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not mean that he occupied the land within the meaning of section 59(1), Punjab Tenancy Act. What is meant there is that it is not necessary to decide in what capacity the common ancestor held the land provided he did hold it and the land descended from him to his heirs."

Mr Yash Pal *Gandhi* urges that it is not necessary for the collaterals to prove that the land had descended from the common ancestor to his heirs and it was sufficient for the application of section 59(1)(d) of the Punjab Tenancy Act, 1887, hereinafter called the Act, to prove that the land was occupied by the common ancestor. In my judgment the words "male collateral relatives in the male line of descent from the common ancestor of the deceased tenant and those relatives" occurring in clause (d) of section 59(1) of the Act imply that the land should have descended from the common ancestor to his heirs. In this case this condition is not satisfied.

In the result, I affirm the judgment *qua khasra* No. 274 and dismiss with costs Regular Second Appeal No. 703 of 1951.

CIVIL WRIT

Before Dulat and Bishan Narain, JJ.

MESSRS GHAIO MALL AND SONS,—*Petitioners.*

v.

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

1955

Dec., 12th

Civil Writ Application No. 11-D of 1955

Licence—Liquor—Nature of—Government of Part C States Act (XLIX of 1951)—Sections 36 and 38—Scope of—Whether apply to power conferred on the Chief Commissioner under a particular or a special statute—Chief Commissioner, whether has power to delegate his executive authority—Punjab Excise Act (I of 1914), as applicable to Delhi

Rules 4.7 and 5.17—Scope of—The "proved respectability" in Rule 5.17—Scope and meaning of.

Held, that it has been found expedient to control the use and traffic in liquor and this control embraces both regulatory and prohibitory measures. This doctrine has been recognised by the directive principles of State policy in Article 47 of the Constitution. By now it is an accepted doctrine that manufacture or sale or its possession or even its use is not a matter of inherent or natural right vested in a person and it is a mere privilege which the Government may grant to one person and deny to another person. This power of the Government to regulate or prohibit use and traffic in liquor includes the power to prescribe reasonable rules on which such business may be conducted. One of the recognized forms of this regulation is to prohibit this trade except on grant of a licence which is a permission to the licensee to engage in the trade on the terms laid down in the licence. Such a licence is a merely personal and a temporary permit or privilege to be enjoyed as long as its terms are complied with. It follows, therefore, that the issue of a licence is a matter of grace granted by the Government and is not a matter of right.

Held, that sections 36 and 38 of the Government of Part C States Act of 1951, relate to the executive Acts of the Government of Delhi State and do not apply to any power conferred on the Chief Commissioner under a particular or special statute. Powers conferred under the Statutory rules framed under the Excise Act on the Chief Commissioner cannot be said to be powers which the Chief Commissioner exercises by virtue of those sections. The Chief Commissioner gets executive powers under the orders of the President under Article 239 of the Constitution and it is not open to the Chief Commissioner to delegate his executive authority to the Collector or to any other person.

Held, that rules 4.7 and 5.17 of the rules made under the Punjab Excise Act as applicable to Delhi have been made merely for the guidance of the licensing authority and nothing more. The words "proved respectability" in rule 5.17 is used in the sense that the licensing authority is satisfied of the applicants' respectability and that satisfaction need not necessarily be the result of any enquiry or evidence produced by the parties. The word 'proved' in

this rule does not contemplate any kind of enquiry. It was not incumbent on the Chief Commissioner to hold an enquiry by giving adequate hearing to the applicants before choosing the person to whom licence should be granted.

Petition under Article 226 of the Constitution of India praying for—

(a) *quashing and setting aside the orders of respondent granting the L-II licence to the 5th respondent;*

(b) *directing respondent No. 4, to hold proper enquiry regarding suitability of premises, etc., to hear both the parties and to decide the application of the petitioner on merits before taking up the application of the 5th respondent;*

(c) *issuing such other writs, orders or directions against the respondents in favour of the petitioner as may appear to your Lordships to be just, fit and proper; and*

(d) *allowing the petitioner his costs of the proceedings in this Court against the respondents.*

GURBACHAN SINGH and R. S. NARULA, for Petitioners.

