to the parties, and to return the evidence to this Court together with its findings thereon and the reasons therefor within four months from today. L.P.As. 501 of 1969 and 26 of 1970 may be set down for hearing after the receipt of the report from the trial Court.

MEHAR SINGH, C.J.—I agree.

K. S. K.

CIVIL MISCELLANEOUS

Before R. S. Narula and P. C. Jain, JJ.

M/s. ISHTOO & Co.,—*Petitioners*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 118 of 1970.

April 23, 1970.

Punjab Excise Act (I of 1914)—Section 36—Power of cancellation or suspension of liquor licence—Whether of quasi-judicial nature—Breach of condition under section 36—Such breach within the knowledge of the defaulter—Cancellation or suspension of licence therefor—Rules of natural justice—Whether not to be followed.

Held, that power of cancellation or suspension of a liquor licence by the appropriate authority under Section 36 of the Punjab Excise Act, 1914 is of quasi-judicial nature. From the plain reading of this section, it is clear that 'cancellation' or 'suspension' can be ordered in the event of a breach or violation of conditions expressly specified therein. Before any action can be taken it is necessary for the appropriate authority to investigate if the licensee has committed any violation or breach of any of the conditions specified in section 36 of the Act. The power conferred by this section is circumscribed and cannot be exercised outside the matters specified therein, nor arbitrarily. If an opportunity is given to the defaulting licensee, he may be able to disprove the allegations of breach or may bring out circumstances which may convince the authority not to take the drastic step of cancelling or suspending the licence. Section 36 gives power to the authority to determine questions affecting the rights of citizens and the very nature of the power inevitably imposes limitation that it should be exercised in conformity with the principles of natural justice.

Held, that the power of cancellation or suspension of liquor licence is discretionary as the words used in section 36 of the Act are "may cancel

or suspend". In case of breach of any of the conditions prescribed in the section, the appropriate authority is not bound to cancel or suspend a licence. Merely the fact that a breach of any of the conditions has occurred is within the knowledge of the defaulter is no ground for not following the rules of natural justice. Even in such cases if opportunity of hearing is afforded to the defaulter he may furnish an explanation and satisfy the appropriate authority not to take action by proceeding to cancel or suspend the licence.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of Certiorari, Mandamus Prohibition or any other appropriate writ, order or direction be issued quashing the order of cancellation of the petitioners' licences dated 25th November, 1969 and permitting the petitioners to carry on their business of the licence for the full period and also quashing the notices of demand, if any, issued by respondents for recovery as arrears of land revenue and directing the respondents not to make recovery of any sums allegedly due in relation to the liquor vends for G. T. Road, Jullundur City and Basti Nau District Jullundur for the year 1969-70 except with reference to the quantity of liquor actually lifted and sold by the petitioners, and also directing the respondents not to place the petitioners on the Excise black list.

T. S. MUNJRAL, ADVOCATE, for the petitioners.

D. N. RAMPAL, ASSISTANT ADVOCATE-GENERAL, PUNJAB, for the respondents.

JUDGMENT

P. C. JAIN, J.—(1) Messrs Ishtoo and Company, a partnership concern, through Chunni Lal, one of its partners, has filed this petition under Articles 226 and 227 of the Constitution of India, praying that a writ of *certiorari* be issued quashing the orders of cancellation of the petitioners' licences, dated 25th November, 1969 (copies Annexures 'B' and 'C' to the petition), and permitting the petitioners to carry on their business of the liquor licence for the full period, that the notice of demand issued by respondents for recovery, be quashed, that a writ of *mandamus* be issued directing the respondents not to make recovery of any sums allegedly due in relation to the liquor vends for G.T. Road, Jullundur City and Basti Nau, District Jullundur, for the year 1969-70 except with reference to the quantity of liquor actually lifted and sold by the petitioners, and that a direction be issued to the respondents not to place the petitioners on the Excise Black List.

