

Embassy Restaurant and ors. Vs. Delhi Administration and ors.

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SooperKanoon Citation : sooperkanoon.com/684043

Court : Delhi

Decided On : Aug-26-1988

Reported in : 37(1989)DLT127

Judge : S.S. Chadha and; Y.K. Sabharwal, JJ.

Acts : Delhi Liquor license Rules, 1976 - Rule 18; [Punjab Excise Act, 1914](#);
[Constitution of India](#) - Article 14

Appeal No. : Election Writ Appeal No. 1244 of 1987

Appellant : Embassy Restaurant and ors.

Respondent : Delhi Administration and ors.

Advocate for Def. : Mr. Chandhiok

Advocate for Pet/Ap. : D.D. Thakur,; P.R. Agarwal,; Rajiv Sharma,;

Judgement :

Y.K. Sabharwal, J.

(1) The question which arises for determination in this writ petition is whether Rule 18, Delhi Liquor license Rules 1976 is constitutionally valid. The petitioners carry on the trade of running restaurants at Connaught Place, New Delhi. Embassy, Gaylord, Kwality, Standard and Volga are five restaurants Along with their (owners

who have impugned the validity of Rule 18. They have sought a direction for striking down the said Rule as ultra virus of Article 14 of the [Constitution of India](#). A writ of mandamus has also been sought commanding the respondents to issue liquor licenses (Bar licenses) in favor of the petitioners in form L-5 for sale of foreign liquor and Indian Made Foreign Liquors to their customers and license in form L-4 for retail vend of beer for the consumption at their restaurants.

(2) The petitioners' case is that four out of the five Restaurants held bar licenses till the year 1956. These licenses were issued under the [Punjab Excise Act, 1914](#) (for short the Act ') as applicable to the Union Territory of Delhi and the Rules of 1935 made there under. They say that sometime in the late 50's, the Government of India decided to enforce prohibition in Delhi. A prohibition policy aimed at disallowing drinking in public was accordingly drawn up and the first step taken in the process was to withdraw all bar licenses held by independent restaurants as well as bars in the hotels. The licenses held by the aforesaid four restaurants were accordingly withdrawn. In so far as hotels are concerned, licenses held by them in Form L J were allowed to operate and the hotel keepers were allowed to serve liquor to their guests in their rooms. Since 1956 these restaurants are without bar licenses. The result is their customers cannot be served liquor. The petitioners' claim that with the change of circumstances, the existing excise policy of not granting liquor licenses to restaurants like the petitioners has become arbitrary and discriminatory and is violative of Article 14 of the Constitution. They say that holder of license in form L-5 can serve liquor to everybody whether Indian or foreigner, resident of Hotel or non-resident and, therefore, now no distinction can legally be made in the matter of grant of license in form L-5. As such it is claimed, that Rule 18 which provides that license in form L-5 for retail vend of Foreign Liquor in a bar, may, only be granted to the holder of a license in form L-3 for the retail vend of foreign liquor in a hotel or a restaurant is constitutionally invalid. In sum and substance the challenge is to the Excise policy of the respondents reflected in Rule 18 which renders persons other than those who are holding L-3 licenses ineligible for grant of license in form L-5. According to this policy petitioners are ineligible for grant of license in form L-5 and only Hotels are eligible for grant of license in form L-5 on the strength of their license in form L-3.

(3) The liquor licenses are granted under Rules framed by the Lt. Governor by virtue of power conferred on him by Section 58 of the Act. It is clear from various provisions of the Act that the State has exclusive right to manufacture or sell intoxicants. There is no dispute that the Act deals with not only with the matter of excise revenue but also with regulation and control of import, export, transport, manufacture, sale and possession of liquor. The policy of the Act is thus clear that the objects to be achieved are not confined merely to the collection of excise revenue but it is intended to regulate and control liquor in almost all its aspects, and that obviously is with a view not only to safeguard the matter of collection of excise revenue but also in public interest. Only prescribed quantity of liquor can be possessed (Section 5). Import, export and transport are subject to license and pass (Sections 16, 18 and 19). The manufacture of liquor is controlled (Section 20). so also its possession (Section 24), and sale (Section 26). The sale of liquor to soldiers is circumscribed (Section 21?), its sale is prohibited to those under 25 years of age (Section 29) and employment of women on premises with the license to seU liquor is prohibited (Section 30). All these measures of regulation and control are apparent indication that they are in public interest (See: Prithpal Singh v. Chief Commissioner & Ors. 1965 Supp PLR 183).

