interest.

Held, that there is nothing to prevent the declaration of a particular meaning to a word in an interpretation clause also containing in it a positive enactment. A part of the definition may be declaratory of specific and stated meaning and the remaining part may be a positive enactment conferring power. The last part of section 3(14) of the Punjab Excise Act as extended to Delhi, is a positive enactment conferring power on the Chief Commissioner to declare any substance to be liquor for the purposes of the Act. The notification No. 10(27)/61 Fin-. (E) (i), dated December 7, 1961, has been issued by the Chief Commissioner in exercise of those powers and is, therefore, valid. This notification cannot be held to be invalid on the ground that it declares all spirituous preparations with 20 per cent proof alcoholic content to be liquor, without making the distinction of such spirituous preparations with that content, the taking of which will prove dangerous to health and those that will not prove to be so. The making of such a classification is obviously impractical. Nor can this notification be held to be violative of Article 301 of the Constitution of India.

Held, that notification No. F. 10(27)/61-Fin., (E) (ii), dated 13th December, 1961 is valid as it merely fixes the date of the commencement of the earlier notification, dated 7th December, 1961.

Held, that rules 2, 3, 3-A, 4, 5-A, 7, 9; 10(E); 12; 13; 14; 17-A; 23(ii) and 24 of the Delhi Intoxicating Spirituous Preparations, Import, Export, Transport, Possession and Sale Rules, 1952, as amended upto 13th December, 1961, are perfectly valid being consistent with the provisions of the Punjab Excise Act, 1914, as extended to Delhi. The requirements of a licence, permit or pass, as may be necessary having regard to the purpose for which the same is needed, may be irksome and be of some inconvenience but that is not a basis upon which it can be said that it is a restriction of which the consequence is almost paralysis of the business of a chemist or a druggist and non-availability of intoxicating spirituous preparations as medicines to the general public. The main matters which are provided by the impugned rules and the notification are the limitation of the quantity that may be purchased by a person and the requirement of a licence or a permit or a pass as a particular situation demands under

the rules. Neither in its terms is an excessive restriction. The limitation on the quantity permitted to be sold is only circumscribed with the requirements of a person for the purposes of his health and hence on the basis of a medicinal prescription. This cannot be considered excessive from any angle. The requirement of a licence or a permit or a pass is not excessive either. The impugned rules and the notification cannot be said to impose unreasonable restrictions on the sale, possession, import, export or transport of intoxicating spirituous preparations in so far as a chemist or a druggist is concerned or in so far as the general public is concerned in purchasing such preparations as a requirement for health.

Petition under Article 226 of the Constitution of India praying to quash, set aside and declare void as well as restrain and prohibit the enforcement of Notification No. F. 10(27) 61, Fun. (E) (i), dated 7th December, 1961 and Corrigendum Notification of even number, dated 13th December, 1961, directing the enforcement of the notification, dated 7th December, 1961, and also to quash, set aside, declare void, and restrain and prohibit the enforcement of Intoxicating Spirituous Preparations, Import, Export, Transport, Possession and Sale Rules, 1952, as subsequently amended and to restrain and and prohibit any action being taken under the said rules or notifications as amended up-to-date and for appropriate writs, orders, and directions.

R. S. NARULA, S. N. ANAND, S. S. CHADHA AND M. K. CHAWLA, ADVOCATES, for the Petitioners.

NIREN DE ADDITIONAL SOLICITOR-GENERAL AND S. N. SHANKAR, ADVOCATE, for the Respondents.

ORDER

MEHAR SINGH, J.—This is a petition under Article 226 of the Constitution by Pritpal Singh petitioner, who is a chemist and a druggist, questioning the constitutional validity and legality of Notification No. F. 10(27)/61 Fin. (E)(i), dated December 7, 1961, and corrigendum Notification No. F. 10(27)/61-Fin(E)(ii), lated December 13, 1961, directing enforcement of the first notification with effect from December 13, 1961, and the Delhi Intoxicating Spirituous Preparations, Import, Export, Transport, Possession and Sale Rules, 1952, as amended upto December 13, 1961, of which the main rules will be referred to as the 1952 Rules and the amended rules as the 1961 Rules. Mehar Singh, J.

The first notification of December 7, 1961, has been issued by the Chief Commissioner of Delhi under section

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3(14) of the Punjab Excise Act, 1914 (Punjab Act I of 1914), as in force in the Union Territory of Delhi, hereinafter to be referred as 'the Act', the second notification merely enforces the first notification with effect from December 13, 1961, and the 1952 Rules and 1961 Rules have been issued under various sections of the Act, including section 58, which gives powers to the Chief Commissioner of Delhi to make rules for the purposes of the Act.

No provision of the Act is impugned. But to appreciate the argument on the constitutional validity and legality of the two notifications and the Rules of 1952 and 1961, it is necessary to make reference to such of the sections of the Act as are relevant for the purpose. Section 3 is a definition section. Section 3(2) defines 'to bottle' to mean to transfer liquor from a cast or other vessel to a bottle, jar, flask or similar receptacle whether any process of manufacture be employed or not, and bottling includes re-bottling; section 3(5) says that 'denatured' means effectually and permanently rendered unfit for human consumption; section 3(6) defines 'excisable article' to means—(a) any alcoholic liquor for human consumption; or (b) any intoxicating drug; section 3(12-a) gives definition of 'intoxicant' as meaning any liquor or intoxicating drug; section 3(14) defines 'liquor' to mean intoxicating liquor and includes all liquor consisting of or containing alcohol; also any substance which the Chief Commissioner may by notification declare to be liquor for the purposes of the Act; in Section 3(16) the definition of 'manufacture' includes every process, whether natural or artificial by which any intoxicant is produced or prepared, and also redistillation, and every process for the rectification, reduction, flavouring, blending or colouring of liquor; and section 3(21) gives definition of 'transport' to mean to move from one place to another with the Union Territory of Delhi. Section 5 reads thus—"The Chief Commissioner of Delhi may by notification declare, with respect either to the whole of the Union Territory of Delhi or to any local area comprised therein, and as regards purchasers generally or any specified class of purchasers, and generally or for any specified occasion, the maximum or minimum quantity or both of any intoxicant which for the purposes of this Act may be sold by retail and by wholesale." These sections are in Chapter I. The second chapter deals with establishment and control, a subject not material in this petition. The third chapter comprises of four sections 16 to 19, and concerns the subject of import, export

and transport. Section 16 days that no intoxicant shall be imported, exported or transported except—(a) after payment of any duty to which it may be liable under the Act, or execution of a bond for such payment, and (b) in compliance with such conditions as the Chief Commissioner may impose. Section 17 provides that the Chief Commissioner may by notification—(a) prohibit the import or export of any intoxicant into or from the Union Territory of Delhi or any part thereof; or (b) prohibit the transport of any intoxicant. Section 19 says that passes for the import, export or transport of intoxicants may be granted by the Collector, and section 18 provides that except as otherwise provided by any rule made under the Act, no intoxicant exceeding such quantity as the Chief Commissioner may prescribe by notification shall be imported, exported or transported except under a pass issued under the provisions of section 19. There are two provisos to section 18 but the first proviso alone is relevant here which says—"Provided that in the case of duty-paid foreign liquor such passes shall be dispensed with, unless the Chief Commissioner shall by notification otherwise direct." Chapter IV deals with manufacture, possession and sale, covering sections 20 to 30. According to section 20(1), no intoxicant shall be manufactured or collected except under the authority and subject to the terms and conditions of a licence granted in that behalf by the Collector. Sub-section (2), of this section says that no distillery or brewery shall be constructed or worked except under the authority and subject to the terms and conditions of a licence granted in that behalf by the Excise Commissioner under section 21. Sections 21 to 23 are not relevant for the present purpose as the first of these sections deals with the establishment or licensing of distilleries and breweries, the second with the establishment or licensing of warehouses, and the third with removal of intoxicants from the distillery, brewery, warehouse or other place of storage established or licensed under the Act. The subject of possession of intoxicants is dealt with in section 24 which says that no person shall have in his possession any quantity of any intoxicant in excess of quantity as the Chief Commissioner has, under section 5, declared such to be the limit of retail sale, except under the authority and in accordance with the terms and conditions of—(a) a licence for the manufacture, sale or supply of such articles; or (c) a permit granted by the Collector in that behalf. This is in sub-section (1), and sub-sections (3) and