(2) Briefly the facts as given in the petition may be stated thus. The petitioners have been carrying on the business of liquor. The annual excise auctions of Jullundur District were held in the month of March, 1969, by the Deputy Excise and Taxation Commissioner, Jullundur, respondent No. 3 in the office of the Excise and Taxation Officer, respondent No. 4, in pursuance of a pamphlet issued, copy of which is attached with the petition as Annexure 'A'. In respect of the liquor vends of G.T. Road, Jullundur City and Basti Nau, Jullundur, to which this writ petition relates, it was announced that their annual quota would be 1,32,250 proof litres and 35,200 proof litres respectively. It is alleged in the petition that before the said auction could take place, the petitioners were approached by the Inspectorate staff of the Department to assist them in the said excise auction and were persuaded to make as high bids as possible. In view of the assurances given by the staff, the petitioners gave the highest bids for Rs. 29,01,000 and Rs. 7,75,000 respectively for the said liquor vends. The petitioners deposited 1/12th of the annual licence fee as security, as required under the terms and conditions mentioned in the announcement (copy Annexure 'A' to the petition). In due course the auction was confirmed by the Excise and Taxation Commissioner, Punjab, Patiala, respondent No. 2. The petitioners commenced the operation of their licence on 1st April, 1969.

(3) It is further alleged that the petitioners at first made a good start in their business but contrary to the assurances held out to them, the Excise enforcement staff did not suppress illicit distillation in that area. The difficulty of the petitioners was further increased by the Inspectorate staff and the Excise and Taxation Officer, Jullundur, respondent No. 4, by stopping the grant of permits for supply of even ordinary spiced country liquor unless proportionate licence fee for the quota of liquor applied for was paid in advance. After narrating certain other facts it is alleged that the petitioners could not make payment of some of the instalments of the licence fee in full on which the respondents started harassing the petitioners. On account of the attitude of the respondents, the petitioners were forced to make further payments despite the fact that respondent No. 4 did not grant to them permits for supply of liquor according to the needs of the vends although much more money than the proportionate licence fee had been paid to Government in respect of the so-called licence fee.

(4) It is further stated that respondent No. 3 without issuing any show cause notice and without affording any opportunity of hearing, cancelled the licences of the petitioners on 25th November, 1969 (copies of the orders Annexures 'B' and 'C' to the petition). The Excise and Taxation Officer was further authorised by the Deputy Excise and Taxation Commissioner, respondent No. 3, to re-auction the said licences by public auction under the provisions of rule 36(24) of the Punjab Liquor Licence Rules, 1956 (hereinafter referred to as the Rules). In case the petitioners made the payment before the date of re-auction, the Excise and Taxation Officer was further authorised to stay the proceedings of re-auction and to submit a case for imposition of additional fee to his office. The petitioners, after the order of the cancellation made certain payments. However, as full payments were not made, the Excise and Taxation Officer, respondent No. 4, finally filed the re-auction on 24th December, 1969, and accepted the bids of Messrs Parshotam Lal-Ram Rattan, and Laxmi Dass, respondents 5 and 6 in respect of liquor vends of G. T. Road, Jullundur, and Basti Nau, Jullundur respectively. It is alleged that grave irregularities and illegalities were committed at the time of re-auction by the Excise and Taxation Department, that the respondents threatened to make recoveries from the petitioners of about Rs. 2,95 650 in respect of G. T. Road vend, and Rs. 67,800 in respect of Basti Nau vend and that these recovery proceedings have resulted into the filing of this writ petition.

(5) In the written statement filed on behalf of respondents 1 to 4, by Shri P. S. Tiwana, Excise and Taxation Officer, Jullundur, the material allegations made in the petition have been controverted. It is specifically stated that the re-auction was carried out by the competent authorities strictly in accordance with law and the rules framed thereunder. In spite of the fact that service was effected on respondents 5 and 6, no written statement has been filed by them nor have they put in appearance in this Court.

(6) Before I deal with the contentions of Mr. Munjral, learned counsel for the petitioners, certain admitted facts may be narrated :

(i) that the petitioners failed to pay the amount of instalments of the licence fee pertaining to the month of October,

(ii) that on 25th November, 1969, a notice was issued to them by the Deputy Excise and Taxation Commissioner (Collector), Jullundur Division, Jullundur, saying that the instalment for the month of October regarding licence of country liquor vend of G.T. Road, Jullundur, for the year 1969-70, has not been deposited by them as yet, that they have contravened the term No. 15(ii) of the Licence and provisions of section 36(23) of the Punjab Liquor License Rules, 1956, and that the remaining amount, if not paid in the treasury within two days, their licence would be cancelled,

(iii) that two days' time was given in the notice for the payment of the amount, yet the impugned orders cancelling the licence of the petitioners, were passed on 25th November, 1969, the date of the issuance of the notice itself,

(iv) that some more amount was paid by the petitioners after the cancellation of the licence,

(v) that after 25th November, 1969, a couple of dates were fixed for re-auction but the same could not take place, and

(vi) that the re-auction was finally held on 24th December 1969, when the bids of respondents 5 and 6 were accepted.