(4) The Delhi license Liquor Rules 1976 (for short 1976 Rules') were framed by the Lieutenant Governor in exercise of the powers conferred by Section 58' of the Act as in force in the Union Territory of Delhi and all other powers enabling him in that behalf. The 1976 Rules repealed 'The Delhi Liquor license Rules' Published vide Administration Notification No. 80 8-Commerce dated the 3rd October 1935 and as subsequently amended from time to time. Rule I of 1935 Rules sets out various category of licenses and the authorities empowered to grant the licenses and renew the said licenses. license in form L-3 was for retail vend of foreign liquor in a hotel; license in form L4 was for retail vend of foreign liquor in a Restaurant and license in form L-5 was for a retail vend of foreign liquor in a Bar attached to a Hotel or a Restaurant (Supplementary to Nos. L-4). Rule 16 of 1935 Rules provided that a license in form L-5 for a retail vend of foreign liquor in a bar may only be granted to the holder of a license in form L-3 or L-4 for the retail vend of foreign liquor in a Hotel or a Restaurant. Reference has been made in the petition to an amendment made -to 130 1935 Rules in the year 1974. The amendment

was made in Rule 5 35 in sub rule (10) after Clause (1) for the second proviso, which reads as under : 'Provided further that these restrictions are not applicable to the service of liquor to residents in case of license in form L-3 and to foreign tourists and their foreign guests in case of 8 license in form L5 *

(5) Consequent upon this amendment bar licenses in form L-5 were granted to the Hotels restricting the service of liquor, however to only foreign tourists and their foreign guests. Another notification was also issued in 1974 raising the duties in respect of licenses in form L-3 and L-5 but turn decision of this petition, however, this amendment is not relevant. the Delhi Liquor license Rules 1976. The 1976 Rules are divided into four parts, namely. 'A', 'B', 'C' and 'D'. Part 'A' deals with class of licenses and authorities empowered to grant and renew the licenses. It contains only one Rule Part B deals with the regulations governing the grant and renewal of licenses. Rules 2 to 22 are incorporated in Part 'B' Part 'C' prescribes various fees payable and the procedure for payment of assessed fees and impositions penalty in the case of foreign liquor, licenses Rules 23 to 32 fall in part C. Part 'D'. provides general conditions applying to all licenses, conditions dealing with the licensed hours, conditions relating to conduct of the business and sale and storage of liquor and special conditions and other similar matters. Part 'D' contains Rules 33 to 35.

(6) Rule 1 of 1976 Rules enumerates the details of licenses and the authorities empowered to grant and renew the licenses. license in form L-3 is for service of foreign liquor in Hotel (to the residents in their rooms). license in form L-4 is for retail vend of beer only for consumption 'off' the premises and license in form L-5 is for service of foreign liquor in a bar attached to a hotel or restaurant (supplementary to No. 3). Rule 18 provides that a license in form L-5 for retail vend of foreign liquor in a bar, may only be granted to the holder of a license in form L-3 for the retail vend of foreign liquor in a hotel or a restaurant. Rule 33(1) provides that the licensee shall be bound to observe all Rules under the Punjab Excise Act as in force in Union Territory of Delhi applicable to his license and orders issued by the Excise Commissioner from time-to-time. Sub-rule (2) of Rule 33 provides that licensee shall not carry on any business connected with his license, or store any liquor to be sold or otherwise deal with under his license, except at the premises specified, in his license called as the 'licensed premises'.