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(4) of this section provide—"(3) A licensed vendor shall not have in his possession at any place, other than that authorised by his licence, any quantity of any intoxicant in excess of such quantity as the Chief Commissioner has under section 5 declared to be the limit of sale by retail, except under a permit granted by the Collector in that behalf; (4) Notwithstanding anything contained in the foregoing sub-sections, the Chief Commissioner may by notification prohibit the possession of any intoxicant or restrict such possession by such conditions as he may prescribe." Section 25 prohibits possession of any quantity of any intoxicant with knowledge that the same has been unlawfully imported, transported, manufactured, cultivated or collected or knowing that the prescribed duty has not been paid therein. According to section 26 no liquor shall be bottled for sale and no intoxicant shall be sold, except under the authority and subject to the terms and conditions of the licence granted in that behalf. There are four provisos to the section, but those are not material. Section 27 deals with grant of lease for manufacture or wholesale supply, or wholesale or retail sale of country liquor in sub-section (1), and sub-section (2) of this section deals with conditions of lease. Section 28 deals with manufacture and sale of liquor in military cantonments, and section 29 with prohibition of sale to persons under the age of 25 years. Section 30 says that no person who is licensed to sell any liquor or intoxicating drug for consumption on his premises, shall during the hours in which such premises are kept open for business, employ or permit to be employed, either with or without remuneration, any man under the age of 25 years or any woman in any part of such premises in which such liquor or intoxicating drug is consumed by the public. Following three chapters, V to VII, deal with subjects of duties and fees, licences, permits and passes, and powers and duties of officers under the Act. In Chapter VIII are the general provisions, and section 58(1) provides that the Chief Commissioner may, by notification, make rules for the purpose of carrying out the provisions of the Act or any other law for the time being in force relating to excise revenue, and sub-section (2) then particularizes certain defined aspects or subjects on which the Chief Commissioner may make rules. Section 59 says that the Excise Commissioner may, by notification, make rules regulating quite a number of matters including the manufacture, supply, storage

or sale of any intoxicant, the bottling of liquor for purposes of sale,. and prescribing the authority by, the restrictions under, and the conditions on which, any licence, permit or pass may be granted. Chapter IX is the last chapter which deals with offences under the Act and punishments for the same. The Act, when applied to Delhi, was extended without the preamble, but the provisions of the Act, to which some detailed reference has been made above, make it clear that it deals not only with the matter of excise revenue but also with regulation and control of import, export, transport, manufacture, sale, and possession of liquor. The policy of the Act is thus clear that the objects to be achieved are not confined merely to the collection of excise revenue but it is intended to regulate and control liquor in almost all its aspects, and that obviously is with a view not only to safeguard the matter of collection of the excise revenue but also in public interest. Only prescribed quantity of liquor can be possessed (section 5). Import, export and transport are subject to licence and pass (sections 16, 18 and 19). The manufacture of liquor is controlled (section 20), so also its possession (section 24), and sale (section 26). Sale of liquor to soldiers is circumscribed (section 28), its sale is prohibited to those under 25 years of age and women (section 29), and employment of women on premises with a licence to sell liquor is prohibited (section 30). All these measurers of regulation and control are apparent indication that they are in public interest.

On March 22. 1952, the Punjab Government issued notification No. 769-E&T-52/1275, declaring 37 spirituous preparations as liquor under section 3(14) of the Act, and on the same day by another notification No. 769-E&T-52/1275, it issued the Punjab Intoxicating Spirituous Preparations, Import, Export, Transport, Possession and Sale Rules, 1962, under section 5, 6, 16, 17, 18, 24 and 58 of the Act. The then Delhi Administration similarly under section 3(14) of the Act issued Notification No. F. 10(16)/52-R&J, on February 19, 1953, declaring the same 37 spirituous preparations to be liquor, and on the same date by a notification under the same number it issued the Delhi Intoxicating Spirituous Preparations, Import, Export, Transport, Possession and Sale Rules, 1952, in exercise of the powers under sections 5, 6, 16, 17, 18, 24 and 58 of the Act. The Delhi 1952 Rules are

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a virtual copy of the Punjab 1952 Rules, with no substantial modification but only minor modifications in the description of the authorities under the rules. The reason for that was that the authorities in Delhi for the purpose were not and have not even now the comparable designations and offices to those in the Punjab. The 1961 Delhi Rules amend the 1952 Delhi Rules but by large follow exactly the same pattern with some slight modifications necessitated by the new developments and circumstances. In the petition the petitioner has made particular reference to rules 11, 11A, 13 and 14, and, so far as the remaining rules are concerned, there is a general challenge to the same as providing unreasonable restrictions on the petitioner carrying on his profession as chemist and druggist. But at the hearing the learned counsel for the petitioner has confined his arguments to specific rules only. His arguments have been confined to ruels 2, 3, 3A, 4, 5A, 7, 9, 10(E), 12, 17A, 23(ii), and 24 of 1961 Rules. As the patern of 1961 Rules is not in substance materially different from the pattern of 1952 Rules, reference will be made only to such of the 1952 Rules as are comparable to the impugned 1961 Rules.

In rule 1(f) of the 1952 Rules intoxicating spirituous preparations have been defined as those listed in a notification of the very date as that of the rules in which 37 such spirituous preparations are enumerated. In the 1961, Rules this meaning meets a change because of Chief Commissioner's Notification No. F. 10(27)/61-Fin. (E)(i) of December 7, 1961, which notification, made under section 3(14) of the Act, declare all spirituous preparations containing more than 20 per cent proof alcohol to be liquor for the purpose of the Act. Rules 2 of the 1952 Rules says that no intoxicating spirituous preparations shall be manufactured or prepared or possessed for sale except under the authority and subject to the terms and conditions of a licence in Form M.C. 12, granted in that behalf by the Collector. In the 1961 Rules, this rules is word for word the same except that for the word "Collector" the words 'competent excise officer' have been substituted and there is the addition of a proviso to this rule which says that no licence under this rule is necessary where there is already a licence under the Medical and Toilet Preparations (Excise Duties) Act, 1955 (Act 16 of 1955). The rule in both the set of rules is the same except that it relieves a person required to take a licence under it, if he has already a license under Act 16 of 1955. Rules 3 of the 1952 Rules goes with rules 3 and 3A

of 1961 Rules. Rule 3 provides that no person shall have in his possession any intoxicating spirituous preparations in any quantity except (i) a patient on the authority of a prescription issued by a registered practitioner and dispensed either by the registered practitioner himself or by a licensee; (ii) a registered practitioner, who may keep in his possession at any one time intoxicating spirituous preparations not exceeding one lb. each. Rule 3 of the 1961 Rules is to the effect that no person shall have, except to the extent permitted by rule 3A, in his possession any quantity of any intoxicating spirituous preparations except under the authority and in accordance with the terms and conditions of a licence or permit granted under these rules. Rule 3A lists intoxicating spirituous preparations that may be possessed without a licence or permit by a person and of the items stated the first two in the first item are relevant here, which relate to allopathic preparations and may be possessed by (a) a patient on the authority and up to the extent of a prescription issued by a registered practitioner and dispensed either by the registered practitioner himself or by a licensee; (b) a registered practioner up to 900 millilitres of each such preparation at any one time. The remaining part either of rule 3 of 1952 Rules or rule 3A of 1961 Rules is not material. It is apparent that rule 3 of 1952, Rules is practically the same as rule 3A(1) (a) and (b) of the 1961 Rules. And all that rule 3 of 1961 Rules says is that apart from the qantities mentioned in rule 3A, a licence or a permit must be taken out for possession of any excess quantity. In 1952 Rules, rule 4 provides that a license or a registered practitioner may subject to rule 3 import, export or transport intoxicating spirituous preparations on the authority of a permit and a pass granted by the Collector. In rule 4 of 1961, Rules the substantive part is word for word the same, but in addition to a licensee or a registered practitioner there is addition of homoeopathic practitioner, private medical practitioner or a permit-holder. There is no rule, 5A in the 1952 Rules, but this rule in the 1961 Rules merely says that a permit-holder may import such quantity of intoxicating spirituous preparations as may be possessed by him under the permit granted to him by the District Excise Officer, Rule 7 in both the rules of 1952 and 1961 says that every consignment of intoxicating shall be accompanied by a pass issued by the Collector. spirituous preparations, imported, exported or transported

