KULDEEP SINGH

v.

GOVT. OF NCT OF DELHI

JULY 6, 2006

[S.B. SINHA AND P.K. BALASUBRAMANYAN, JJ.]

Administrative Law—Policy decision—Application invited for grant of liquor licence—Subsequently, policy decision taken that no licence would be granted—Challenge to, by applicants seeking grant of licence—Held: Dealing in liquor is not a fundamental right—Applicants did not derive any accrued or vested right—Policy decision could have been changed—Authority specifying date of allotment of licence does not clothe the applicants with the legal right—Thus, doctrine of legitimate expectation not attracted—Some licence having been granted not a ground to issue licence, moreso when applicant has no legal right—Doctrine of legitimate expectation—Constitution of India, 1950.

Respondent-Government of National Capital Territory of Delhi invited applications for grant of L-52 licences for retail sale of Indian Made Foreign Liquor-IMFL for the licencing year 2004-05 in commercial areas subject to certain conditions. Appellants-KS, SK and SJ filed applications for grant of licence. Since large number of applications were filed, State notified that no new application would be accepted, however, pending application would be considered. There was a huge public outcry. Government took a policy decision on 9.3.2005 that no fresh licence would be issued. However, some applications were processed. Appellant's applications were not considered in terms of the excise policy of the State as such they filed writ petitions. High Court allowed the writ petitions directing State to grant licence to the appellants. State filed Letters Patent Appeals which were allowed. Hence the present appeal.

Appellants contended that the State acted illegally and without jurisdiction in rejecting their applications for grant of L-52 licences; that the State adopted a pick and choose method; that the State itself having given the date of grant of licence, appellants derived an accrued right in relation thereto; that the applicants had a legitimate expectation to obtain

A licences in view of the policy decision of the State; and that the State having adopted particular procedures for disposal of the applications for grant of liquor licenses were bound thereby.

Respondent-Government of NCT of Delhi contended that the appellants do not have any fundamental right to trade in liquor; that the B State having adopted a policy decision, this Court should not exercise its power of judicial review interfering therewith; and that in any event, no case is made out that the policy decision suffers from any illegality, irrationality or procedural impropriety nor any malice is attributed.

C Dismissing the appeals, the Court

HELD: 1.1. Appellants filed applications for grant of licence pursuant to the policy decision adopted by the State. They might have invested a huge amount, but did not thereby derive any accrued or vested right. Therefore, unless an accrued or vested right had been derived by D the appellants, the policy decision could have been changed. [343-C-D]

Lakshmi Amma alias Echuma Amma v. *Devassy,* (1970) KLT 204 *Howrah Municipal Corpn. and Ors.* v. *Ganges Rope Co. Ltd. and Ors.,* [2004] 1 SCC 663, referred to.

E *Director of Public Works and Anr.* v. *HO PO Sang and Ors.,* (1961) AC 901, referred to.

1.2. The matter relating to grant of licence for dealing in liquor is within the exclusive domain of the State and the citizen has no fundamental right to carry on business in liquor. If the State had the right to adopt a F policy decision, they indisputably had a right to vary, amend or rescind the same. The effect of a policy decision taken by the State is to be considered having regard to the provisions contained in Article 47 of the Constitution of India as also its power of regulation and control in respect of the trade in terms of the provisions of the Excise Act. [343-D-E]

G 1.3. The State had adopted a policy to grant licence on first-cum-first-serve basis. It had in terms of the public notice dated 7.2.2005, intended to grant licences for 70 vends. The terms and conditions for grant of such licences and also the mode and manner in which such applications were to be filed was specified. Even time frame therefor was fixed. It H represented to the applicants that their cases would be considered on their

own merits. Thus, such consideration was required to be fair and reasonable. [345-F-G] A

P.T. Rajan v. *T.P.M. Sahir and Ors.*, [2003] 8 SCC 498; *Punjab State Electricity Board Ltd.* v. *Zora Singh and Ors.*, [2005] 6 SCC 776; *State of M.P. and Ors.* v. *Nandlal Jaiswal and Ors.*, [1986] 4 SCC 566; *Ashok Lenka* v. *Rishi Dikshit & Ors.* (2006) 4 SCALE 519 and *Ramana Dayaram Shetty* v. *International Airport Authority of India and Ors.*, [1979] 3 SCC 489, relied on. B

