

Before B. S. Dhillon, J.

M. K. MAKKAR,—*Petitioner.*

versus

EXCISE AND TAXATION COMMISSIONER and another,—
Respondents.

Civil Writ Petition No. 1921 of 1979.

August 6, 1979.

Punjab Excise Act (1 of 1914)—Sections 58(2)(e) and 59(d) & (f)—Punjab Liquor Licence Rules 1956—Rule 4 proviso—Person holding an L. 2 licence debarred from holding another such licence in the State—Power to frame such a rule—Whether vests in the State Government—Financial Commissioner imposing such a bar by adding the proviso to rule 4—Proviso to rule 4—Whether ultra vires.

Held. that a bare reading of the provisions of clause (e) of section 58(2) of the Punjab Excise Act 1914 would suggest that the State Government has been given powers to frame rules for regulating the periods and localities for which, and the persons, or classes of persons, to whom, licenses, permits and passes for the vend by wholesale or by retail of any intoxicant may be granted and regulating the number of such licenses which may be granted in any local area. The power to frame rules as to which class of person or classes of persons are debarred from taking the licence or are qualified to take licence, vests in the State Government. The provisions of section 59(a) of the Act vests power in the Financial Commissioner to make rules for regulating the manufacture, supply, storage or sale of any intoxicant. As regards clause (d) of this section the said provisions give power to the Financial Commissioner for prescribing the scale of fees or the manner of fixing the fees payable in respect of any licence, permit or pass or in respect of the storing of any intoxicant. This power hardly touches a person or class of persons who are debarred from taking licence. As regards clause (f) of this section, it relates to the prescribing the authority by, the restrictions under, and the conditions on, which any license, permit or pass may be granted. The refusal to grant a licence cannot be termed as condition of licence. Framing a rule debarring person who holds one licence in L. 2 anywhere in the State of Punjab, from having another licence, cannot be termed as a condition of licence. Thus, the proviso to rule 4 which has been promulgated by the Financial Commissioner is *ultra vires* because he has no power under section 59 of the Act to frame such a rule. (Paras 4 and 5).

M. K. Makkar v. Excise and Taxation Commissioner and another
(B. S. Dhillon, J.)

Petition under Articles 226/227 of the Constitution of India praying that :—

- (i) *the records of the case kindly be summoned ;*
- (ii) *this Hon'ble Court be pleased to issue against the respondents and/or their subordinate staff a suitable writ, direction or order in the nature of Mandamus, certiorari and/or any other appropriate writ order or direction to quash the impugned orders dated 31st March, 1979 and 16th May, 1979 of the Collector (Annexure P. 3) and the Commissioner (Annexure P. 6) respectively and to forebear from enforcing the same ;*
- (iii) *Notice of motion as required under Article 226(4) of the Constitution of India be dispensed with ; Costs of the writ-petition be also awarded.*

It is further prayed that pending the disposal of this writ-petition, the following reliefs be granted :—

- (a) *Operation of the order dated 31st March, 1979 (Annexure P. 3) of the Collector Respondent No. 2, and 16th May, 1979 (Annexure P. 6) of the Commissioner (Respondent No. 1) be stayed;*
- (b) *the petitioner be allowed to operate his license as hitherto ;*
- (c) *filing of the certified copies of the various Annexures to this petition may be dispensed with.*

Such other order or direction as this Hon'ble Court deem just and proper in the circumstances of the case may also kindly be granted.

It is further prayed that since this Hon'ble Court is in vacation, ad interim stay of operation of the impugned orders (Annexures P. 3 and P. 6) be granted.

Tirath Singh Munjral, Advocate.

