still it indicates the limits within which the maxim *actio personalis moritur cum persona* is to be confined and, as laid down in *Ratanlal Bhannalal Mahajan* v. *Baboolal Hajarilal Jain and others* (2), there is no reason why the maxim should be limited in its application to the case of executors or administrators who might be administering the estate for the general body of heirs or legatees and not the heirs themselves. This was also the view taken by a Division Bench of the Patna High Court in *Jogindra Kaur and others* v. *Jagdish Singh and others* (3), in which it was held that a claim in appeal for enhancement of damages allowed for personal injury by the trial Court would not survive to the legal representatives of a plaintiff who died during the pendency of his appeal. The principle is fully applicable to the case before the Tribunal in which Kartar Singh's demand was limited to compensation for personal injuries, both physical and mental. The right to make the claim being personal to him died with him on the principle above enunciated and cannot be said to have survived to anyone.

(5) For the reasons stated I accept the petition, set aside the order of the Tribunal and declare that the action brought by Kartar Singh before the Tribunal abated with his death so that respondents Nos. 1 and 2 had no right to continue the same thereafter. The Tribunal shall deal with the action accordingly. No order as to costs.

K. S. K.

FULL BENCH:

Before R. S. Narula, H. R. Sodhi and B. R. Tuli, JJ.

M/S. MULKH RAJ KRISHAN KUMAR & CO.,—*Petitioners.*

versus.

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 480 of 1970.

December 21, 1971.

Punjab Excise Act (I of 1914)—Section 36—Proceedings for cancellation of liquor licence—Nature of—Whether administrative or quasi-judicial—Rules of natural justice—Whether to be followed.

(2) A.I.R. 1960 M.P. 200.
(3) A.I.R. 1964 Patna 548

Held, that 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 short-fall 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 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.

Case referred by Hon'ble Mr. Justice R. S. Narula and Hon'ble Mr. Justice C. G. Suri,—vide their order dated 19th November, 1970 to a larger Bench for deciding an important question of law involved in the case. The Full Bench consisting of Hon'ble Mr. Justice R. S. Narula, Hon'ble Mr. Justice H. R. Sodhi and Hon'ble Mr. Justice Bal Raj Tuli finally decided the case on 21st December, 1971.

Petition under articles 226/227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the order or orders of cancellation of the petitioners' licence in question and also quashing the notice of demand, if any (copy whereof has not been supplied) issued by

respondent No. 4 against the petitioners for the recovery of the sums mentioned therein on account of the so called deficiency in licence-fee as arrears of land revenue and further directing the respondents not to make recovery of any sums, whatsoever allegedly due in relation to the liquor vend at Railway Road, Kapurthala, for the year 1969-70 and also further directing the respondents not to place the petitioners on the Excise Black

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

S. S. KANG, DEPUTY ADVOCATE-GENERAL (PUNJAB), for the respondents.

JUDGMENT

B. R. TULI, J.—This petition came up for hearing before my learned brethren Narula and Suri, JJ., and the learned Judges referred it for decision to a larger Bench by an order, dated November 19, 1970, principally because Suri, J., doubted the correctness of some earlier Division Bench judgments of this Court. In pursuance of that reference order this petition has been placed for hearing before this Full Bench.

(2) The petitioner-firm gave the highest bid for the country liquor vend at Railway Road, Kapurthala, for the years 1969-70 when the auctions were held in the month of March, 1969. The quota fixed for the vend was 11640 proof litres. A pamphlet containing the terms of auction was prepared and circulated amongst the prospective bidders. The relevant conditions of auction are contained in annexure 'A' to the writ petition. In accordance with those conditions, the licence fee for the vend bid by the petitioner-firm amounting to Rs. 2,75,000.00 was to be deposited in the Treasury in twelve equal instalments, each instalment being paid on or before the 25th of each month. Before starting the vend, the petitioner-firm had to deposit 1/12th of the amount, that is, Rs. 22,916.00 by way of security. The petitioner-firm failed to deposit the licence fee for the month of August, 1969, as a result of which its licence was cancelled on September 15, 1969. That cancellation was, however, revoked because the instalment of the licence fee for the month of August, 1969, had been paid by the petitioner-firm on September 13, 1969. Again, on November 4, 1969, the licence of the petitioner-firm was cancelled for failure to deposit the licence fee for the month of September, 1969. In this

order of cancellation it was specifically mentioned that the licence should be reauctioned by public auction under the provisions of rule 36(24) of the Punjab Liquor License Rules, 1956 (hereinafter called the Rules), if the defaulter, that is, the petitioner-firm, did not pay the dues before the date of reauction. If the dues were paid, the reauction was to be stopped and the case for imposition of additional fee was to be referred to the Deputy Excise and Taxation Commissioner. The Excise and Taxation Officer, respondent 4, who was authorised by respondent 3 to take action for reauction, did not re-auction the vend and the order of cancellation was revoked. On January 20, 1970, a memorandum in Punjabi was served on the petitioner-firm through Mulkh Raj, the English translation of which is as under:—