C. K. DAPHTRY, BISHAMBAR DAYAL, S. N. ANDLEY and P. L. VORA, for Respondents.

JUDGMENT

Bishan Narain, J. BISHAN NARAIN, J. This writ petition under Article 226 of the Constitution of India has arisen in the following circumstances.

Messrs Ghaio Mall and Sons, the petitioner, is a joint family firm and it is alleged in the petition that this firm had been selling foreign liquor since 1922 and before the partition of the country held licences in forms L-1, L-2, L-10 and L-11 at Amritsar, Sialkot and Multan. The firm applied for grant of L-2 licence (wholesale and retail sale to the public) in Chawri

Bazar, Delhi, for 1955-56. It appears that in anticipation of formal grant of this licence the firm was given permits to import foreign liquor in Delhi. Ultimately, however, this licence was not granted for reasons that are not clear on the record. The petitioning firm was granted licence in form L-1 (wholesale and retail sale of foreign liquor to traders only) for 1951-52 on, 20 Beadonpura, Karolbag, Delhi. In 1954, the firm learnt that Messrs Army and Navy Stores, Regal Buildings, New Delhi, had closed their business and a vacancy in L-2 licence had ocrurred there . On 21st January, 1954 the petitioners applied for grant of this licence in this vacancy and requested that the firm be allowed to operate this licence from its existing Karolbag place of business or from anywhere else. By application, dated 21st May, 1954, the firm informed the Chief Commissioner (licensing authority) that it had secured shop No. H. 32 in Connaught Circus, New Delhi, which is suitable for the purpose of selling foreign liquor to the public. The firm wrote again to the Chief Commissioner on 30th July, 1954, that there are persistent rumours in the city that its application will not be placed before him and to see that this does not happen. The firm again wrote on the subject, mentioning certain rival applicants and compared its own experience etc., with other applicants and particularly mentioned the rival applicants M|s Gaindamal Hemraj and stated that that firm was totally unknown to trade (*vide* letter dated 11th September, 1954). In this letter the Chief Commissioner was reminded of the recently acquired premises by the firm in Connaught Circus, New Delhi. At about the same time the firm applied for change of the locality of L-1 licence from Karolbag to Connaught Circus and

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a reminder regarding this application for change of locality of L-1 licence was sent on 6th November, 1954. The Chief Commissioner by his order dated 15th January, 1955 allowed the petitioner to transfer its L-1 licence to shop No. H. 32 in Connaught Circus. Subsequently the petitioning firm filed an application under Article 226 of the Constitution in this Court (C.W. 323-D of 1954) which was dismissed by the Circuit Court at Delhi, on 22nd December, 1954, *in limine*. Attempts were made to get this matter heard by the Supreme Court but in the meanwhile the firm came to know that on 16th December, 1954 the licence in form L-2 had been granted to the respondent firm Gaindamal Hemraj for 1955-56. On getting this information these proceedings were dropped and the present petition was filed in this Court for the relief that the licence granted to Messrs Gaindamal Hemraj be set aside and for direction that the Chief Commissioner Delhi, should hold proper enquiry regarding suitability of premises, etc., to hear both the parties and to decide the application of the petitioners before taking up the application of Messrs Gaindamal Hemraj. This petition is based on the allegations that —

(1) the order granting licence was not passed by the Chief Commissioner who is the only person having authority in the matter;

(2) the order in question was passed in contravention of section 36 of the Government of Part C States Act, 1951 (XLIX of 1951);

(3) the order was passed behind the petitioner's back without affording any opportunity to the petitioner firm to show cause against the grant of licence to the rival candidate and without holding due enquiry required under section 58(e) of

the Punjab Excise Act as applicable to Delhi;

(4) the Excise Act offends Article 19(1)(g) of the Constitution; and finally

(5) the orders had been passed against the fundamental rights of the petitioner guaranteed under Articles 14 and 19 of the Constitution.