Rule 33(4) provides that if a licensee holds a license in form L-5 in conjunction with a license in form L-3, he shall not in pursuance of the license in form L-3, sell any liquor after the hours fixed as the closing hours for the license in form L-5 in any part of the licensed premises to which non-residents in the hotel are admitted or in any room or bar adjoining or opening into any room to which persons not resident in the hotel are admitted. Different hours have been provided for sale of liquor under license in form L-3 and L-5. Rule 34 sets out the special conditions applicable to the licensees in addition to the conditions laid down in Rule 33. Rule 34(3) provides that the licensee of a license in form L-3 for the service of foreign liquor in a hotel for 'on' consumption, shall sell foreign liquor retail for consumption 'on' the premises to the residents only in their private rooms only and the licensee shall not set up or maintain on his licensed premises any bar without taking out a separate bar license.

(7) RULE 34(5) provides that a licensee of a supplementary license, in form L-5 for service of foreign liquor in a bar attached to a hotel or restaurant, shall sell foreign liquor for consumption 'on' the premises of his hotel or restaurant, or other parts of the premises specially prescribed in the license. For the purposes of the present petition other rules are not relevant.

(8) There have been certain amendments to 1976 Rules. The first relevant amendment is of the year 1978 published in Delhi Gazette Extraordinary Part IV Notification No. F-10/9/78-Fin (G) (3) dated 22nd March 1978 amending some of the 1976 Rules but in this petition I am only concerned with amendments made in Rule 34(5) and other amendments are not relevant. The existing clause 5 of Rule 34 of 1976 Rules was substituted by new clause (5) and it was provided that only the foreigners will be served liquor at the bars under the L-5 license (Rule 34(5) (d)). It also provided that foreigners alone will be allowed to carry beer and wine to the dining halls attached to the bars. No hard liquor shall be served in the dining halls from the bars under L-5 licenses (Rule 34 (5) (e)).

(9) The next relevant amendment of 1976 Rules is of the year 1980 published in Delhi Gazette Extraordinary Part-IV, Notification No. F. 10 F67)/0-Fin(G) dated 18th April 1980. By this amendment the existing Rule I was substituted by new

Rule I as contained in the aforesaid Notification of 1980. The description of license in form L-5 in 1976 Rules was: 'Service of foreign liquor in a bar attached to a hotel or restaurant (supplementary to No. L 3)'. The substituted description of license in form L-5 was as follows: Service of foreign liquor in a bar attached to a hotel',

(10) The words or 'restaurant (supplementary to No. L-3)' were deleted while describing L-5 license. Some other amendments were also made in Rule I but the said amendments are not relevant for the decision of this petition. The other relevant amendments are in Rule 34. By Rule 34(5) it was provided that under a license in Form L-3 for service of liquor in a hotel to the residents in their room, no liquor shall be served by the licensee to any person except to the order of a genuine resident. Under 1976 Rules the holder of L-3 license could sell foreign liquor retail for consumption 'on' the premises to the residents only in their private rooms only. The provision with regard to service of liquor in the room was maintained but it was extended to be served by the licensee to any person to the order of a genuine resident (Rule 34(5)). Rule 34(7) (a) relating to license in Form L-5 provided that the licensee shall not serve any foreign liquor at any premises of his hotel other than the premises of the bar and restaurants, if any. specified and endorsed on his license, Rule 34(7) (d) provided that the licensee shall not serve any foreign liquor to any Indian ; and shall not serve any foreign liquor other than wine and beer to any person at any premises other than the premises described as bar in his license. By the amendment of Rule 33 sub rule (1) it was provided that the licensee shall comply with the provisions of the [Punjab Excise Act, 1914](#) as in force in the Union Territory of Delhi and observe all the rules made there under and the terms and conditions of his license and orders issued to him by the Excise Officers from time to time and for such observance give security as mentioned in the said Rule. No other part of 1980 amendment is relevant for the decision of this petition.