> "Subject : Cancellation of the licence of the shop of country-made liquor, Railway Road, Kapurthala, district Kapurthala.
>
> *Memorandum.*
>
> You are licencee for selling country made liquor at the shop situated on the Railway Road, Kapurthala, for the year 1969-70. The amount of instalment, Rs. 22,916 in respect of this shop for the month of November, 1969, which was to be deposited by the 25th of that month, has not been deposited by you till now. Hence you have violated condition No. 15(ii) of the licence and rule 36(23) of the Punjab Liquor License Rules. You are directed to deposit the said amount within four days, otherwise the licence of this shop shall be cancelled under rule 37(33)(i) of the Punjab Liquor Licence Rules, 1956, and under section 36(c) of the Punjab Excise Act, 1914."

This memorandum was issued by the Deputy Excise and Taxation Commissioner, Jullundur Division, who is the Collector under the Punjab Excise Act, 1914 (hereinafter called the Act), and Rules. The petitioner-firm did not deposit the amount mentioned in the memorandum and on February 3, 1970, an order cancelling the licence of the petitioner-firm was passed in the following words:—

> "The excise licensee of country liquor vend Railway Road in Kapurthala for the year 1969-70, by not depositing his

licence fee for November, 1969, has contravened the provisions of rule 36(23) of the Punjab Liquor Lincese Rules, 1956, and rendered his licence liable for cancellation. I, accordingly, cancel the licence of the vend under rule 36 of the Rules *ibid* and further decide that this should be reauctioned by public auction under the provisions of rule 36(24) of the said Rules. If the defaulter pays the dues before the date of reauction, the proceedings should be stopped and a case for imposition of an additional fee should be referred to this office."

This order does not seem to have been communicated to the petitioner-firm because on February 10, 1970, the petitioner wrote a letter to the Excise and Taxation Officer, Kapurthala, as under:—

"With due respect I beg to write that our C. L. Vend, Railway Road, Kapurthala, is lying closed for want of supply of country liquor. Kindly issue us 50 bags (900 B/Ls) of country-liquor from L-13 Kapurthala, without delay, so that we may be able to deposit the licence fee in respect of the said vend. If liquor is not supplied immediately, we will not be able to pay the licence fee."

Instead of supplying any liquor to the petitioner-firm, the Excise and Taxation Officer, Kapurthala, passed an order on February 11, 1970, to the effect that the country liquor licence of the petitioner-firm had been cancelled by the Deputy Excise and Taxation Commissioner, Jullundur Division, on February 3, 1970, on account of non-payment of licence fee for the month of November, 1969, and the vend would be put to reauction on February 13, 1970, at 10.00 a.m. in his office. The terms and conditions would be announced at the time of reauction. This order was got noted by Mulkh Raj at 8.00 p.m. on February 11, 1970, as is clear from annexure 'J' to the writ petition. The reauction was held on February 13, 1970, as a result of which the State suffered a loss of Rs. 33,635.00 for which the petitioner-firm has been made liable. This amount is sought to be recovered from the petitioner-firm as arrears of land revenue. In the writ petition, the petitioner has stated that a demand of Rs. 56,551.00 on account of the short-fall has been raised against it and that amount was sought to be recovered as arrears of land revenue. No demand notice has, however, been

produced and it appears that the petitioner-firm has added Rs. 22,916.00 on account of one monthly instalment of licence fee to the sum of Rs. 33,635.00 while stating the sum of Rs. 56,551.00 which is sought to be recovered from it. In the return filed by respondent 4, it has been stated that the Government suffered a loss of Rs. 33,635.00 on account of short-fall in licence fee as a result of reauction and a sum of Rs. 70,135 was due from the petitioner-firm on account of the arrears of licence-fee. It has not been mentioned in the return that any demand notice was issued to the petitioner-firm and if any demand notice was issued, for what amount it was. The petitioner has prayed for the quashing of the order or orders of cancellation of its licence, the quashing of the notice of demand, if any, issued by respondent 4 against it for the recovery of the so-called deficiency in licence fee as arrears of land revenue and directing the respondents not to make recovery of any sums whatsoever alleged to be due from the petitioner-firm in relation to the liquor vend at the Railway Road, Kapurthala, for the year 1969-70. It has also been prayed that the respondents should be directed not to place the petitioner-firm on the Excise Black List.

(3) Written statement to the writ petition has been filed only by respondent 4 controverting the allegations of the petitioner-firm.