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According to rule 9 of 1952 Rules, a licensed manufacturer shall sell intoxicating spirituous preparations only to a licensee, a registered practioner or a medical practioner in charge of a hospital or dispensary in accordance with those rules, but rule 9 in the 1961 Rules drops the third category concerning the medical practioner in-charge of a hospital or dispensary, and adds a homoeopathic practioner or a permit-holder, and makes the sale subject to the terms and conditions of the licence or permit. There is no substantial difference in the form of the rule in either set of rules. Rule 10 of 1952 Rules is confined to sale of intoxicating spirituous preparations by a licensee to another licensee and a few other persons mentioned in it, but rule 10 of 1961, Rules gives a list of six persons to whom a licensee may sell such preparations, subject to the conditions of his licence, and in the list item (e) concerns 'a person holding a prescription of a registered practioner..... in accordance with such prescription'; and this was not in rule 10 of 1952 Rules, Rules 12 and 13 of 1952 Rules are verbatim the same as rules 12 and 13 in 1961 Rules, except this that the quantity in rule 13 was four drams in the Rules of 1952 and it has been made eight drams in the Rules of 1961. In brief, rule 12 says that a licensee or a registered practitioner shall sell intoxicating spirituous preparations only once on the prescription of a registered practitioner unless repetition of dose is indicated on the prescription with the interval for the same. The proviso to this rule further says that if the prescription shows a sale of four drams of such preparation on expiry of the interval specified in the prescription. there shall be no further sale except on a revalidated prescription. Rules 13 prescribes that the maximum quantity of intoxicating spirituous preparations that can be purchased on medical prescription is eight drams or one fluid ounce. the sale of the quantity above that being treated as a wholesale transaction requiring to be covered by a permit. If anything, rule 13 doubles the quantity that may be purchased on a medical prescription. Rule 14 of 1952 Rules gives power to the Collector or any other officer authorised in that behalf to grant a licence to any person or firm holding a licence under the Drug Control Act, as a qualified or approved person or having in his employ such a person. Rule 14 of the 1961 Rules is in substance the same but the enumeration is a little more specific in that it gives power to such officer to grant licence to chemists and druggists

holding licences under the Drug Conrtol Act, to homoeopath chemists and practitioners, or to any person engaged in sale of general stores, and/or toilet preparations and/or essences. There is no rule in the 1952 Rules comparable to rule 17A of 1961 Rules. This rule prescribes the limit in which permit may be granted for possession of intoxicating spirituous preparations in excess of quantities specified in rules 3A and 13 and only to persons named in it. Rule 23(ii) in both the sets of rules is to the effect that in all other matters not specified in the rules, the Delhi Liquor Licence Rules, published with the Chief Commissioner's Notification No. 8058-Commerce, dated October 3, 1935, as subsequently amended, shall apply *mutatis mutandis* except in regard to working hours and closed days. There is no rule 24 in the 1952 Rules and this rule in the 1961 Rules merely says that those rules do not apply to intoxicating spirituous preparations imported from overseas and those medical preparations which contain self-generated alcohol or are made under Ayurvedic or Unani systems of medicines. The object of taking the two sets of rules together has been to show that there is no material or substantial variation in the same. No doubt in parts the 1961 Rules are more detailed and elaborate than the 1952 Rules, but the substance of the matter remains practically the same. These rules apparently provide for regulation of sale, possession, import, export and transport of intoxicating spirituous preparations containing more than 20 per cent proof alcohol with a restriction for the sale and possession of the same, without a licence or permit, to the extent as given in rules 12 and 13. Apparently all these rules are relatable to the quantity of liquor that may be possessed having regard to the provisions of sections 5 and 24, and import, export and transport of liquor under licence and pass according to sections 16 to 19. In the matter of sale they are covered by section 26. All these rules are also generally covered by section 58 relating to the rule-making power of the Chief Commissioner for the purposes of the Act.

In regard to 37 intoxicating spirituous preparations, the 1952 Rules carrying all the restrictions that are to be found in 1961 Rules continued till the 1961 Rules were promulgated. In *Dr. Bishambar Nath* v. *The State of Punjab* (1), the constitutional validity of the Punjab 1952

(1) I.L.R., 1953, Punj. 618 = 1953, P.L.R., 187.

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Rules was in question. The learned Judges held that those rules are properly made and the restriction placed on the sale of articles mentioned in the same is not contrary to clause (f) of Article 19(1) of the Constitution, in other words, the learned Judges upheld the constitutionality of the rules. It has been pointed out that the Delhi 1952 Rules are a virtual copy of the Punjab 1952 Rules. The restrictions imposed by the 1952 Rules on the sale, possession, import, export and transport of 37 items of intoxicating spirituous preparations have not, in any way, affected the trade in so far as those preparations are concerned. In other words, for nearly nine years or so, before the 1961 Rules frame to be promulgated, the restrictions imposed by the 1952 Rules have not been felt either by the trade or by the medical practitioners or by the public such as in practice have proved detrimental to them and to their interests, particularly in the matters of trade and health. The difference that has been made by the 1961 Rules is the extended definition of the word 'liquor' consequent upon the first notification of December 7, 1961, by the Chief Commissioner declaring spirituous preparations containing more than 20 per cent proof alcohol to be liquor under section 3(14) of the Act. By that declaration the sweep of the rules has not remained confined to 37 items of intoxicating spirituous preparations as under the 1952 Rules, but now spreads over all spirituous preparations with 20 per cent proof or more alcohol in them.

Soon after the first notification of December 7, 1961, and the promulgation of the 1961 Rules on December 13, 1961, the petitioner filed Civil Writ No. 548-D, of 1961 in this Court for appropriate writs, orders and directions restraining the respondents from enforcing the impugned notifications and the rules. The respondents did not make a return to that petition until July 18, 1963. In between those two dates the Chief Commissioner, respondent 1, first issued Notification No. F. 10(27)/61-Fin. (E)(ii) on January 1, 1962, exempting a number of items as given in R. 4 from the Rules of 1952 as amended by the Rules of 1961. And according to the present petition (Civil Writ No. 474-D of 1964), a second similar notification was issued on February 5, 1962, making some more exemptions. When Civil Writ No. 548-D of 1961, came for hearing before Pandit, J., and myself on August 6, 1964, the learned counsel for the petitioner obviously wanted to make

changes in the petition pursuant to the two notifications issued by respondent 1 making a considerable number of exemptions from the rules. He had a choice of either amending the original petition or re-drafting the petition in the light of those two notifications and filing it again. He chose the latter alternative. The present petition was then filed on August 11, 1964. In the return on behalf of the respondents some argument has been pressed that the present petition is delayed, but it is obvious that this cannot prevail in the circumstances as have been narrated above.

In the petition reference to certain sections of the Act has been made with the object to show that some of the rules do not conform to those sections and are *ultra vires* of the same. But, as reliance has not been placed upon all such sections during the arguments, only such of the sections will come for consideration upon which the learned counsel has based his arguments at the hearing. It has already been pointed out that excepting rules 11, 11A and 13 there is hardly any reference to any other rule in the petition, although there are general and broad statements that the rules provide unreasonable restrictions on the trade, on the medical practitioners and on the public in general in obtaining medical aid. It has been said that the practical effect of the rules is to paralyse the trade of the petitioner and persons like him and almost a denial of medical facilities to the public. The matter thus broadly stated has been repeated a number of times in various grounds in the petition. Obviously enough the return on the side of the respondents has had to follow in reply the pattern set in the petition. There is a broad denial of all the grounds and claim on the side of the petitioner that the rules are *ultra vires* of any provisions of the Act or violative of Articles 14 and 19 of the Constitution, as has been alleged in the petition. The details of the grounds of attack as given in the petition and the reply in the return are not being set out for this reason that on behalf of the petitioner not all the grounds stated in the petition have been urged nor in the form in which the same have been stated. The learned counsel for the petitioner has, at the hearing, proceeded with the arguments with far more clarity than anything of the type is to be found in the petition. And as specific arguments have been presented on the side of the petitioner

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at the hearing, the detail of the matter is being left as each argument is going to be considered. At this stage it is, however, appropriate to refer to the return of the respondents to show why change has been made in the definition of the term 'liquor' so as to include within its scope all spirituous preparations with content more than 20 per cent proof alcohol. It is explained that the use of spirituous preparations for potable purposes was so much on the increase that the 1952 Rules were found inadequate to deal with the abuse. Liquor addicts not having means to purchase foreign liquor or country liquor, were purchasing cheap tinctures from chemists to satisfy their craving for intoxication. Complaints were received by the respondents as to the diversion of the use of spirituous preparations from the normal to the abnormal state. It was further found that in several cases huge quantities of several items of intoxicating spirituous preparations, after import, were diverted from their original use and were not at all accounted for anywhere. It came to notice that such spirituous preparations were being sold in open condition, like pegs of whisky. It was this development, to curb which, apparently in public interest, that the first notification of December 7, 1961, and the 1961 Rules have been issued. The arguments on the side of the petitioner may now be considered.