Before discussing the arguments advanced by the learned counsel in this case it will be convenient to describe relevant provisions of the Excise Act and the rules framed under section 59 of that Act. Section 26 of the Act lays down that no liquor shall be sold except under a licence and section 59 authorises the Chief Commissioner, Delhi to make rules by notification regulating the manufacture, supply, storage or sale of any intoxicant. In rule 4.2 it is stated that unless otherwise directed licences shall be granted for one year from the 1st April to the 31st March. The Chief Commissioner shall fix the number of liquor shops in any local area (rule 4.6). Licences, however, may not be granted to type of persons described in rule 4.7. The licences are specified in rule 5.1 which also gives the name of authority competent to grant a licence. Under this rule the Chief Commissioner has the authority to grant L-2 licence and the Collector is empowered to renew it. Every licence is granted to a certain person in respect of certain premises (5.3). The authority competent to renew the licence shall not refuse to do so without giving notice to the licensee and without recording his objections (rule 5.12). As for the procedure rule 5.11 reads—

"All applications for the grant or renewal of licences which require the orders of the Chief Commissioner under the Delhi Excisable Articles Licence and Sale

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Orders or these rules should be received in the Chief Commissioner's Office before the end of October in each year."

And rule 5.17 as far as it is relevant to the present case reads—

"A licence in form L-2 may only be given to a firm of proved respectability in a civil station or cantonment or any other place where there is a demand for superior foreign liquor. A licence in this form may not authorise consumption on the premises."

It will be noticed from these rules that no procedure has been laid down for the guidance of a competent authority to grant a licence beyond the rule that the applications should be received in the Chief Commissioner's Office before the end of October each year although certain restrictions have been provided in rule 4.6 regarding persons to whom licences may not be granted and in rule 5.17 the relevant portion of which has been reproduced above.

In the course of arguments it was urged on behalf of the petitioning firm that it had a legal right to sell liquor. This is incorrect. From the earliest times it has been found expedient to control the use and traffic in liquor and this control embraces both regulatory and prohibitory measures. This doctrine has been recognised by the directive principles of State policy in Article 47 of the Constitution. By now it is an accepted doctrine that manufacture or sale or its possession or even its use is not a matter of inherent or natural right vested in a person and it is a mere privilege which the Government may grant to one person and deny to another person. This power of the Government to regulate or prohibit use and

traffic in liquor includes the power to prescribe reasonable rules on which such business may be conducted. One of the recognised forms of this regulation is to prohibit this trade except on grant of a licence which is a permission to the licensee to engage in the trade on the terms laid down in the licence. Such a licence is a merely personal and a temporary permit or privilege to be enjoyed as long as its terms are complied with. It follows, therefore, that the issue of a licence is a matter of grace granted by the Government and is not a matter of right. The legislature by statute generally makes the granting of a licence dependent on the approval of the applicant by some officer. It is, however, clear that no person can demand such a licence as of right and cannot carry on the trade under the law of the land without first obtaining the required approval of the licensing authority. Their Lordships of the Supreme Court in their judgment in *Cooverjee B. Bharucha* v. *Excise Commissioner, Ajmer* (1), approved of the observations of Field, J. in *Crowley* v. *Christensen* (2):—

> "The Police power of the State is fully competent to regulate the business to mitigate its evils or to suppress it entirely. There is no inherent right in a citizen to thus sell intoxicating liquors by retail; it is not a privilege of a citizen of the State or of a citizen of the United States. As it is a business attended with danger to the community, it may, as already said, be entirely prohibited or be permitted under such conditions as will limit to the utmost its evils. The manner and extent or regulation rest in the discretion of the governing authority. That authority

(1) A.I.R. 1954 S. C. 220
(2) (1890) 34 Law Ed. 620

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may vest in such officers as it may deem proper the power of passing upon applications for permission to carry it on, and to issue licences for that purpose. It is a matter of legislative will only."

