



**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**BEFORE**

**HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV**

+ **W.P.(C) 3806/2026**

Between:

**M/S PERNOD RICARD INDIA PVT. LTD.**

12<sup>th</sup> Floor, Tower B,

DLF Cyber Park, 405-B

Sector-20, Udyog Vihar, Phase-III

Gurugram – 122016

.....PETITIONER

*(Through: Mr. Mukul Rohatgi, Sr. Advocate and Mr. Jayant K. Mehta, Sr. Advocate with Mr. Ninad Laud, Mr. Raj Kamal, Mr. Karan Khanuja, Mr. Zubin Dash, Mr. Harneet Singh, Mr. Kunal Khanuja, Mr. Ishani Shekhar, Mr. Somil Jain & Mr. Dhruv Raman Singh, Advocates., Advs.)*

Versus

**1. EXCISE DEPARTMENT, DELHI,  
GOVT. OF NCT OF DELHI**

Through

Deputy Commissioner of Excise

GNCT of Delhi

Department of Excise,

L-Block, Vikas Bhawan, I.P. Estate,

New Delhi - 110002

**2. EXCISE COMMISSIONER,  
GOVT. OF NCT OF DELHI**

L-Block, Vikas Bhawan,

New Delhi - 110002

.....RESPONDENTS



(Through: Mr Sameer Vashisht with Ms Avni Singh, Ms Harshita Nathrani, Mr Aryaman Vachher, Mr Vaibhav Sharma, Advocates with Ms P Pandeewari (ASO Excise).)

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% Reserved on: 20.05.2026  
Pronounced on: 29.05.2026

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## **JUDGMENT**

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A person indulged in the liquor business not having a criminal background may, *prima facie*, colloquially, appear to be a contradiction in terms, but the present matter, owing to the demands of the statute, requires the compliance of this very term.

2. The present petition has been filed assailing the order dated 17.02.2026 (“**Impugned Order/2<sup>nd</sup> FC Order**”) of the Court of the Financial Commissioner of Delhi dismissing the petitioner’s appeal, challenging the order of the Excise Commissioner dated 09.05.2025, whereby, the petitioner’s application for L-1 license under the Delhi Excise Act, 2009 (“**Excise Act**”) came to be rejected.

## **I. FACTUAL MATRIX**

3. On 24.08.2022 and 26.08.2022 the petitioner, under the 2022 Excise Policy, applied for an L-1 license for the wholesale supply of Indian liquor in Delhi, for the licensing year 2022-23 (collectively “**Applications**”). The said applications were for its units in Gwalior and Mohali respectively. The Assistant Commissioner, thereafter, on 31.08.2022 and 01.09.2022, issued letters (“**Approval Letters**”) to the petitioner conveying the approval of the competent authority for the grant of L-1 licenses to the petitioner for the year 2022-23 with respect to its Gwalior and Mohali units.

4. On the very next day i.e., 02.09.2022 the Assistant Commissioner, issued another letter to the petitioner directing it to provide Police Verification Certificates for all its directors as per Section 13(1)(c) and 13(1)(g) of the Excise Act. Through the same letter, the Assistant Commissioner, informed the petitioner that it is in receipt of information



pertaining to an FIR dated 17.08.2022 registered by the CBI pertaining to what came later to be known as the “*Delhi Excise Policy Scam*” for criminal conspiracy, falsification of account and undue advantage (“**CBI’s FIR**”), which arraigned an employee of the petitioner, its then Assistant Vice President, Mr. Manoj Rai as an accused.

5. *Vide* a letter dated 21.09.2022, the petitioner submitted to the Assistant Commissioner, PVCs for 6 out of the 7 directors. It was further informed through the same letter that the police verification of Mr. Thibault Cuny, a whole-time Director, was pending since he was undergoing medical treatment overseas. Since Mr. Cuny passed away, on 13.12.2022, the PVCs for the 6 directors was again submitted by the petitioner to the Assistant Commissioner.

6. Being aggrieved by the non-grant/non-issuance of the L-1 license, the petitioner filed a Writ Petition before this Court bearing W.P.(C) 4057/2023 (“**1<sup>st</sup> Writ Petition**”), which came to be disposed of *vide* order dated 29.03.2023 (“**1<sup>st</sup> HC Order**”), with the following directions:

*“10. Accordingly, it is directed that the decision of the grant of the L-1 license and in respect of the representation dated 13th December, 2022 be taken within a period of two weeks and the same be communicated to the Petitioner. The same shall be a reasoned order. All remedies, if required, are left open and to be availed of in accordance with law.*

*11. The present petition, along with all pending applications, if any, is disposed of.”*

7. Pursuant to the aforesaid order of the Court, a detailed and thorough order dated 17.04.2023 came to be passed by the Deputy Commissioner (“**Deputy Commissioner’s Order**”), whereby, the authority came to the



conclusion that the petitioner has not fulfilled the requirement of, *inter alia*, Section 13 of the Delhi Excise Act, and accordingly the petitioner's Applications for the grant of L-1 licenses for the year 2022-2023 came to be rejected.

8. The Deputy Commissioner's Order was assailed before this Court in a Writ Petition bearing W.P.(C) 5202/2023 ("**2<sup>nd</sup> Writ Petition**"), which came to be disposed of *vide* order dated 17.07.2023 ("**2<sup>nd</sup> HC Order**"), relegating the petitioner to pursue its statutorily prescribed alternate and efficacious remedy in the form of an appeal to the Excise Commissioner under Section 72 of the Excise Act. The petitioner, thereafter, filed an appeal before the Excise Commissioner, which came to be dismissed *vide* order dated 23.07.2024 ("**1<sup>st</sup> EC Order**").