The first impugned notification declaring all spirituous preparations with content more than 20 per cent proof alcohol to be liquor for the purpose of the Act was issued under section 3(14) on December 7, 1961. There is no specific statement in it from which date it is to come into force. Apparently it comes into force, if nothing else is said, on the date of its own publication. However, a second notification of December 13, 1961, was issued saying that the first notification shall come into force with effect from December 13, 1961. A copy of the gazette that has been produced bears the date Saturday, December 9, 1961. In that gazette is published the second notification under the date of December 13, 1961. The learned counsel for the petitioner urges that the notification of December 13, 1961, could not come into existence as it was published five days earlier in the gazette of December 9, 1961. So, he says, the second notification is no notification in the circumstances. The gazette in which it appears is just a scrap of paper which lends itself to no meaning.

On this, it is said, follows the conclusion that the first notification has never come into force. This is immediately untenable because, if nothing else is said, the first notification comes into force on the date of its publication. In the return, on the side of the respondents; it has been explained that the fact is that the second notification of December 13, 1961, was along with other notifications, one of which was of the same date and three others were of December 9, 1961, sent to the press for publication on that very date, that is to say December 13, 1961, as is clear from copy of the letter R.2. It is said that in the press a printing mistake occurred whereby the gazette came to be dated December 9, whereas it should have been dated December 13, 1961. It does appear from R. 2 that five notifications, three of December 9, and two of the December 13, including the second notification, were sent for publication in the gazette on December 13, 1961. So the learned Additional Solicitor-General has urged on the side of the respondents that this is a case of a genuine printing mistake not having the result of invalidating the second notification. The learned counsel for the petitioner points out that the public acts on the faith of what is stated in the Government Gazette and when the petitioner read the Government Gazette of December 9, 1961, and found in it the second notification bearing the date December 13, 1961, he was entitled to treat the gazette notification stating an impossible facts and thus a mere scrap of paper. But the first notification had been issued on December 7, and on December 13 the Rules of 1961 were also promulgated, if the petitioner had applied himself to these two, there could be no occasion for any mistake as to the true state of affairs. The petitioner could not possibly have reached any other conclusion but that the first notification and the Rules of 1961 are operative from December 13, and this even in the presence of the mistake in the second notification. But if he read the three side by side there were no room for any mistake. This printing mistake, in the circumstances, does not invalidate either the second notification or the first notification, and in any case, not the first notification. This argument does not prevail.

It has next been contended by the learned counsel for the petitioner that the first notification of December 7,

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1961, declaring all spirituous preparations with 20 per cent Proof alcohol to be liquor for the purposes of the Act is a positive and substantive enactment, which, as a legislative measure, is not authorised by the provisions of section 3(14), which provision is a mere definition provision defining what is 'liquor'. A notification of the type could only be issued, according to the learned counsel, if there was, in the main body of the Act, a specific provision giving power to the Chief Commissioner to make such a declaration as is made in the first notification. As an illustration. the learned counsel has referred to section 4 of the United Provinces Excise Act, 1910 (United Provinces Act 4 of 1910), of which sub-section (1) is in these words—"The State Government may by notification declare any substance to be 'liquor' for the purposes of this Act or any portion thereof," and sub-section (2) says—"The State Government may in the like manner and for the like purpose declare what shall be deemed to be 'country liquor' and 'foreign liquor' respectively." In the United Provinces Act 4 of 1910 liquor is defined in section 3(11), which is for the present purpose in exactly the same words as the definition of 'liquor' in section 3(14) of the Act. The learned counsel for the petitioner stresses that in the United Provinces, which is now Uttar Pradesh, it is only because of section 4 that the State Government may issue a noification declaring any substance to be liquor, which can then meet the definition of this term in section 3(11). In section 4 of the Act the provision is exactly the same as sub-section (2) of section 4 of United Provinces Act 4 of 1910, in other words, what is sub-section (1) in the latter Act is not to be found in the Act. The statutory provision in regard to liquor in section 3(14) and 4 in the Bengal Excise Act, 1909 (Bengal Act 5 of 1909), is again verbatim the same as in the Act. There is no parallel provision in Bengal Act 5 of 1909 as sub-section (1) of section 4 of the United Provinces Act 4 of 1910. The mere existence of that sub-section is United Provinces Act 4 of 1910 does not mean that the definition provision relating to liquor in seetion 3(11) of that Act saying at the end 'liquor' means 'any substance which the State Government may by notification declare to be liquor for the purpose of this Act' is not itself a substantive operative positive enactment in itself. What is provided in sub-section (1) of section 4 of United Provinces Act 4 of 1910 is at most restatement of the same thing as a matter of abundant caution and no

more. But I agree with the learned Additional Solicitor-General that there is a reason for such statement because sub-section (1) of section 4 of United Provinces Act 4 of 1910 gives power to the State Government to declare by notification any substance to be 'liquor' for the purpose of the whole of the Act or any part thereof. Declaration pursuant to last part of section 3(11) of the same Act will cover the whole of the Act and as the Legislature also wanted to have power to make such declaration for a part of the Act, so sub-section (1) of section 4 has been given the shape in which it is found so that it may not be said that although the State Government can issue such a declaration with regard to and for the purposes of the whole Act it cannot do so with regard to any portion thereof. Consequently the non-existence of provision like sub-section (1) of section 4 of United Provinces Act 4 of 1910 in the Act does not lead to the conclusion that the last part of the definition of the term 'liquor' in section 3(14) of the Act is not a substantive positive enactment giving power to the Chief Commissioner to issue the notification as he has done in the shape of the first notification of December 7, 1961. The definition of the word 'liquor' was considered by their Lordships in the *State of Bombay* v. *F. N. Balsara* (2), beginning at page 702 and at page 705 their Lordships refer to various Provincial Excise Acts and point to the definition of this term in the same. The definition in all the Acts referred to practically follows the pattern as in section 3(14) of the Act. No other Excise Act has been refered to on the side of the petitioner in which there is a provision like sub-section (1) of section 4 of United Provinces Act 4 of 1910. No assistance is available to the petitioner by reference to that provision in United provinces Act 4 of 1910, which, as has already ben pointed out, has been enacted, first, as a measure of abudant caution and, second, because a power has been given to the State Government to make a declaration as stated in that provision not only for the purposes of the whole of the Act but for any portion thereof. The learned counsel for the petitioner has made reference to *Manik Ram Ahir* v. *Emperor* (3), in which, at page 134, after pointing

(2) 1952, S.C.R., 682.

(3) A.I.R., 1916, Patna, 133(2)(F.B.).

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out that most modern statutes contain an interpretation clause wherein is declared the meaning which certain words and expressions are to, or may bear for the purposes of the statute in question, the larned Judges proceed to observe—"As a rule, however, it should be used for interpreting words which are ambiguous or equivocal and not so as to disturb the meaning of such as are plain. Interpretation clauses are not to be construed as positive enactments' for if it is no more than just an interpretation clause, obviously it cannot be read as a positive enactment. However, there is nothing to prevent the declaration of particular meaning to a word in an interpretaion clause also containing in it a positive enactment. A part of the definition may be delaratory of specific and stated meaning and the remaining part may be a positive enactment conferring power. Both sides have cited certain statutes, reference to which will merely burden this judgment, which according to the side relaying upon the same supports its arguments. There is, however, nothing to show any exact and consistent legislative practice which is a bar to the making of a part of a definition in an interpretation clause a positive enactment conferring power. The last part of section 3(14) of the Act, thus is a positive enactment confering power on the Chief Commissioner to declare any substance to be liquor for the purposes of the Act. It is, therefore, not correct that the first notification of December 7, 1961, has not been issued by the Chief Commissioner in exercise of any power conferred upon him by a positive enactment in the Act. The fact is that the second part of section 3(14) does give such a power to the Chief Commissioner as a positive enactment and it is in exercise of that power that that notification has been issued. It is thus a valid notfication.

