

(2004) 10 AHC CK 0172

Allahabad High Court

Case No: C.M.W.P. No. 1156 of 2004

Ram Kripal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Oct. 5, 2004

Acts Referred:

- Constitution of India, 1950 - Article 14, 226
- Uttar Pradesh Excise Act, 1910 - Section 11 , 24

Citation: (2005) 5 AWC 4681

Hon'ble Judges: R.K. Agrawal, J; Prakash Krishna, J

Bench: Division Bench

Advocate: Shashi Nandan, Pooja Agrawal and Navin Srivastava, for the Appellant; S.P. Kesarwani, S.K. Shukla, Sunil Singh and C.S.C., for the Respondent

Final Decision: Dismissed

Judgement

R. K. Agrawal, J.

By means of the present writ petition filed under Article 226 of the Constitution of India, the Petitioner, Ram Kripal, seeks the following reliefs:

"A. An order, direction or writ in the nature of certiorari quashing the order dated 15.7.2004 (Annexure-12 to the writ petition) passed by Excise Commissioner, U.P., Allahabad.

B. An order, direction or writ in the nature of mandamus restraining the Respondents from establishing or opening a sub-shop for the retail sale of country liquor at Katghar in pursuance to the impugned order dated 15.7.2004 and to direct the Excise Commissioner U.P. to consider the application of the Petitioner for establishment of a sub-shop at the aforesaid place in accordance with the provisions of U.P. Number and Location of Excise Shop Rules, 1968 and U.P. Excise (Settlement of Licenses for Retail Sale of Country Liquor) Rules 2002.

C. Such other and further order, direction or writ of suitable nature which this Hon"ble Court may deem fit and proper in the circumstances of the case.

D. An order awarding cost of this petition to the Petitioner."

2. Briefly stated, the facts giving rise to the present writ petition are as follows:

According to the Petitioner, he was granted a licence on 19.3.2002 for retail sale of country liquor in Mutthiganj locality in the city of the Allahabad for the excise year 2002-2003 which is the financial year also, in accordance with the provisions of the U.P. Excise (Settlement of Licenses for Retail Sale of Country Liquor) Rules 2002 (hereinafter referred to as "the 2002 Rules"). The Petitioner had paid the basic licence fee of Rs. 6,90,000. During that year the minimum quantity fixed was 69,000 bulk litres of country liquor and the total licence fee payable was Rs. 56,58,000. The licence was renewed for the excise year 2003-2004 and it has been renewed for the current excise year 2004-2005. However, the minimum quantity of the country liquor has been enhanced to 77,280 bulk litres. It is alleged by the Petitioner that as per the terms and conditions of the licence and the policy of the State Government, he had the exclusive right to sell the country liquor within the entire locality of Mutthiganj and no other licensee could operate in the aforesaid area. The State Government has framed the rules for fixation of number and location of the excise shops, known as the U.P. Number and Location of Excise Shop Rules, 1968 (hereinafter referred to as "the 1968 Rules"). Rule 1A (b) defines "sub-shop" to mean a retail shop for vend of country liquor to be opened by a grantee of exclusive privilege for retail sale of country liquor u/s 24 of the U.P. Excise Act, 1910 (hereinafter referred to as "the Act"), within the area and during the currency of the excise year of his contract. Under Rule 2 of the 1968 Rules, the Collector has been empowered to determine the distribution and location of shops and sub-shops. His powers have been made subject to the control of the State Government and the Excise Commissioner and to the limitations provided in the Rules.

3. On 1.11.2002 the State Government had issued a Government order providing for opening of sub-shop within a licensed area with a condition that the business of any other existing shop and the revenue payable to the State Government should not be adversely affected, which decision was circulated to all the concerned authorities by the Excise Commissioner, U.P., Allahabad vide letter dated 10.1.2003. The Petitioner had made an application on 20.1.2003 before the District Excise Officer, Allahabad seeking permission to open a sub-shop at Katghar Chauraha in Mutthiganj locality, i.e., within the area of his operation. Further, on coming to know that the excise licensees for retail vend of country liquor of the Baluaghat, Gaughat, Kydganj and Bai ka Bagh localities have made application for opening of sub-shop under their area of operation, the Petitioner submitted his objection dated 10.1.2003. The Joint Secretary, U.P. Government, Lucknow, vide letter dated 28.1.2003 directed the Excise Commissioner, U.P., Allahabad to take proper action on the application made by the Petitioner and one Ram Sewak, excise licensee for retail vend of country

liquor in respect of Bairahana locality.