9. The Excise Commissioner's decision was assailed before the Financial Commissioner, by an appeal under Section 72(3) of the Excise Act. The said appeal was allowed *vide* order dated 13.02.2025 ("**1<sup>st</sup> FC Order**") and the matter was remanded back to the Excise Commissioner to be considered anew.

10. Thereafter, post the remand direction in the 1<sup>st</sup> FC Order, the Excise Commissioner after granting a fresh opportunity of hearing to the petitioner, passed an order dated 13.04.2023 ("**2<sup>nd</sup> EC Order**"), again rejecting the petitioner's appeal from the Deputy Commissioner's Order and consequently its Applications for the grant of L-1 licenses. The said order was yet again assailed before the Financial Commissioner, which passed the Impugned Order/2<sup>nd</sup> FC Order dismissing the petitioner's appeal and



affirming the rejection of the petitioner's Applications. It is this order which the petitioner has challenged in the instant petition.

## II. SUBMISSIONS OF THE PARTIES

11. Mr. Mukul Rohatgi and Mr. Jayant K. Mehta, learned senior counsel appearing on behalf of the petitioner have submitted that — *first*, the purported “*rejection*” of the petitioner's Applications *vide* the Impugned Order is impermissible since the L-1 licenses were in fact granted. The powers which could have then been exercised by the respondents pertained only to cancellation, and the said provisions under the Excise Act have not been invoked. *Second*, the 1<sup>st</sup> FC Order, being a limited remand, it was not open to the Excise Commissioner while passing the 2<sup>nd</sup> EC Order to not grant/issue to the petitioner the L-1 licenses. *Third*, on merits, the interpretation canvassed in the Deputy Commissioner Order, 1<sup>st</sup> and 2<sup>nd</sup> EC Order, and the Impugned Order/2<sup>nd</sup> FC Order pertaining to Section 13(1)(c) of the Delhi Excise Act getting attracted before a conviction for an offence is reached, is wholly untenable.

12. *Per contra*, Mr. Sameer Vashisht, learned counsel appearing for the respondents has submitted that — *first*, there is no fundamental right to get a license and the petitioner's Applications were considered in accordance with law. Though there was an inordinate delay but the same does not affect the validity of the Impugned Order. *Second*, the L-1 licenses were never granted to the petitioner, and further, the Impugned Order being a detailed order should not be interdicted. *Lastly*, he also submitted that the Court ought not



to interfere in the decision of the respondents pertaining to the conferment of a license, particularly, that relating to liquor.

### III. ANALYSIS

#### A. INTERPRETTING SECTION 13(1)(C) OF THE EXCISE ACT

13. Section 13 of the Excise Act reads as under:

***“13. Qualifications for grant of licence***

*(1) While considering an application for grant of licence or permit, the licensing authority shall have regard that the applicant—*

...

*(c) possesses good moral character and has no criminal background or has not been convicted of any offence punishable under this or other relevant Acts:*

*PROVIDED that in case he is selected as licensee, he shall furnish within thirty days of the grant of licence a certificate issued by the Superintendent of Police of the district or the Commissioner of Police, as the case may be, of which place he is the resident, showing that he possesses good moral character and has no criminal background or criminal record;*

...

*(g) shall not employ any salesman or representative who has criminal background or suffers from any infectious and contagious disease or is below twenty-one years of age.*

*(2) The licence shall be liable for cancellation, if any document produced with the application is found to be false or forged.”*

14. The petitioner’s case is that the expression “*has no criminal background*” as it appears in Section 13(1)(c) of the Act must be equated with “*has not been convicted of any offence*”. The solemn ground to make this argument is the use of the word “*or*” as it appears between these two expressions.



15. The trade of liquor being *res extra commercium*,<sup>1</sup> special qualifications appear to have been attached to a proposed person desirous to engage in the said trade. The permissibility of imposing such specific eligibility criteria was recognised by the Supreme Court as early as ***Cooverjee B. Bharucha v. The Excise Commissioner and the Chief Commissioner, Ajmer and Ors.***,<sup>2</sup> where the Constitution Bench speaking through Mahajan C.J. observed as under:

*“7. ...The nature of the business is, therefore, an important element in deciding the reasonableness of the restrictions. The right of every citizen to pursue any lawful trade or business is obviously subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, order and morals of the community. Some occupations by the noise made in their pursuit, some by the odours they engender, and some by the dangers accompanying them, require regulations as to the locality in which they may be conducted. Some, by the dangerous character of the articles used, manufactured or sold, require also special qualifications in the parties permitted to use, manufacture or sell them...”*

16. Similarly, another Constitution Bench in ***Amar Chandra Chakraborty v. Collector of Excise***,<sup>3</sup> recognised the special nature of trade in liquor in the following words:

*“10. ... In view of the injurious effect of excessive consumption of liquor on health this trade or business must be treated as a class by itself and it cannot be treated on the same basis as other trades while considering Article 14. This classification is founded on an intelligible differentia having a rational relation to the object to be achieved by the control imposed on the trade or business in country liquor. Article 14, it may be pointed out, only forbids class legislation but reasonable classification does not come within the prohibition. Nothing convincing was urged at the bar to attract the prohibition embodied in Article 14.”*

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<sup>1</sup> ***Khoday Distilleries Ltd. and Ors.***, (1995) 1 SCC 574, para. 60.

<sup>2</sup> AIR 1954 SC 220.

<sup>3</sup> 1972 AIR 1863.



17. The purpose of Section 13(1)(c), thus, appears to be to prevent a person with a criminal background or not having good morals to be part of the liquor business. The expression “*criminal background*” is *ex facie* broader than not being convicted for an offence. If the two expressions were equated, the apparent and clear intention of the legislature to prevent the liquor license from going into doubtful hands of persons with a “*criminal background*” and not just those convicted of an offence may be rendered otiose and nugatory. Indeed, the very purpose for using the expression “*criminal background*” shall be rendered futile.