(11) The next relevant amendment is of the year 1983 published in Notification No, F. 10(23)/83-Fin (G) dated 31st March 1983. Before I deal with this amendment it would be appropriate to refer to the affidavit of Mr. 1.A. Khan, Secretary (Finance), Delhi Administration, Delhi, filed during the course of the hearing of the writ petition on 13th November 1987. By orders made by us on November 2, 1987 the

respondents were called upon to file an additional affidavit of the Secretary (Finance) relating to any amendments made in the Rules after 1978, the effect of those amendments and the factual position as to the retail vend of foreign liquor in a bar holding L-5 license. This order was passed during the course of the final arguments of the writ petition. The petitioners had made averments in their writ petition that holders of L-5 licenses are serving liquor not only to foreigners but to every person irrespective of the fact whether he is an Indian or a foreigner, a resident in that hotel or not. a resident of Delhi or elsewhere in the country. In the counter affidavit vague pleas were taken by the respondents. It was mentioned in the counter affidavit that service of liquor is allowed to the guests in the hotel to Indians as well as to foreigners. It was also stated that there is no restriction for service of liquor in L 5 bar in hotels i.e. to Indians as well as foreigners. However, neither the petitioners nor the respondents, in their respective pleadings, made any reference to the Rules under which Indians could be served liquor by the holder of L-5 license. No rule was also brought to our notice permitting service of liquor to Indian by holder of license in form L-5. Accordingly, the aforesaid order dated 2nd November 1987 was made. In pursuance of the said order, Mr. I, K.ban, Secretary (Finance) Delhi Administration, Delhi, filed his affidavit dated 13th November 1987. In this affidavit reference has been made to amendments made in 1978, 1980 and 1983. It has been stated in this affidavit that for various considerations the distinction between foreigners and Indians in the service of liquor in the bar operating under license L-5 was removed by the amendment made in the year 1983 and the facilities of service of liquor during the hours fixed for the purpose for a bar operating under license L-5 are available now both to the foreigners and Indians residents as well as nonresidents. A copy of the Notification dated 31st March 1983 was also placed on record. By this notification sub clause (d) of Rule 34(5) was deleted besides some other amendments which are not relevant for decision of the writ petition. Learned counsel for the respondent submitted that in fact the intention of this 1983 notification was to delete clause (d) of Rule 34(7). By Rule 34(5)(d) as amended in 1978, the restriction that only foreigners will be served liquor at the bars under L-5 license was incorporated. But this Rule 34(5)(d) was substituted by the amendment of 1980. Under the amendment of 1980, clause (d) of sub rule 34(7) contained the restriction that the

L-5 licensee shall not serve any foreign liquor to any Indian and shall not serve any foreign liquor other than wine and beer to any person at any premises other than the premises described as bar in his license. Counsel submits that inadvertently instead of deleting the aforesaid clause (d) of Rule 34(7) in the Notification of 1983 reference was made to clause (d) of Rule 34(5). In the affidavit referred to above, the Secretary (Finance) has stated that distinction between foreigners and Indians in the service of liquor in the bar operating under license L-5 was removed by the amendment made in the year 1983. Learned counsel for the parties submit that amendment made in 1983 should be taken to have removed the restriction for the holder of license in form L-5 from service of liquor to Indians and it be taken that now such a licensee can serve liquor both to foreigners and Indians, residents as well as non-residents. It is really shocking that such a mistake should occur while making amendments in the Rules. The amendments, before finalisation and its publication in the official gazette, have to pass through many hands and various officers examine the amendments at various stages and still this lapse has taken place. I do not know whether any steps have been taken by the Administration rectifying the mistake in the Notification of 1983. None was brought to the notice of the Court. I hope that if already not done atleast now the Administration will set their records right by issuing the necessary amendment and/or corrigendum without any further delay and the position as reflected in the affidavit of Secretary (Finance) will also be reflected in the Rules. For the present I will leave the matter at that and will say nothing more at this stage. I will take it, as agreed by learned counsel for the parties, that now holders of license in form L-5 can serve liquor to every person whether foreigner or Indian in a bar attached to a hotel, and consider its effect.