(4) The learned counsel for the respondents has raised a preliminary objection at the hearing that the petition deserves to be dismissed on the ground that the petitioner suppressed a material fact which ought to have been mentioned in the petition as it had a great bearing on the decision thereof. The fact said to have been suppressed by the petitioner-firm is the memorandum served on it through Mulkh Raj on January 20, 1970, calling upon the petitioner-firm to deposit the sum of Rs. 22,916.00 within four days, failing which the licence would be cancelled. The petitioner has stated in the writ petition that no notice was ever issued to the firm either in September or in November or in January to show cause against the proposed cancellation of the licence on the ground that it had failed to deposit the licence fee for a particular month. If the memorandum served on the petitioner-firm amounted to a show-cause notice, the petitioner-firm can be said to have been guilty of suppressing a material fact, but if it cannot be termed a show-cause notice, then there is no suppression of any material fact. This objection was not taken in the return to the writ petition nor has

it been stated that any show-cause notice was issued to the petitioner-firm before passing the order cancelling its licence nor has this memorandum been referred to or relied upon in the whole of the return. A copy of this memorandum was also not filed with the return. This memorandum was found on the file of reauction that was brought to the Court and it was then that the learned counsel for the respondents raised this objection and stated that a notice had been issued to the petitioner-firm which had been suppressed by it. It had been held in some Division Bench judgments of this Court, to be referred to later, that the memorandum like the one served on the petitioner-firm on January 20, 1970, did not amount to a show-cause notice, which has been affirmed in a later part of this judgment, and in view of those judgments the petitioner-firm was justified in stating in the petition that no show-cause notice was issued to it before its licence was cancelled. We are, therefore, of the opinion that there is no merit in the preliminary objection raised on behalf of the respondents.

(5) The first point to be decided is whether the proceedings for the cancellation of a licence like the one held by the petitioner-firm are administrative or quasi-judicial in nature. A licence can be cancelled under section 36 of the Act, the relevant portion of which is as under:—

> "36. Subject to such restrictions as the State Government may prescribe, the authority granting any licence, permit or pass under this Act may cancel or suspend it—
>
> (a) * * * * * * *.
>
> (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 licence, 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 licence, permit or pass; or
>
> * * * * * * * *.
>
> * * * * * * * *

The provision with regard to the deposit of the licence fee is contained in rule 36(23)(b) as applicable to the year in question, that is, 1969-70, which is reproduced below:—

"36.23. The security deposit, if any, and the licence fee shall be payable by the person whose bid has been accepted, in the following manner—

(a) * * * * * * *

(b) (i) in the case of a country liquor licence, he shall deposit security equivalent to 1/12th of the annual licence fee within a period of seven days of the date of the auction or by the last date of the month in which the auction takes place, whichever is earlier. The aforesaid amount of security shall be refundable to him at the end of the period for which the licence is granted unless the same or any part thereof is forfeited or adjusted against any amount of fee, duty or penalty due from him in respect of his licence. In the event of the amount of security deposit or any part thereof being forfeited or adjusted as aforesaid, the deficiency shall be made good by him within seven days of the happening of such an event failing which the licence shall be liable to cancellation by the authority by which it was granted;

(ii) he shall pay the whole amount of licence fee in 12 equal monthly instalments, each instalment being payable by the 25th day of each month beginning from the month from which he starts his business:

Provided that if the licence is issued for a period of less than a year, the whole amount of licence fee shall be paid in such number of equated monthly instalments as the number of months for which the licence is granted by ignoring fraction of a month, if any, in counting the number of months.

Provided further that if the licence is for a period of less than a month, the whole amount of licence fee shall be paid in lump sum immediately after the bid is accepted ;

(iii) A licensee who pays the full proportionate monthly licence fee by the 25th of the month concerned shall be entitled to draw subject to availability a quota of special spiced country liquor up to 10 per cent of his proportionate monthly quota of ordinary spiced country liquor on the payment of a proportionate additional licence fee at the same rate of incidence as in the case of ordinary spiced country liquor."

It is evident from this clause that 1/12th of the entire licence fee had to be deposited by way of security before the 7th of April, 1969, and thereafter 1/12th of the licence fee was to be deposited every month before the 25th of that month. The non-payment of any monthly instalment within time amounted to a breach of the conditions of the licence and entitled the Collector (Deputy Excise and Taxation Commissioner of the Division) to cancel the licence before its expiry. The cancellation of the licence affects the civil rights of the licensee in so far as he is debarred from carrying on the licence for the remaining period and becomes liable for the short-fall in case the amount received by reauction is less than the amount he had bid for the remaining 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 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 on a default being committed. That discretion has to be exercised judiciously after taking into consideration the facts of each case. Although this power has to be exercised by an administrative officer of the department, the proceedings for cancellation of the licence are quasi-judicial in nature, as has been held by their Lordships of the Supreme Court in *Nagendra Nath Bora and another* v. *Commissioner of Hills Division and Appeals, Assam and others* (1). The relevant observations are contained in para 9 of the report which are to the following effect:—

"It is true that no one has an inherent right to settlement of liquor shops, but when the State, by public notice,

(1) A.I.R. 1958 S.C. 398 .

invites candidates for settlement to make their tenders, and in pursuance of such a notice, a number of persons make such tenders, each one makes a claim for himself in opposition to the claims of the others, and the public authorities concerned with the settlement have to choose from amongst them. If the choice had rested in the hands of only one authority like the District Collector on his subjective satisfaction as to the fitness of a particular candidate without his orders being amenable to an appeal or appeals or revision, the position may have been different. But section 9 of the Act has laid down a regular hierarchy of authorities, one above the other, with the right of hearing appeals or revisions. Though the Act and Rules do not, in express terms, require reasoned orders to be recorded, yet, in the context of the subject matter of the rules, it becomes necessary for the several authorities to pass what are called 'speaking orders'. Where there is a right vested in an authority created by statute, be it administrative or quasi-judicial, to hear appeals and revisions, it becomes its duty to hear judicially, that is to say, in an objective manner, impartially and after giving reasonable opportunity to the parties concerned in the dispute, to place their respective cases before it."