18. The mere usage of the word “*or*” is not determinative of the manner in which a statute is to be read. The principle has been succinctly captured in the Principles of Statutory Interpretation by GP Singh<sup>4</sup> in the following words:

*“The word “or” is normally disjunctive and “and” is normally conjunctive but at times they are read as vice versa to give effect to the manifest intention of the Legislature as disclosed from the context. As stated by Scrutton LJ:*

*You do sometimes read ‘or’ as ‘and’ in a statute. But you do not do it unless you are obliged because ‘or’ does not generally mean ‘and’ and ‘and’ does not generally mean ‘or’. 63. And as pointed out by Lord Halsbury the reading of ‘or’ as ‘and’ is not to be resorted to, “unless some other part of the same statute or the clear intention of it requires that to be done”.*

...  
*However, if the literal reading of the words produces an unintelligible or absurd result “and” may be read for “or” and “or” for “and” even though the result of so modifying the words is less favourable to the subject provided that the intention of the Legislature is otherwise quite clear.”*

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<sup>4</sup> 13<sup>th</sup> Ed., Ch. 5, pg. 485-486.



19. A brief reference may also be made to the decision of the Supreme Court in *Ishwar Singh Bindra and Ors. v. State of Uttar Pradesh*,<sup>5</sup> para. 11 of which reads as under:

*“11. Now if the expression “substances” is to be taken to mean something other than “medicine” as has been held in our previous decision it becomes difficult to understand how the word “and” as used in the definition of drug in Section 3(b)(i) between “medicines” and “substances” could have been intended to have been used conjunctively. It would be much more appropriate in the context to read it disjunctively. In Stroud’s Judicial Dictionary, 3rd Edn. it is stated at p. 135 that “and” has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of or. Sometimes, however, even in such a connection, it is, by force of a contexts, read as “or”. Similarly in Maxwell on Interpretation of Statutes, 11th Edn., it has been accepted that “to carry out the intention of the legislature it is occasionally found necessary to read the conjunctions ‘or’ and ‘and’ one for the other”.*

20. It is also important to note that disqualifying persons on the basis of a criteria that though relates to criminality but falls short of actual conviction is not unique to the Delhi Excise Act. For instance, the Haryana Liquor License Rules, 1970 under Rule 36(16) provides as under:

*“16. The Deputy Excise and Taxation Commissioner (Excise) of the respective district may exclude from allotment of retail liquor outlet any person on account of his being notorious or of a **bad character** or any other sufficient reasons to be recorded in writing.”*

[Emphasis Supplied]

21. Punjab Intoxicants License and Sale Orders, 1956, under Order 7 provides as under:

*“A licence for the vend of liquor or drugs may not be given:*

*...*

***b. to any person whether a former licensee or not, who has been convicted, or reasonably suspected of committing or conniving at the commission***

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<sup>5</sup> 1968 SCC OnLine SC 98.



*of any offence under the Punjab Excise Act, 1914 or the East Punjab Opium Smoking Act, 1948, or the East Punjab Molasses (Control) Act, 1948 or the Indian Power Alcohol Act, 1948, or the Narcotics Drugs and Psychotropic Substances Act, 1985.”*

[Emphasis Supplied]

22. The Chhattisgarh Excise Settlement of Licenses for Retail Sale of Country Foreign Liquor Rules, 2002 (“**Chhattisgarh Rules**”) further provides the following eligibility conditions for a prospective applicant:

**“9. Eligibility Conditions for Applicant.**

*The applicant has to fulfill the following conditions for obtaining the licence for shop/group of shops of country/foreign liquor.*

(d) *Has to submit an affidavit duly verified by public notary as proof of the following, namely:*

...

(2) *That he possesses good moral **character and have no criminal background** and have not been convicted of any offence punishable under the Act or Narcotic Drugs and Psychotropic Substances Act, 1985 or any other law for the time being in force or any other cognizable and non-bailable offence.*

(3) *That in case he is selected as licensee he will furnish a certificate, issued by Superintendent of Police of the district of which he is the resident, showing that he as well as his family members possess good moral character and **have no criminal background** or **criminal record**, within thirty days of grant of licence.*

(4) *That he shall not employ any salesman or representative who has criminal background as mentioned in clause (iii) or who suffer from any infectious or contagious disease or is below 21 years of age or a woman.”*

[Emphasis Supplied]

23. The Chattisgarh Rules were analysed by the Supreme Court in *Ashok Lanka and Anr v. Rishi Dixit and Ors.*,<sup>6</sup> where, even though the *vires* of the

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<sup>6</sup> (2005) 5 SCC 598.



legislation was not into question, however, *qua* compliance with Rule 9's eligibility criterion S.B. Sinha J. observed as under:

*“48. Rule 9 provides that the eligibility conditions should be scrutinised before an application is made. Rule 9 is in two parts. It deals with the eligibility conditions of the applicant. It does not make any exception as regards fulfilment of different clauses inasmuch as the said rule begins with the expression “the applicant has to fulfil the following conditions”. Such conditions are required to be fulfilled for obtaining the licence. Whereas clauses (a), (b) and (c) thereof are essential conditions which would debar a person from filing an application and if such an application is filed, the same would be liable to be rejected at the outset. An applicant having regard to the expressions used in clause (d) has to file an affidavit. Filing of such affidavit, therefore, is mandatory. However, affidavit is required to be filed by the applicant to show that: (i) he possesses or may arrange for taking on rent suitable premises; (ii) he possesses good moral character and has no criminal background and has not been convicted of any offence punishable under the Act or the Narcotic Drugs and Psychotropic Substances Act, 1985 or any other law for the time being in force or any other cognizable and non-bailable offence. Clause (3) of sub-rule (d) of Rule 9 enjoins a duty upon the authorities to get the same verified whereupon only a certificate is required to be issued by the Superintendent of Police of the district of which he is the resident in the event his selection as a licensee showing that he as well as his family members possess good moral character and there is no criminal background or criminal record against them. Such certificate is required to be filed within thirty days from the grant of licence. He also in terms of the said clause (5) of sub-rule (d) of Rule 9 is to state that no government dues are outstanding against him.”*

