hand the said Act has been interpreted by Shri Chetan Dass Dewan, the learned Additional Advocate General, Haryana, saying that if any defect crept in the constitution of Market Committee the same has been removed under the Act, therefore, the validation of the levy and collection of the market fee is quite valid. This matter need not be gone into in view of my conclusion that there is no defect in the constitution of the Market Committee, Hissar. This Act would have only come into play if it was found that there was legal defect in the constitution of the Committee. It is, therefore, obvious that this Act is not applicable to the present case. The validity of the Act may be gone into in some appropriate case.

(21) No other point has been pressed before us.

(22) For the reasons recorded above, there is no merit in all these writ petitions and the same are hereby dismissed. However, keeping in view the facts and circumstances of the cases, there will be no order as to costs.

Pandit, J.—I agree that the writ petitions be dismissed, but with no order as to costs.

K.S.K.

FULL BENCH

Before Bal Raj Tuli, Bhopinder Singh Dhillon and M. R. Sharma, JJ.

M/S. BHAGAT SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB, ETC.,—*Respondents.*

Civil Writ No. 3069 of 1972.

March 24, 1975.

Punjab Excise Act (1 of 1914)—*Sections* 36(c), 40 *and* 80—*Constitution of India* (1950)—*Articles* 14 *and* 19(1)(f) *and* (g)—*Section* 36(c) *read with sections* 40 *and* 80—*Whether violative of Articles* 14 *and* 19(1) (f) *and* (g) *of the Constitution*—*Cancellation of a liquor licence under section* 36(c)—*Rules of natural justice*—*Whether require the giving of a notice of an oral hearing to the*

licensee—Forfeiture of the security deposited in respect of the licence—Whether automatic on the cancellation of the liquor licence —Licensee—Whether entitled to a notice for oral hearing against such forfeiture.

Held, that section 36(c) read with sections 40 and 80 of the Punjab Excise Act, is not *ultra vires* Articles 14 and 19(1) (f) and (g) of the Constitution of India. Action under section 36(c) and section 40 is taken on the proof of violation or breach of any conditions of the licence, permit or pass and, therefore, the question of violation of the fundamental right to carry on business under Article 19(1) (f) and (g) of the Constitution does not arise. The order of cancellation or suspension of the licence, permit or pass is made as a result of the quasi-judicial proceedings after compliance with the principles of natural justice. Violation of Article 14 of the Constitution cannot be pleaded on the ground that no guidelines have been prescribed as to in what circumstances the licence, permit or pass is to be cancelled and in what cases it has to be suspended because no guidelines for the exercise of judicial or quasi-judicial powers or discretion are ever laid down by the Legislature. If such a provision is made, no judicial discretion will be left with the quasi-judicial authority. Guidelines can be prescribed only for taking an administrative action under a law and not for the exercise of power or discretion in judicial or quasi-judicial matters. For similar reasons, section 40 is also not *ultra vires* Article 14, or Article 19(1) (f) and (g) of the Constitution. Section 80 of the Act only enables the authority to forego the cancellation or suspension of the licencee or to revoke the order of cancellation or suspension already passed on the holder of the licence, permit or pass agreeing to pay some amount by way of compounding fee. That section cannot be struck down on the ground that it gives arbitrary power to the authority to compound or not to compound or on what terms to compound so that discrimination can be exercised amongst the licensees or permit-holders or pass-holders similarly situated. Any abuse of power will of course be struck down but not the statute vesting the power which enables the competent authority to act in the interest of the licensee, whose licence is proposed to be or has been cancelled or suspended. The provisions of section 80 are to the advantage of the licensees and not to their prejudice. But for this provision in the Act, there will be no discretion with the competent authority not to cancel or suspend the licence, permit or pass, if a violation or breach of the conditions thereof is established even if it may be a minor one, since no other penalty can be imposed. In that case either an order cancelling or suspending the licence will have to be passed or the violation or breach will have to be ignored. It is only in exercise of the powers under section 80 of the Act that unnecessary hardships or inconveniences to the licensees can be avoided and the conditions of the licence enforced in the public interest. Hence section 36(c) read with sections 40

and 80 of the Act is not *ultra vires* Articles 14 and 19(1) (f) and (g) of the Constitution.