(6) Very recently, the Supreme Court held in *M/s Mahabir Prasad Santosh Kumar* v. *State of U.P. and others* (2), that an order cancelling the dealer's licence under the U.P. Sugar Dealers' Licensing Order, 1962, is quasi-judicial in nature and it is not enough that an opportunity of hearing should be granted to the licensee but that the order passed should be a speaking order. The relevant observations are found in para 8 of the report which is reproduced below:—

"The High Court in rejecting the petition filed by the appellants has observed that the District Magistrate in considering the explanation of the appellants had 'considered all the materials' and also that 'the State Government in considering the appeal had considered all the materials'. We have, however, nothing on the record

(2) A.I.R. 1970 S.C. 1302.

to show what materials, if any, were considered by the District Magistrate and the State Government. The High Court has also observed that Clause 7 of the Sugar Dealers' Licensing Order does not require 'the State Government to pass a reasoned order. All that is required is to give an aggrieved person an opportunity of being heard'. We are of the view that the High Court erred in so holding. The appellants have a right not only to have an opportunity to make a representation, but they are entitled to have their representation considered by an authority unconcerned with the dispute and to be given information which would show the decision was reached on the merits and not on considerations of policy or expediency. This is a clear implication of the nature of the jurisdiction exercised by the appellate authority: it is not required to be expressly mentioned in the statute. There is nothing on the record which shows that the representation made by the appellants was even considered. The fact that Clause 7 of the Sugar Dealers' Licensing Order to which the High Court has referred does not 'require the State Government to pass a reasoned order is wholly irrelevant. The nature of the proceeding requires that the State Government must give adequate reasons which disclose that an attempt was made to reach a conclusion according to law and justice."

(7) It has to be borne in mind that the order of the Collector cancelling the licence is appealable under section 14 of the Act read with the Punjab Excise Powers and Appeals Orders, 1956, under which an appeal against every order of the Collector lies to the Financial Commissioner. Under section 15 of the Act, a provision has been made for a revision in which it has been clearly stated that the revising authority shall give a notice of hearing to party affected by the order. It is thus clear that the adjudication of the dispute with regard to the cancellation of the licence on the failure of the licensee to carry out any condition of the licence is quasi-judicial and has to be determined in that manner. It was so held by a Division Bench of this Court (Narula and P. C. Jain, JJ.,) in *M/s. Ishtoo and Co.* v. *The State of Punjab and others* (3), wherein

(3) 1970 Curr. L.J. 697.

the learned Judges have referred to various judgments.. I am in respectful agreement with the view taken in that judgment. It is, therefore, held that the proceedings for the cancellation of a licence under section 36 of the Act are quasi-judicial in nature.

(8) In the light of the above conclusion, it has to be determined what procedure was to be followed by the Deputy Excise and Taxation Commissioner in the matter. No procedure has been prescribed in the Act or the Rules and the use of the word 'may' in section 36 of the Act clearly leaves a discretion with the Collector whether to cancel or suspend the licence or not. That discretion has to be exercised judicially and it is, therefore, necessary that the party affected, that is, the licensee must be given a notice to show cause why his licence may not be cancelled or suspended on any of the grounds mentioned in section 36 of the Act before an order for cancellation or suspension is passed. It may be that the licensee is able to convince the Collector that in spite of the default or defaults committed by him, it was not a fit case for the cancellation of the licence and some lesser penalty might be imposed. The issuance of the notice is also necessary because the cancellation of the licence prejudicially affects the civil rights of the licencee to carry on the business under that licence for the unexpired period. An appeal against that order is provided by the statute and unless the licensee is given an opportunity to place his defence or version before the Collector, it will not be possible for him to determine judicially that 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 a speaking order giving reasons and the necessity of giving reasons requires the authority to deal with the case of both the parties and after weighing objectively all the facts a decision is to be made on the merits. The following observations of their Lordships in para 7 of the report in *Mahabir Prasad Santosh Kumar's case* (2) (supra), support the above view:—

> "opportunity to a party interested in the dispute to present his case on questions of law as well as fact, ascertainment of facts from materials before the Tribunal after disclosing the materials to the party against whom it is

intended to use them, and adjudication by a reasoned judgment upon a finding of the facts in controversy and application of the law to the facts found, are attributes of even a quasi-judicial determination. It must appear not merely that the authority entrusted with quasi-judicial authority has reached a conclusion on the problem before him: it must appear that he has reached a conclusion which is according to law and just, and for ensuring that end he must record the ultimate mental process leading from the dispute to its solution. Satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appeal to the authority. Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just."

