A SHIV KUMAR BHAGAT

v.

STATE OF BIHAR AND ORS.

SEPTEMBER 12, 2003

B [N. SANTOSH HEGDE AND B.P. SINGH, JJ.]

Bihar and Orissa Excise Rules:

R.45—Additional licence—Requirements for granting—Compliance
C *of—Indian Made Foreign Liquor—Wholesale vending— Collector recommending to Excise Commissioner for sanction of one additional wholesale liquor licence for sale of IMFL—Existing licensee filing petition before Excise Commissioner, who held that recommendation for an additional licence was justified—Existing licensee's revision before Board*
D *of Revenue dismissed, but his writ petition allowed by High Court on the ground that the additional licence granted was illegal inasmuch as the Collector while making the recommendation to Excise Commissioner had not complied with the requirement of r.45—Held, in sum and substance both the Collector as well as the Commissioner while granting licence for the retail sale or wholesale vend of IMFL must keep in mind the needs of*
E *the people of the area concerned—The true test with reference to r.45 is whether the additional licence has been granted having regard to the needs of the people of that area and with a view to counteract supply through illicit sources—The use of the words "to meet an ascertained demand for such article" only means that the authorities must make an assessment as*
F *to whether the demand for the excisable article in question has increased and whether supply of such excisable article, in the instant case IMFL, can be met with the existing licensees—On facts, the requirements of the provisions of the Act and r.45 have been complied with—Under the circumstances and on the material as were placed before the Commissioner,*
G *his conclusion that the grant of an additional licence was justified cannot be found fault with—Even assuming that there was some technical defect by reason of some omission on the part of the Collector, inasmuch as he did not mention all the relevant facts in the letter of recommendation itself, the same cannot in view of the provisions of Section 41 of the Act,*
H *invalidate the licence granted by the Excise Commissioner—The submission*

that since the period of licence having run out there was nothing left to be decided in this appeal, which also has become infructuous, is also misconceived--So far as the grant of wholesale licence to vend IMFL is concerned, under the Rules the same may be granted for any number of years not exceeding five years, as the Board may decide in each case--Bihar Excise Act, 1915--S.41.

Words and Phrases:

Expression "to meet an ascertained demand for such article"--Meaning of in the context of r.45 of the Bihar and Orissa Excise Rules.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7269 of 2003.

From the Judgment and Order dated 13.8.2002 of the Patna High Court in C.W.J.C. No. 7075 of 2002.

R.K. Jain, Satyabir Bharti and Mrs. Rachna Gupta for the Appellant.

A. Sharan, Arup Banerjee, S.A. Khan, Deba Prasad Mukherjee, B.B. Singh and Ms. Sunita R. Singh for the Respondent.

The following Order of the Court was delivered :

B.P. SINGH, J. : Special Leave granted.

We have have heard counsel for the parties at length. In this appeal the appellant has impugned the judgment and order of the High Court of Judicature at Patna dated 13.8.2002 in CWJC No. 7075 of 2002. The High Court while allowing the writ petition filed by respondent No. 5 herein quashed the letter of the Collector dated 13.2.2002 recommending the grant of one additional licence for wholesale vending of Indian Made Foreign Liquor (hereinafter referred to as "IMFL") for the district of Begusarai on the ground that the same was not made in accordance with Rule 45 of the Bihar and Orissa Excise Rules (hereinafter referred to as the "Rules") framed under Section 89 of the Bihar Excise Act, 1915 (hereinafter referred to as "the Act). It held that since the recommendation made by the Collector was not in accordance with the Rules, the recommendation could not be

A acted upon and accepted by the Commissioner by his order dated 18.3.2002.

The facts of the case in so far as they are relevant for the disposal of this appeal are as follows :