2.1. The doctrine of 'legitimate expectation' is a source of procedural or substantive right. But, however, the relevance of application of the said doctrine is as to whether the expectation was legitimate. Such legitimate expectation was also required to be determined keeping in view the larger public interest. Claimants' perceptions would not be relevant therefor. The State actions indisputably must be fair and reasonable. Non-arbitrariness on its part is a significant facet in the field of good governance. The discretion conferred upon the State yet again cannot be exercised whimsically or capriciously. But where a change in the policy decision is valid in law, any action taken pursuant thereto or in furtherance thereof, cannot be invalidated. [345-G-H; 346-A-C] C D

R. v. *North and East Devon Health Authority, ex parte Coughlan,* (2001) Q.B. 213, referred to. E

2.2. In view of clear stipulation made in the advertisement that the grant of the licence shall be subject to the acceptance of the application by the specified Competent Authority who may accept or reject the application, the appellants could not have had any legitimate expectation that they would invariably be granted a licence to deal in liquor. A date for grant of licence was put in the case of SK. The said date has been given evidently having regard to the time frame made in the advertisement. It would not mean that the contents of his application were not required to be verified in the light of the statutory requirements. It must have been done under a misconception. Such a clear mistake on the part of the authorities would not clothe them with any legal right. Furthermore, SK withdrew his application so as to enable him to apply for another vend. He filed such an application only on 8.2.2005 which was acknowledged by the State in terms of its letter dated 6.5.2005 which did not contain any promise that the licence would be granted by a particular date. Even otherwise, it was impermissible for the respondents to specify a date on F G H

A **which the licence shall be granted keeping in view the fact that it was required to process a large number of applications. Thus, it is not a case where the doctrine of legitimate expectation would be attracted.**

[346-D-G]

Ashok Lenka **v.** *Rishi Dikshit & Ors,.* **(2006) 4 SCALE 519, relied on.**

B

3. The policy which would be applicable is the one which is prevalent on the date of grant and not the one, on which the application had been filed. If a policy decision had been taken on 16.9.2005 not to grant L-52 licence, no licence could have been granted after the said date. In any event

C **the period for which licences could be directed to the appellants has since expired. Thus, this Court, cannot direct grant of licence for the next year only because some licences had been granted after the said date, particularly in view of the fact that the appellants have no legal right in respect thereof. Article 14 of the Constitution of India carries with it a positive concept. Equality cannot be claimed in illegalities. [349-B-E]**

D

State of U.P. **v.** *Raj Kumar Sharma,* **[2006] 3 SCJ 713, relied on.**

Union of India and Ors. **v.** *Indian Charge Chrome and Anr.,* **[1999] 7 SCC 314 and** *S.B. International Ltd. and Ors.* **v.** *Asstt. Director General of Foreign Trade and Ors.,* **[1996] 2 SCC 439, referred to.**

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2802 of 2006.

From the Judgment and Order dated 7.11.2005 In LPA No. 2389/05 and Final Order dated 22.11.05 in Review Petition No. 337/05 in LPA No. 2389/05 of High Court of Delhi.

F

WITH

C.A. Nos. 2803 and 2804/06.

Gopal Subramanium, ASG, T.S. Doabia, Soli J. Sorabjee, Manish Sharma, Amit Bhardwaj, Anil Nag, Rajesh Tyagi, Dr. Aparna Bhardwaj,

G Atishi Dipankar, Rajshekhar Rao, Sri Devi Venkataswamy, Anil Katiyar Pragyan Pradip Sharma, Chinmoy, Andhendumauli Prasad and Dr. Kailash Chand for the appearing parties.

The Judgment of the Court was delivered by

H **S.B. SINHA, J.** Leave granted.