(7) On the basis of the above mentioned admitted facts, Mr. Munjral, learned counsel for the petitioners, contended that the appropriate authority while cancelling the licences, was exercising power which was of a quasi-judicial nature and as such the impugned orders cancelling the licences of the petitioners, being violative of principles of natural justice, were illegal and void. It was further contended that it was incumbent on the appropriate authority to have afforded opportunity of hearing to the petitioners before passing the impugned orders. In support of his contentions the learned counsel relied on the following Supreme Court decisions wherein guiding principles are laid down to determine whether certain proceedings and orders were of purely administrative or of a judicial or quasi-judicial nature.

(8) In *Province of Bombay* v. *Kusaldas S. Advani and others*, (1), Das, J. formulated the following tests to find out whether a

(1) 1950 S. C. R. 621 at P. 725

proceeding before a party or a tribunal is a quasi-judicial proceeding :—

" * * * * * ,

(i) that if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a *lis* and *prima facie* and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and

(ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.

In other words, while the presence of two parties besides the deciding authority will prima facie and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially."

These tests were adopted by their Lordships of the Supreme Court in *Shivji Nathubhai* v. *The Union of India and other* (2), while considering the validity of cancellation, in review by the Central Government, of the mining lease granted by the State Government.

In *Lala Shri Bhagwan and another* v. *Ram Chand and another* (3), their Lordships of the Supreme Court observed thus :—

"On the other hand, authorities or bodies which are given jurisdiction by statutory provisions to deal with the

(2) 1960 (2) S. C. R. 775
(3) AIR 1965 S.C. 1767

rights of citizens, may be required by the relevant statute to act judicially in dealing with matters entrusted to them. An obligation to act judicially may, in some cases, be inferred from the scheme of the relevant statute and its material provisions. In such a case, it is easy to hold that the authority or body must act in accordance with the principles of natural justice before exercising its jurisdiction and its powers; but it is not necessary that the obligation to follow the principles of natural justice must be expressly imposed on such an authority or body. If it appears that the authority or body has been given power to determine questions affecting the rights of citizens, the very nature of the power would inevitably impose the limitation that the power should be exercised in conformity with the principles of natural justice. Whether or not such an authority or body is a tribunal would depend upon the nature of the power conferred on the authority or body, the nature of the rights of citizens, the decision of which falls within the jurisdiction of the said authority or body, and other relevant circumstances."

(9) In *Board of High School and Intermediate Education, U.P. Allahabad* v. *Ghanshyam Das Gupta and others,* (4), their Lordships of the Supreme Court observed thus :—

"Now it may be mentioned that the statute is not likely to provide in so many words that the authority passing the order is required to act judicially; that can only be inferred from the express provisions of the statute in the first instance in each case and no one circumstance alone will be determinative of the question whether the authority set up by the statute has the duty to act judicially or not. The inference whether the authority acting under a statute where it is silent has the duty to act judicially will depend on the express provisions of the statute read along with the nature of rights affected, the manner of the disposal provided, the objective criterion if any to be adopted, the effect of the decision on the person affected and other indicia afforded by the statute. A duty to act judicially may arise

(4) A. I. R. 1962 S. C. 1110

in widely different circumstances which it will be impossible and indeed inadvisible to attempt to define exhaustively [*vide* observations of Parker, J., in *R. V. Manchester Legal Aid Committee*, (5)]."

It would further be useful to reproduce a passage from a recent decision of their Lordships of the Supreme Court in *A. K. Kraipak and others* v. *Union of India and others*, (6), wherein it has been observed thus :—

"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 concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely : (1) no one shall be a judge in his own case (*Nemo debet esse judex propria cause*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times, it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both

(5) (1952) 2Q.B. 413

(6) 1969 (2) S.C. Cases 262

quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George* v. *The University of Kerala and others*, (7), the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened the Court has to decide wheher the observance of that rule was necessary for a just decision on the facts of that case."