D. N. Rampal, Advocate, for A.G. (Pb.).

JUDGMENT

B. S. Dhillon, J. (Oral):

(1) The petitioner is carrying on business of foreign liquor in the State of Punjab for the last several years. He had a licence described L-2 under the Punjab Liquor Licence Rules for Mukerian and

Talwara. The petitioner applied for the renewal of both the licences for the year 1979-80 on 3rd November, 1978 in the prescribed form. Respondent No. 2, Collector-cum-Deputy Excise and Taxation Commissioner, Jullundur Division, Jullundur, is the authority who has the power to renew such a licence. The said respondent,—*vide* his order dated 29th March, 1979, renewed both the licences of the petitioner and in consequence thereof, the petitioner was asked to deposit a sum of Rs 5,000 as a fixed licence fee for each vend and to furnish bank guarantee for Rs. 10,000 for the year 1979-80. The petitioner deposited a sum of Rs. 5,000 on 31st March, 1979, *qua* the vend at Talwara. However, by a Gazette notification dated the 30th March, 1979, the Excise and Taxation Commissioner, exercising the powers of the Financial Commissioner, added proviso to rule 4 of the Punjab Liquor Licence Rules, 1956, in the following terms:—

“Provided that a person who has been granted a licence in form L-2 anywhere in the State of Punjab shall not be granted another Licence in form L-2.”

(2) In view of this proviso, the Collector-cum-Deputy Excise and Taxation Commissioner reviewed his order renewing the licence and issued order dated 31st March, 1979, copy of which is Annexure ‘P-3’ with the writ petition, holding that in view of the amendment in the Punjab Liquor Licence Rules, the renewal of L-2 Licence of the petitioner for the year 1979-80 at Talwara is withdrawn. This order of respondent No. 2 is the subject-matter of attack in this petition. The petitioner filed an appeal before the Excise and Taxation Commissioner which was dismissed by him,—*vide* order dated 16th May, 1979. The order under appeal is also sought to be impugned in this writ petition.

(3) Shri Munjral, the learned counsel for the petitioner, has vehemently contended that the Excise and Taxation Commissioner, while exercising the powers of the Financial Commissioner, has no jurisdiction to frame the rule by which he added proviso to rule 4 as the powers for framing the rules, as to which class of persons is entitled to obtain the licences, vests with the State Government under the provisions of section 58 of the Punjab Excise Act, 1914 (hereinafter referred to as the Act). The learned counsel contends that the plea taken in the return that the said rule could be framed by the Financial Commissioner in view of the powers vested in him

M. K. Makkar v. Excise and Taxation Commissioner and another
(B. S. Dhillon, J.)

under section 59, clauses (d) and (f), cannot stand the scrutiny. With a view to examine this contention, the provisions of clause (e) of section 58 of the Act, and clauses (d) and (f) of section 59 of the Act, are reproduced as under:—

“58. *Powers of State Government to make rules:*

- (1) The State Government may, by notification make rules for the purpose of carrying out of the provisions of this Act or any other law for the time being in force relating to excise revenue.
- (2) In particular, and without prejudice to the generality of the foregoing provisions, the State Government may make rules,—

* * * * *

- (e) regulating the periods and localities for which, *and the persons, or classes of persons*, to whom, licenses, permits and passes for the vend by wholesale or by retail of any intoxicant may be granted and regulating the number of such licenses which may be granted in any local area.

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“59. *Powers of Financial Commissioner to make rules:—*

The Financial Commissioner may, by notification, make rules—

* * * * *

- (d) prescribing the scale of fees or the manner of fixing the fees payable in respect of any license, permit, or pass or in respect of the storing of any intoxicant.

* * * * *

- (f) prescribing the authority by, the restrictions under, and the conditions on, which any license, permit or pass may be granted including provision for the following matters:—

- (i) the prohibition of the admixtures with any intoxicant of any substance deemed to be noxious or objectionable;
- (ii) the regulation or prohibition of the reduction of liquor by a licensed manufacturer or licensed vendor from a higher to a lower strength;

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- (iii) the fixing of the strength, or price below which any intoxicant shall not be sold, supplied or possessed;
 - (iv) the prohibition of sale of any intoxicant except for cash;
 - (v) the fixing of the days and hours during which any licensed premises may or may not be kept open, and the closure of such premises on special occasions;
 - (vi) the specification of the nature of the premises in which any intoxicant may be sold; and the notice to be exposed at such premises;
 - (vii) the form of the accounts to be maintained and the returns to be submitted by license-holders; and
 - (viii) the prohibition or regulation of the transfer of licenses.