B The Collector of Begusarai sent a proposal to the Excise Commissioner for sanction of one additional wholesale liquor licence in favour of the appellant herein vide his proposal dated 22.1.2002. The said proposal of the Collector was turned down by the Commissioner and returned to him since in the opinion of the Commissioner the Collector was not justified in making a recommendation for an additional licence for any particular C person. He directed that a proposal may be made for sanctioning an additional wholesale licence looking to the demand and public need justifying such additional wholesale licence. Thereafter, the Collector, Begusarai made another recommendation dated 13.2.2002 for the sanction of one additional wholesale licence for the sale of IMFL for the district D of Begusarai. In his letter addressed to the Excise Commissioner, he stated that by grant of one additional wholesale licence there will be augmentation of licence revenue in the district of Begusarai and the same was also conducive to promote competition which could increase the collection of revenue in view of the increase in the consumption of IMFL. The E respondent No. 5 herein was the only wholesale licence holder for IMFL in the district of Begusarai. The husband of the aforesaid respondent was granted such a licence in the year 1984 which licence stood transferred to respondent No. 5 upon his death. The respondent No. 5 filed a petition before the Excise Commissioner, which was registered as Excise Case No. 16 of 2002, against the proposal of the Collector for sanction of one F additional wholesale licence for IMFL. The Excise Commissioner by his order dated 18.3.2002 rejected the objection of respondent No. 5 which is annexed as annexure P-2. It appears from the said Order that he called for the comments of the Collector, Begusarai, as also the relevant administrative file from the excise office and after hearing the parties came to the G conclusion that in the facts and circumstances of the case the grant of an additional licence for wholesale trade in IMFL was justified, keeping in view the provisions of Rule 45 of the Rules. He observed that under the aforesaid Rules an additional licence may be granted considering the demand of the area in question. It appears that before the Excise H Commissioner respondent No. 5 contended that since she had the sole

wholesale licencee for the district of Begusarai since 1984 and had been working with dilignce and executing her work satisfactorily giving huge amount to the State by way of excise revenue, there was no need to grant an additional wholesale licence. A

The Excise Commissioner after perusing the records produced before him by the Collector, Begusarai and the comments of the Collector found that since 1984 there was only one wholesale licencee operating in the district. Since then there had been considerable increase in the demand of IMFL. He also noticed the report of the Collector about the monopoly which had been created in this regard. Having regard to the fact that there was increase in demand for IMFL consequent to the increase in the population and economic potentiality, he found justification in the recommendation made by the Collector for the grant of an additional wholesale licence for the district of Begusarai. After taking into consideration all relevant considerations the Excise Commissioner disposed of excise case before him with, *inter alia*, the following directions : B C D

> "(i) In the district of Begusarai now there is only one wholesale license and in addition to this one additional license is sanctioned.
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> (ii) It is made clear that the additional licence is not sanctioned for any individual person. The Collector will consider the principle of equality before granting the licence and will follow the prescribed procedure. E
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> (iii) For this he will make publication in the newspaper and will consider the applications independently and with equality. I am making clear here that in this procedure the Collector, Begusarai will not make any special condition in favour of an individual and/ or at the same time he will not consider the case of other applicants without previous biasness." F

Prusuant to the order of the Excise Commissioner, the Collector issued a general notice in the newspapers on 28.3.2002 inviting applications from interested parties for the settlement of sanctioned wholesale licence for the sale of IMEL for the district of Begusarai for the year 2002-2003. The conditions for the settlement and the documents required to be submitted along with the application have been detailed in the notice. G H

A Respondent No. 5 herein, the existing wholesale licencee preferred a revision before the Board of Revenue being Board Revision Case No. 57 of 2002 challenging the order of the Commissioner dated 18.3.2002 sanctioning an additional wholesale licence for wholesale vending of IMFL. The said Revision Petition was admitted, but the stay prayed for B was refused. Respondent No. 5 purported to file a Title Suit on 29.3.2002 but the same was not entertaind by the Court of Munsif, Begusarai for non-compliance with Section 80 of the Code of Civil Procedure.

Respondent No. 5 then filed a writ petition before the High Court of Judicature at Patna on 8.4.2002 being CWJC No. 4607 of 2002 challenging C the order of the Excise Commissioner aforesaid, but in view of the pendency of the Revision before the Board of Revenue, the High Court disposed of the writ petition with a direction to the Board of Revenue to dispose of the Revision, and further directed that till disposal of the Revision no further action may be taken parsuant to the order of the Excise D Commissioner dated 18.3.2002.