The Government of National Capital Territory of Delhi formulated an excise policy in 2002 permitting sale of Indian Made Foreign Liquor (IMFL) through private parties upon issuance of L-52 licences. A

Upto the year 1979, prohibition was in force in the State. From 1979 to 2003, IMFL and Country Liquor were being sold exclusively through public sector undertakings. Pursuant to or in furtherance of the said purported B policy, however, an advertisement was issued inviting applications for grant of L-52 licences for retail sale of IMFL for the licencing year 2004-05 in commercial areas subject to the following conditions:

(i) No fresh L-52 licence in the private sector would be granted if the location of the proposed vend was within 250 meters of an C existing retail vend.

(ii) The applicant should be in actual physical possession of a shop admeasuring 500 sq. ft. in an approved and recognized commercial complex.

D

(iii) Proposed vend should not be within 75 meters of : (a) major educational institutions; (b) religious places; and (c) hospitals with 50 beds and above.

(iv) The grant of L-52 licence shall be subject to the acceptance of the application by the competent authority who may accept or E reject any application without assigning any reasons. Further, the licensing authority was under no obligation to grant any licence for which application had been made.

(v) The licence was to be subject to the general conditions in Rule 33 and special conditions in Rule 34 of the Delhi Liquor License F Rules, 1976.

Relevant clauses of the L-52 licence may also be noticed. Clause 12 provides for actual physical possession of covered shop admeasuring 500 sq. ft. in an approved commercial complex/area recognized by the local bodies such as DDA, MCD, NDMC, etc. No licence was to be issued for a liquor G vend within 75 meters of : (a) major educational institutions (b) religious places (c) hospitals with fifty beds and above. 'Major educational institutions' were defined to mean "middle and higher secondary schools, colleges and other institution of higher learning recognized by the Government of NCT of Delhi or Government of India". No licence was to be issued where the proposed premises was located within 250 meters from an existing L-2/L-52 vend of H

A foreign liquor. The licences were to be granted upon consideration of the applications on case to case basis. Such applications were subject to acceptance by the competent authority who may accept or reject any application without assigning any reason and that the licensing authority would be under no obligation to grant any licence for which an application has been made. A time schedule, however, was fixed therefor to the effect that the licence was B to be granted within 30 days from the grant of approval therefor.

Pursuant to or in furtherance of the said advertisement, the Appellants herein filed their respective applications for grant of licences. In view of the fact that large number of applications were filed, the State issued a public C notice on or about 7.2.2005 notifying closure of the scheme. It was, however, clarified that pending applications would be considered as per the rules and terms and conditions of the Scheme and no new application would be accepted.

Whereas in the case of *Kuldeep Singh*, his application was rejected, in the case of *Surinder Katiyal,* the Appellant withdrew his application so as to D enable him to file another application at a different site.

Kuldeep Singh preferred an appeal against the order rejecting his application before the Excise Commissioner. It was allowed by an order dated 11.5.2005 and the matter was remitted to the Collector, Excise with a direction to conduct a fresh inspection to ascertain the facts on a finding that E the earlier inspection had not been carried out properly. Pursuant thereto a fresh inspection of the premises was carried out in May, 2005.

The Appellants herein filed writ petitions before the High Court *inter alia* alleging that their applications had not been considered in terms of the excise policy of the State. Directions had been issued in the case of *Sadaram* F *Gupta* to the Respondents herein to dispose of his application for grant of L-52 licence for running a retail liquor vend on the same terms and conditions as well as the policy existing on or before 16.9.2005.

In or about the month of March, however, there was a huge public G outcry in regard to the excise policy of the State. Resident Welfare Associations and elected representatives also lodged protests. The matter was referred to the Cabinet for a decision whether or not the State would continue with the said policy. On or about 9th March, 2005, a decision was taken that no fresh licence would be issued by the Department. Surprisingly despite the same, applications were processed on the purported ground that in the event, the H State was to direct approval in regard to continuation of its liquor policy, the

licences could be issued immediately thereafter. A

However, the matter was placed before the competent authority of the State, whereupon the following decision was taken :

(i) "The exercise for grant of licence was stopped in the month of March, 2005....." B

(ii) "Since the opening of shops is a matter of Govt. Policy, decided on a year to year basis, it has been decided to review the last year's policy and not consider granting any more L-52 Licences."