(Para 6)

Held, that before taking a drastic action under section 36(c) of the Act involving a pretty heavy financial loss to a liquor licensee, a fair and proper enquiry into the culpable allegations levelled against him should be made after affording him an adequate opportunity of hearing. If the licensee raises controversial issues and asks for an oral hearing, it must be granted. If the controversial facts can be resolved only on taking evidence, an opportunity to lead evidence on such matters should also be allowed to him. Similarly, the Excise Department can also lead evidence to prove the defaults committed by the licensee and to rebut his defence in order to enable the authority to take action for cancellation or suspension of the licence. In order to comply with the principle of natural justice—*audi alteram partem*—the licensee must be given a full and true disclosure of the facts sought to be used against him and the hearing afforded must be adequate and substantial in order to enable him to safeguard his rights. The hearing must be fair, proper and in substance and not mere form. Under the requirements of a full hearing, a party has the right to defend himself against the charges levelled against him by arguments, proof and examination of witnesses where necessary. Then and then alone will it be said that the hearing has been a proper, fair and meaningful one. The licensee must state in his explanation to the show-cause notice that he wants an oral hearing and/or an opportunity to adduce evidence etc. In short, the procedure before the Collector in proceedings under section 36 of the Act must conform to the procedure before a judicial tribunal.

(Paras 3 and 4)

Held, that the mere reading of section 40 of the Act shows that the licensee is debarred from claiming the refund of any fee paid or deposit made in respect of the licence which has been cancelled or suspended. The words "in respect thereof" clearly relate to the words "licence, permit or pass is cancelled or suspended" which occur in the beginning of the section and not to "any fee paid". It thus follows that the licensee has been debarred from claiming the refund of any fee or deposit made by him respect of the licence cancelled or suspended. This section does not cast any obligation on the competent authority to forfeit the entire amount of the fee paid or deposit made. The authority can forfeit the entire amount of the fee paid or deposit made or a part of it or refund it in full. Therefore, if it is intended to forfeit the entire or any part of the amount of the fee paid or deposit made, the intention must be indicated in the show-cause notice which is issued for cancellation or suspension of the licence and if it is not mentioned in that notice, then after the order of cancellation or suspension of the

licence is made, another notice will have to be issued to the licensee to show cause why the fee paid or the deposit made in respect of the cancelled or suspended licence be not forfeited in whole or in part. The forfeiture of the fee and deposit, etc., is not automatic on the cancellation of the licence. The penalty under section 40 is in addition to and as a consequence of the order of cancellation or suspension of the licence and involves a fair amount of financial loss to the licensee. This additional penalty cannot be imposed without issuing to the licensee a notice or making him aware of the fact that the authority wants to impose this penalty also.

(Para 5)

Case referred by a Divisional Bench consisting of Hon'ble Mr. Justice Prem Chand Pandit and Hon'ble Mr. Justice Bhopinder Singh Dhillon,—vide order dated 8th February, 1973, to a Full Bench for decision of the following three questions of law. The Full Bench consisting of Hon'ble Mr. Justice Bal Raj Tuli, Hon'ble Mr. Justice Bhopinder Singh Dhillon and Hon'ble Mr. Justice M. R. Sharma, after deciding the questions referred to returned the case,—vide order dated 24th March, 1975, to the Division Bench for deciding the case on merits in the light of the observations made in the order of the Full Bench:

(1) *Whether the rules of natural justice require that before cancelling the liquor licence of an excise licensee under section 36(c) of the Punjab Excise Act, a notice for an oral hearing necessarily be given to him ?*

(2) *Whether the rules of natural justice require that before the seucrity of a licensee is forfeited, he must be given a notice for oral hearing against such forfeiture or whether the necessary result of the cancellation of the licence was automatic forfeiture of the security and no such notice was essential ?*

(3) *Whether section 36(c) read with sections 40 and 80 of the Punjab Excise Act was* ultra vires *the Constitution of India, being violative of Articles 14 and 19(1)(f) and (g) of the said Constitution ?*

Petition under Articles 226/227 of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the impugned orders of respondents Nos. 3 and 2 dated 6th July, 1972, and 7th August, 1972, contained in Annexures 'B' and 'D', respectively and further praying that during the pendency of the writ petition the operation of the impugned orders be stayed and the petitioner be permitted to continue with the sale of liquor as heretofore under the licence.