(12) Mr. D D. Thakur, learned counsel for the petitioners submits that there may have been some justification for the administration to restrict the grant of licenses in form L-5 to hotels only so long as there was restriction about service of liquor to foreigners alone. He says that with the removal of said restriction, liquor can now be served both to Indians and foreigners. Bars attached to the hotels are open to everybody. These bars are not restricted for residents or foreigners or their foreign guests. Now Indians can visit these bars and it is common knowledge that they do visit these bars frequently and are served liquor by the holder of license in form L-

5 irrespective of their being residents or non-residents of the hotel. The argument is that in view of the aforesaid change, the policy of the respondents as reflected in Rule 18 of the 1976 Rules, which makes only hotels eligible for grant of licenses in form L-5 on the strength of licenses in form L-3, is wholly discriminatory and arbitrary. The policy reflected in this Rule making the restaurants ineligible for grant of licenses in form L-5 suffers from the similar vice of discrimination and is violative of Article 14 of the Constitution. Petitioners' restaurants and Bars in the Hotels are now stated to be similarly placed and the continued distinction in Rule 18 is irrational. The validity of Rule 18 is accordingly challenged being discriminatory, arbitrary and in contravention of Article 14 of the Constitution.

(13) The stand of the respondents is that hotels with or without restaurants and mere eating houses and/or restaurants are two separate and distinct categories. According to the respondents the idea underlying the policy restricting grant of licenses in form L-5 to hotels is to restrict easy accessibility of alcohol both in public as well as in private places and to thereby reduce consumption of liquor. They say that if the contention of petitioners is accepted, the liquor would be easily available for consumption 'on' the premises and it would be available to public throughout Union Territory of Delhi even at a Tea shop; this would be injurious to the welfare of the people at large and would be contrary to the directive principles of the State policy. It has further been pointed out that right from 1956-57 Union Territory of Delhi has been introducing measure of prohibition by prohibiting drinking in public places. Reference has also been made to the recommendations of Central Prohibition Committee which adopted a 12 point minimum programme for prohibition. According to the policy the Administration has to restrict easy accessibility of alcoholic drinks both in public as well as in private places. It is claimed that L-3 and L-5 licenses have been granted to various hotels functioning in the Union Territory of Delhi keeping in view the needs of foreigners and other residents who may visit the hotels and stay there ; the bonafide residents in the rooms in the hotels are allowed service of liquor by hotel having the license. The policy, however, does not permit issue of liquor licenses to the restaurants. It is explained that licenses in form L-3 were granted specifically to meet the requirements of residents of hotels. Since there was every likelihood that the residents of the hotels may like to eat in the restaurants also attached to these

hotels, licenses have been granted for service of liquor and that too in a specified area. According to the respondents an independent restaurant cannot claim equality with hotels as two are distinct and separate categories. It is further pointed out that after the prohibition policy came into existence, there has never been any occasion when the Delhi Administration has granted a liquor license to a restaurant alone. In short the argument is that right from the year 1956 liquor licenses have not been granted to restaurants. The claim of the respondents is that majority of the hotels granted L-3 and L-5 licenses have an independent complex with proper security and by no means the locational advantage and isolation available to a hotel can be compared with an independent restaurant which are nothing more than a shop in a crowded market place where any untoward incident due to consumption of liquor could lead to law and order problem. The position relating to hotels is claimed to be different as majority of the hotels are stated to be located at isolated places away from markets and any incident inside the hotel could easily be tackled then and there. The Administration in order to discourage drinking has to be very restrictive in so far as the grant of license for consumption 'on the premises' is concerned and, therefore, the respondents claim that grant of license to independent restaurants is not in public interest. The respondents say that although total prohibition in Union Territory of Delhi is no doubt ruled out at present but the Administration intends to follow restrictive and regulatory Excise policy to ensure that progressively consumption of liquor is reduced to the extent possible and its easy accessibility curbed. It is further the case of the respondents that matter pertaining to grant of L-5 license to restaurants has been considered in the excise policy of the Administration for the years 1985-86, 19⁸⁶ 87 and 1987-88 and after careful consideration of the pros and cons of the matter the Administration has taken a conscious decision that there would be no change in the policy of grant of L-5 license for opening of bars in the restaurants. It is argued that the policy of the Administration is that the liquor for 'on' consumption should not be easily and freely available and Rule 18 is a step in that direction and is not arbitrary or discriminatory. According to Administration opening of bars on the premises of the restaurants and eating houses would certainly be hazardous to public peace and morality. The Explanationn given for removing restriction about service of liquor by holder of license in form L-5 only to

foreigners is that administratively the administration found it difficult to distinguish between an Indian or foreigner or -resident or non-resident and that is why the restriction of service of liquor by the holder of L-5 license to only foreigners was removed.