Another argument of the learned counsel for the petitioner on the first notification of December 7, 1961 is that it is *ultra vires* and repugnant to the provisions of the Act inasmuch as the Chief Commissioner can deal under the Act only with intoxicating liquor and not with non-intoxicating or medicinal or toilet preparations. The learned counsel presses that the Act only deals with intoxicating liquor and the Chief Commissioner has not the power to declare under section 3(14) any substance, which is not intoxicating, to be liquor for the purposes of the Act. As much is conceded by the respondents in the return, but it is

stated that neither the two impugned notifications nor the 1961 Rules concern non-intoxicating substances. It is admitted that they do but then it is said that is only when such preparations concern medicinal and toilet preparations have 20 per cent proof alcohol content. There is apparently no divergence between the parties on this aspect of the matter. The learned counsel for the petitioner has referred to *Moti Lal Chandra* v. *Emperor* (4), in which the learned Judges say this—"To be an excisable article liquor must be intoxicating liquor, and the enumeration of all the liquids that follows does not make them liquor unless they are intoxicant. Now, none of these drugs before us could conceivably be used as an intoxicating liquor. The poisonous drugs they contain would kill a man long before he had taken a sufficient quantity of alcohol to intoxicate him—". It has been stated above that the definition of the word 'liquor' in Bengal Act 5 of 1909 is the same as in section 3(14) of the Act. The opinion of the learned Judges does lend support to what the learned counsel for the petitioner has urged that a substance to be liquor has to be intoxicating substance and the substance must be capable of creating a state of intoxication, for if it does not permit such a state to arise, it would not be considered intoxicating and hence cannot be defined as intoxicating liquor. The instance, which the learned Judges have given, emphasises this matter that if a poisonous substance has some quantity of intoxicant mixed with it, but before its taking will intoxicate, it would prove fatal, such substance cannot, in spite of having alcoholic content, be said to be an intoxicating substance and hence intoxicating liquor. The learned counsel has also referred in this connection to *State of Bombay* v. *Narandas Mangilal Agarwal* (5), and the observations of their Lordships that medicinal preparation not capable of being used for intoxicating without danger to health would be unfit for use as intoxicating liquor, but the observations of their Lordships are by reference to section 24A of the Bombay Prohibition Act, 1949 (Bombay Act 25 of 1949), in which medicinal preparations containing alcohol which are unfit for use as intoxicating liquor are exempt from the provisions of that Act.

(4) I.L.R. (1912), 39 Cal. 1053.
(5) A.I.R., 1962, S.C., 579.

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Their Lordships point out at more than one place that if medical preparation may be consumed for intoxication it would attract section 24A of that Act and medicinal preparation containing a small percentage of alcohol may still be capable of intoxicating if taken in large quantities, but if consumption of the preparation in large quantities is likely to involve danger to health of the consumer it, cannot be regarded as fit to be used as intoxicating liquor. As has already been pointed out, all these observations of their Lordships are in the wake of the actual language of section 24A of Bombay Act 25 of 1959. However, it is not controverted on the side of the respondents that the Act only deals with intoxicating liquor and so no substance that is not intoxicating is within its ambit and scope. At the same time the stand on the side of the respondents is that there is no declaration by the Chief Commissioner in regard to any non-intoxicating substance to be liquor. The learned counsel for the petitioner in this respect further contends that what the first notification does is to declare all spirituous preparations with 20 per cent alcoholic content to be liquor wihout making the distinction of such spirituous preparations, with that content, the taking of which will prove dangerous to health and those that will not prove to be so. It seems apparent that this is some thing conjectural, the learned counsel making no reference during the arguments to any spirituous preparation, with 20 per cent proof alcoholic content, being dangerous to health. Obviously if there is spirituous preparation of a poisonous nature which would kill before any of its intoxicating contents can have effect, it will not be intoxicating liquor, but how could the Chief Commissioner make a list of any preparations. It would depend upon a particular preparation whether or not it is of such fatal nature that in spite of alcohol, i.e., content it will, when taken, give no time to the alcoholic content to intoxicate, and hence it is not an intoxicant or intoxicating liquor. So the first notification of December 7, 1961, is not vague because it is not making the type of classification or division as suggested by the learned counsel for the petitioner. The suggestion appears obviously to be impractical. But the learned counsel for the petitioner in this respect makes reference to Schedule to Act 16 of 1955 and points out that the items in this Schedule refer to preparations which are not capable of being consumed as ordinary alcoholic beverages. What the learned counsel has meant by reference to this

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is that it is only a preparation which can be used as alcoholic beverage that comes under the Excise Act and not any other preparation. By way of illustration list, P. 4, said to be under the provisions of the said Act, has been filed showing spirituous preparations containing more than 20 per cent proof alcohol. It has been said that apart from those given in this list the others, though containing 20 per cent or more than 20 per cent proof spirit not having been included in the list have been considered by Parliament not coming under Act 16 of 1955. The argument on the side of the petitioner in this respect is not quite clear because the object of Act 16 of 1955 is levy and collection of duty of excise on medicinal and toilet preparations containing alcohol, opium, Indian hemp or other narcotic drug or narcotic, that Act has nothing to do with the aspect of the matter with which the Act or the 1961 Rules deal. What might be a suitable division of approach into alcoholic beverages ordinarily capable of being consumed or those not ordinarily capable of being consumed for the purposes of Act 16 of 1955 for the matter of levy and collection of excise duty, has no practical bearing upon to administration of the Act and the rules under it. The learned counsel then referred to the Punjab Excise Liquid Definitions, 1954, and in particular to item 1 which says that "the following shall be deemed to be 'liquor' for the purposes of the Punjab Excise Act (I of 1914), followed by a list of substances, which are thus deemed to 'liquor', and he contends that what the Chief Commissioner should have done was to issue an order of this type. It may be that this apeals to one authority and the form that has been adopted by the Chief Commissioner rather more appeals to him. But it is not quite clear how this has any bearing in showing that the first notification of December 7, 1961, is in any way either *ultra vires* or repugnant to any provisions of the Act. The learned counsel for the petitioner then refers to the Spirituous Preparations (Inter-State Trade and Commerce) Control Act, 1955 (Act 39 of 1955), of which the preamble says that it is an Act to make provisions for the imposition in the public interest of certain restrictions on inter-State trade and Commerce in spirituous medicinal and other preparations and to provide for matters connected therewith. Pursuant to section 13 of this Act, the Central Government has issued Notification No. SRO-2777-A of August 30, 1957, which exempts from the provisions of this Act spirituous preparations that are described as (1)

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Asavas and Arishtas containing self-generated alcohol in which the alcohol content does not exceed two per cent proof spirit; and (2) other medicinal preparations containing alcohol falling under item (iii) of the Schedule to the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (Act 16 of 1955). In the Schedule to the last-mentioned Act there are three items. Items 1 and 2 (i) and (ii) deal with medicinal and toilet preparations which are or which are not capable of being consumed as ordinary alcoholic beverages, and item 2(iii) refers to all other medicinal and toilet preparations. The object of the learned counsel in referring to these provisions is to show that even under Act 39 of 1955, which imposes certain restrictions on inter-State trade and commerce with regard to spirituous medicinal and other preparations, in public interest, those restrictions are confined to such medicinal preparations as are capable of being consumed as ordinary alcoholic beverages. The learned counsel considers that the first notification of December 7, 1961, and the 1961 Ruels in turn, in the same manner, should have been confined only to such medicinal preparations as are capable of being consumed as ordinary alcoholic beverages. The circumstances in which the necessity for the issue of that notification and the amendment of the 1952 Rules by the 1961 Rules has arisen provides a complete answer to this approach for it was only when discovery was made that spirituous preparations were being used or rather the use of the same was being abused for the purpose of taking them as alcohol on a large-scale that the notification was issued and the rules were amended. In this connection the last contention of the learned counsel for the petitioner is with reference to section 24A(1) of the Bombay Prohibition Act 25 of 1949, pointing out that it in terms exempts from the provisions of that Act any medicinal preparation containing alcohol which is unfit for use as intoxicating liquor. It is not clear how this helps the petitioner. It has already been stated that if a medicinal preparation is so unfit for use as it may prove fatal, then alcohol content in it will not obviously make it liquor, for before such content will ever begin taking effect, the subject shall have been no more.