4. After the licence was renewed for the excise year 2004-2005, the Petitioner again made an application on 17.4.2004 seeking permission for opening a sub-shop at Katghar Chauraha or Mutthiganj Sabzi Mandi upon which the Joint Excise Commissioner, vide letter dated 19.4.2004, had asked for a report from the District Excise Officer, Allahabad. It appears that the Respondent No. 6, Renu Jaiswal, who is the licensee for retail vend of country liquor for Baluaghat locality, has also made an application for opening of a sub-shop at Katghar. The Deputy Excise Commissioner, Allahabad after making spot inspection, submitted a report stating therein that if the sub-shop of Baluaghat country liquor licensee is sanctioned, it can very well be opened at a distance of about 400 meters from the existing Mutthiganj shop licensee which would create a dispute and thereafter recommended against the opening of sub-shop.

5. It may be mentioned here that on some proposal made by the Excise Commissioner, U.P., Allahabad on 6.5.2004 to the State Government relating to establishment of sub-shops in the entire State of U.P., a high level meeting was held on 29.6.2004 under the Chairmanship of the Secretary, Excise Department, Government of Uttar Pradesh, in which the following decision has been taken:

"1. AABKARI AYUKTA KE ANUMODAN SE UP DUKAN MUKHYA DUKAN KE VIKRAYA PARIDHI ME HI KHOLI JAYEGI TATHA KISI BHI ANYA DUKAN SE UP DUKAN KI DOORI APNI MUKHYA DUKAN KI TULANA ME ADHIK HOGI.

2. UP DUKAN TULNATMAK RUP SE BARE M.G.Q. WALI DUKANO JINKA M.G.Q. 20 HAJAR BULK LITRE SE KAM NAHI HOGI KE LIYE HI APARIHARYA PARISHTHITI ME MATRA EK UP DUKAN HETU HOGI ARTHAT JYADA M.G.Q. WALI DUKAN KO UP DUKAN HETU PRATHAM VARIYATA RAHEGI.

3. UP DUKAN KA M.G.Q. USKI NIKAY VISHESH KI PRASTHITI KE ANUSAR HOGI JO USKI MOOL DUKAN KE M.G.Q. KE ATIRIKT HOGA JO IS PRAKAR HOGI:

KA-NAGAR NIGAM HETU 4000 B.L. GHA-GRAMIN KSHETRA KE LIYE 1500 B.L.

4. UP DUKAN KE NIKATSTHA KISI BI ANYA DUKAN SE USKI DOORI KE MADHYA KENDRA BINDU SE MUKHYA DUKAN (JISKI UP DUKAN HOGI) KI OR UP DUKAN KI PRASTHITI USKI PARIDHI KE ANDAR HOGI TAKI VIVAD UTPANN NA HONE PAYE.

6. The Excise Commissioner, U.P., Allahabad had passed an order on 15.7.2004 permitting the Respondent No. 6 who is the licensee of Baluaghat area to open a sub-shop at Katghar. The order dated 15.7.2004 is under challenge in the present writ petition.

7. We have heard Sri Shashi Nandan, learned senior counsel, assisted by Sri Navin Srivastava, Advocate on behalf of the Petitioner ; Sri S.P. Kesarwani, the learned standing counsel appearing for the Respondent Nos. 1 to 5 and Sri S.K. Shukla,

learned Counsel appearing on behalf of the Respondent No. 6.