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This being the nature of the petitioner's right to sell liquor, the question arises if the petitioner has any right which has been contravened by the State. Mr. Gurbachan Singh for the applicants has argued that rule 5.1 authorises only the Chief Commissioner to grant this licence and that in the present case he has not exercised this power and the licence in question has been granted to Messers Gaindamal Hemraj by some person other than the Chief Commissioner. The petitioner's case is that it has been granted either by the Chief Minister (respondent No. 2) or the Excise and Taxation Commissioner Delhi (respondent No. 3) and that his own application and that of Messrs Gaindamal Hemraj were never put before the Chief Commissioner for necessary orders. Respondents in reply have produced a copy of the letter dated 14th December, 1954 sent by the Under-Secretary, Finance (Expenditure) to Delhi State Government, to respondent No. 3 and its relevant portion reads—

> "I am directed to say that the Chief Commissioner is pleased to approve under rule 5.1 of Delhi Excise Manual, Volume II, the grant of L-2 licence to Messrs Gaindamal Hemraj, New Delhi, in place of L-2 licence surrendered by Messrs Army and Navy Stores, New Delhi."

It is contended by the respondents that this letter is an order authenticated under section 38(3) of the Government of Part C States Act (No. XLIX) of 1951 and it must, therefore, be held that the

order was made by the Chief Commissioner. I am, however, of the opinion that this provision of law has no applicability to the present dispute. Section 38 relates to executive acts of the Government of Delhi State and does not apply to any power conferred on the Chief Commissioner under a particular or special statute. Powers conferred under the statutory rules framed under the Excise Act on the Chief Commissioner cannot be said to be powers which the Chief Commissioner exercises by virtue of section 38 of 1951 Act. I am in respectful agreement with the observations of Yahya Ali, J., *in re. V. Venkataraman* (1), that the Constitution Act deals with the normal executive activities of the Government which are not covered by statute. The same view has been taken in *Om Parkash Mehta* v. *Emperor* (2). The rules under the Excise Act give power to the Collector to grant L-9, L-10 and other licences and it cannot be said that when the Collector exercises this power he is taking executive action of the Government of the Delhi State. It must be mentioned here that the Chief Commissioner gets executive powers in the Delhi State under the orders of the President under Article 239 of the Constitution and it is not open to the Chief Commissioner to delegate his executive authority to the Collector or to any other person. I am, therefore, of the opinion that the letter under discussion does not prove by itself that the Chief Commissioner did in fact exercise the power vested in him under the statutory rules made under the Excise Act particularly when this fact is denied by the petitioner. This is, however, not of much consequence in this case. Finance Secretary to the Delhi State Government has filed an affidavit in this Court stating that the decision regarding the grant of licence to Messrs Gaindamal Hemraj was

(1) A.I.R. 1949 Mad. 578
(2) A.I.R. 1948 Nag. 199

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taken by the Chief Commissioner and in this Court the learned Solicitor-General stated in specific terms that the matter was in fact decided by the Chief Commissioner. There is absolutely no reason for not accepting these statements. I, therefore, hold that in the present case the Chief Commissioner exercised the powers conferred on him by rule 5.1 in granting licence to Messrs Gaindamal Hemraj.

The above discussion also disposes of the petitioner's claim that section 36 of the Government of Part C States Act (No. XLIX) of 1951 has been contravened as in my view that section is applicable only to executive acts of the Government of the Delhi State.