There is then the argument of the learned counsel for the petitioner that the impugned first notification of December 7, 1961, made under section 3(14) of the Act

declaring all spirituous preparations containing more than 20 per cent proof alcohol to be liquor for the purposes of the Act is violative of Article 301 of the Constitution. This Article says that 'subject to the other provisions of this part, trade, commerce and intercourse throughout the territory of India shall be free'. According to the learned counsel the operation of the first notification of December 7, 1961, with the 1952 and 1961 Rules is to impose unreasonable restrictions on the trade and commerce of medicinal spirituous preparations and also commercial intercourse with regard to the same both as to the inter-State trade and commerce as also the inter-State trade and commerce, inasmuch as import, export and transport to the same is restricted except in accordance with a licence and pass. In this respect the learned counsel has referred to *Atiabari Tea Co., Ltd.* v. *The State of Assam* (6), in which their Lordships have held that Article 301 applied not only to inter-State trade, commerce and intercourse but also to inter-State trade, commerce and intercourse and that the freedom of trade guaranted by this Article is freedom from all restrictions except those which are provided by the other Articles of Part XIII. With reference to Article 304 the position taken by the learned counsel is that before the issue of this notification, which, he says, is delegated legislation, previous sanction of the President was not obtained as stated in the proviso to this Article, and, in any case, this Article is not attracted because it concerns legislation by the Legislature of a State, and the Chief Commissioner, respondent 1, while issuing the notification under consideration does not come within the definition of 'Legislature of a State'. So the learned counsel urges that the notification is not constitutionally valid. He has had to accept that the Act, which was already in force when the Constitution commenced, is existing law as that expression is defined in Article 366(10) but he has further contended, that, while the Act is an existing law, the further delegated legislation under its provisions, as in this case notification issued under Section 3(14), is new legislation and thus not existing law. This aspect of his argument has reference to Article 305, upon which the learned Addition Solicitor-General has placed reliance on the side of the respondents in answer to the argument on behalf of

(6) A.I.R., 1961, S.C., 232.

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the petitioner in this respect. The relevant part of Article 305 says that 'nothing in Article 301 and 303 shall affect the provisions of any existing law except in so far as the President may by order otherwise direct—'. It is apparent that the Act being existing law, every part of it is existing law, and so is section 3(14) of it, it cannot be that while the rest of the Act is an existing law but not a part of section 3(14) of it under which the impugned notification has been issued. The Act having been saved by Article 305, every power conferred by any provision of it has also obviously been saved. If it was otherwise a part of the Act would be rendered nugatory. So that a part would be saved under Article 305 and not another part of the Act. There is no valid justification for this either in the language of Article 305 or on any other basis. This is the apparent effect of Article 305. If any authority was needed to support this position there is first the case of *Surajmal Bal* v. *State of Rajasthan* (7), in which Wanchoo, C.J., held a bye-law made after the commencement of the Constitution pursuant to a power given in a Municipal Statute, which was an existing law, as covered by Article 305 and thus not attracting Article 301. To an argument as in the present case the learned Chief Justice said that 'there would—be no meaning in saving the provisions of an Act, which empower a certain body to impose certain taxes, if the intention was not to save the bye-laws imposing taxes, which might in future be passed'. The second case which lends support to this approach is the *Bengalore Woollen Cotton and Silk Mills Co., Ltd.* v. *The Corporation of the City of Bangalore* (8), in which somewhat exactly similar argument was not accepted by their Lordships. The learned counsel for the petitioner has pointed out that this was a case of conditional legislation, but in principle the decision in the case applies because in it subsequent imposition of octroi duty was held saved by Article 305. There is another aspect of the matter urged by the learned Additional Solicitor-General in respect of this argument on the side of the petitioner, and that is that legislation to attract Article 301 should be such as to directly and immediately restrict or impede trade, commerce or intercourse, but if it is not

(7) A.I.R., 1954, Rajasthan, 260.

(8) A.I.R., 1962, S.C., 562.

such a legislation and it only incidentally results in regulatory restrictions in that respect, to such legislation Article 301 has no application. Even in *Atiabari Tea Co., Ltd.'s case* at page 254 'if any Act imposes any direct restrictions at the observation that on the very movement of goods, it attracts the provisions of Article 301, and its validity can be sustained only if it satisfies the requirements of Article 302 or Article 304 of Part XIII. But this argument of the learned Additional Solicitor General finds direct support from *Automobile Transport (Rajasthan), Ltd.* v. *State or Rajasthan* (9), in which their Lordships have held that regulation of trade and commerce may achieve some public purpose which affects trade and commence incidentally but without impairing the freedom. In this case a regulatory statute not directly impinging on the freedom of trade, commerce and intercourse but only incidentally affecting the same has been upheld as not violative of Article 301. It has already been stated that there is no challenge to any provision of the Act and the rules have been made in exercise of powers given in various provisions of the Act and the impugned notification has been issued under section 3(14) of it. So the rules have been made pursuant to a constitutionally valid piece of Legislation and so also the impugned notification. There is no substance in this contention on the side of the petitioner.

A further contention of the learned counsel for the petitioner is that the impugned rules and notifications are *ultra vires* the provisions of the Act. This is a ground taken in paragraph 15 of the petition in which reference is made to sections 5, 18, 24, 26 and 35(2), and subsequently there is also reference to section 30. In the course of arguments the learned counsel has also referred to section 20(1)(a), but no ground with reference to this provision to be found in the petition. Section 5 has already been reproduced earlier and what it does in brief is to confer powers on the Chief Commissioner to declare the maximum or minimum quantity or both of any intoxicant which for the purposes of the Act may be sold by retail or by wholesale. Rules 3 and 3A(1)(a) and (b); with Rules 12 and 13 of the 1961 Rules, make provision for the sale of intoxicating spirituous preparation on a prescription issued by a registered medical practitioner. It is said that to the extent limitation is prescribed on the sale of such

(9) A.I.R., 1962, S.C., 1406.

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preparations so as to be according to the prescription of a registered medical practitioner, it is not within the scope of section 5. The reason given for this is that instead of the Chief Commissioner in exercise of the power under that section fixing the maximum or minimum quantity, that has been left to a registered medical practitioner. This to my mind; is not a correct approach to those rules. A maximum and minimum quantity that can be sold of intoxicating spirituous preparations is provided in these rules. The reference to a prescription by a registered medical practitioner and obviously to be made because a person buying such a preparation would be buying it for reasons of health either for himself or a relation or a friend of his. Such a person would obviously not be able to know the quantity of such preparation needed for purposes of health without medical advice. So it is only this inevitable fact that has been stated in these rules. Such statement does not mean that the prescription of the maximum and the minimum quantity for purposes of sale of such preparation has been left to some other authority such as a registered medical practitioner. In this respect the circumstances which have led to the promulgation of the 1961 Rules and the issue of the impugned notifications cannot be ignored. The respondents had before them material showing that intoxicating spirituous preparations were not being used for the legitimate use as aids to health but their use was being abused as a substitute for ordinary alcohol. To meet such a situation it was from any consideration reasonable and correct for the Chief Commissioner to say that the quantity of an intoxicating spirituous preparation within the maximum and the minimum declared by him under the rules be sold in accordance with a prescription by a registered medical practitioner. This, to my mind, does not militate against the provisions of section 5. Same argument has been urged with reference to section 24, which deals with possession of intoxicating spirituous preparations within the quantity declared under section 6 and no more need be said on this account. In so far as section 18 is concerned the only argument that has been urged is that no notification under provision 1 of this section has been issued. That proviso merely deals with exemption of foreign liquor by a notification from the main provisions in the section. This, however, does not affect the petitioner in any way. In any case, it is a discretionary matter with the Chief Commissioner and merely

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because he has not exercised his discretion under the first proviso to section 188, no rule can be said to be *ultra vires* of the section. With regard to section 20(1)(a) and 26, the objection is that the petitioner as a chemist and a druggist cannot even prepare or make a medicine containing 20 per cent proof alcohol for as soon as he does so, it may result in reduction, flavouring, or blending of the preparation, which will amount to manufacture of liquor according to section 3(16) and when he pours it in a small phial that would amount to bottling under section 3(2), all which he cannot do without a licence. Rule 10(e) provides that a licensee can sell intoxicating spirituous preparations to a person holding the prescription of a registered medical practitioner in accordance with such prescription, and rule 1(h) defines a 'licensee' to mean a person licensed to possess, manufacture or for dispensing or for selling intoxicating spirituous preparations. It is apparent that the petitioner can obtain a licence under the Act and the rules for dispensing and once he does that, he can both prepare or make a medicine containing 20 per cent proof alcohol and also bottle it in a phial. Once he obtains a licence all these difficulties imagined on behalf of the petitioner cease to be in his way for dispensing medicines with intoxicating spirituous preparatons having 20 per cent proof alcohol in the same. The requirement of a licence cannot possibly render the rules under consideration repugnant to sections 20 and 26 of the Act. In regard to section 30 what is urged is that the petitioner cannot even have a lady doctor on his premises, but that section relates to a person licensed to sell any liquor or intoxicating drug for consumption on his premises, and this is what does not normally happen with a chemist and a druggist. But of course if he does obtain such a licence, then he must comply with the provisions of this section. This is an indirect manner of a challenge to the validity of this section, though it has been the case of the petitioner that no part of the Act is questioned as invalid. Similarly section 35(2) also relates to the grant of a licence for the retail sale of liquor for consumption on the premises. In the end no argument has been addressed with regard to this section. No case is made out of any of the rules, either 1952 Rules or 1961 Rules, being *ultra vires* or repugnant to any section of the Act.