(iii) "For the all above said retail vends, wholesale bonds and licensed premises of various categories, effective and efficient enforcement C is required to ensure implementation of the provisions of the Excise Law and detection/ prevention of revenue evasion. As against the requirement of 115 Inspectors and Sub-Inspectors to cover the given number of licensed premises, the Department has only a skeletal inspectorate staff of 51 to discharge its statutory D functions. In the considered view of the Department, it will not be appropriate to open any new L-52 vend...."

(iv) "The above said proposal is all the more pertinent keeping in view the prohibition policy of the Government which is aimed at discouraging drinking. The Directorate of Prohibition, Govt. of NCT of Delhi educates the people, especially the youth and socio- E economically weaker sections, about the ill effects of alcohol by various means and the message of prohibition is conveyed by spending money from the exchequer. In this backdrop, the uncontrolled proliferation of liquor shops would be against the overall objective of the Government as stated in Article 47 of the F Constitution of India."

(v) "At the time of inviting applications, the number of shops required or the areas in which they were to be opened was not mentioned. The tremendous wave of public resentment against the opening of such shops, in keeping with the decided policy and norms, G resulted in the need to stop the process midway and to keep the pending applications in abeyance."

(vi) "In view of the above and the fact that an order of rejection is necessitated by the policy directions of the Government, a suitable and reasoned order may be passed by the Collector (Excise) in H

A the instant case."

The said proposal was approved by the Finance Minister who was competent therefor under the Rules of Executive Business. The said decision of the Finance Minister was ratified by the Council of Ministers. The High Court, however, in the writ applications pending before it directed that the B decision of the competent authority may be placed on record within three days. The Collector, Excise rejected all the applications received pursuant to the advertisement dated 22.11.2004 relying on or on the basis of the purported policy decision of the Government taken on 16.9.2005 by an order dated 20th September, 2005.

C However, having regard to the earlier orders passed in the writ petitions, a learned Single Judge of the High Court allowed the writ petitions directing the State to grant licences to the Petitioners within one month in the event the writ petitioners have fulfilled all the requirements therefor, before 16.9.2005. Letters Patent Appeals filed thereagainst have been allowed by reason of the D impugned judgment.

The learned counsel appearing on behalf of the Appellants contended:

(i) The State acted illegally and without jurisdiction in rejecting the applications for grant of L-52 licences to the Appellants in so far as not only the cases of others had been considered even after E 9th March, 2005 but licences had also been granted during the period 11.3.2005 and 28.4.2005.

(ii) The State adopted a pick and choose method ignoring the fact that the licence was to be granted on first-cum-first-serve basis.

F (iii) The State itself having given the date of grant of licence stating that the licence would be issued on 10.1.2005, the Appellants derived an accrued right in relation thereto.

(iv) The High Court having directed the State to consider the applications filed by the Appellants herein on the same terms G and conditions, the State could not have ignored the same. The applicants had a legitimate expectation to obtain licences in view of the policy decision of the State and, thus, it could not have refused to grant such licences.

(v) The State having adopted particular procedures for disposal of H the applications for grant of liquor licenses were bound thereby.

Mr. Gopal Subramanaium, learned Additional Solicitor General appearing on behalf of the Respondent, on the other hand, submitted:

(i) The Appellants do not have any fundamental right to trade in liquor.

(ii) The State having adopted a policy decision, this Court should not exercise its power of judicial review interfering therewith. In any event, no case that the policy decision suffers from any illegality, irrationality or procedural impropriety having been made out nor any malice having been attributed in regard to the policy decision, this Court should not interfere with the judgment of the High Court.

(iii) The parties in whose favour licenses have been granted were necessary parties to the writ petitions and in their absence the writ petitions could not have been entertained.