24. Further, the Uttar Pradesh Excise Licenses (Tender-Cum-Auction) Rules, 1991 which were enacted for determining consideration for and the manner of the grant of licence for exclusive privilege of retail sale of country liquor, foreign liquor and Bhang by tender-cum-auction system provides under Rule 16 the ‘Auction Procedure’, the material portion of which reads as under:

*“Rule 16. Auction procedure*

*...*

*(5) Following precautions need to be observed while deciding the bids:*



...  
(ii) **It is necessary to guard** against the acceptance of bids which may have the effect of constituting an overt or covert monopoly and **against the acceptance as licence holders of undesirable persons of doubtful solvency or criminal background.**”

[Emphasis supplied]

25. Similarly, Rule 8 of the Uttar Pradesh Excise (Settlement of Licenses for Retail Sale of Country Liquor) Rules, 2002 deals with the Eligibility Conditions for applicants and sub-rule (d) provides as under:

**“Rule 8. Eligibility conditions for applicants.**

*Eligible applicants for license of a retail country liquor shop must fulfill following conditions, namely:*

(d) *submit an affidavit duly verified by notary public as proof of the following, namely:*

...  
(iii) *that he and his family members **possess good moral character and have no criminal background nor have been convicted of any offence punishable under United Provinces Excise Act, 1910 or Narcotics Drugs and Psychotropic Substances Act, 1985 or any other cognizable and non-bailable offence.***

(iv) *that in case he is selected as licensee he will furnish a certificate issued by Senior Superintendent of Police/Superintendent of Police of the district of which he is the resident, showing **that he as well as his family members possess good moral character and have no criminal background or criminal record, within thirty days of grant of license.***

(v) *that he shall not employ any salesman or representative who has **criminal background** as mentioned in clause (iii) or who suffers from any infectious or contagious diseases or is below 21 years of age or a woman.*

[Emphasis supplied]



26. Further, the aforementioned Rule became the subject matter of the dispute in *Jugal Kishore Pandey v. State of U.P. and Ors.*,<sup>7</sup> where a Division Bench of the Allahabad High Court held that a conviction in a criminal case is a necessary requirement for a person to have a criminal background. The material portion of the said judgement which, in erudite terms, elaborate upon the nature of character read as under:

*“29. A bare perusal of Rule 8(d)(iii) of the Rules 2019 shows that the applicant for the license of a retail foreign liquor shop, shall submit an affidavit duly verified by public notary as proof of the fact that he and his family members possess good moral character and have no criminal background nor have been convicted of any offence punishable under the United Provinces Excise Act, 1910 or the Narcotics Drugs and Psychotropic Substances Act, 1985 or any other cognizable and non-bailable offence. It specifically provides that the applicant for the license of a retail foreign liquor shop must have no criminal background. If the applicant has a criminal background, then also, he does not fulfil the eligibility conditions, as in such a case, he cannot file an affidavit duly verified by a public notary in terms of Clause (d)(iii) of Rule 8 of the Rules 2019. The conviction in a criminal case is not must for being ineligible as provided under Rule 8. The pendency of a criminal case would be sufficient to deny issue of the character certificate or for its cancellation, and particularly where pendency of such case was suppressed at the time of issue of the character certificate. A person against whom a criminal case is pending, cannot be said to be a person having no criminal background. If the character certificate is issued despite pendency of a criminal case, because there is yet no conviction, and on the basis thereof the petitioner applies for the grant of license of foreign liquor shop, the same would not be in consonance with the eligibility conditions as prescribed under Rule 8(d)(iii) of the Rules, 2019. As such we find that the impugned order dated 22.1.2020 cannot be said to be contrary to the provisions of the Rules, 2019.*

*30. “Character” means “an attribute, quality, esp, a trait or characteristic which serves as an index to the essential or intrinsic nature of a person”; reputation, repute; as a man's character for truth and veracity, a description, delineation, or detailed account of the qualities or peculiarities of a person.” (Webster's New International Dictionary)*

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<sup>7</sup> 2020 SCC OnLine All 256.



31. According to Law Lexicon, “character” means “estimation of a person by his community; particular qualities impressed by nature or habit on a person which distinguish him from others”. Character lies in the man, it is the mark of what he is, it shows itself on all occasions, reputation depends upon others; and it is what they think of him. According to Oxford Dictionary “character” means “collective peculiarities, sort, style, reputation, description of person's qualities, testimonial, status”.