The 1952 Rules have been made under sections 5, 6, 16 to 18, 24 and 58 of the Act, and 1961 Rules are an amendment of those rules. So that the rules are not only made

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under section 58. Section 59 of the Act says that the Excise Commissioner may, by notification make rules—(a) regulating the manufacture, supply, storage or sale of any—intoxicant, and (b) regulating the bottling of liquor for purposes of sale. The power extends to making rules on some other matters which are not relevant here. The position taken by the learned counsel for the petitioner has been that it was the Excise Commissioner who should have made the impugned rules and as there is specific power given to him in this respect in section 59, the impugned rules could not have been made by the Chief Commissioner, respondent 1, in exercise of the powers given to him in the various other sections of the Act including section 58. What can be done by the Chief Commissioner under other sections of the Act barring section 58, obviously cannot be done under those sections by the Excise Commissioner. Section 58(1) says that the Chief Commissioner may, by notification, make rules for the purpose of carrying out the provisions of the Act or any other law for the time being in force relating to excise revenue. The learned counsel has urged that this power is only confined to making rules relating to excise revenue, but this is not correct reading of the sub-section because it first empowers the Chief Commissioner to make rules for the purpose of carrying out the provisions of the Act and then proceeds to give him further power to make rules for the purpose of any other law for the time being in force relating to excise revenue. This general power with the Chief Commissioner is not restricted or controlled by the rule making power conferred on the Excise Commissioner by section 59, and it is clear that the power of the Excise Commissioner under section 59 is subject to action taken by the Chief Commissioner in making rules under section 58 and the other sections of the Act. Thus there is nothing in the Act which supports this contention that the powers of the Chief Commissioner under the provisions of the Act including section 58 are controlled by the rule-making powers conferred on the Excise Commissioner under section 59. In this respect the learned counsel for the petitioner has referred to *The U. P. State* v. *Murtaza Ali* (10), in which the learned Judges of the Full Bench have held that if a rule purports to have been made under one provision, it cannot be sustained under another provision even though it could have been made

(10) A.I.R., 1961, All. 477.

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under it. But the present impugned rules have been made under the sections to which reference has been made and it has been nobody's case that they should be sustained under a different provision than the provisions under which the same have been made. This argument on the side of the petitioner thus is untenable and cannot possibly prevail.

There remains then for consideration the last argument on behalf of the petitioner. The argument is based on Article 19(1)(f) and (g) of the Constitution. It is said that the impugned rules and the notifications provide unreasonable restrictions on the right of the petitioner to acquire, hold and dispose of property; and to practise his profession as a druggist and a chemist, and to carry on such occupation, trade or business, and that the same are not saved under clauses (5) and (6) of the same Article inasmuch as the restrictions imposed are not reasonable nor in the interest of the general public. On October 26, 1962. emergency was declared under Article 352. Article 358 provides that during the emergency restriction under Article 19 is not to apply in regard either to legislative or executive action by the State. But the learned counsel for the petitioner points out that the impugned rules were made and the notifications issued before that date, and so Article 358 has no application to the same, which is obviously correct. Article 47 appears in Part IV of the Constitution on directive principles of State policy and it says—"The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health." Article 37 provides that the provisions in Part IV shall not be enforceable by any Court. The learned counsel for the petitioner contends that the policy under Article 47 is not to prohibit the use of medicinal preparations even when enforcing prohibition of consumption of intoxicating drinks and of drugs which are injurious to health. In this connection he makes reference to the *State of Bombay* v. *F. N. Balsara* (2), in which their Lordships referred to this Article at page 719 making this observation—"article 47 of the Constitution also takes note of the fact that medicinal preparations should be excluded in the enforcement of prohibition. I do not consider that it is reasonable that the possession,

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sale, purchase, consumption or use of medicinal and toilet preparations should be prohibited merely because there is a mere possibility of their being misused by some perverted addicts." Relying on this observation the learned counsel has pressed that merely because the authorities found that intoxicating spirituous preparations in the Union territory of Delhi were being misused by some addicts that itself would not justify the restrictions imposed by the rules and the notifications. This, however, is not a case of prohibition, and directly the consideration of the policy in Article 47 does not come in. But that Article only deals with the matter of prohibition and says that while prohibition is being enforced it will not cover the matter of consumption of intoxicating drinks or drugs for medicinal purposes. It does not extend to placing an embargo on restrictions on the use of such preparations when as actual fact it is found that the use is perverted into misuse on a large scale for the purpose of intoxication and not for medicinal purposes having concern with the health of the user. So nothing in Article 47 advances any argument on the side of the petitioner. It has already been pointed out that 1952 Rules have been in force for over 9 years with regard to 37 intoxicating spirituous preparations. 1961 Rules are in substance similar and are in amendment of the previous rules. If the amended 1961 Rules were confined to those 37 intoxicating spirituous preparations hardly any argument would have been available to the petitioner at such late date when for well over 9 years the restrictions have not in actual enforcement been found to work in an unreasonable manner and to the detriment either of the trade or of the requirements of the public in matters of health. The impugned notification of December 7, 1961, merely extends the scope of the application of the rules from 37 intoxicating spirituous preparations to all spirituous preparations having contents 20 per cent proof alcohol. Now this extension by itself would apparently be seen not to make any substantial alteration or change in the situation. It probably results in a certain measure of irksomeness but that is no ground for striking down either the rules or the notifications as constitutionally invalid. It has to be borne in mind that the rules have been made under the provisions of the Act and consistent therewith, the validity of the provisions of the Act not being in question in any respect. So apparently the rules and the notifications which conform to the provisions of the Act must be held to be valid

unless a case is made out that they are substantially of a nature as to be detrimental to the carrying on of the trade or profession of a druggist and a chemist to the degree of almost rendering it practically impossible to carrying on the same or the obtaining of intoxicating spirituous preparations by the public in general for purposes of health works so as to practically deprive it of such medicines in this respect. After this now for the particular rules with regard to which the learned counsel for the petitioner has addressed arguments with the intention of showing that the same operate in such a manner so as to render the carrying on of the trade and profession of a chemist and a druggist almost impossible in practice and so as to deprive the public in substance of the benefit of intoxicating spirituous preparations as medicines for purposes of health. The details of the rules have already been referred to in the beginning. The only objection to rule 2 is that for manufacture or preparation or possession for sale of intoxicating spirituous preparations a licence in form M.C. 12 is required. This form deals only with the grant of a licence to an approved manufacturer but such a manufacturer has to have a licence under section 20 of the Act, and , as stated there is no challenge to the validity of this provision. Apart from this a chemist and a druggist while dispensing an intoxicating spirituous preparations as medicine would not be a manufacturer as has already been explained. The fault that has been found with rules 3 and 3-A is that these make prescription of a registered medical practitioner necessary and also give the right to such a practitioner to set the limit of purchase of intoxicating spirituous preparation in the prescripion. There seems to be nothing unreasonable or in any way objectionable in this for a person who is by himself or for a relation or a friend in need of intoxicating spirituous preparation as a medicine, as I have already stated would not be purchasing such a preparation except when prescribed by a medical practitioner and in accordance with such a prescription. It is then said that rule 4 requiring a permit and a pass by the collector for import, export or transport of intoxicating spirituous preparations is an unreasonable restriction, but this is according to section 16 of the Act. In regard to rule 5-A the learned counsel has pointed out that it applies to those importing intoxicating spirituous preparations from outside the Union territory of Delhi and its effect is that a