* * * * *

(4) The bare reading of the provisions of clause (e) of section 58(2) of the Act would suggest that the State Government has been given powers to frame Rules for regulating the periods and localities for which, and the persons, or classes of persons, to whom, licenses, permits and passes for the vend by wholesale or by retail of any intoxicant may be granted and regulating the number of such licenses which may be granted in any local area. The power to frame rules as to which class of persons or classes of persons are debarred from taking the licence or are qualified to take the licence, vests with the State Government. The provisions of section 59(a) of the Act vest powers in the Financial Commissioner to make rules for regulating the manufacture, supply, storage or sale of any intoxicant. As regards clause (d) of this section, the said provisions give power to the Financial Commissioner for prescribing the scale of fees or the manner of fixing the fees payable in respect of any license, permit, or pass or in respect of the storing of any intoxicant. This power hardly touches a person or class of persons who are debarred from taking licence. As regards clause (f) of this section, it relates to the prescribing the authority by, the restrictions under, and the conditions on, which any license, permit or pass may be

M. K. Makkar v. Excise and Taxation Commissioner and another
(B. S. Dhillon, J.)

granted. The refusal to grant a licence by no stretch of imagination can be termed as condition of licence. For instance, in the present case, the licence held by the petitioner at Mukerian had been renewed and admittedly no condition has been added to the conditions of that licence whereas the licence held by him regarding Talwara, has not been renewed. Framing a rule debarring person who holds one licence in L-2 anywhere in the State of Punjab, from having another L-2 licence, cannot be termed as a condition of licence. Shri Rampal, the learned counsel appearing for the respondents, has not drawn my attention to any other provision in section 59 of the Act to justify the source of power for framing the rule which is under attack.

(5) It is no doubt true that the Financial Commissioner has framed Rule 14 of the Punjab Liquor License Rules, 1956, which also prohibits a class of persons from being awarded a licence of a particular type if they hold a licence of another type, but it is admitted before me that the vires of the said Rule were not challenged at any stage. Therefore, the presence of Rule 14 will not in any way mean that the Financial Commissioner has the power to frame such rules. It may be pointed out that the provisions of clauses 7-A of the Punjab Intoxicants Licence and Sale Orders, 1956, are in the following terms:—

“7-A. A licence in form L-2 for wholesale and retail vend of foreign liquor to the public only shall not be given to a person, partnership firm, co-operative society, a body incorporated under the Indian Companies Act or Hindu Undivided Family if such person or any partner of such firm or any member of such society or any share-holder of such body or any member of such family, as the case may be, holds or has held a country liquor licence in form L-13, L-14, L-14-A or L-14-B during the last three years preceding the year in which application for grant or renewal of the licence in form L-2 is submitted or who is in any way connected in interest with any person who holds or has held a country liquor licence in form L-13, L-14, L-14-A or L-14-B during the last three years preceding the year in which application for grant or renewal of licence in form L-2 is submitted.”

This Rule also debars a person from holding two types of licences mentioned therein. This Rule has admittedly been framed by the State Government under its powers under section 58(2) (e) of the Act. In this view of the matter, I am clearly of the opinion that the proviso to Rule 4, which has been promulgated by the Financial Commissioner, is *ultra vires*, and the Financial Commissioner has no power under section 59 of the Act to frame such a rule. Consequently, the proviso to Rule 11-A of the Rules is also liable to be quashed as the same is a procedural rule. Since the impugned order has been passed in view of the proviso to Rule 4 of the Rules, therefore, the impugned order has also to be quashed as I find that earlier respondent No. 2 himself had ordered the renewal of the licence and that obviously was done as the petitioner had satisfied all the requirements of law.

(6) For the reasons recorded above, this writ petition is allowed, with no order as to costs. However, the petitioner is directed to comply with the formalities, if not already done, as desired by the authorities.

N.K.S.

Before A. S. Bains, J.

KARAM SINGH,—Petitioner.

versus

HARDAYAL SINGH and others,—Respondents.

Criminal Revision No. 623 of 1979

August 8, 1979.

Code of Criminal Procedure (II of 1974)—Sections 46, 129, 132 and 482—Indian Penal Code (XLV of 1860)—Section 141—Prosecution of police officers—Complaint alleging unprovoked firing and use of force by them on a peaceful jatha—No allegation or suggestion in the complaint regarding the existence of pre-requisites of section 129—Sanction for prosecution under section 132—Whether necessary—Complaint—Whether liable to be quashed—‘Arrest’ and ‘unlawful assembly’—Meaning of.