32. In the case of Nilgiris Bar Association v. T.K. Mahalingam, (1998) 1 SCC 550, paragraph 10, the Hon'ble Apex Court has held as under:—

*“The word “character” is not defined in the Act. Hence, it must be given the ordinary meaning. According to Webster's New International Dictionary “character” means “an attribute, or quality especially a trait or characteristics which serves as an index to the essential or intrinsic nature of a person”. In Black's Law Dictionary “character” is defined as “the aggregate of the moral qualities which belong to and distinguish an individual person; the general result of the one's distinguished attributes”. The celebrated lexicographer has at the same time pointed out the following aspects also about the subject:*

*“Although character and reputation are often used synonymously, the terms are distinguishable. ‘Character’s is what a man is, ‘reputation’ is what he is supposed to be in what people say he is, ‘Character’ depends on attributes possessed and ‘reputation’ on attributes which others believe one to possess. The former signifies reality and the latter merely what is accepted to be reality at present.”*

33. Thus, the term “character” is of very wide import and it comprehends all those traits, dispositions, habits, ways of acting and inter acting in certain situations which give an idea of the personality and enable others to form an opinion and a reasonable degree of expectations as to how the person would conduct himself in the situation in respect of which his characteristics are visible or otherwise known. As such, the character certificate must reflect the true character of the person holding that certificate to enable others to form an opinion and a reasonable degree of expectation as to how that person would conduct himself in certain situations. The public at large must not be misled by wrong issue of the character certificate.”

27. In light of the discussion above, in order to give effect to the intention of the legislature, and considering the counter-part legislations concerning matters pertaining to excise and liquor, the Court considers it appropriate to



treat the condition for not being convicted of a criminal offence as the floor and not the ceiling for a person to not have a criminal background. The word “*or*” as it appears between the expression “*has no criminal background*” and “*has not been convicted of any offence*” as “*and*”.

## **B. WHETHER THE PETITIONER COMPLIES WITH SECTION 13(1)(c) OF THE EXCISE ACT**

28. Ordinarily, in exercise of the powers conferred under Articles 226 and 227 of the Constitution, the Court does not delve into the merits of the decision. However, the case at hand concerns the grant of a license for the supply of liquor, which inherently involves an aspect of public interest, welfare, and health. Further, the procedural history of the case at hand, is to a certain extent chequered, with various remand orders having been passed, and the ladder of Courts, authorities, and tribunals been repeatedly, to use Mr. Rohatgi’s words gone “*up and down, up and down*”.

29. Thus, owing to the above, the Court has deemed it appropriate to delve into merits of the case and decide authoritatively, whether the petitioner herein, does in fact, comply with the requirements of Section 13(1)(c) of the Excise Act.

30. The Deputy Commissioner’s Order renders detailed findings on the background of the petitioner, which it considered as constituting “*criminal background*” for the purposes of Section 13(1)(c) of the Excise Act. The Deputy Commissioner, broadly, took into account — *first*, the CBI’s FIR registered against one Mr. Major Roy, an employee of the petitioner, and proceedings consequent thereto and *second*, the ED’s ECIR dated



22.08.2022 (“**Said ECIR**”) and proceedings in furtherance of it under the Prevention of Money-Laundering Act, 2002 (“**PMLA**”).

31. After taking note of the proceedings by the CBI and ED, the Deputy Commissioner arrived at the following conclusion:

*“As per above summary which is result of investigations done, it is evident that M/s Pernod Ricard India Private Limited, is one of the accused covered in the subject prosecution complaint, which through Sh. Benoy Babu and others, in conspiracy with the super cartel and Sh. Vijay Nair, gave their wholesale business to Indo Spirits. Sh. Binoy Babu and other related individuals have also been subsequently arrested by the Directorate of Enforcement. Sh. Vijay Nair who has been charge sheeted by the CBI, named in prosecution complaint of the Directorate of Enforcement and whose assets have been attached by the Directorate of Enforcement, in the matter of irregularities in framing and implementation of the New Excise Policy 2021-22, of Delhi, has been seen to have an active involvement in M/s Pernod Ricard India Private Limited.”*

32. Before the passing of the Deputy Commissioner’s Order dated 13.04.2023, the following events had taken place. The CBI’s FIR had been registered on 17.08.2022 for the Delhi Excise Policy Scam which arraigned the then Assistant Vice President of the Petitioner Mr. Manoj Rai as an accused. Further, the Enforcement Directorate (“**ED**”) had on 22.08.2022 registered as ECIR against the same persons who were the accused in the CBI’s FIR i.e., Mr. Rai as well. Thereafter, the Supplementary Prosecution Complaint dated 06.01.2023 was also filed by the ED wherein the petitioner was arraigned as accused no. 12 and one of its employees Mr. Benoy Babu, the Regional Head of Delhi, as accused no. 11. Further on 02.02.2023, the ASJ/Spl. Judge (PC Act) (CBI-09), New Delhi had already taken cognizance of the Supplementary Prosecution Complaint.



33. The Deputy Commissioner's Order takes note of the narration in the Provisional Attachment Order issued by the ED in relation to the said ECIR ("PoA"), the material portion of the said order reads as under:

*4. Directorate of Enforcement has initiated an investigation in the matter by recording an ECIR No. ECIR/HIU-II/14/2022 on 22.08.2022 as Section 120B of the Indian Penal Code, 1860 and Section 7 of the Prevention of Corruption Act, 1988 are Scheduled offences under the PMLA. The references wherein name of M/s Pernod Ricard India Pvt Ltd and its employees/directors are mentioned in provisional attachment order of ED in multiple times which are mentioned as under:*

*"I. Pernod Ricard, is one of the accused covered in the subject PC, which through Sh Benoy Babu and others, in conspiracy with the super cartel and Sh Vijay Nair gave their wholesale business to Indo Spirits. **The Excise Policy 2021-22 required the manufacturers to register their brands at the Lowest EDP net of all discount/commission/rebate of any nature whatsoever, however, Pernod Ricard by way of conspiracy has got their price fixed without deducting the discounts/rebates they offer thus getting a much higher price fixed for their brands and thus earning a huge additional profit which was ineligible to them and should have been passed to the consumers as lower MRP If the manufacturer had registered the brands at actually lowest EDP, the capacity of the manufacturers to give out credit notes would have been limited.** However, Pernod Ricard paid Rs. 131.9 Cr as credit notes to the retailer via the wholesalers, where the benefit of discounts was shifted to the retailers instead of the actual consumer at large. (At page no 18/19 of 150)."*