(10) After giving our thoughtful consideration to the facts of this case and keeping in view the law enunciated by their Lordships of the Supreme Court, we are of the view that the power of cancellation or suspension of a licence by the appropriate authority under section 36 of the Punjab Excise Act, 1914 (hereinafter referred to as the Act), is of quasi-judicial nature. Section 36 of the Act reads thus :—

"36. *Power to cancel or suspend licenses, etc.*

Subject to such restrictions as the State Government may prescribe, the authority granting any license, permit or pass under this Act may cancel or suspend it.

(a) If it is transferred or sublet by the holder thereof without the permission of the said authority, or

(b) if any duty or fee payable by the holder thereof be not duly paid, or

(c) in the event of any breach by the holder of such license, permit or pass or by his servants or by any one acting on his behalf with his express or implied permission of any of the terms or conditions of such license, permit or pass, or

(d) if the holder thereof is convicted of any offence punishable under this Act or any other law for the time being in force

(7) C.A. No. 990 of 1968 decided by Supreme Court on 15th July, 1968

relating to revenue or of any cognizable and non-bailable offence, or of any offence punishable under the Dangerous Drugs Act, 1930, or, under the Merchandise Marks Act, 1889 (IV of 1889), or of any offence punishable under sections 482 to 489 (both inclusive) of the Indian Penal Code (XLIV of 1860) ; or

(e) If the holder thereof is punished for any offence referred to in clause (8) of section 167 of the Sea Customs Act, 1878 (VII of 1878) ; or

(f) where a license, permit or pass has been granted on the application of the grantee of a lease under this Act, on the requisition in writing of such grantee; or

(g) at will, if the conditions of the license or permit provide for such cancellation or suspension."

From the plain reading of this section, it is clear that 'cancellation' or 'suspension' can be ordered in the event of a breach or violation of conditions expressly specified therein. Before any action can be taken it would be necessary for the appropriate authority to investigate if the licensee has committed any violation or breach of any of the conditions specified in section 36 of the Act. The power conferred by this section is circumscribed and cannot be exercised outside the matters specified therein. The power cannot be exercised arbitrarily. If an opportunity is given to the defaulting licensee, he may be able to disprove the allegations of breach. Further, he (licensee) may bring out circumstances which may convince the authority not to take the drastic step of cancelling or suspending the licence. Cancellation of a licence is a very serious matter. It deprives a person of his right to carry on his business. Section 36 has given power to the authority to determine questions affecting the rights of citizens and as observed by their Lordships of the Supreme Court in *Lala Shri Bhagwan's case*, (3), the very nature of the powers would inevitably impose the limitation that the power should be exercised in conformity with the principles of natural justice. S.A. de Smith in his book entitled 'Judicial Review of Administrative Action' (Second Edition)] at page 211, has stated thus :—

"To equate a decision summarily to revoke a licence with a decision not to grant a licence in the first instance may be still more unrealistic. Here the "privilege" concept may be

peculiarly inapposite; and its aptness has not been enhanced by the manner in which it has been employed in some modern cases. It is submitted that the Courts should adopt a presumption that prior notice and opportunity to be heard should be given before a licence can be revoked. The presumption should be rebuttable in similar circumstances to those in which summary interference with vested property rights may be permissible. That the considerations applicable to the revocation of licences may be different from those applicable to the refusal of licences has indeed been recognised by some British statutes and a number of judicial decisions in other Commonwealth jurisdiction."

(11) A similar question came up for consideration before a Division Bench of the Madhya Pradesh High Court in *Sukhlal Sen* v. *Collector, Distt. Satna and others* (8), wherein the question arose with regard to the nature of the duty imposed on the licensing authority by section 31(1)(b) of the Central Provinces Excise Act (2 of 1915), which is identical to section 36 of the Act, in the matter of cancellation or suspension of a licence. After considering various decisions, the learned Judges observed thus :—