S. C. Sibal, and R. N. Narula, Advocates, *for the petitioner.*

I. S. Tiwana, Deputy Advocate-General, Punjab, *for the respondents.*

ORDER

Tuli, J.—These four writ petitiins (Nos. 2980, 3069, 3565 and 4004 of 1972) were admitted to a Division Bench and came up for hearing before P.C. Pandit and B.S. Dhillon, JJ. The learned Judges have referred the following questions of law for decision to a larger Bench by order dated February 8, 1973:—

(1) Whether the rules of natural justice require that before cancelling the liquor licence of an excise licensee under section 36(c) of the Punjab Excise Act, a notice for an oral hearing must necessarily be given to him ?

(2) Whether the rules of natural justice require that before the security of a licensee is forfeited, he must be given a notice for oral hearing against such forfeiture or whether the necessary result of the cancellation of the licence was automatic forfeiture of the security and no such notice was essential ?

(3) Whether section 36(c) read with sections 40 and 80 of the Punjab Excise Act was *ultra vires* the Constitution of India, being violative of Articles 14 and 19 (1) (f) and (g) of the said Constitution ?

This Bench has been constituted to decide these questions.

(2) It is not necessary to give the facts of these cases in detail. Suffice it to say that the petitioners obtained liquor licences and due to certain irregularities alleged to have been committed by them, their licences were cancelled and securities deposited by them were forfeited either in whole or in part. They filed the present petitions to challenge the orders of cancellation of their licences and the forfeiture of the amounts of securities. Admittedly, they were issued notices to show cause why their licences should not be cancelled. The orders of cancellation were passed after taking into consideration their explanations but without affording them any opportunity of oral hearing. The petitioners have claimed that they were entitled to a hearing before their licences were cancelled and the orders of forfeiture of security deposits were made. They also submitted that section 36 read with sections 40 and 80 of the Punjab Excise Act, 1914 (hereinafter referred to as the Act), was *ultra*

vires Articles 14 and 19 (1) (f) and (g) of the Constitution. It is in these circumstances that the abovementioned three questions of law have been referred to us for decision.

(3) As regards the necessity of granting oral hearing to a licensee before an order is passed for the cancellation of his licence, it may be observed that rules of natural justice do not amount to codified law nor can be put into a strait jacket. They do not supplant the law but only supplement it where possible. They are followed with a view to do complete justice to the parties. The most important rule is *audi alteram partem*, that is, no person shall be condemned unheard. The person proceeded against must be afforded an adequate opportunity of defending himself against the charge and proving his innocence. This matter has been elaborately dealt with by the Supreme Court in *A. K. Kraipak and others* v. *Union of India and others* (1), wherein it was observed:—

> "The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it."

The same observations were relied on in *Union of India* v. *J. N. Sinha and another* (2) in para 7 of the report, wherein it was further said :

> "It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But, if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules or principles of natural justice, then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision

(1) A.I.R. 1970 S.C. 150.
(2) A.I.R. 1971 S.C. 40.

conferring the power, the nature of the power conferred, the purpose for which it is conferred, and the effect of the exercise of that power."

A Full Bench of this Court in *M/s. Mulkh Raj Krishan Kumar & Co.* v. *The State of Punjab and others* (3) had to decide whether the proceedings for the cancellation of a licence like the one held by the petitioner-firms were administrative or quasi-judicial in nature and the procedure that had to be followed by the Deputy Excise and Taxation Commissioner in such a matter. The decision has been tersely summed up in the head-note as under:—