The Revision Petition came up before the Board of Revenue for consideration and by order dated 21.6.2002, Ex. P-5, the learned Member, Board of Revenue dismissed the Revision Petition. Though it was contended E on behalf of the appellant herein that Rule 45 was not applicable to the case in hand, the Board of Revenue dicided the Revision Petition on the assumption that Rule 45 applied to the facts of the case, and further held that the said Rule was complied with. The Board of Revenue by a detailed order considered the submissions urged before it by the appellant and the F respondent No. 5 herein as also the Government pleader who appeared on behalf of State of Bihar and its authorities. He also perused the comments of the Collector which had been called for giving year-wise break-up of the consumption of IMFL. He also considered the report of the Excise Superintendent, Begusarai dated 10.6.2002. From the material placed before it, the Board of Revenue found that while in the year 1985-1986 G the demand of IMFL was only 12655.76 L.P.L., the same increased to 265643.32 L.P.L. in the year 2001-2002, and till May, 2002 the consumption was as high as 35286.25 L.P.L. Based on these figures the learned Government Pleader in view of the increased demand for IMFL, submitted that there was justification to grant an additional licence for the district of H Begusarai. The report of the Collector also disclosed that while there were

7 wholesale IMFL licencees in the district of Patna, 5 in the district of Muzaffarpur, 3 in the districts of Saran, Bhagalpur, Darbhanga and Purnea, 4 in East Champaran and 2 in the districts of West Champaran, Samastipur, Madhubani and Sitamarhi, there was only one wholesale licencee in the district of Begusarai. The Board was, therefore, satisfied that having regard to the tremendous increase in the consumption of IMFL, there was justification for the grant of one additional wholesale licence for the sale of IMFL for the district of Begusarai. There was, therefore, no justification for interference with the order of the Excise Commissioner. On these findings the Revision Petition preferred by the respondent No. 5 was rejected.

Respondent No. 5 thereafter filed a writ petition before the High Court of Judicature at Patna which was allowed by the High Court giving rise to the instant appeal.

Before the High Court the appellant herein contended that the sole purpose of objecting to the grant of an additional licence by respondent No. 5 was to maintain her monopoly. In view of the increased demand over the years, there was justification for grant of an additional wholesale licence for the district of Begusarai and that more than one wholesale licence had been granted in the adjacent and surrounding districts. The respondent No. 5 in her writ petition also challenged the grant of a wholesale licence in favour of appellant herein, since the Collector in the meantime had granted a wholesale licence in favour of the appellant herein on 29.6.2002 after dismissal of the Revision Petition by the Member, Board of Revenue. The High Court found that though the authorities in granting the licence to the appellant had acted fairly and had followed the procedure therefor, and the charge of unfairness etc. made against the Authorities was not justified, the grant utimately made in favour of the appellant was illegal inasmuch as the Collector had not complied with the requirement of Rule 45 of the Rules while making a recommendation to the Excise Commissioner for the grant of an additional wholesale licence. Consequently, such a recommendation could not be accepted by the Excise Commissioner.

The short question which arises for our consideration in this appeal is whether the sanction of one additional wholesale licence for wholesale trade in IMFL for the district of Begusarai by the Commissioner on the

A basis of the recommendation made by the Collector is bad for non-compliance with Rule 45 of the Rules. Counsel for the appellant submitted before us that the High Court fell into an error in holding that Rule 45 was not complied with. The facts of this case would disclose that before the Commissioner of Excise sanctioned one additional wholesale licence, he B had satisfied himself one the basis of the comments of the Collector and the material placed before him that the requirement of Rule 45 were fully complied with. Since, the recommendation of the Collector required the approval of the Commissioner for gaining finality, before a final order was passed by the Commissioner all the relevant material had been placed C before him which he took into consideration and on being satisfied that the recommendation was justified, he sanctioned one additional wholesale licence for trade in IMFL for the district of Begusarai. He further submitted that in view of the provisions of Section 41 of the Act, even if, there was any technical defect, or ommission in the proceedings taken prior to the grant of the wholesale licence, such technical defect or irregularity or D omission did not invalidate the licence.

It is necessary at the stage to notice some of the relevant provisions of the Act. Sub-section (1) of Section 5 of the Act provides that the Board of Revenue may by Notification declare with respect either to the whole E of the State or to any specified local area, what quantity of any intoxicant shall, for the purpose of the Act be the limit of a retail sale. Sub-section (2) provides that the sale of any intoxicant in any quantity in excess of the quantity declared in respect thereof under sub-section (1) shall be deemed to be a wholesale.

F Chapter 6 of the Act deals with Licences, Permits and Passes. Sections 34 and 35 of the Act are relevant which provide as folows :

> "34. *Grant of licences by Collector and submission of list, objections and opinions in Excise Commissioner.* — (1) After the G date prescribed for the receipt of objections and opinions submitted under Section 33, the Collector shall consider the same, and shall, if necessary, revive the said list, and shall decide for what places licences for the retail sale of spirit shall be granted, and may, in his discretion, grant licences accordingly.