8. The learned Counsel for the Petitioner submitted that the opening of a sub-shop is governed by the 1968 Rules. According to him, in view of the policy decision taken by the State Government in the meeting held on 29.6.2004, a sub-shop can be established only within the licensed area of the main shop with the permission of the Excise Commissioner and the distance of such shop should be greater than the existing main shop in comparison to an existing shop ; the shop having larger minimum guaranteed quota would be given first preference and the distance of the sub-shop would be within the licensed area from the main shop to avoid all further disputes, ought to have been followed. According to him, the Petitioner's application for establishing a sub-shop at Katghar Chauraha/Mutthiganj Sabzi Mandi was pending since 17.4.2004 and the Petitioner's minimum guaranteed quota was 77280 bulk litres of country liquor whereas the minimum guaranteed quota of the Respondent No. 6 was only 71904 bulk litres. Moreover, granting permission to the Respondent No. 6 to open a sub-shop in the Katghar locality would adversely affect the Petitioner's business. Moreover, the Petitioner ought to have been accorded preference and, therefore, the order dated 15.7.2004 passed by the Excise Commissioner granting permission to the Respondent No. 6 for opening a sub-shop at Katghar is liable to be quashed.

9. Sri S.P. Kesarwani, the learned standing counsel, submitted that the Petitioner is a competitor and a trade rival and, therefore, has no locus standi to maintain this petition. He also raised the plea of alternative remedy and submitted that against the order dated 15.7.2004 passed by the Excise Commissioner, U.P., Allahabad as the Petitioner can approach the State Government u/s 11 of the Act, the Court should not exercise its discretion and decline to exercise its jurisdiction under Article 226 of the Constitution of India. He further submitted that in the advertisement published on 27.2.2004 in Dainik Jagran inviting applications for grant of licence for retail vend of country liquor for the year 2004-2005, it was specifically mentioned that the Excise Commissioner/the State Government can create new shops of country liquor at any time according to the requirement and, therefore, if the sub-shop has been created/opened at Katghar, the Petitioner cannot have any grievance. He also submitted that the Petitioner has applied for opening of a sub-shop at Katghar Chauraha/ Mutthiganj Sabzi Mandi and, therefore, he cannot be said to have any grievance if the Respondent No. 6 has been permitted to open a sub-shop in Katghar locality apart from disputing the distance of the sub-shop and that of the Petitioner's main shop as given by the Petitioner. In any event, he submitted that the decision taken by the Secretary, Excise, in the meeting on 29.6.2004, cannot be enforced in a Court of law as it is not binding. In support of his aforesaid submissions, he has relied upon the following decisions:

(i) Mahesh Narain Singh v. State of U.P. and Ors. Civil Misc. Writ Petition No. 261 of 2001, decided on 26.2.2003 ;

(ii) Raju v. State of U.P. and Ors. Civil Misc. Writ Petition No. 491 of 2003, decided on 1.4.2003 ; and (iii) Anil Kumar Tyagi v. State of U.P. and Ors. Civil Misc. Writ Petition No. 1169 of 2003, decided on 17.10.2003.

10. Sri S.K. Shukla, the learned Counsel appearing for the Respondent No. 6, while adopting the arguments of the learned standing counsel, referred to the decision of this Court in the case of Raju (supra) and submitted that the Petitioner has no locus standi to challenge the opening of the sub-shop as he is a trade rival and competitor. According to him, in any event it was within the discretion of the Excise Commissioner to have granted permission to the Respondent No. 6 to open a sub-shop at Katghar and neither any Rules nor any guidelines have been violated.

11. Taking up the preliminary objection of availability of alternative remedy raised by the learned standing counsel, we find from the reliefs claimed in the writ petition which have already been reproduced hereinbefore, that the Petitioner apart from challenging the order dated 15.7.2004 passed by the Excise Commissioner, U.P., Allahabad had also prayed for a writ of mandamus directing the Excise Commissioner to consider his application for opening of the sub-shop. Even though u/s 11 of the Act, the State Government can examine the legality of the order dated 15.7.2004 passed by the Excise Commissioner, the Petitioner has the only remedy to approach this Court under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the authorities to decide his application as no such power is vested in the State Government. Moreover, the Constitution Benches of the Hon'ble Supreme Court, in [K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc.](#), [Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, Union of India \(UOI\) Vs. T.R. Varma](#), State of U.P. and Ors. v. Mohammad Nooh AIR 1958 SC 86 and [K.S. Venkataraman and Co. Vs. State of Madras](#), have held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision could not be adopted.