(14) Before considering the aforesaid rival contentions of the parties it would be appropriate to bear in mind the scope of the writ petition dealing with grant of license of liquor. It is well settled that there is no fundamental right to do trade or business in intoxicants. The State, under its regulatory powers, 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. In 'American Jurisprudence', volume 30 it is stated that while engaging in liquor traffic is not inherently unlawful, nevertheless it is a privilege and not a right, subject to governmental control, (page 538). 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 (See : Har Shankat and Ors. v. Deputy Excise and Taxation Commissioner and Ors., : [1975]3SCR254).

(15) Although no one can claim any fundamental right to carry on trade or business in liquor but that does not mean that State can arbitrarily pick and choose and violate Article 14. When State decides to grant such right or approval to others the State cannot escape the rigour of Article 14. It cannot act arbitrarily or at its sweet will. It must comply with the equality clause while granting the exclusive right or approval of manufacture or grant to sell liquor. The State cannot ride roughshod over the requirement of Article 14 (See: State of Madhya Pradesh v. Nand Lal Jaiswal & Ors. : [1977]1SCR1037 .

(16) In Nand Lal Jaiswal's case (supra) while holding that State cannot escape the rigour of Article 14, when State decides to grant liquor licenses, the Supreme Court while considering the applicability of the said Article, added a note of caution and allowed a large measure of latitude to the State Government in determining its

policy of regulating, manufacturing and trade in liquor in the following words : 'But while considering the applicability of Article 14 in such a case, we must bear in mind that, having regard to the nature of trade or business, the Court would be slow to interfere with the policy laid down by the State Government for grant of licenses for manufacture and sale of liquor. The Court would, in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy of regulating, manufacture and trade in liquor. Moreover, the grant of licenses for manufacture and sale of liquor would essentially be a matter of economic policy where the court would hesitate to intervene and strike down what the State Government had done, unless it appears to be plainly arbitrary, irrational or malafide. We had occasion to consider the scope of interference by the Court under Article 14 while dealing with laws relating to economic activities in *R.K Garg v. Union of India* (1982) 1 Scr 947 : AIR 1981 Sc 2138. We pointed out in that case that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. We observed that the legislature should be allowed some play in the joints because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. We quoted with approval the following admonition given by Frankfurter, J. in *Money v. Doud* (1957) 354 Us 457. 'In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events-self limitation can be seen to be the path to judicial wisdom and institutional prestige and stability'. What we said in that case in regard to legislation relating to economic matters must apply equally in regard to executive action in the field of economic activities, though the executive decision may not be placed on as high a pedestal as legislative judgment in so far as judicial deference is concerned. We must not

forget that in complex economic matters every decision is necessarily empiric and it is based on experimentation or what one may call 'trial and error method' and, therefore, its validity cannot be tested on any rigid 'a priori' considerations or on the application of any strait jacket formula. The court must while adjudging the constitutional validity of an executive decision relating to economic matters grant a certain measure of freedom of 'play' in the 'joints' to the executive. 'The problem of Government' as pointed out by the Supreme Court of the United States in *Metropolis Theatre Company v. State of Chicago* (1912) 57 L ed 730 'are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not discernible, the wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review. It is only its palpably arbitrary exercise which can be declared void'. The Government, as was said in *Permian Basin Area Rate cases* (1968) 20 L ed (2d) 312, is entitled to make pragmatic adjustments which may be called for by particular circumstances. The Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The Court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide'.