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(2) The Collector shall then forthwith submit the said list, as so revised, and the said objections and opinions, and his own opinion to the Excise Commissioner.

35. *Finality of decision of Excise Commissioner.* — The Excise Commissioner shall consider the list, objections and opinions so sent to him, and may modify or annul any order passed or licence granted by the Collector and, notwithstanding anything contained in Section 8, his order shall be final."

Section 41 of the Act reads as under :

"41. *Technical defects, irregularities and omissions.* — (1) No licence granted under this Act shall be deemed to be invalid by reason merely of any technical defect, irregularity or omission in the licence or in any proceedings taken prior to the grant thereof.

(2) The decision of the Excise Commissioner as to what is a technical defect, irregularity or imission shall be final.

It is also necessary to notice some of the Rules which are relevant namely Rules 44, 45 and 46 which are as follows :

"44. Licences for the wholesale or retail vend of excisable articles may be granted for one year, from the 1st April to the 31st March, subject to the following provisions :

(i) Licences for the retail vend of country spirit, foreign liquor and spiced country spirit may be granted for any number of years up to three years, beginning on the 1st April, in cases where the Excise Commissioner considers this advisable.

(2) If any licence be granted during the course of the financial year, it shall be granted only up to the 31st March, next following.

(3) Season licences for the sale of either fresh or fermented tariff may be granted for periods fixed by the Collector.

(4) Temporary licences may be granted to provide for the supply of excisable articles on temporary and special occasions e.g., fairs,

A regimental camps of exercises, etc., and shall be limited to the period during which such temporary or special occasions last.

(5) Wholesale licences for the supply and sale of excisable articles may be granted for any numbers of years not exceeding five, as the Board may decide in each case.

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45. The number of licences which may be granted for any local area shall be regulated by the needs of the people of that area, and no licence for the sale of any excisable article in any local area shall be granted unless it is required either to meet an ascertained C demand for such article or to counteract supplythrough illicit sources.

46. The general principles below stated shall be borne in mind, and shall be applied by Collectors, so far as possible, in fixing the D number of licences to be granted for the retail sale of liquor for consumption on the premises of the vendor :

Liquor shops should not be so sparsely distributed as to give to each a practical monopoly over a considerable area, or at least such a monopoly should only be allowed when prices can be E effectively fixed. At the same time two or more shops should not be equally convenient to a considerable number of persons. In other words, liquor shops need not be so limited in number as to make it practically impossible for a resident in a particular area to get his liquor except from one particular shop; but it should only F be possible for him to get his liquor from two different shops at the cost of considerable inconvenience, and he ought to have as little freedom of choice in the matter as possible."

Sub-section (1) of Section 5 of the Act.

G "5. Definition of retail and wholesale. —

(1) The Board may, by notification, declare, with respect either to the whole of State or to any specified local area, and as regards purchasers generally or any specified class of H purchasers, and either generally or for any specified occasion,

what quantity of any intoxicant shall for the purposes of this Act, be the limit of a retail sale." A

It appears from Chapter VI of the Act that the provisions therein contained deal with grant of licence for the retail sale of spirit etc. The provisions of Chapter VI do not deal specifically with the grant of licence for wholesale vending in IMFL. However, Rule 44 refers to licences for the wholesale or retail vend of excisable articles and sub-rule (5) provides that wholesale licences for the supply and sale of excisable article may be granted for any number of years not exceeding five as the Board may decide in each case. Rule 45 refers to the number of licences which may be granted for any local area but there is no reference of wholesale licences. Similarly, Rule 46 lays down the general principles for fixing the number of licences to be granted for the retail sale of liquor for consumption on the premises of the vendor. However, it appears that the statutory authorities under the Act as well as the Board of Revenue have proceeded on the assumption that the provisions of Chapter VI of the Act and those of Rules 44, 45 and 46 apply as much to the grant of licence for retail sale as for the grant of wholesale licence. We find that there is no specific provision in the Act providing a procedure for the grant of wholesale licence to vend IMFL. Apparently, for the grant of wholesale licence to vend liquor, the same Rules are followed as are prescribed for the grant of licence for retail sale. We also, therefore, proceed on the same assumption. B C D E