12. In [Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others](#), the Hon'ble Supreme Court held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the Petitioner seeks enforcement of any of the fundamental rights ; where there is failure of principle of natural justice or where the orders of proceedings are wholly without jurisdiction or the vires of an Act is challenged.

13. In the case of [K.N. Guruswamy Vs. The State of Mysore and Others](#), , the Apex Court has held as follows:

20. The next question is whether the Appellant can complain of this by way of a writ. In our opinion, he could have done so in an ordinary case. The Appellant is interested in these contracts and has a right under the laws of the State to receive the same treatment and be given the same chance as anybody else....

We would therefore in the ordinary course have given the Appellant the writ he seeks. But, owing to the time which this matter has taken to reach us (a consequence for which the Appellant is in no way to blame, for he has done all he could to have an early hearing), there is barely a fortnight of the contract left to go.... A writ would therefore be ineffective and as it is not our practice to issue meaningless writs we must dismiss this appeal and leave the Appellant content with an enunciation of the law.

14. The aforesaid decision was followed subsequently by the Apex Court in the case of D.F.O. v. Ram Sanahi Singh (1973) 3 SCC 864, wherein it has been held as follows:

By that order he has deprived the Respondent of a valuable right. We are unable to hold that merely because the source of the right which the Respondent claims was initially in a contract, for obtaining relief against any arbitrary and unlawful action on the part of a public authority he must resort to a suit and not a petition by way of a writ. In view of the judgment of this Court in [K.N. Guruswamy Vs. The State of Mysore and Others](#), , case there can be no doubt that the petition was maintainable, even if the right to relief arose out of an alleged breach of contract, where the action challenged was of a public authority invested with statutory power.

15. In the case of [ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others](#), , the Apex Court, in para 28, has held as follows:

28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the Court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. See [Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others](#), . And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.

16. In the case of Mahesh Narain Singh (supra), this Court has dismissed the writ petition on the ground of alternative remedy available u/s 11 (2) of the U.P. Excise Act.

17. Applying the principles laid down in the aforesaid cases, we are of the considered view that where the complaint is that the action of the State Government is arbitrary or is violative of Article 14 of the Constitution of India, a writ petition under Article 226 of the Constitution of India is maintainable. Moreover, in the present case, the Petitioner has also prayed for consideration of his application for establishment of a sub-shop at the same place in accordance with the 1968 Rules and the 2002 Rules and in the absence of any order on the said application neither any appeal or revision is maintainable. Thus, the Court is not inclined to throw out the petition on the plea of alternative remedy canvassed by the standing counsel.

18. On merits, we find that it is well-settled by the numerous decisions of the Apex Court that there is no fundamental right to do trade or business in intoxicants and the State, under its regulatory covers, has the right to prohibit absolutely every form of activity in relation to intoxicants, its manufacture, storage, export, import, sale and possession. In all their manifestations, these rights are vested in the State and indeed without such vesting there can be no effective regulation of various forms of activities in relation to intoxicants. See, *State of Bombay v. F. N. Balsara* AIR 1951 SC 318 *Cooverjee B. Bharucha v. Excise Commissioner and Chief Commissioner, Ajmer* AIR 1954 SC 220 [The State of Assam Vs. A.N. Kidwai, Commissioner of Hills Division and Appeals, Shillong, Amar Chandra Chakraborty Vs. The Collector of Excise, Government of Tripura and Others, State of Orissa and Others Vs. Harinarayan Jaiswal and Others, Nashirwar and Others Vs. State of Madhya Pradesh and Others, Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, Lakhanlal and Others Vs. The State of Orissa and Others, Sat Pal and Co. and Others Vs. Lt. Governor of Delhi and Others, ; Southern Pharmaceuticals and Chemicals, Trichur and Others Vs. State of Kerala and Others, State of M.P. and Others Vs. Nandlal Jaiswal and Others, Doongaji and Co. Vs. State of Madhya Pradesh and others, Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others, Rajendra Singh Vs. State of Madhya Pradesh and others, and Yadar Shafi and Ors. v. State of J and K and Ors. : \(1996\) 5 SCC 740.](#)