The learned Solicitor-General then urged that the petitioner has no legal right in the grant of a licence and in the absence of any infringement of right the present petition is not competent. He has placed his reliance on *Cooverjee B. Bharucha* v. *Excise Commissioner, Ajmer* (1), for this purpose. That case related to Ajmer Excise Regulation (I of 1951) and while recognising that no person has any inherent right to sell liquor their Lordships of the Supreme Court observed—

> "It is open to the petitioner under Article 226 to approach the High Court for a 'mandamus' if the officers concerned have conducted themselves not in accordance with law or if they have acted in excess of their jurisdiction. The same is the answer to the petitioner's next contention that the sale could not be confirmed by the Minister and that under the rules it was only the Chief Commissioner who was authorised to confirm it."

(1) A.I.R. 1954 S.C. 220

It is, therefore, clear that this petition cannot be dismissed on this ground and consequently this contention of the learned counsel fails.

The decision of the Supreme Court in *Bharucha's case* (1), has also held that the Excise Act regulating trade in intoxicant liquor does not contravene Article 19(1)(g) and is valid. No argument was advanced before us regarding Article 14 and in any case I am unable to see how that Article is applicable to the facts of this case.

It has been contended on behalf of the petitioning firm that the firm's application was never placed before the Chief Commissioner and in any case the Chief Commissioner gave its partners no opportunity to put its case before him and that the discretion vested in him has been exercised arbitrarily without full knowledge of facts and circumstances relating to the applicants' claim for this L-2 licence. In short according to the petitioner the Chief Commissioner held no regular enquiry into the matter which he was bound to do and it was strenuously urged before us by Shri Gurbachan Singh that if the Chief Commissioner had considered his clients' application it could not have been rejected as his qualifications for getting the licence were far superior to the qualifications of the rival applicants. There is no doubt that the Chief Commissioner held no enquiry of the kind suggested by the petitioning firm as necessary in this matter. In support of his argument the learned counsel has placed his reliance on rules already mentioned in this judgment and also on some decisions. Now there is no doubt that the rules do not lay down any procedure which the authority empowered to grant a licence should follow when deciding the matter and it is open to

(1) A.I.R. 1954 S.C. 22

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him to make any kind of enquiry that he considers necessary in a particular case. The rules only provide that all applicants for grant or renewal of a licence should be received in the Chief Commissioner's Office before the end of October each year (rule 5.11). As regards L-2 licences it is laid down that this licence is to be granted only to a firm of proved respectability (5.17). Rule 5.3 provides that every licence shall be granted to a certain licensee in respect of certain premises. Thus subject to certain restrictions and without provision of any procedure the Chief Commissioner in the present case had full authority to grant or to refuse a licence to any person he liked. It is true that under rule 5.11 time is fixed by which an application for grant or renewal of licence must be made and inferentially it may be stated that therefore, applications are invited for that purpose but that does not mean that the licence must of necessity be granted and that the choice is limited to one of the applicants. If this were correct then once an application regarding a particular licence is received that must of necessity be granted whether it be for renewal or for grant of a new licence and the Chief Commissioner cannot cancel any licence and cannot regulate the number of licences that should be granted in any local area as provided in rule 4.6. Obviously such a construction defeats the very object of regulation of trade in intoxicant liquor. As far as I can see rules 4.7 and 5.17 given above have been made merely for the guidance of the licensing authority and nothing more. Reliance was placed on the words "proved respectability" in rule 5.17 for showing that it raises a justiciable issue. It is to be noticed that in the corresponding Punjab Rules which have been adopted in Delhi the word used is "approv-