Section 34 of the Act which we have quoted earlier obliges the Collector to consider the objections and opinions submitted under Rule 33. After considering the same he may revive the existing list and decide for what places licences for the retail sale of spirit shall be granted and may, in his discretion grant licences accordingly. However, sub-section (2) obliges him to submit forthwith the said list along with objections and his own opinion to the Excise Commissioner. The Excise Commissioner is required by Section 35 to consider the matters placed before him by the Collector under Sub-section (2) of Section 34. He may, thereafter, modify or annul any order passed or licence granted by the Collector. The order of the Commissioner as declared by Section 35 shall be final. Reading two provisions together, it is apparent that after considering the objections and opinions submitted, the Collector is required to finalize the list with regard to the grant of licences and he may in discretion grant licences accordingly. F G H

A However, his decision is not final and the matter is required to be further considered by the Commissioner of Excise. For this purpose, the Collector is obliged to place before the Excise Commissioner the objections and opinions received by him together with his own opinion. These matters have then to be considered by the Commissioner and it is within his B competence to modify or annul any order passed or licence granted by the Collector. The decision of the Commissioner is made final.

So far as the Rules are concerned, Rule 45 provides that the number of licences which may be granted for any local area shall be regulated by the needs of the people of that area. No licence for the sale of any excisable C article in any local area shall be granted unless it is required either to meet an ascertained demand for such article or to counteract supply through illicit sources. These two considerations are to some extent co-related inasmuch as supply through illicit sources may increase if supply through the authorised sources is not sufficient to meet the demand. Thus, the D primary consideration appears to be that a licence may be granted, if the needs of the people of that area, so demand. In sum and substance, both the Collector as well as the Commissioner while granting licence for the retail sale or wholesale vend of IMFL must keep in mind the needs of the people of the area concerned. If the supply of IMFL through the existing E licencee is not adequate to meet the demand, they may be justified in granting an additional licence or licences. The true test, therefore, is whether the additional licence has been granted having regard to the needs of the people of that area with a view to counteract supply through illicit sources. The use of the words "to meet an ascertained demand for such F article" only means that the authorities must make an assessment as to whether the demand for the excisable article in question has increased and whether supply of such excisable article, in the instant case IMFL,can be met with the existing licencees. The ascertainment of demand is not required to be made with mathematical precision. It is sufficient if the authorities have applied their mind to the extent of need of the people and G the adequacy of the arrangement to meet such need through existing licencees. For this purpose, no doubt, they must take into account the increased consumption of the excisable article concerned in any local area.

As we have noticed earlier, the Collector in his recommendation for H the grant of additional wholesale licence no doubt referred to the

augmentation of licence revenue and the need to provide competition in view of increase in consumption of liquor. In his recommendation he had not detailed the material on the basis of which he had come to the conclusion that an additional licence is required to meet the needs of the people of the area. But it is quite evident that when called upon to submit his comments, he had disclosed the material on the basis of which he had recommended the grant of an additional licence. The Excise Commissioner had also called for the comments of the Excise Superintendent and the relevant file for his consideration. Similarly, before the Board of Revenue as well, the Collector had placed all the relevant material to satisfy him that the recommendation made by him for grant of additional licence was on the basis of relevant considerations under Rule 45 of the Rules. The comments of the Collector and the material placed by him before the Commissioner and other material placed before the Commissioner were duly considered by him before granting his approval to the recommendations made by the Collector. The factual position as to the tremendous increase in consumption of IMFL was before him and it appeared thereform that since 1984, there had been a steep increase in the consumption of IMFL and yet there was only one wholesale licencee for vending of IMFL in the entire district. It also appeared from the material placed before him that in other comparable and neighbouring districts there were at least two and in some as many as seven wholesale licencees. Under these circumstances and on such material as were placed before the Commissioner, if he came to the conclusion that the grant of an additional licence was justified, we cannot find fault with his decision. In the decision making process he has taken into consideration only relevant considerations and, therefore, the conclusion reached by him cannot be faulted. The High Court found that Rule 45 had not been complied with in as much as in the recommendation made by the Collector, he had not mentioned that an additional licence should be granted since there was a steep rise in the demand for IMFL, or that it was so necessary to counteract supply through illicit sources. The letter simply referred to the increase in State revenue by way of licence fee and promotion of competition in view of the increased demand for IMFL. The High Court was of the view that the letter of recommendation made by the Collector should in itself be complete and must show that all considerations relevant under Rule 45 have been taken into account while making a recommendation. Since, the letter of the Collector making the recommendation did not contain these particulars, he could not be permitted

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A to supplement his recommendation by the comments submitted by him before the Commissioner of Excise.