"....the cancellation of the liquor licence affects the civil rights of the licensee in so far as he is debarred from carrying on the licence for the unexpired period and becomes liable for the shortfall in case the amount received on re-auction is less than the amount he had bid for that period. It is, therefore, necessary that the licensee must be issued a notice to show cause or to explain why his licence should not be cancelled on the basis of the default committed by him. Section 36 of the Punjab Excise Act does not provide that on such a default being committed, the licence shall stand cancelled or shall be cancelled. A discretion has been given to the licensing authority to cancel or not to cancel the licence even if a default has been committed. That discretion has to be exercised judiciously after taking into consideration the facts of each case. Although power of cancellation has to be exercised by an administrative officer of the Excise Department, the proceedings for cancellation of the licence are quasi-judicial in nature. An appeal against such an order is provided by the statute and unless the licensee is afforded an opportunity to place his defence or version before the Collector, it will not be possible for him to determine judicially whether the order of cancellation of the licence is the only order to be passed in the case. He will have to deal with the explanation of the licensee in order to enable the appellate authority to consider whether the Collector had rightly and for good reasons cancelled the licence or had erred in doing so. In quasi-judicial proceedings it is also necessary to pass

(3) I.L.R. (1972) 2 Pb. & Hr. 161.

> a speaking order giving reasons in support of the conclusion. The necessity of giving reasons postulates that the authority dealing with the case will weigh objectively all the facts and make a decision on the merits. It is, therefore, necessary in proceedings for the cancellation of a licence that principles of natural justice should be observed and a notice should be issued to the defaulting licensee to show cause why his licence should not be cancelled on account of the defaults alleged to have been committed by him and which defaults are covered by the provisions of section 36 of the Act. The giving of such a notice is not expressly or by implication excluded by any provision of the Act or the Rules framed thereunder. It is, therefore, to be presumed that the legislature intended that the Collector, before cancelling the licence, should act in accordance with the principles of natural justice."

It is also clear from section 40 of the Act that when a licence, permit or pass is cancelled or suspended under clause (a), (b), (c), (d) or (e) of section 36, the holder shall not be entitled to any compensation for its cancellation or suspension nor to the refund of any fee paid or deposit made in respect thereof. Section 37 empowers the competent authority to cancel any other licence, permit or pass granted to a person whose licence, permit or pass is cancelled under clause (a), (b), (c), (d) or (e) of section 36, within the same district, which is an additional penalty imposable on a licensee as a consequence of the cancellation or suspension of his licence under clause (a), (b), (c), (d) or (e) of section 36 of the Act. It is, therefore, all the more necessary that before taking such drastic action, which results in far-reaching consequences involving a pretty heavy financial loss, a fair and proper enquiry into the culpable allegations levelled against a licensee should be made after effording him an adequate opportunity of hearing. If the licensee raises controversial issues and asks for an oral hearing, it must be granted. Nay, if the controversial facts can be resolved on taking evidence, an opportunity to lead evidence on such matters should also be allowed to him. Similarly, the department can also lead evidence to prove the defaults committed by the licensee and to rebut his defence in order to enable the authority to take action for cancellation or suspension of the licence. As an illustrative case, the facts of C.W. 3069 of 1972 may be referred.

(4) In this case, the petitioner obtained the licence for the year 1972-73. The previous licensee was M/s. Tilak Chand and Co., and its unsold stock had to be taken over by the petitioner on April 1, 1972. He alleged that M/s. Tilak Chand and Co., delivered to him the stock on April 2, 1972, after preparing the list which was signed by the petitioner as well as by Tilak Chand on behalf of M/s. Tilak Chand and Co. In that list, 15 pints of Diplomat Whisky were mentioned and the total number of pints of whisky delivered to the petitioner was mentioned as 148. The Assistant Excise and Taxation Officer inspected the liquor vend of the petitioner on May 11, 1972, at 9.45 p.m., and detected the following irregularities :—

> "On physical verification of the stock, the stock was found in excess by 12 quarts and 19 pints of whisky and Gin, besides the sale of 14 quarts and 11 pints of whisky and Gin stated to be made by the time of inspection. Thus 26 quarts and 30 pints of whisky and Gin were found in excess. 42 pints of Rum were found short as against the sale of only two pints of Rum stated to be made by the time of inspection. It is thus clear that correct accounts of day to day sales were found to have not been maintained at the vend."