*...  
"II. Another novel method of recovery of the kickbacks was through passing of Credit Notes. Ordinarily the credit notes are passed to the person who had direct nexus with or has sold the goods, however, in this business; the manufacturers were giving credit notes to the retailers with whom they had no direct transactions with. Further, there was no apparent reason to give credit notes to businesses which are minting money with MRP being 3 times of the cost and having profit margin of 185% approx. The fact that the credit notes were an eyewash to transfer money illegally to pay kickbacks is evident from the fact that the ostensible reason of volume based credit notes was bogus and credit notes have been passed in an inconsistent manner considering the sale volume. For example, Pernod Ricard has not given any credit notes to M/s Adharv Enterprises (not a favored L7) against the volume of 19,080 cases purchased in the months of Dec, 2021 Jan, 22 and Feb 22. However, Pernod Ricard has given Rs. 61.01 lakhs as credit notes to Mis Organomix Ecosystems Pvt. Lid. (which is part of the South Group*



*cartel) who has purchased 17,644 cases during the said 3 months. (At page no 20 of 150)."*

[Emphasis Supplied]

34. The Deputy Commissioner's Order, while relying upon the PoA further records the partnership arrangement orchestrated by one Mr. Vijay Nair ensured that the petitioner's wholesale business would go to Indo Spirits, which increased the profitability of the business which helped in recovering the kickbacks paid in advance. The relevant extracts as under:

*"III. One of the entities that partaked in the sharing stakes with the South Group is M/s Indo Spirits of Sh Sameer Mahandru. Sh Sameer Mahandru formed this firm with 65% partnership given to the representatives of the South Group Sh Arun Pillai and Sh Prem Rahul Manduri who represented Ms. K. Kavitha and Sh MSR respectively in this partnership firm. The nominal investments made by Sh Arun Pillai and Sh Prem Rahudl are also linked with their actual respective investors. The same is detailed in the prosecution complaints filed by the ED. Further, Sh Sameer Mahandru in conspiracy with Sh Vijay Nair gave this partnership share to these persons on assurance from Vijay Nair that he would ensure that Pernod Ricard's wholesale business is awarded to Indo Spirits. Therefore, Indo Spirits was a special purpose vehicle created to facilitate the recoupment of the kickbacks paid by the South Group in advance. Vijay Nair using his influence and access with the top leaders of political party and with their full support directed Pernod Ricard to choose Indo Spirits as their L-1 distributor. Accordingly, Indo Spirits got Pernod Ricard's wholesale business and that itself made the profitability of that business extremely high and then this was compounded the fact that the members of the South group further got control of total 9 retail zones including 2 retail zones of Sh Sameer Mahandru, thereby making one of the biggest cartel controlling almost 30% of the liquor business in Delhi and also a self-sustaining mechanism for the South Group to recover their Kickbacks paid in advance. (At page no 33/34 of 150)."*

35. It has further been narrated in the PoA that the petitioner used the veil of corporate guarantee to push their brands through the cartel companies to which guarantees were given. The relevant extracts are as under:



*“VI. Pernod Ricard as a manufacturer was not permitted to participate in wholesale or retail as per the Excise policy, directly or indirectly. However, in contravention of the same and in conspiracy with Sh Sameer Mahandru and others, participated in retail business. Pernod Ricard has provided corporate guarantee at HSBC for a loan of Rs. 100 Cr. to two entities of Sh Sameer Mahandru, namely, M/s Khao Gali and M/s Bubbly Beverages, as explained above. The said corporate guarantee was actually an investment by the Pernod Ricard in retail zone for increasing the market share of Pernod Ricard in Delhi. Vimal Khanna, Pernod Ricard has disclosed that the arrangement with the entities who were given corporate guarantee was to generate the demand in line with Pernod Ricard market share. Thus, since their then market share was 35% in Delhi, the 8 retailers with whom they have corporate guarantee arrangement had to ensure that 35% of the stocks they have in their shops should be of Pernod Ricard. The aim was to increase the market share to 47% over a period of 3 years. As return on the investment made by Pernod Ricard in the retail zones, their market share has increased from 15% to 35% as revealed by Sh Vimal Khana in his statement dated 18.10.2022. This establishes a clear intention of Pernod Ricard to indulge in brand pushing and gain illegitimate market share through conspiracy and cartelization. (At page no 46 of 150).*

*As explained above, Pernod Ricard made Indo Spirits, its wholesale distributor as per the directions of Sh Vijay Nair and political leaders in exchange of kickbacks of Rs 100 Cr to Sh Vijay Nair, who has received advance kickbacks and used to introduce himself as OSD to Excise Delhi, from the South group, who are beneficial partners in Indo Spirits. In this manner, the super cartel as described above came into existence. Further, the Corporate guarantee provided by Pernod Ricard for Rs. 100 Cr loan to Khao Gali and Bubbly Beverages, facilitated cartelisation between Pernod Ricard and Sh Sameer Mahandru. As on 07.09.2022. Rs 37.3 Cr of this loan against the corporate 7 guarantee of Pernod Ricard is outstanding. This amount facilitated illegal activities of Khao Galt and Bubbly Beverages including, benami proxy business operations and fraud by using false CA certificate. (At page no 46/47 of 150).”*