(9) In *Union of India* v. *J. N. Sinha and another* (4), their Lordships enunciated when and why the principles of natural justice should be observed. Said their Lordships:—

"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 of 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

(4) A.I.R. 1971 S.C. 40.

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 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."

In the light of the above observations, I am of the view that it is 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 ben committed by him and which defaults were covered by the provisions of section 36 of the Act. The giving of this notice is not expressly or by implication excluded by any provision of the Act or the Rules and, therefore, I have to presume that the legislature intended that the Collector, before cancelling the licence, should act in accordance with the principles of natural justice.

(10) It has next to be seen whether any show-cause notice was issued by the Collector to the petitioner-firm before passing the order cancelling its licence on February 3, 1970. The only notice that has been relied upon is the one that was served on the petitioner on January 20, 1970, the English translation of which has already been set out in an earlier part of this judgment. This notice directed the petitioner-firm to deposit the sum of Rs. 22,916,00 in respect of its shop for the month of November, 1969, which had to be deposited by the 25th of that month, within four days failing which its licence would be cancelled under rule 37(33)(i) of the Rules and section 36(c) of the Act. This notice did not call upon the petitioner-firm to show cause why its licence should not be cancelled because of the default committed by it as was mentioned therein. By this notice, only a direction for the payment of the amount due was made with a threat to cancel the licence if the amount was not deposited within the time prescribed. In other words, it can be said that this notice indicated that it had already been decided to cancel the licence if the petitioner did not deposit the amount demanded within four days, which was the only method by which the cancellation of the licence could be avoided. The petitioner has stated that similar demands were made earlier too and no action for the cancellation of the licence was taken and if any order cancelling the licence was

passed, it was *suo motu* revoked by the Collector without any approach being made by the petitioner-firm. The petitioner-firm was not put on the alert to plead its case against the cancellation of its licence before the Collector because no date for the hearing of the case or for the passing of the order was fixed or communicated to the petitioner, on or before which it could show cause against the contemplated cancellation. While passing the order of cancellation, the Collector also did not consider that memorandum to be a show-cause notice, otherwise he would not have passed a conditional order by directing therein that the proceedings for re-auction should be stopped if the defaulter deposited the amount before the date of re-auction. As is evident from the order, it was passed merely on the ground that the petitioner-firm had failed to deposit the licence fee for the month of November, 1969, which necessarily entailed cancellation of the licence and not on the ground that, in spite of a notice having been issued, the petitioner-firm had failed to render a satisfactory explanation against the cancellation of the licence. It is also pertinent to note that in the order of cancellation no mention is made of this notice nor has it been mentioned that any notice had been issued to the petitioner-firm to show cause why its licence should not be cancelled as it had failed to deposit the licence fee for the month of November, 1969, which supports my conclusion that the Collector did not consider that memorandum as equivalent to a show-cause notice. That memorandum, therefore, did not amount to a show-cause notice as was necessary to be given to the petitioner-firm before passing the order cancelling its licence in accordance with the principles of natural justice embodied in the maxim *audi alteram partem*. No order for cancellation of the licence could, therefore, be passed on its basis.

(11) In the following cases similar notices issued to the licensees came up for consideration and it was held that those notices did not amount to show-cause notices and were invalid:—

(1) *M/s. Ishtoo and Company* v. *State of Punjab and others* (3), (*supra*) ;

(2) *Mulkh Raj and Co.* v. *The State of Punjab and others* (5) (*by Narula and Suri, JJ.*);

(5) C.W. 442 of 1970 decided on 24th July, 1970.

(3) *M/s. Didar Singh Gurnam Singh* v. *The State of Punjab and others* (6), (by Narula and Suri, JJ).

(12) In *Surjit Singh, Ujjal Singh, Pritam Singh* v. *The State of Punjab and others* (7), which came up for hearing before Narula and Suri, JJ., a difference of opinion arose on the point whether such a notice was a valid show-cause notice or not. Suri, J., was of the opinion that it was a sufficient notice on the basis of which the licence could be cancelled while Narula, J., held the contrary view in accordance with the judgments referred to above. The case was then referred to a third Judge (Mahajan, J.) for decision, who agreed with the view expressed by Narula, J., and disagreed with the view expressed by Suri, J. These judgments are in accord with the view that I have taken about the notice that was issued in this case and served on the petitioner-firm on January 20, 1970, and those judgments are affirmed on this point.