The Appellants filed applications for grant of licence pursuant to the policy decision adopted by the State. They might have invested a huge amount, but did not thereby derive any accrued or vested right. The matter relating to grant of licence for dealing in liquor is within the exclusive domain of the State. If the State had the right to adopt a policy decision, they indisputably had a right to vary, amend or rescind the same. The effect of a policy decision taken by the State is to be considered having regard to the provisions contained in Article 47 of the Constitution of India as also its power of regulation and control in respect of the trade in terms of the provisions of the Excise Act.

We, however, must express our dissatisfaction as regards the manner in which the cases have been dealt with. If a policy decision had been taken by a competent authority, viz., the Finance Minister as far back on 9th March, 2005, we fail to see any reason as to how the officials of the State could proceed with the processing of the applications filed by the applicants even thereafter. The explanation sought to be offered that the same was done on the premise that the Cabinet may not approve the same, in our opinion, is an after-thought. Although, other applications were processed, the applications filed by the Appellants who had filed writ applications before the Delhi High Court were not considered. It is beyond any cavil that the cases of the applicants were required to receive due consideration at the hands of the competent authority along with those who were similarly situated.

So far as the case of Kuldeep Singh is concerned, his application was

A required to be considered afresh in view of the order passed by the Excise Commissioner. Insofar as the case of Sadaram Gupta is concerned, the same was required to be considered in terms of the interim order passed by the High Court. In the case of Surinder Katiyal although he had withdrawn his earlier application and filed a fresh application for grant of a licence at a different place, his contention for shifting was accepted by the Respondent
B as would appear from the letter dated 6.5.2005 wherein it was stated:

> "With reference to your letter dated 2.2.2005 and 8.2.2005 you are hereby informed that your request for shifting of the proposed liquor from UG-1,2,3, Road No. 44, Plot No. 27, Sagar Plaza II, Pitampura,
C Community Center, New Delhi to G-11-12, Vardhman Western Plaza, Behera Enclave, Paschin Vihar, Delhi 63 has been accepted by the Competent Authority.
>
> You are therefore directed to submit the all requisite documents i.e. Commercial Proof, Rent Agreement, NOC for running liquor shop,
D ownership proof, Affidavits, Site Plan for your new proposed premises."

For the purpose of consideration of the applications filed by the applicants, the following time frame was specified:

Scrutiny of Application	No. of Days	Cumulative Total
Issue of deficiency memo, if any/ Approval for site inspection	10 days	10 days
Site Inspection Report	10 days	20 days
Approval for grant of Licence	04 days	24 days
Issue of offer letter	06 days	30 days

Although it was not imperative on the part of the Respondents herein to adhere thereto, as the same was directory in nature, it was required to be substantially complied with. [See *P.T. Rajan* v. *T.P.M. Sahir and Ors.*, [2003]
G 8 SCC 498 and *Punjab State Electricity Board Ltd.* v. *Zora Singh and Ors.*, [2005] 6 SCC 776].

Here, however, the State had made a change in its policy decision of opening the doors to the private entrepreneurs evidently with a view to earn more revenue. It represented to the applicants that their cases would be
H considered on their own merits. Such consideration was, thus, required to be

fair and reasonable. Although dealing in liquor as has rightly been submitted by the learned Additional Solicitor General is not a fundamental right, but indisputably the equality clause contained in Article 14 of the Constitution of India would apply.

In *State of M.P. and Ors.* v. *Nandlal Jaiswal and Ors.*, [1986] 4 SCC 566 whereupon the learned Additional Solicitor General himself relied upon, this Court stated:

> "...No one can claim as against the State the right to carry on trade or business in liquor and the State cannot be compelled to part with its exclusive right or privilege of manufacturing and selling liquor. But when the State decides to grant such right or privilege to others the State cannot escape the rigour of Article 14..."

[See also *Ashok Lenka* v. *Rishi Dikshit & Ors.*, (2006) 4 SCALE 519.]

Moreover, if the equality clause applied, the State could not have adopted different procedures for different applicants. [See *Ramana Dayaram Shetty* v. *International Airport Authority of India and Ors.*, [1979] 3 SCC 489, para 10]

The learned Additional Solicitor General furthermore failed to give any satisfactory answer to a query made by us as to how on the face of such policy decision which according to the State was strictly adhered to, licences had been granted to six other persons. We would, however, like to place on record the statements made by the learned Additional Solicitor General that the State would take action for cancellation of the licences of the said licensees.