After inspection a notice was issued to the petitioner to show cause why his licence should not be cancelled. In response to that notice the petitioner submitted his explanation and the Assistant Excise and Taxation Officer was satisfied that the petitioner's stock was correct except to the extent of 3 pints which were in excess. The case of the department was that 12 pints of Diplomat Whisky were handed over to the petitioner by the previous licensee instead of 15 shown by him and 145 pints in all, instead of 148, were delivered. It was said that 5 had been overwritten by 8 and to support this plea reference was made to the Department's own registers. Evidently, in this case, the petitioner had to be granted an oral hearing in order to prove his defence that he had received 15 pints of Diplomat Whisky from the previous licensee. From the order of the Collector, it is not clear whether he had examined Shri Tilak Chand in order to find how many pints of Diplomat Whisky were handed over by him to the petitioner and whether there was any overwriting. This was a very important fact to be proved in the case in order to enable the petitioner to show his innocence and to prove that he had not committed any default which entailed the penalty

of cancellation of the licence or the forfeiture of the security deposit which was of Rs. 10,000. He had also paid Rs. 7,000 on account of licence fee. The effect of the order was that his licence was cancelled and the licence fee paid and the security amount deposited by him were also forfeited without affording him any real and fair opportunity by merely describing his explanation as unsatisfactory. In such a case the licensee must not only be heard orally but he should be afforded an opportunity to produce evidence to substantiate his plea in defence. It is thus clear that in order to comply with the principle of natural justice—*audi alteram partem*—the licensee must be given a full and true disclosure of the facts sought to be used against him and the hearing afforded must be adequate and substantial in order to enable him to safeguard his rights. In other words, the hearing must be fair, proper and in substance and not mere form. If such a hearing is denied, the action will be struck down as void. Under the requirements of a full hearing, a party has the right to defend himself against the charges levelled against him by arguments, proof and examination of witnesses where necessary. Then and then alone will it be said that the hearing has been a proper, fair and meaningful one. It is not necessary to refer to various decided cases on the point because it will depend on the facts of each case as to what kind of oral hearing should be granted if one is required by the licensee. The licensee must state in his explanation to the show-cause notice that he wants an oral hearing and/or an opportunity to adduce evidence etc. In short, the procedure before the Collector in proceedings under section 36 of the Act must conform to the procedure before a judicial tribunal. The answer to question No. 1 is returned in the above terms.

(5) As regards question No. 2, the mere reading of section 40 of the Act shows that the licensee is debarred from claiming the refund of any fee paid or deposit made in respect of the licence which has been cancelled or suspended. We do not agree with the learned counsel for the petitioners that the words "in respect thereof" at the end of the section refer to fee paid. In our view, these words refer to the licence cancelled or suspended. The learned counsel have vehemently argued that the words "deposit made" refer to any fee paid, that is, if the liecnsee had made any deposit on account of the fee leviable but they have not been able to refer to any provision in the Act or the Rules whereunder such a deposit can be made. The security deposit is mentioned in section 34 of the

Act and rule 27-A(2) of the Punjab Liquor Licence Rules, 1956, and evidently the words "deposit made" refer to such a deposit. In order to understand the meaning of the words "in respect thereof" the sentence can be split up as under:—

> "The holder shall not be entitled to the refund or any fee paid in respect thereof and the holder shall not be entitled to the refund of any deposit made in respect thereof."

Thus the words "in respect thereof" clearly relate to the words "licence, permit or pass is cancelled or suspended" which occur in the beginning of the section and not to "any fee paid". It thus follows that the licensee had been debarred from claiming the refund of any fee or deposit made by him in respect of the licence cancelled or suspended. Licence fee is paid under rule 27-A(1) of the Punjab Liquor Licence Rules, 1956, while security deposit is made under sub-rule (2) of rule 27-A. However, section 40 does not cast any obligation on the competent authority to forfeit the entire amount of the fee paid or deposit made. The authority can forfeit the entire amount of the fee paid or deposit made or a part of it or refund it in full. Therefore, if it is intended to forfeit the entire or any part of the amount of the fee paid or deposit made, the intention must be indicated in the show-cause notice which is issued for cancellation or suspension of the licence and if it is not mentioned in that notice, then after the order of cancellation or suspension of the licence is made, another notice will have to be issued to the licensee to show-cause why the fee paid or the deposit made in respect of the cancelled or suspended licence be not forfeited in whole or in part. It is also open to the competent authority not to pass any order regarding the forfeiture of the entire amount or part of the amount of the fee paid or the deposit made and if the licensee makes an application for refund thereof, it may be refused or granted in full or in part after a due consideration of the facts pleaded. The penalty under section 40 is in addition to and as a consequence of the order of cancellation or suspension of the licence and involves a fair amount of financial loss to the licensee. It is, therefore, desirable that this additional penalty should not be imposed without issuing to the licensee a notice or making him aware of the fact that the authority wants to impose this penalty also. Question No. 2 is answered in these terms.