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chemist and a druggist cannot do so without a permit under this rule and a medical practitioner cannot carry medicines in his bag. This last statement of course is obviously without basis because a medical practitioner can have intoxicating spirituous preparations, without a licence or permit as provided in rule 3-A. and if he needs to keep larger quantities, there is nothing which interferes with his obtaining a necessary license or a permit. Objection to rule 7 is equally unsubstantial because importer, exporter or transporter is required to have a pass by the collector with every consignment of intoxicating spirituous preparation. This does not deal with individuals purchasing intoxicating spirituous preparations for personal use or for a relation or a friend. The objection to rule 9 proceeds on the misconception that a chemist and a druggist is a manufacturer of intoxicating spirituous preparations and as such he can only sell such preparations to the four classes of persons, named in this rule and to nobody else not even a private person needing the same for his own use as a medicine or for a relation or a friend. Rule 10(e) make a clear provision that a chemist and a druggist as a licensee under the rules can sell such preparations to a person holding a prescription of a registered medical practitioner in accordance with such prescription. The grievance with regard to rules 12 and 13 is that the same prescribe a narrow and limited quantity of such preparations for sale so that if the prescription does not provide for repetition or if after purchasing such a preparation, the patient or his relation or his friend drops the phial and breaks it, he will have to approach a registered medical practitioner again before he can make a purchase. But how often does an accident of this type happen and how often does a registered medical practitioner make a mistake in not providing for repetition of a dose in the prescription where repetition is really a necessity for the health of the patient? These are just flights of imagination on the side of the petitioner and have no bearing to the reality of the circumstances. As it has been pointed out already rules 12 and 13 of the 1961 Rules is an improvement on the 1952 Rules inasmuch as the quantity purchasable has been increased. If a registered medical practitioner does not consider that repetition of a medicine including intoxicating spirituous preparation is needed for the health of a particular person or such a person needs no more of such a preparation than noted on the prescription, there is no object in his

purchasing any more quantity of such a preparation if he is the genuine user of it. If he is not, the object of the rule is to regulate sale of intoxicating spirituous preparations that he does not obtain it so as to misuse it. It is said that the discretion given to the collector or the officer authorised by him to grant licence in form I.S.P. 1 to the three classes of persons mentioned in rule 14 has no criterion provided in this rule for the exercise of the discretion. But the three classes of persons mentioned in the rule itself provide sufficient guidance for this purpose to the collector or the officer authorised by him, apart from the general tenor of the rules. The classes of persons mentioned in this rule are chemists and druggists holding licence under the Drugs Act, 1940, homoeopathic chemists or practitioners, and persons engaged in sale of general stores including toilet preparations and essences. Objection to rule 17-A is the requirement of a permit under it, but this rule has to be read with rules 3-A' and 13, and it is only when quantities in excess of those provided in those rules that are required that a permit is necessary in the terms of this rule. The objection to rule 23(ii) is that for all other matters not specified in the 1952 or 1961 Rules, the Delhi Liquor License Rules of October 3, 1935, have been applied *mutatis mutandis* and rule 4.15 of those rules prohibits a licensee from selling liquor to any soldier of the rank of the non-commissioned officer, to any person whom the licensee knows or has reason to believe to be a member of the family of such soldier, and to any person whom the licensee knows or has reason to believe to be a 'follower'. But there is a proviso to this rule which says that sale of liquor, and this rule relates to sale of liquor, may be permitted in approved premises by the collector to soldiers and those others mentioned in this rule. It is obvious that this rule is intended to apply to normal premises for the sale of liquor and not to chemists and druggists, and, in any case, approval of the collector in this respect can always be obtained. So there is not much in what the learned counsel for the petitioner says that the petitioner cannot render any medical assistance in selling medicine to a soldier or a relation of a soldier. In these rules rule 5.35 (1) says that the licensee shall not give to any customer any free dole of liquor, nor shall he give any customer any perquisite or *dasturi* on the price of liquor sold and item (22) of the same further provides that the licensee shall not compound, blend colour, flavour or rectify any

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liquor sold by him or stored in his licensed premises. It is again clear that this relates to licensee of an ordinary liquor shop. In any case, so far as item (22) is concerned, this matter has already been considered and it has been shown that no such changes is so far as the matter of dispensing is concerned lead to any breach by a chemist and a druggist provided he is a licensee whose licence has a condition allowing him dispensing and selling intoxicating spirituous preparations. It now becomes clear that the rules being consistent with the provisions of the Act, the only objection to them is the requirements of licence, permit, or pass as may be necessary having regard to the purpose for which the same is needed. Such a requirement may be irksome and be of some inconvenience but that is not a basis upon which it can be said that it is a restriction of which the consequence is almost paralysis of the business of a chemist or a druggist and non-availability of intoxicating spirituous preparations as medicines to the general public. The learned counsel for the petitioner has laid great stress on *Balsara's case* in pointing out that in that case notification providing regulations somewhat similar to the impugned rules and the notifications were struck down by their Lordships as being unreasonable. But this is not so. In that case it was the *vires* of the provisions of the Bombay Prohibition Act, 1949, that was in question. It was contended that certain notifications had been issued making rules exempting from the rigours of the Act medicated tonics, medicated wines and certain spirituous toilet preparations and essences, and thus the Act was not invalid because while it prohibited sale of liquor it permitted by the exemptions sale of such of the preparations as were either medicinal preparations or toilet preparations meant for genuine use by the public. Their Lordships repelled the argument pointing out at page 721 of the report that an ordinary citizen may find it a perplexing task to attempt to extract information out of the long series of complicated regulations, as to the true nature and extent of the right which the law confers upon him. They pointed out that indeed it was only with the help of the learned counsel appearing for the parties that they were able to know what the position was up to March 31, 1950, and what changes were made on April 1, 1950. It is in the peculiar circumstances of the case that their Lordships came to the conclusion that those notifications making rules providing for certain exemptions did not assist the argument for the State

in favour of the Bombay Prohibition Act, 1949, but no such situation arises here. The matter is quite simple. The 1961 Rules when read with the notification of December 7, 1961, make the picture quite clear that the sale of intoxicating spirituous preparations with 20 per cent proof alcohol content is only permissible subject to the 1952 and 1961 Rules and so also the possession, import, export and transport of the same. The position with regard to the present impugned rules and notifications is not the same as in *Balsara's case* where the challenge was to the constitutional validity of the Bombay Prohibition Act, 1949. In considering whether restrictions as in the impugned rules and the notifications are reasonable or are not reasonable, the circumstances which have led to them cannot be ignored and the other matter that has to be kept in view is whether they are so excessive as to be in themselves unreasonable. Reference has already been made to the circumstances which have compelled the authorities to proceed in the manner in which they have done by the impugned rules and the notifications so as to put a stop to the use of intoxicating spirituous preparations as a substitute for ordinary alcohol and not as medicine. The main matters which are provided by the impugned rules and the notifications are the limitation of the quantity that may be purchased by a person and the requirement of a licence or a permit or a pass as a particular situation demands under the rules. Neither in its terms is an excessive restriction. The limitation on the quantity permitted to be sold is only circumscribed with the requirements of a person for the purposes of his health and hence on the basis of a medicinal prescription. This cannot be considered excessive from any angle. The requirement of a licence or a permit or a pass as has been explained is not excessive either. So that this last argument on the side of the petitioner cannot be accepted that the rules to which reference has been made, and no other rule has been under attack by the learned counsel for the petitioner, are in any way providing unreasonable restrictions on the sale, possession, import, export or transport of intoxicating spirituous preparations in so far as the petitioner as a druggist and a chemist is concerned or in so far as the general public is concerned in purchasing such preparations as a requirement for health.

There is no more argument on the side of the petitioner, but the learned counsel for him has made reference

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to *D. K. Kannisa* v. *Devichund* (11), in which Devaloss, J., held that rules and bye-laws made by statutory bodies should be reasonable, otherwise they would be *ultra vires* and void. It is unnecessary to go into the applicability of the ratio of this case to the facts of the present petition because it has not been found that the impugned rules and notifications are unreasonable and are not in public interest.

In consequence this petition is dismissed with costs, counsel's fee being Rs. 500.

S. B. CAPOOR, J.—I agree.

J. S. BEDI, J.—I agree.