ed". This may or may not be due to printing mistake but I am inclined to think that the word "proved" in Delhi Rules is not used in the sense suggested by Shri Gurbachan Singh but in the sense that the licensing authority is satisfied of the applicants' respectability and to my mind that satisfaction need not necessarily be the result of any enquiry or evidence produced by the parties. If the argument of the learned counsel is accepted then in every case of grant of a licence it should be necessary to record or hear evidence regarding respectability of every applicant and as this trade is remunerative such an enquiry may relate to considerable number of applicants and may take considerable time to decide the matter. This obviously could not be the intention of the Chief Commissioner when he framed this rule as it must defeat the object of the rules to grant or renew licences before 1st April every year. If the contention of Shri Gurbachan Singh in this matter is accepted then it will lead to considerable inconvenience in enforcing the rules under the Act and Maxwell in his well-known book on Interpretation of Statutes has recognised that the argument drawn from inconvenience is forcible in law. In any case such a consideration cannot be ignored. I am, therefore, of the opinion that the word "proved" in this rule does not contemplate any kind of enquiry. It is undoubtedly laid down in rule 5.12 that a renewal application should not be refused without giving notice to the licensee and without recording his objections and it is also laid down that after 20th of January, renewal cannot be refused for the following year without the special sanction of the Chief Commissioner. I consider the matter of renewal to stand on a footing slightly different from that of grant of licence as it affects vested interests but even in this matter there is no provision for hearing the objector

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or for giving a decision on his objections. The objections are merely to be recorded. In any case, the case of renewals need not be discussed here at length as it does not arise in the present case. I am of the opinion that taking into consideration the nature of trade involved and the rules framed under the Excise Act the enquiry by the authority granting a licence is not required. The matters involved do not reveal a justiciable issue. It appear to me that no judicial or quasi-judicial duty is imposed on the Chief Commissioner by the Excise Act or by the rules framed under it. The rules do not prescribe any steps which must be taken to decide the matters. The object of the rules is to get information with a view to decide whether a licence should be issued or not and if so, to whom. The object of the collection of information is not to decide any issue. In my view the following observations of Lord Thankerton in *Franklin and others* v. *Minister of Town and Country Planning* (1), fully apply to the present case:—

> "In my opinion, no judicial, or quasi-judicial, duty was imposed on the respondent, and any reference to judicial duty, or bias, is irrelevant in the present case."

And again,

> "I am of opinion that no judicial duty is laid on the respondent in discharge of these statutory duties and that the only question is whether he has complied with the statutory directions * * *."

The position is described in American Jurisprudence, Volume 30 at page 319 thus:—

> "The decision of a city council refusing to grant a liquor licence to an applicant on the ground that he is not fit is not rendered arbitrary by the refusal to grant him a

(1) 1948 A.C. 87

hearing upon the application. The statute or ordinance authorizing the issuance of the licence may provide for a hearing. In the absence, however, of such a provision, where the law or ordinance regulating applications for such licences empowers the licensing body, such as a municipal council, to issue licences to applicants who in the opinion of the licensing authority are fit to carry on the business of selling intoxicating liquors, and leaves entirely to the licensing authority the method or means by which they may satisfy themselves of the fitness or qualification of applicants, it has been held that an applicant is not entitled to a hearing, and the refusal to grant his application is not rendered arbitrary by the refusal to grant him a hearing."

Now I shall deal with the authorities relied upon by the learned counsel for the petitioner. *Abdul Majid Haji Mahomed* v. *P. R. Nayak* (1) is a case in which it was held that the proceedings before the Custodian are quasi-judicial proceedings and therefore, the Custodian must hold an inquiry. The case has, however, no application to the facts of the present case because the proceedings taken by the Chief Commissioner are not quasi-judicial in nature. Similarly it was held in *Chandra Bhan* v. *Rent Control and Eviction Officer* (2), that under the U. P. Act 3 of 1947, the Rent Control and Eviction Officer acts in quasi-judicial capacity when he decides the question of fact. This decision also has no relevancy to the present case. The last case relied upon is *Ramnath* v. *Collector Darbhanga* (3). This case is more in point.

(1) A.I.R. 1951 Bom. 440
(2) A.I.R. 1954 All. 6
(3) A.I.R. 1955 Pat. 345

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In this case the Collector cancelled a licence and forfeited the security deposited by the licensee to Government and it was held that in the circumstances the Collector was bound as a matter of principle to give a fair opportunity to the licensee of presenting his case by making a relevant statement or by controverting any relevant statement made to his prejudice. Cancellation of a licence in the Delhi Excise Act is provided under sections 36 and 37 which give authority to the Chief Commissioner to do so in certain circumstances. The present case, however, relates to grant of a licence and not to cancellation of it. The cancellation of a licence affects vested rights and it may be that in such cases different considerations would apply but to my mind such a decision is of no assistance in the present case which relates to grant of a licence.