(13) The demand for the amount of short-fall as a result of the re-auction raised against the petitioner-firm is also liable to be quashed on the ground that the re-auction of the vend held in February 13, 1970, was not in accordance with the Rules. Rule 36(24) provides for re-auction and is as under:—

"36(24) When a licence has been cancelled, the Collector or any gazetted officer authorised by him in this behalf may resell it by public auction or by private contract in accordance with the procedure laid down in this rule and any deficiency in the licence fee and all expenses of such resale or attempted resale shall be recoverable from the defaulting licensee in the manner laid down in section 60 of the Punjab Excise Act, 1914. The Collector shall communicate the result of such resale in a statement in form M-16 to the Excise Commissioner in the same manner as annual auction results. The Excise and Taxation Officer incharge of the district shall communicate the change in the list of licensees to the Superintendent of Police of the district concerned and to the Manager of any distillery to whom a list of such licensees has already been supplied.

(6) C. W. 431 of 1970 decided on 26th Aug., 1970.

(7) C. W. 625 of 1970 decided on 19th March, 1971.

If the amount realised from the original licensee, including the initial deposit of one-sixth of the total licence fee in the case of foreign liquor and one-twelfth of the total licence fee in the case of country liquor together with the amount bid by the incoming licensee is less than the amount previously bid by the original licensee, the deficiency together with the expenses, if any, of resale shall be recovered from the original licensee. If, however, these amounts together are more than the amount previously bid, no refund shall be allowed to the original licensee."

It is clear from this sub-rule that the reauction has to be held in accordance with the procedure laid down in rule 36. Reference in this connection may be made to clause (3) of rule 36 which reads as under:—

"36(3) The Collector will give timely notice of the date and place of the auction. This notice will also specify:—

(a) the conditions to which the auction shall be subject;

(b) the number and situation of the shops to be licensed for the sale of country liquor, foreign liquor under L. 2 and beer under L. 10;

(c) the price, if any, fixed for retail vend of country liquor or foreign liquor;

(d) the occasions, if any, on which the shop will be closed; and

(e) any other information which may be of use to intending bidders."

(14) In the instant case, all that has been said in the return is that all formalities were observed while holding the re-auction but the nature of the formalities observed has not been stated nor has it been disclosed whether any notice of re-auction was issued and whether that notice complied with the provisions of rule 36(3), set out

above. No copy of the notice has been filed with the return nor was any copy found in the file produced at the hearing. The order of re-auction was made on February 11, 1970, for the re-auction to be held on February 13, 1970. It cannot be said that a notice of one or two days was a timely notice of re-auction. The notice of re-auction has to be read by the Presiding Officer before the auction begins, as is provided in rule 36(4) *ibid.* It is nowhere asserted or recorded that any such notice was read before holding the re-auction on February 13, 1970. A similar matter came up for hearing before me in *Baldev Raj Chawla* v. *The State of Haryana and others*, (8), and I observed as under:—

> "It has been stated on behalf of the respondents that the publicity was made in the same manner as is done for the annual auctions usually held in the months of February or March each year. The annual auctions are to be treated on a different footing because every person interested in the trade and in getting license knows about the dates of these auctions and the conditions thereof. The matter is different when a re-auction has to be made as a result of the cancellation of the previous licence as in such a case the people generally in the trade do not know about the re-auction unless it is brought to their notice specifically. The petitioners wrote letters to the Excise and Taxation Officer, Gurgaon, on the 20th July, 1968, complaining that wide publicity had not been given to the re-auction and no publicity had appeared in any newspaper by that time. A telegram to this effect was also sent to respondent No. 3 at Chandigarh but none of the two officers advertised the re-auction in any newspaper. When the publicity had to be done at the cost of the petitioners, I fail to understand why advertisement in the newspapers was not made. As far as the handbills are concerned, they are not in accordance with clause (3) of rule 36, set out above. The terms of auction are not stated in the handbill but a note is made that the terms of auction will be announced at the site. The time of the commencement of the auction is mentioned as 10 A.M., but it is not mentioned how long the auction will continue. The prices fixed for the retail vend of country spirit are also not mentioned nor are the occasions, if any, on which the

(8) C.W. No. 2220 of 1968 decided on 29th October, 1968.

shops will be closed mentioned. From the handbill, therefore, it is not possible to conclude that any wide publicity was made."

Against my judgment in those cases, appeals under clause X of the Letters Patent (L.P.A. Nos. 57, 58 and 59 of 1969) were filed which were dismissed on November 20, 1969. A similar point was argued before a Division Bench (Narula and Sarkaria, JJ.), in *M/s. Lal Chand Amrit Lal* v. *The State of Punjab and others* (9), and they took the same view as I did in the cases of *Baldev Raj Chawla* (8), (*supra*). *Sarkaria, J.*, who wrote the judgment of the Division Bench, with which Narula, J., agreed, after reproducing sub-rule (3), (4), (5) and (8) of rule 36 *ibid*, observed as under:—