"That provision enables the licensing authority to cancel a licence "in the event of any breach by the holder thereof or by any of his servants, or by any one acting on his behalf with his express or implied permission or any of the terms or conditions thereof". It must be noticed that the charge of breach of terms or conditions of a licence is one which will require investigation before it is found as a fact and if the licensee against whom such a charge is levelled is given an opportunity to meet it, it may be possible for him to disprove the same. Cancellation of a licence is a serious matter as it deprives the licensee of his right to carry on business. In our opinion, the nature of the duty to determine whether the licensee has committed any breach of terms or conditions of his licence and whether for that reason the licence should be cancelled, imposes upon the authority the duty to act judicially. It necessarily follows that the authority must follow the requirements of natural justice and must give an opportunity to the licensee to meet the allegations of breaches of terms and conditions of the

(8) A.I.R. 1969 M.P. 176

licence reported against him before cancelling the licence. As in the instant case, this opportunity was not given to the petitioner, it has to be held that the cancellation of his licence was invalid and void."

(12) The abovementioned observations of the learned Judges in *Sukhlal Sen's case* (8) fully support the view we have taken. In an unreported decision of this Court in *M/s. Chiranji Lal-Om Parkash and Som Parkash* v. *The State of Haryana and others* (9), Tuli, J. has observed "The proceedings for cancellation of the licences under section 36(c) of the Punjab Excise Act are judicial in nature and the rules of natural justice have to be followed particularly because civil rights of the licensees are involved." In this view of the matter the only irresistible conclusion that is possible for us to arrive at is that the powers exercised by an appropriate authority under section 36 of the Act, are of a quasi-judicial nature and that before proceeding under that section, it is incumbent on the appropriate authority to follow rules of natural justice.

(13) The learned Assistant Advocate-General did not seriously contest the above proposition of law. The only contention raised by him was that in the instant case it was not at all necessary to give an opportunity of hearing to the petitioners. According to the learned Assistant Advocate-General, the petitioners knew that they had defaulted in making payment of the instalments which had fallen due, for the month of October, 1969, and as such issuance of any notice or of giving opportunity of hearing would have been a mere formality. We are afraid, there is no merit in this contention of the learned counsel. The power of cancellation or suspension is discretionary as the words used are 'may cancel or suspend'. In case of a breach of any of the conditions prescribed in the section, the appropriate authority is not bound to cancel or suspend a licence. Merely this fact that a breach of any of the conditions that has occurred, is within the knowledge of the defaulter, is no ground for holding that it is not necessary to follow the rules of natural justice. Even in such cases, if opportunity of hearing is afforded, the defaulter may furnish an explanation and satisfy the appropriate authority not to take action by proceeding to cancel or suspend the licence. Thus we are of the view that merely this fact that a defaulter has knowledge of the breach of any of the conditions specified in section 36 of the Act, cannot be set up as a defence for not following the rules of natural justice.

(9) C. W. No. 315 of 1970 decided on 30th March, 1970

(14) In the view we have taken of the first contention of the learned counsel for the petitioners, it is not necessary to deal with his other contentions.

(15) For the reasons recorded above, we allow this petition with costs and quash the impugned orders dated 25th November, 1969 (copies Annexures 'B' and 'C' to the petition). The result would be that all proceedings taken subsequent to the passing of the impugned orders are also set aside. Counsel fee Rs. 250.

(16) It was conceded by the learned counsel for the parties that our decision in this petition would also govern Civil Writ No. 271 of 1970 (*M/s Didar Singh-Khazan Chand & Co.* v. *The State of Punjab and others*). Accordingly in view of our decision in Civil Writ No. 118 of 1970, we allow Civil Writ No. 271 of 1970 with costs and quash the impugned orders of the appropriate authority by which the licences of the petitioners were cancelled. The result would be that the proceedings taken in pursuance of the impugned orders of cancellation are also set aside. Counsel fee Rs. 250.

R. S. NARULA, J.—I agree.

K. S. K.

LETTERS PATENT APPEAL

Before D. K. Mahajan and Bhopinder Singh Dhillon, JJ.

THE MARKET COMMITTEE, KARNAL AND OTHERS,—*Appellants.*

versus.

THE STATE OF HARYANA AND ANOTHER,—*Respondents.*

Letters Patent Appeal No. 90 of 1970.

April 23, 1970.

Punjab Agricultural Produce Markets Act (XXIII of 1961)—Sections 14, 17 and 36—Member to a Market Committee appointed under section 17—Election of the Committee not held after the expiry of three years—Tenure of such appointed members—Whether to continue till new elections are held—Resort to section 36—Whether can be had in such situation.