19. In "American Jurisprudence", Volume 30, it has been stated at page 538-541 that while engaging in liquor traffic is not inherently unlawful, nevertheless it is a privilege and not a right, subject to Government control. This power of control is an incident of the society's right to self-protection and it rests upon the right of the State to care for the health, morals and welfare of the people. Liquor traffic is a source of pauperism and crime.

20. The Apex Court in the case of [Government of Maharashtra and Others Vs. Deokar's Distillery](#), has once again reiterated the above principle. Paragraphs 43 to 45 of the report is reproduced below:

43. Concededly, a citizen of India in view of a catena of decisions of this Court has no fundamental right to carry on trade or business in potable liquor. The State indisputably has a right to regulate or prohibit business in potable liquor as a beverage or otherwise keeping in view the fact that the same is dangerous and injurious to health and is, therefore, an article which is *res extra commercium* being inherently harmful. The State is, therefore, entitled to completely prohibit a trade or business in liquor and create monopoly either in itself or in an agency created by it or take over such activities itself. For the purpose of selling the licence it can adopt any mode with a view to maximize its revenue so long as the method adopted is not discriminatory.

44. However, when the State permits trade or business in potable liquor, the citizen has the right to carry on trade or business subject to the limitations, if any, and the State cannot make discrimination between the citizens who are qualified to carry on the trade or business, see *Khoday Distilleries Ltd. (supra)*.

45. Although a citizen has no fundamental right to carry on trade or business in potable liquor, but when he is permitted to carry on such business, he would be entitled to claim equal right as against other citizens. In absence of the State imposing any prohibition or monopolizing the business, the same may be carried on by the licensee without being subjected to any discrimination. Such a right although may not be elevated to the status of a fundamental right but all the same it is a right.

21. Thus, the Petitioner has no fundamental right to carry on trade in liquor or intoxicant except under a permit to be issued in accordance with the Rules.

22. In the case of *Ramana Dayaram Shetty v. International Airport Authority of India* (1979) IILLJ217SC : AIR 1979 SC 1628, the Apex Court has held as follows:

It is a well-settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in *Vitarelli v. Seaton* (1959) 359 US 535: 3 L Ed 1012, where the learned Judges said:

An executive agency must be rigorously held to the standards by which it professes its actions to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword.

The aforesaid principle laid down by Mr. Justice Frankfurter in *Vitarelli v. Seaton* (1959) 3 Law Ed 1012, has been accepted as applicable in India by this Court in [Dr. Amarjit Singh Ahluwalia Vs. The State of Punjab and Others](#), and in subsequent

decision given in [Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, , Mathew J.](#) quoted the above-referred observation of Mr. Justice Frankfurter with approval.

23. In the case of [B.S. Minhas Vs. Indian Statistical Institute and Others](#) , the Apex Court while referring its earlier decisions in the case of Ramana Dayaram Shetty, A. S. Ahluwalia and Sukhdev (supra) has held that in view of pronouncement of this Court on the point, it must be held to be obligatory on the part of the Respondent No. 1 to follow the bye laws, if the bye laws have been framed for conduct of its affair to avoid arbitrariness and compliance with the bye laws also seem to be necessary in the name of fair play. The Respondent cannot, therefore, escape the liability for not following the procedure prescribed by the bye laws.