The State had adopted a policy to grant licence on first-cum-first-serve basis. It had in terms of the public notice dated 7.2.2005, intended to grant licences for 70 vends. Not only the terms and conditions for grant of such licences have been specified, the mode and manner in which such applications were to be filed had also been specified. As noticed hereinbefore, even time frame therefor was fixed.

It is, however, difficult for us to accept the contention of the learned Senior Counsel, Mr. Soli J. Sorabjee that the doctrine of 'legitimate expectation' is attracted in the instant case. Indisputably, the said doctrine is a source of procedural or substantive right. [See *R.* v. *North and East Devon Health Authority, ex parte Coughlan,* (2001) Q.B. 213] But, however, the

A relevance of application of the said doctrine is as to whether the expectation was legitimate. Such legitimate expectation was also required to be determined keeping in view the larger public interest. Claimants' perceptions would not be relevant therefor. The State actions indisputably must be fair and reasonable. Non - arbitrariness on its part is a significant facet in the field of good governance. The discretion conferred upon the State yet again cannot be B exercised whimsically or capriciously. But where a change in the policy decision is valid in law, any action taken pursuant thereto or in furtherance thereof, cannot be invalidated.

The State in its advertisement clearly stated:

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> "The grant of L-52 licence shall be subject to the acceptance of the application by the specified competent authority who may accept or reject any application without assigning any reason. The licensing authority shall be under no obligation to grant any licence for which application has been made."

D

In view of clear stipulation made in the advertisement therefor, the Appellants could not have had any legitimate expectation that they would invariably be granted a licence to deal in liquor. A date for grant of licence, however, was put in the case of *Surinder Katiyal*. The said date has been given evidently having regard to the time frame made in the advertisement. E It must have been done under a misconception. Such a clear mistake on the part of the authorities would not clothe them with any legal right. His application was received on 10.12.2004 while acknowledging receipt of the said application, it was stated that the licence will be issued on 10.1.2005. The same, however, would not mean that the contents of his application were not required to be verified in the light of the statutory requirements. F Furthermore, he withdrew his application so as to enable him to apply for another vend. He filed such an application only on 8.2.2005 which was acknowledged, as noticed hereinbefore, by the State in terms of its letter dated 6.5.2005. The said letter dated 6.5.2005 did not contain any promise that the licence would be granted by a particular date. Even otherwise, it was G impermissible for the Respondents to specify a date on which the licence shall be granted keeping in view the fact that it was required to process a large number of applications. It is, thus, not a case where the doctrine of legitimate expectation would be attracted.

The State issued a public notice on 7.2.2005. Even prior thereto, the H State notified that only those applications which had been received by the

Department would be considered and no more. The Appellant, Surinder Katiyal evidently filed his application on 8.2.2005. Still his application had been processed. Some correspondences had been entered into in relation thereto. A

It is not in dispute that the State received a large number of applications. It was required to process all the applications. While processing such applications, inspections of the proposed sites were to be carried out and the contents thereof were required to be verified. For the said purpose, the applications were required to be strictly scrutinized. [See *Ashok Lenka* (supra)] B

Unless, therefore, an accrued or vested right had been derived by the Appellants, the policy decision could have been changed. C

What would be an acquired or accrued right in the present situation is the question.

In *Director of Public Works and Anr.* v. *HO PO Sang and Ors.*, (1961) AC 901, the Privy Council considered the said question having regard to the repealing provisions of Landlord and Tenant Ordinance, 1947 as amended on 9th April, 1957. It was held that having regard to the repeal of Sections 3A to 3E, when applications remained pending, no accrued or vested right was derived stating: D

> "In summary, the application of the second appellant for a rebuilding certificate conferred no right on him which was preserved after the repeal of sections 3A-E, but merely conferred hope or expectation that the Governor in Council would exercise his executive or ministerial discretion in his favour and the first appellant would thereafter issue a certificate. Similarly, the issue by the first appellant of notice of intention to grant a rebuilding certificate conferred no right on the second appellant which was preserved after the repeal, but merely instituted a procedure whereby the matter could be referred to the Governor in Council. The repeal disentitled the first appellant from thereafter issuing any rebuilding certificate where the matter had been referred by petition to the Governor in Council but had not been determined by the Governor." E F G

[See also *Lakshmi Amma alias Echuma Amma* v. *Devassy,* 1970 KLT 204.]