36. Further, the Supplementary Prosecution Complaint notes that the corporate guarantees issued by the petitioner was for the purpose of creating a cartel to purchase more of petitioner’s products. This was contended to be an investment rather a corporate guarantee, and in turn Proceeds of Crime. The profit accrued, therefrom, to the tune of Rs. 163.5 Cr., was also stated to



be Proceeds of Crime. The material portion of the Supplementary Prosecution Complaint reads as under:

“xi) From the above, it is clearly evident that the investment of Rs. 200 cr. was done for creation of cartel of Manufacturer (Pernod Ricard) and these retailers which was against the objectives and provisions of the policy. The main motive of Pernod Ricard in cartel creation was to ensure that the retail shops of the cartel partners purchased higher quantity of Pernod Ricard brands (35% of their total stocks in each shop) in lieu of the financial assistance provided by Pernod Ricard. Further, Mrs. Richa Singh, CFO and Director of PRI has deposed that there should have been written request from the parties, due diligence should have been done and Collateral Security should have been taken. **Thus, the primary aim of PRI was to increase their market share and profits by investing Rs. 200 cr. and creating a cartel with retailers which was against the policy.**”

...  
“(iv) Further, as a result of Sh Vijay Nair's role in conspiracy with M/s Pernod Ricard through its employee Sh Benoy Babu, M/s Pernod Ricard accrued excess profit of Rs 163.5 Cr because of its increase in market share. Since, this profit is a result of the conspiracy in the policy formulation, this amount of Rs. 163.5 Cr is proceeds of crime.”

...  
(ix) Loan of Rs. 140 Cr was availed by 4 retail entities against the corporate guarantee of Rs. 200 cr. given to HSBC for 5 retail groups for backing, which was used for promoting cartelization by Benoy Babu and M/s Pernod Ricard is actually Proceeds of crime. This corporate guarantee and the subsequent loan of Rs. 140 Cr to select 4 entities was a result of conspiracy by Pernod Ricard and Sh. Benoy Babu with others to illegally acquire greater market share and enhanced profits for Pernod Ricard. The loan thus availed was used in the payment of EMDs by these retail entities by themselves or even in cross funding. In the manner explained above, this loan was an outcome of a conspiracy. Further, it is also a vehicle for creating cartels in the Delhi liquor business. Therefore, as per the definition of proceeds of crime under section 2(1) (v) read with 2(1) (u), wherein property of any kind used in the commission of an offence under this Act or any of the scheduled offences is proceeds of crime, thus this amount of Rs. 140 Cr is proceeds of crime. Further, the cost of due diligence conducted by M/s Dow Jones of Rs. 11.8 lacs that was borne by Pernod Ricard to facilitate the corporate guarantee given to the above mentioned entities is proceeds of crime as it was used in the conspiracy of forming cartel by Pernod Ricard with these entities.

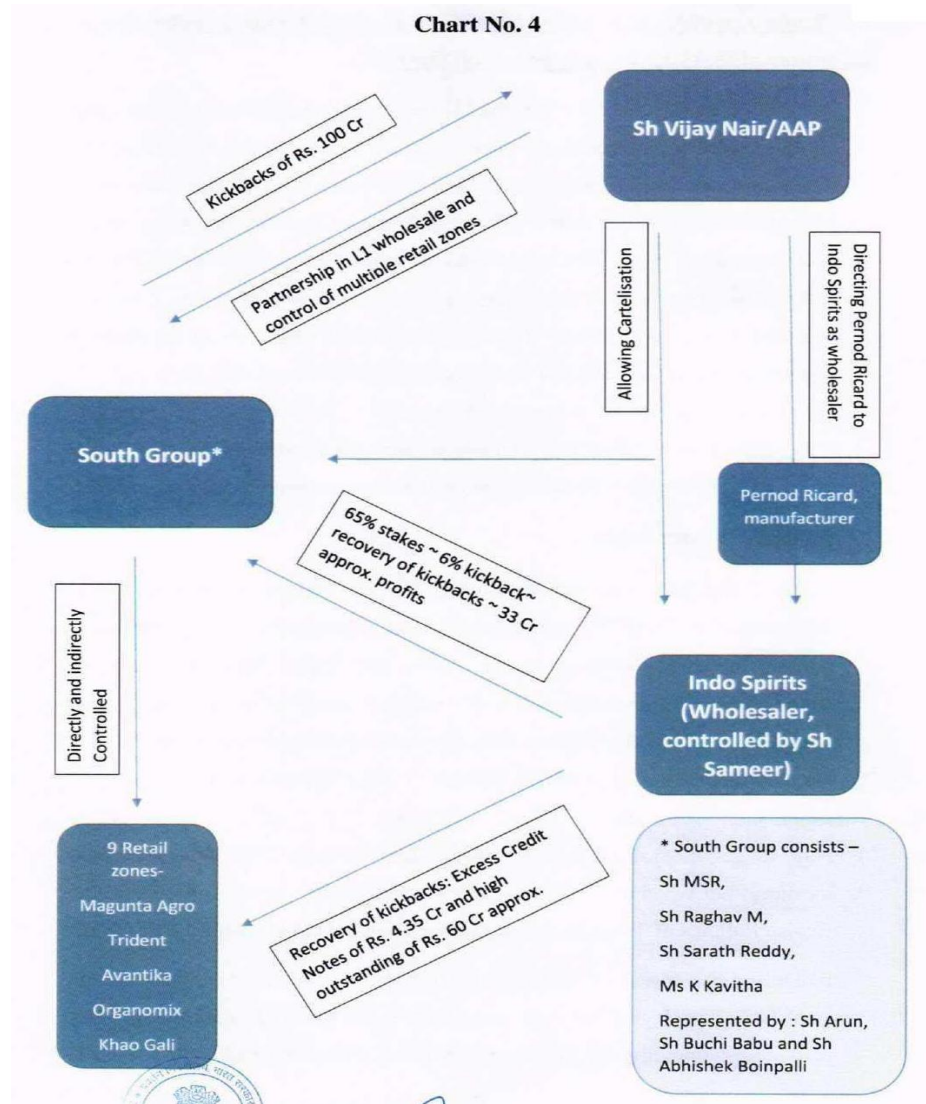
...