It was contended by Shri Gurbachan Singh that even if the Chief Commissioner or any other competent authority to grant licence had absolute discretion he could not exercise it without holding some kind of enquiry as such a discretion must be exercised according to rules of reason and justice and not according to private opinion, according to law and not humour; it is not to be arbitrary, vague and fanciful but legal and regular (vide *The King* v. *Woodhouse and others* (1). I have already mentioned that no person has an inherent right to the grant of a licence to vend liquor and, therefore, its grant by the Chief Commissioner is a matter of grace and its refusal does not deprive the applicant of any right or property. In the circumstances the competent authority is free to exercise its absolute discretion in any way that in his opinion advances the object of the Excise Act and the rules made thereunder. I may

(1) (1906) 2 K.B. 501

again refer to Volume 30 of the American Jurisprudence reproduced above where it is stated that the decision of the officer refusing to grant a licence to an applicant is not rendered arbitrary by the fact that he did not grant a hearing to the applicant. I am, therefore, of the opinion that it was not incumbent on the Chief Commissioner to hold an enquiry by giving adequate hearing to the applicants to produce evidence in support of their case in preference to other applicants before choosing the person to whom this L-2 licence should be granted. The result is that the grant of the licence to Messrs Gaindamal Hemraj must be held to be in accordance with law.

It was then argued on behalf of the petitioners that their application was never placed before the Chief Commissioner along with the application of the successful applicant to enable him to come to a correct conclusion. There is no doubt that the petitioner suspects this to be correct as is evident from the firm's letters to the Chief Commissioner. Assuming this to be correct it is not possible for this Court in these proceedings to direct an unknown subordinate of the Chief Commissioner to forward the petitioner's application to the Chief Commissioner to enable him to reconsider the matter if he considers it fit. This request if still available to the petitioner can be made only to the Chief Commissioner himself.

Now the only thing which remains to be considered is the question of costs. It appears to me that the petitioning firm has some justification to be aggrieved. The firm has possessed an L-2 licence in 1945 and it holds L-1 licence in Delhi. This firm appears to have been in this business since a long time and considerable portion of this business has been lost to it by partition of the country. It has not been

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suggested that the petitioning firm cannot be considered to be of proved respectability. Its partners heard rumours that their application has not been placed before the Chief Commissioner. In the circumstances it cannot be said that the filing of this petition under Article 226 was not wholly justified. I am, therefore, of the opinion that the petitioner should not be made to pay respondents' costs.

For all these reasons this petition is dismissed but the parties will bear their own costs.

Dulat, J

DULAT, J.—I agree in dismissing the petition and leaving the parties to bear their own costs.

CIVIL WRIT

Before Bishan Narain, J.

THE ADMINISTRATOR, MUNICIPAL COMMITTEE, LUDHIANA,—*Petitioner.*

v.

THE EXCISE AND TAXATION COMMISSIONER, JULLUNDUR CITY AND OTHERS,—*Respondents.*

Civil Writ No. 60 of 1955

1955

Dec., 15th

Punjab Urban Immovable Property Tax Act (XVII of 1940)—Section 3—Punjab Municipal Act (III of 1911)—Section 56(1)(g)—Property Tax on income from the use of Public Streets—Tehbazari *fee levied by Municipal Committee for the use of Public Streets—Whether liable to Property Tax.*

Held, that by the operation of section 56(1)(g) of the Municipal Act, the Municipal Committee should be held to be owner of so much of the air above and of the soil below as is necessary to the ordinary user of the street as a street. The *tehbazari* fee is charged for the use of a public street only and, therefore, it must be held that for the purposes of the property tax the Municipal Committee is the owner of the surface of the public street and the soil underneath