The question again came up for consideration in *Howrah Municipal* H

A *Corpn. and Ors.* v. *Ganges Rope Co. Ltd. and Ors.*, [2004] 1 SCC 663 wherein this Court categorically held:

> "...The context in which the respondent Company claims a vested right for sanction and which has been accepted by the Division Bench of the High Court, is not a right in relation to "ownership or possession
B of any property" for which the expression "vest" is generally used. What we can understand from the claim of a "vested right" set up by the respondent Company is that on the basis of the Building Rules, as applicable to their case on the date of making an application for sanction and the fixed period allotted by the Court for its consideration,
C it had a "legitimate" or "settled expectation" to obtain the sanction. In our considered opinion, such "settled expectation", if any, did not create any vested right to obtain sanction. True it is, that the respondent Company which can have no control over the manner of processing of application for sanction by the Corporation cannot be blamed for delay but during pendency of its application for sanction, if the State
D Government, in exercise of its rule-making power, amended the Building Rules and imposed restrictions on the heights of buildings on G.T. Road and other wards, such "settled expectation" has been rendered impossible of fulfilment due to change in law. The claim based on the alleged "vested right" or "settled expectation" cannot be
E set up against statutory provisions which were brought into force by the State Government by amending the Building Rules and not by the Corporation against whom such "vested right" or "settled expectation" is being sought to be enforced. The "vested right" or "settled expectation" has been nullified not only by the Corporation but also by the State by amending the Building Rules. Besides this, such a
F "settled expectation" or the so-called "vested right" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the Building Rules and the resolution of the Corporation issued thereupon."

In *Union of India and Ors.* v. *Indian Charge Chrome and Anr.*, [1999]
G 7 SCC 314, again this Court emphasized:

> "...The application has to be decided in accordance with the law applicable on the date on which the authority granting the registration is called upon to apply its mind to the prayer for registration..."

H In *S.B. International Ltd. and Ors.* v. *Asstt. Director General of Foreign*

Trade and Ors., [1996] 2 SCC 439, this Court repelled a contention that the authorities cannot take advantage of their own wrong, viz., delay in issuing the advance licence stating:

> "...We have mentioned hereinbefore that issuance of these licences is not a formality nor a mere ministerial function but that it requires due verification and formation of satisfaction as to compliance with all the relevant provisions..."

In a case of this nature where the State has the exclusive privilege and the citizen has no fundamental right to carry on business in liquor, in our opinion, the policy which would be applicable is the one which is prevalent on the date of grant and not the one, on which the application had been filed. If a policy decision had been taken on 16.9.2005 not to grant L-52 licence, no licence could have been granted after the said date.

In any event the period for which licences could be directed to the appellants has since expired. This Court, thus, cannot direct grant of licence for the next year only because some licences had been granted after 9th March, 2005. Article 14 of the Constitution of India carries with it a positive concept. Equality cannot be claimed in illegalities. [See *State of U.P.* v. *Raj Kumar Sharma,* (2006) 3 SCJ 713] We have moreover noticed hereinbefore, the statement made by the learned Additional Solicitor General that steps would be taken for cancellation of licences of those licensees who had been granted licence after the said date. We do not intend to make any further observation in regard thereto.

It is true that some licences had been granted, but the same cannot by itself be a ground to issue a writ of mandamus, particularly in view of the fact that the appellants have no legal right in respect thereof.

For the reasons aforementioned, we do not find any merit in these appeals. Moreover the period for which the applications for grant of licences had been granted has also expired. We dismiss these appeals. No costs.

N.J. Appeals dismissed.