24. In the case of [Bejgam Veeranna Venkata Narasimloo and Others Vs. State of A.P. and Others](#) , the Apex Court has held that it is not open to the Andhra Pradesh Government now to say that the memorandum is of no legal effect because it was not notified in the official gazette and was not addressed to any of the rice millers, or it was the merely inter-departmental communication. If the memorandum was required to be notified, the Government cannot take advantage of its failure to advertise it. Having acted on the unnotified memorandum and having collected the rice compulsory from the millers on the strength of the memorandum and also having paid the millers the amount fixed by the memorandum, the Government cannot be heard to say that the memorandum is of no legal effect and payment was made under mistake of law. The Apex Court has held that in their view it would be inequitable to permit the Government to take the plea of irregularity of its own order after procuring rice on the basis of that order.

25. In the case of [Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai and Another](#) , the Apex Court has held that in the field of contracts the State or its instrumentalities ought to so design their activities as would ensure fair competition and non-discrimination. They can augment their resources but the object should be to serve the public cause and to do public good by resorting to fair and reasonable methods.

26. In the case of Raju (supra), this Court had held that a rival businessman had no locus standi to file the "writ petition under Article 226 of the Constitution of India even if the grant of licence to his rival is illegal. In the aforesaid case, the writ petition was filed for a writ of mandamus directing the Excise Commissioner. U.P. and the District Magistrate, Maharajganj to remove the country made wine shop of the Respondent No. 4 therein.

27. In the case of Anil Kumar Tyagi (supra), this Court has held that where the Petitioner has got his licence renewed after understanding the terms and conditions

of renewal, he is estopped from challenging the same and cannot challenge the grant of additional licence on the ground that his business will suffer.

28. Under Rule 2A of the 1968 Rules, the power for determination, distribution and allocation of shops by the Collector is subject to the control of the State Government and of the Excise Commissioner. In the present case, a policy decision has been taken by a high level meeting convened by the Secretary, Excise on 29.6.2004 in which the guidelines were formulated for granting permission for opening of sub-shop in a locality. The decision taken in the said meeting has already been reproduced hereinbefore. During the excise year in question, the Petitioner has already made an application for grant of permission for opening a sub-shop as far back as on 17.4.2004, which stands admitted by the Respondents. For reasons best known to the Respondents, no decision has been taken on the said application. It is not a case of a claim by a business rival or a competitor but in the present case the arbitrary action of the Excise Commissioner is under challenge on the ground that the guidelines or the decision taken in the meeting held on 29.6.2004 has not been adhered to, which granted preference to a licensee having a higher minimum guaranteed quota. On a query being made by us as to whether the locality of Mutthiganj and Baluaghat has been specified in the licence or not and as to whether the area of Katghar falls under any of the aforementioned two localities, the learned standing counsel submitted that the excise licensees of Mutthiganj and Baluaghat are entitled to open their shops including sub-shops, after getting it approved, in their locality and the Katghar area does not fall under either of the two localities. In fact, it is a no man's land for the purposes of retail vend of country liquor. It is well-settled that even though the right to carry on trade in intoxicant including country liquor vests exclusively with the State, the privilege can be parted on consideration under well specified rules, guidelines or policy which has to be strictly adhered to and the State Government cannot arbitrarily pick or choose any body of its own choice. Applying the principles laid down by the Apex Court in the aforementioned cases to the facts of the present case, we find that the Excise Commissioner, U.P., Allahabad while on the one hand has kept the application dated 17.4.2004 filed by the Petitioner for opening a sub-shop at Katghar Chauraha/Mutthiganj Subzi Mandi pending and on the other hand, has not at all taken into consideration the guidelines/policy decision dated 29.6.2004 while granting permission to the Respondent No. 6 vide order dated 15.7.2004, therefore, the order dated 15.7.2004 cannot be sustained and is hereby set aside.

29. In view of the foregoing discussion, we are of the considered opinion that the order dated 15.7.2004 impugned in the writ petition and filed as Annexure-12 to the writ petition, cannot be sustained and is hereby set aside. We direct the Excise Commissioner to consider the application dated 17.4.2004 filed by the Petitioner and also the application of the Respondent No. 6 after giving a reasonable opportunity of being heard to both of them and decide it in accordance with law in the light of the observations made above within a period of one month from the

date a certified copy of this order is filed before him. However, in the facts and circumstances of the case, we leave the parties to bear their own costs.