In our view, the High Court was not justified in reaching this conclusion. The Act and the Rules do not provide any particular from in B which recommendation has to be made by the Collector for the grant of additional wholesale licence to vend IMFL.The Act and the Rules only provide the procedure to be followed and the matters to be taken into consideration while granting an additional licence. The Act also makes it clear that the final decision has to be taken by the Commissioner and the C recommendation of the Collector is subject to the final decision of the Commissioner of Excise. Any decision taken by the Collector, and any licence granted by him, is expressly made subject to the final decision of the Commissioner of Excise. In view of such legal provisions, for successfully challenging the grant of additional licence by the Commissioner of Excise and the recommendation of the Collector, it must be shown that D the Collector and, or, the Commissioner while granting the additional licence had not acted on the basis of relevant considerations. It matters little whether the recommendation made by the Collector incorporated the matterial on the basis of which he had made a recommendation for the grant of an additional licence. He was only making a recommendation and not E taking a decision. In any event, while considering the recommendation made by the Collector, the Commissioner called for the relevant record and the comments of the Collector, and all the relevant material was actually placed before the Commissioner for his consideration. On the basis of such relevant material he took a final decision to approve the grant of additional F licence. Thus, the recommendation of the Collector, which in any event was only a recommendation and not a final decision, was approved by the Commissioner who was authorized to take a final decision, only after application of mind to all relevant considerations by the decision making authority. We are of the opinion that the requirements of the provisions of the Act and Rule 45 have been complied with. We must, therefore, reject G the submission urged before us by counsel for respondent No. 5 that the grant of additional licence was bad for non-compliance with Rule 45 of the Rules.

Counsel for respondent No. 5 then submitted that the matter has H become infructuous since the licence granted to the appellant was only

valid till 31st March, 2003. Th period of the licence having run out, there was nothing left to be decided in this Appeal, which also has become infructuous. This submission is also misconceived. So far as the grant of wholesale licence to vend IMFL is concerned, under the Rules the same may be granted for any number of years not exceeding five years, as the Board may decide in each case. It is not as if each year a fresh notice is issued for the grant of wholesale licence. In fact, respondent No. 5, as admitted by her, holds a wholesale licence since the year 1984, and the same is being renewed from time to time. In these circumstances, there is no justification for the argument that the period for which the licence was issued to the appellant has run out and the appeal has become infructuous.

He then submitted that a fresh ascertainment may be made since the earlier ascertainment was not objective as it was based solely on the report of the Collector, and no materials have been placed before the Commissioner by the Excise Officers. We find no merit in this submission. As we have noticed earlier in this judgment, though not mentioned in his letter of recommendation, the Collector had made an ascertainment of the needs of the people of the area in question and had come to the conclusion that there had been a tremendous increase in the consumption of IMFL which justified the grant of an additional licence for the wholesale vend of IMFL. The year-wise figures relating to increase in consumption of IMFL for the area concerned were ascertained by him and the same was placed before the Commissioner for his consideration. The criticism, therefore, that the ascertainment was not based on an objective consideration is not justified. Moreover, the Commissioner had called for the relevant administrative file from the Excise Office and he had also perused the same. After perusing the records of the Collector, Begusarai, the comments sent by him, and the administrative file of the Excise Office, he came to the conclusion, having regard to the considerations enumerated in Rule 45 of the Rules, that there was need for granting an additional wholesale licence. Obviously, the Commissioner found that the Collector had placed before him all the relevant material on the basis of which he was justified in making the recommendation.

Even assuming that there was some technical defect by reason of some omission on the part of the Collector, inasmuch as he did not mention

A all the relevant facts in the letter of recommendation itself, the same cannot invalidate the licence granted by the Excise Commissioner. The omission to mention all the relevant material, which in fact existed, in the letter of recommendation itself, was at best a technical defect or omission and did not vitiate his recommendation in view of the provisions of Section 41 of
B the Act.

In the result, this appeal is allowed, the judgment and order of the High Court is set aside. The writ petition filed by the respondent No. 5 is dismissed. There will be no order as to costs.

R.P. Appeal allowed.