(6) As regards the last question, we are of the opinion that section 36(c) read with sections 40 and 80 of the Act is not *ultra*

vires Articles 14 and 19(1) (f) and (g) of the Constitution of India. Action under section 36(c) and section 40 is taken on the proof of violation or breach of any conditions of the licence, permit or pass and, therefore, the question of violation of the fundamental right to carry on business under Article 19(1) (f) and (g) of the Constitution does not arise. The order of cancellation or suspension of the licence, permit or pass is made as a result of the quasi-judicial proceedings after compliance with the principles of natural justice, as has been explained above. Violation of Article 14 of the Constitution cannot be pleaded on the ground that no guidelines have been prescribed as to in what circumstances the licence, permit or pass is to be cancelled and in what cases it has to be suspended because no guidelines for the exercise of judicial or quasi-judicial powers or discretion are ever laid down by the Legislature. If such a provision is made, no judicial discretion will be left with the quasi-judicial authority and, therefore, section 36(c) cannot be held to be *ultra vires* Article 14 of the Constitution on that ground. Guidelines can be prescribed only for taking an administrative action under a law and not for the exercise of power or discretion in judicial or quasi-judicial matters. For similar reasons, section 40 cannot be held to be *ultra vires* Article 14, or Article 19(1) (f) and (g) of the Constitution. Section 80 of the Act only enables the authority to forego the cancellation or suspension of the licence or to revoke the order of cancellation or suspension already passed on the holder of the licence, permit or pass agreeing to pay some amount by way of compounding fee. That section cannot be struck down on the ground that it gives arbitrary power to the authority to compound or not to compound or in what terms to compound so that discrimination can be exercised amongst the licensees or permit-holders or pass-holders similarly situated. In such circumstances, the following observations of the Supreme Court in *Pannalal Binjraj* v. *Union of India* (4) are clearly applicable:—

> "Nevertheless this power which is given to the Commissioner of Income-tax and the Central Board of Revenue has to be exercised in a manner which is not discriminatory. No rules or directions having been laid down in regard to the exercise of that power in particular cases, the appropriate authority has to determine what are the proper cases in which such power should be exercised having

(4) 1957 S.C.R. 233.

regard to the object of the Act and the ends to be achieved. The cases of the assessees which come for assessment before the income-tax authorities are of various types and no one case is similar to another. There are complications introduced by the very nature of the business which is carried on by the assessees and there may be, in particular cases, such widespread activities and large ramifications or inter-related transactions as might require for the convenient and efficient assessment of income-tax the transfer of such cases from one Income-tax Officer to another. In such cases the Commissioner of Income-tax or the Central Board of Revenue, as the case may be, has to exercise its discretion with due regard to the exigencies of tax collection. Even though there may be a common attribute between the assessee whose case is thus transferred and the assessees who continue to be assessed by the Income-tax Officer of the area within which they reside or carry on business, the other attributes would not be common. One assessee may have such widespread activities and remifications as would require his case to be transferred from the Income-tax Officer of the particular area to an Income-tax Officer of another area in the same State or in another State, which may be called 'X'. Another assessee, though belonging to a similar category may be more conveniently and efficiently assessed in another area whether situated within the State or without it, called 'Y'. The considerations which will weigh with the Commissioner of Income-tax or the Central Board of Revenue in transferring the cases of such assessees either to the area 'X' or the area 'Y' will depend upon the particular circumstances of each case and no hard and fast rule can be laid down for determining whether the particular case should be transferred at all or to an Income-tax Officer of a particular area. Such discretion would necessarily have to be vested in the authority concerned and merely because the case of a particular assessee is transferred from the Income-tax Officer of an area within which he resides or carries on business to another Income-tax Officer whether within or without the State will not by itself be sufficient to characterize the exercise of the discretion as discriminatory. Even if there is a possibility of discriminatory

treatment of persons falling within the same group of category, such possibility cannot necessarily invalidate the piece of legislation.