(17) Bearing the aforesaid principles in mind, I will consider whether the impugned Rule 18 is constitutionally invalid or that the policy reflected in the said Rule is arbitrary and discriminatory as contended by Shri D.D. Thakur, learned counsel for the petitioners. By removing restriction about service of liquor to only foreigners, the Administration cannot be said to have given a total go by to its policy followed uninterrupted since the year 1956 of not allowing opening of Bars in restaurants. In my opinion, the administrative difficulties pointed out by the Administration which made them to remove the restriction about service of liquor to foreigners only cannot be said to be extraneous or irrelevant and it cannot be said that in all spheres liquor should be easily available. Mr. Chandhiok, learned counsel for the respondents vehemently argued that the Administration was finding it difficult to make a distinction between a foreigner and Indian or a resident or non-resident. They found it difficult to frequently go to the bars attached to hotels holding licenses in form L-5 and check individuals sitting in the said bars to find out their

nationality and also find out whether they were residents or non-residents. As there were difficulties in implementing the said restriction, the Administration in its wisdom decided to remove the restriction but that does not mean that the administration gave a total go by to its policy of curbing easy accessibility liquor in of all spheres. In my opinion. there is considerable force in Hie contention of Mr. Chandhiok. Removal of restriction in one sphere, on the explained facts and circumstances does not mean that the administration has given complete go by to its policy of curbing easily accessibility of liquor for consumption. In my opinion, the amendments made in the Rules in the years 1976, 197K, 1980 or 1983 also do not show any policy of the gradually encouraging easy accessibility of liquor as contended by Mr. Thakur. In only shows some adjustments made as required from time to time': in view of changing circumstances. These amendments, in any case, do not show a complete departure of the policy of curbing easy accessibility. It is obvious that the word 'or restaurant (supplementary to No. L-3)' were deleted from description of license in form L-5 by amendment made in 1980 because the respondents were not granting licenses in form L-5 to any restaurant independently. The respondents were granting licenses in form L-5 to a Bar attached to a Hotel. Generally, restaurant in a hotel does not have any independent and separate entity. It is a part of the Hotel. There was provision that license in form L-5 could be granted for area specified in the license. Even if the area to be specified is in a restaurant in a hotel, it would be part of the hotel and would be deemed to be attached to the Hotel.

(18) The is also no source in the argument of Thakur that after the amendment of 1983 the distinction, if any between hotels and restaurants stood removed. It cannot be said because Indians can be served liquor in bars attached to hotels they should also be served liquor in restaurants. There is no such right. The restaurants attached to Hotels and restaurants of petitioners being open to everyone does not entitle the restaurants to become eligible for grant of license in from L-5 and it does not make the policy arbitrary. It is no doubt true that restaurants in Hotels can be visited by Indians as well irrespective of the fact of their being resident or not. It is also true that liquor can be served to them. But on that account it does not follow that hotels or restaurants in hotels or bars in hotels and independent restaurants like the petitioners belong to same class. There is an

essential difference. Primarily the hotels provide residence and incidently it also provides the facilities of food and wine etc. in the restaurants. Restaurants in hotels are net separate and different entity and are part of 138 hotel. On the other hand, the restaurants like the petitioners are merely eating houses. Both essentially belong to different class, one provides residence, the other does not. A restaurant may be fit to be visited by a tourist whether foreigner or Indian but it does not entitle such a restaurant to a license for sale of liquor which is governed by excise policy. I cannot shut my eyes to the common knowledge that number of persons visiting the restaurants is much larger as compared to the hotels. Number of restaurants is much larger than number of Hotels. The administration has to be allowed a larger measure of latitude in determining its excise policy. It is impossible in the nature of things to claim absolute equality in these type of matters.