"The above are wholesome provisions. They have been advisedly incorporated and have to be carefully complied with. Chicanery, fraud and favouritism thrive in the darkness of secrecy. They do not survive in the light of broad-day publicity. That is why these rules have laid down with particularity the various things to be done by the Collector or the officer holding the auction, to ensure adequate publicity. I can do no better than recall what their Lordships of the Supreme Court have said on this point in *K. N. Guruswamy* v. *The State of Mysore* (10). In that case, the appellant G and the fourth respondent T were rival liquor contractors for the sale of a liquor contract for the year 1953-54 in the State of Mysore. The contract was auctioned by the Deputy Commissioner under the authority conferred upon him by the Mysore Excise Act, 1901. The appellant's bid was the highest and the contract was knocked down in his favour subject to formal confirmation by the Deputy Commissioner. The fourth respondent T was present at the auction but did not bid. Instead of that he went direct to the Excise Commissioner and made the higher offer. The Excise Commissioner cancelled the sale in favour of G and directed the Deputy Commissioner to take action under rule 11.10. The latter accepted T's tender. It

(9) C. W. No. 585 of 1969 decided on 24th Dec., 1969.

(10) (1955) 1 S.C.R. 305

was held that the subsequent action of the Deputy Commissioner in granting the contract to T was wrong because the arbitrary improvisation of an *ad hoc* procedure to meet the exigencies of a particular case adopted in the secrecy of an office cannot be accepted. Speaking for the Court, His Lordship, Mr. Justice Bose, made these illuminating observations at page 309 of the Report:—

"* * * * sale of these licences forms such a lucrative source of revenue that * * * * legislation has been enacted in most parts of India to regulate and control the licensing of these trades; Acts are passed and elaborate Rules are drawn up under them. It is evident that there is a policy and a purpose behind it all and it is equally evident that the fetters imposed by legislation cannot be brushed aside at the pleasure of either Government or its officers. The Rules bind State and subject alike.

Thus, while one objective of Condition 15(iv) and Rule 36 relating to re-sale is to ensure fairness to the ex-licensee whose licence has been cancelled, the other and more deeper purpose is the elimination of favouritism and corruption. We do not suggest even for a moment that any such thing has happened in these cases. But to overlook a breach of these Rules, particularly of sub-rule (3), would be to leave the door wide open to the very evils which these provisions endeavour to avoid. These Rules being an embodiment of a sound principle of public policy cannot be lightly ignored and their violation cannot be countenanced as a mere technical defect or irregularity curable by section 42 of the Act. The petitioners being vitally interested in the observance of these provisions, it cannot be said that they have no *locus standi* to complain of their violation. Contravention of these Rules directly and adversely affects them.

Keeping in mind the above statement of law on the point, I now proceed on to determine whether the conditions laid down in sub-rule (3) were complied with in these cases. In this connection, it may be noted that the cancellation of the license (in C.W. 585) was communicated on 6th Decem-

ber, 1968. The re-auction was fixed and, in fact, took place on 13th December, 1968, only six or seven days thereafter. The petitioners by a telegram dated 12th December, 1968 (Annexure 'D'), addressed to Respondent 3 (Collector) and Respondent 4 (The Excise and Taxation Officer), protested that no publicity worth the name had been given respecting the re-auction of Urmar-Tanda liquor vend. On the same day, a written representation (Annexure 'E') addressed to Respondent 3 was also made in which the same complaint about the lack of due publicity about the re-auction was reiterated. A request was also made that in order to ensure adequate and proper price at the re-auction, a publication with regard to the re-auction should be made in the Tribune and Hind Samachar, etc. Now, sub-rule (3) says that the Collector would give *timely* notice of the date and place of auction. The word 'timely' is significant. It means that this notice should be given sufficient time ahead of the auction. In the instant case, there was an interval of only 6 or 7 days between the cancellation of the vend and the re-auction. In spite of the protests and the requests made by the petitioners in this case, the notice was not published in the *Tribune* or *Hind Samachar* or any other paper having a good circulation. A huge amount in the shape of excise revenue for the State and dues from the petitioners was at stake. It was, therefore, all the more desirable in the circumstances of this case to give wider publicity of the proposed auction, not only by ordinary handbills, as has been alleged by the respondents, but also by the publication of the notice in some papers. Moreover, the handbill in Punjabi, a copy of which (Annexure R. 4/1) has been furnished by Respondent 4, contains only this cryptic information:—

"that the country liquor vends of Dasuya, Mukerian, Tanda, Hajipur, Bogra and Hariana of Hoshiarpur District for the remaining period of 1968-69 shall be publicly auctioned by the Deputy Excise and Taxation Officer, Jullundur, on 13th December, 1968, at 10 A.M. in the office of the Excise and Taxation Officer, Hoshiarpur, because the licensees (contractors) have not up to this

time paid the instalments due from them up to the month of October.'

It is further stated in the handbill—

'that the conditions of the auction would be announced at the spot before the auction, and any respectable person bidding at the auction shall be required to deposit Rs. 25 before the bidding, which in case of his getting the license shall be adjusted against the instalment of the licence fee due from him. The intending bidders should bring the solvency certificates with them.'