It may also be remembered that this power is vested not in minor officials but in top-ranking authorities like the Commissioner of Income-tax and the Central Board of Revenue who act on the information supplied to them by the Income-tax Officers concerned. This power is discretionery and not necessarily discriminatory and abuse of power cannot be easily assumed where the discretion is vested in such high officials (Vide *Matajok Dobey* v. *H.S. Bhari* (5). There is moreover a presumption that public officials will discharge their duties honestly and in accordance with the rules of law. (Vide *People of the State of New York* v. *John E. Van De Carr, etc.*, (6). It has also been observed by this Court in *A. Thangal Kunju Musaliar* v. *M. Venkitachalam Potti* (7), with reference to the possibility of discrimination between assessees in the matter of the reference of their cases to the Income-tax Investigation Commission that "It is to be presumed, unless the contrary were shown, that the administration of a particular law would be done "not with an evil eye and unequal hand" and the selection made by the Government of the cases of persons to be referred for investigation by the Commission would not be discriminatory.'

This presumption, however, cannot be stretched too far and cannot be carried to the extent of always holding that there must be some undisclosed and unknown reason for subjecting certain individuals for corporation to hostile and discriminatory treatment (Vide *Gulf, Colorado, etc.* v. *W. H. Ellis* (8). There may be cases where improper execution of power will result in injustice to the parties. As has been observed, however, the possibility of such discriminatory treatment cannot necessarily invalidate the legislation and where there is an abuse of such power, the parties aggrieved are not without ample remedies under the law (Vide *Dinabandu Sahu* v. *Jadumony*

(5) (1955) 2 S.C.R. 925.
(6) (1905) 310—199 U.S. 552; 50 L.Ed. 305.
(7) (1955) 2 S.C.R. 1196.
(8) (1897) 165 U.S. 150; 41 L.Ed. 666.

Mangaraj (9). What will be struck down in such cases will not be the provision which invests the authorities with such power but the abuse of the power itself."

On the parity of reasoning it can be held that any abuse of power will be struck down but not the statute vesting the power which enables the competent authority to act in the interest of the licensee, whose licence is proposed to be or has been cancelled or suspended. The provisions of section 80 are to the advantage of the licensees and not to their prejudice. But for this provision in the Act, there will be no discretion with the competent authority not to cancel or suspend the licence, permit or pass if a violation or breach of the conditions thereof is established even if it may be a minor one, since no other penalty can be imposed. In that case either an order cancelling or suspending the licence will have to be passed or the violation or breach will have to be ignored. It is only in exercise of the powers under section 80 of the Act that unnecessary hardships or inconveniences to the licensees can be avoided and the conditions of the licence enforced in the public interest. The licences dealt with in various provisions of the Act and the Rules framed thereunder are not only those which are held by the vendors of liquor but also by the distilleries and breweries engaged in the business of manufacturing various kinds of liquor. In the case of violation or breach of any condition, however, trifling, of their licences, the competent authority will have the option either to ignore the breach and take no action in respect thereof or to cancel or suspend the licence which will cause very great hardship and inconvenience to the distillery or brewery concerned, on the one hand, and a huge loss to the public revenue on the other. In such cases action can appropriately be taken under section 80 whereby the hardship or inconvenience to the licensee is relieved and the public revenue safeguarded. We are, therefore, of the opinion, that section 36(c) read with sections 40 and 80 of the Act is not *ultra vires* Articles 14 and 19(1) (f) and (g) of the Constitution and question No. 3 is answered accordingly.

(7) The cases will now go back to a Division Bench for decision on merits in the light of the above observations.

Dhillon, J.—I agree.

Sharma, J.—I agree.

K.S.K.

(9) (1955) 1 S.C.R. 140.