(19) In support of his contention based on Article 14, Mr. Thakur submitted that classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational to the object sought to be achieved by the Statute in question. There must be nexus between the basis of classification and the object of the Act under consideration (Budhan Choudhry and others v. State of Bihar, : 1955 CriLJ374) There is no difficulty in accepting this principle. But while applying the above principles one has also to bear in mind Article 47 of our Constitution which directs .the State to prohibit consumption of intoxicating drinks and of drugs which are injurious to health except for medical purposes. In the case of liquor, therefore, the question of determining reasonableness of the restrictions may appropriately be considered by giving due weight to the increasing evils of excessive consumption of liquor in the interest of health and social welfare This is the mandate of Article 47. The principles applicable to trades which all person carry on free from all regulatory controls do not apply to trade or business in liquor because of the impact of this Trade on Society due to its inherent nature. I am not at all suggesting that in these matters State can violate Article 14 because of mandate of Article 47. What I am suggesting is that a different approach is required in these matters and a larger measure of latitude is required to be given to the State in these inatters. Article 14 ensures equality amongst equals; its aim is

to protect persons similarly placed against discriminatory treatment, it does not, however, operate against rational classification. A person setting up a grievance of denial of equal treatment must establish that between persons similarly situated, some were treated to their prejudice and the differential treatment had no reasonable relation to the object sought to be achieved by the law. I have held above that hotels and restaurants are not similarly placed.

(20) It cannot be said that there is no nexus between the basis of classification and the object of the Act. The nexus between classification and object of the Act is clear. It is bringing about prohibition progressively and discouraging 'on premises' consumption of liquor. Only patently arbitrary exercise has to be declared void. The Government is entitled to make pragmatic adjustments which may be called for by particular circumstances. The Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fair or wiser or more scientific logical. There is nothing patently arbitrary or discriminatory in the policy. Restaurants as a class have been excluded by Rule 18 for grant of L-5 license.

(21) The object of the Act is to regulate, manufacture and sale of liquor. It is impossible in the nature of things to lay down any abstract standards. The whole case has been based on account of removal of the restriction thereby enabling service of liquor to Indians by a L-5 license. This is not such an act, in the fact and circumstance of the present case, which will invalidate Rule 18. The Administration has taken a conscious decision after considering all the pros and cons. Many representations were made by the petitioners. The said representations were also considered by the Administration and by its letter dated 11th April 1985 (Annexure K-5 to the writ petition) the President of the Hotel and Restaurants Association was informed that the request of the said Association was considered by the Administration and was decided that the restaurants should not be given licenses for service of liquor. It is not a case where one restaurant has been granted license for service of liquor and the other has been refused. In my opinion, there, is no contravention of Article 14 as the excise policy treats all similarly situated persons alike. In the nature of things it is not possible to conclude that Rule 18 or policy reflected in the said Rule is constitutionally invalid, arbitrary

of discriminatory.

(22) Mr. Thakur also urged that some of the hotels having few rooms have been granted L-3 license and on that strength licenses in form L-5 have been granted to them. It is further urged that in the garb of this policy any person even with one room may describe his premises as a hotel; get a L-3 license and on that strength get a L-5 license. When such instances are complained of and impugned it is always open to the court to strike down such an action. As and when such specific complaint is made against any such action, it is always open to the court, on such action being challenged, to quash the grant of license on the ground of abuse of power or its mala fide exercise. The petitioners have not challenged the grant of L-3 or L-5 license in respect of any of the hotel.

(23) The argument that in the adjoining States like Punjab, Rajasthan, Uttar Pradesh and Haryana the restaurants are being given liquor licenses is misconceived. The excise policy of other States is irrelevant while considering the violation of Article 14. In my opinion the argument that such a policy has adverse effect on tourism industry or on foreign exchange earnings is also wholly irrelevant for considering the validity of Rule 18. In my opinion. Rule 18 does not contravene Article 14 of the Constitution and is constitutionally valid.

(24) Before concluding I may add that I have had the benefit of going through the learned judgment of my learned brother Justice S.S Chadha. With utmost respect to my brother Chadha J. I could not persuade myself to concur with the opinion expressed in his judgment that Rule 18 contravenes Article 14 of the Constitution. Accordingly, by this separate opinion I have come to the conclusion that Rule 18 is constitutionally valid.

(25) For the aforesaid reasons I would dismiss the writ petition with costs. Counsel's fee Rs. 2500.00 .