It will be seen that this brief handbill does not comply with the requirements of clause (a), (c) and (d) of sub-rule (3) at all, nor does it substantially comply with clause (e) of that sub-rule. It is true that the petitioners were also present at the time of re-auction. In the return filed by Respondent 4 in Civil Writ No. 585, also, the only mode of publicity alleged is that the handbills (of which Annexure R. 4/1 was a copy) had been published and sent to the Excise officers of other districts for publicity. It is significant to note that in Civil Writ 572 of 1969, the respondents have not chosen to rebut these allegations of the petitioners in para 11 of the writ petition, by filing any return. We have, therefore, no alternative but to assume that the allegations made in para 11 of the writ petition in this case are correct.

As already noticed, the interval between the cancellation and the re-auction was so short that it was physically impossible to send and circulate these handbills in the other districts. The so-called publicity was thus neither timely nor adequate. It had reduced the salutary provisions of sub-rule (3) into a meaningless formality, if not a farce. It may be conceded that in cases of re-auction, a notice cannot be published a long period ahead of such re-auction, for the simple reason that the delay of every day after the cancellation of the license, means loss of excise revenue to the State. But the period between the publication of the notice and the auction should be sufficient to give information to all the persons in the trade and it should not be so short that it gives a farcical colour to the whole affairs."

I am in respectful agreement with the observations quoted above and that is why I have taken the liberty of quoting them in extenso as that judgment has not yet been reported in any law journal and I desire that the respondents shall take full note of those observations and guide the departmental officers as to the manner in which re-auctions should be held so as to avoid loss to the public revenue. The judgments in *Baldev Raj Chawla's cases* (8) (*supra*) and the judgment of the Division Bench in the case of *M/s. Lal Chand Amrit Lal* (9) (*supra*) were delivered long before the re-auction was held in the instant case and if due notice had been taken of those judgments by the concerned officers of the department, the loss occasioned by the illegal re-auction would have been avoided.

(15) In the case in hand although the order of cancellation of the licence was passed on February 3, 1970, the order of re-auction was made on February 11, 1970. It has not been explained why no action for re-auction was taken immediately after the order of cancellation. Eight valuable days were lost and the re-auction was fixed for February 13, 1970, which allowed at the most two days for publicising the re-auction which were grossly inadequate. The learned Judges of the Division Bench considered a notice of six or seven days to be inadequate and not timely. The argument has been advanced by the learned Deputy Advocate-General that longer notice could not be given as every day mattered forgetting that the departmental officers did not at all feel concerned about it as is evident from their conduct in not taking any steps for re-auction for eight days. I have pointed out in an earlier part of this judgment that the order of cancellation was not served on the petitioner-firm and it, therefore, did not come to know of it before 8 P.M., on February 11, 1970, when the order of re-auction was got noted by Mulkh Raj, a partner of the petitioner-firm.

(16) In view of the judgments, referred to above, the re-auction held by respondent 4 on February 13, 1970, cannot be said to be in accordance with the provisions of rule 36 and is not binding on the petitioner-firm. It was stated at the Bar that the new licensee was allowed quota for four months although the remaining period of the year 1969-70, for which he had to work the vend, was only 1½ months. This fact was a very important fact to be disclosed to the intending bidders for which sufficient timely publicity should have been made. As I have said above, no details of the procedure followed and the

steps taken to notify the re-auction have been disclosed to this Court either in the return to the writ petition or at the hearing thereof. It can, therefore, be reasonably presumed that the mandatory provisions of rule 36 were not observed when the re-auction was held. The result is that the re-auction held on February 13, 1970, was not in accordance with the Rules and the petitioner-firm is not liable to make good the deficiency for which a demand has been made from it.

(17) In view of the above decision, it is not necessary to decide the other points mentioned in the writ petition, moreso because those points have already been decided by various Division Benches of this Court and against those judgments appeals are said to be pending in the Supreme Court. It is, however, recorded that the learned counsel for the petitioner has not given up any of the points raised by him in the petition but which we have not considered necessary to decide.

(18) For the reasons given above, this petition is accepted only to the extent that the demand for the sum of Rs. 33,635.00 on account of the short-fall raised against the petitioner-firm is quashed and the parties are left to bear their own costs.

R. S. NARULA, J.—I entirely agree and have nothing to add.

H. R. SODHI, J.—I too agree.

K.S.K.

FULL BENCH.

Before D. K. Mahajan, B. R. Tuli and P. C. Jain, JJ.

COMMISSIONER OF INCOME-TAX,—*Applicant.*

versus.

M/S. ROSHAN LAL KUTHIALA,—*Respondent.*

Income-Tax Reference No. 3 of 1971.

February 21, 1972.

Income-Tax Act (XLIII of 1961)—Sections 271 and 297—Income-Tax Act (XI of 1922)—Section 34—Default committed with regard to an assessment year prior to April 1, 1962—Assessment completed after such date—Imposition of penalty for the default—Whether at the rate prescribed in Income-Tax Act, 1961—Substantive portion of Section 271(1)(a) of the Act providing for penalty—Whether has a retrospective operation.