*(x) Sh Benoy Babu has played a key role not only in the formation of Excise Policy and making a cartel with the retailers to whom he gave corporate guarantee but also in the formation of the Super Cartel with the retailers (L7) of South Group and Wholesaler (L1) i.e. Indo Spirits in conspiracy with Sh Vijay Nair, which ultimately was used to recoup kickbacks that were paid by the South Group. Therefore, the profits of at least Rs. 59.77 Cr accruing from the sales made to the retail entities with which Pernod Ricard through Benoy Babu formed cartels is proceeds of crime.”*

[Emphasis Supplied]

37. The Supplementary Prosecution Complaint provides the following chart to describe the money-laundering scheme in which the petitioner was involved:





38. From the aforementioned, it is clear that the Deputy Commissioner had applied its mind to sufficient amount of relevant material before it, to arrive at the conclusion that the petitioner had a “*criminal background*” in terms of Section 13(1)(c) of the Excise Act. While the Court is not required, at least in the present litigation, to put forth an exhausting list of circumstances and conditions which would amount to a criminal background for the purposes of Section 13(1)(c), it would suffice to observe that the same shall depend upon the nature and gravity of the allegation and its connection with the trade and commerce of liquor.

39. In the instant case, the nature of allegations against the petitioner as revealed from CBI’s FIR, the subsequent Chargesheet, the ECIR of the ED, the Supplementary Prosecution Complaint, as also the factum of the concerned Court having taken cognizance, all concerning the petitioner purportedly having, *inter alia*, illegally influenced the forming of the Excise Policy to the detriment of the people of Delhi, *ex facie* evince that the petitioner does in fact have a “*criminal background*” for the purposes of Section 13(1)(c) of the Excise Act.

40. Since the observation of the Deputy Commissioner’s Order on merits are found to be unimpeachable, the Impugned Order, insofar as it affirms the said order does not warrant interference. Even as on date, there does not appear to be sufficient material to allow a contra-conclusion to be reached. Post the passing of the Deputy Commissioner’s Order, three events took place, none of which are sufficient to outweigh the cloud of “*criminal background*” formed upon the petitioner.



41. First, is the bail granted by the Supreme Court to Mr. Benoy Babu in *Benoy Babu v. Directorate of Enforcement*.<sup>8</sup> The said order of Supreme Court records that the bail is granted, *inter alia*, on the ground that Mr. Babu is merely an employee of the petitioner, it neither received nor transferred any money, and further that it had already suffered incarceration of about thirteen months. Unlike the case of Benoy Babu, the petitioner herein is the company itself, which is an accused in the Supplementary Prosecution Complaint, and not merely an employee.

42. There are also specific allegations in the Supplementary Prosecution Complaint against the petitioner for receiving and sending monies as part of the larger Delhi Excise Policy Scheme, which is the subject matter of adjudication. Lastly, the order of the Supreme Court further, in explicit terms, has noted as under:

*“We clarify that observations made in this order are for the purpose of disposal of the present appeal, and would not be construed as findings and observations on the merits of the case.”*

43. The second subsequent event relied upon by the petitioner is the CBI’s 4<sup>th</sup> Supplementary Chargesheet where Mr. Manoj Rai, one of the employees of the petitioner, has not been charge-sheeted as an accused because against the said individual “*there is no prosecutable evidence*” to prosecute him for Section 120-B of the IPC read with Sections 7, 7A and 8 of the Prevention of Corruption Act, 1988 (“**PC Act**”). Again, it may be noted that the offence with which the CBI’s Chargesheet was concerned

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<sup>8</sup> SLP (Crl.) No. 1164-11645 of 2023, order dt. 08.12.2023.



with was that of the PC Act. It is no longer *res integra* that the offence of money-laundering is an independent offence.<sup>9</sup>

44. Importantly, the proceedings pending *qua* the offence of money-laundering is against the petitioner herein. The CBI not finding evidence to prosecute one of its employees for an offence under a different legislation does not strip off the criminal background of the company i.e., the petitioner concerning the offence of money-laundering under the PMLA.

45. The third last event which is pressed into service is the order dated 27.02.2026 passed by the Special Judge (PC Act) (CBI) in ***CBI v. Kuldeep Singh and Ors.***,<sup>10</sup> whereby the accused in the predicate offence have been discharged. No benefit can be sought from this order owing to the order dated 09.03.2026 passed by this Court in ***Central Bureau of Investigation v. Kuldeep Singh and Ors.***,<sup>11</sup> the material portion of which reads as under:

*“13. In the meantime, the learned Trial Court, where the proceedings regarding the connected case filed by the Directorate of Enforcement are pending, is requested to adjourn the case to a date, later than the date fixed before this Court, **and await the outcome of the present case.**”*

[Emphasis Supplied]

46. The facts as on date remain to be that the petitioner continues to be a company accused of committing the offence of money-laundering as defined under the PMLA, and facing trial before the Court of competent jurisdiction. A few portions of the order dated 02.02.2023, passed in ***Directorate of***

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<sup>9</sup> *Vijay Madanlal Choudhary v. Union of India*, 2022 SCC OnLine SC 929.

<sup>10</sup> CBI Case No. 56 of 2022.

<sup>11</sup> CrI. Rev. P. 134/2026.



*Enforcement v. Sameer Mahandru & Ors.*,<sup>12</sup> whereby cognizance was taken by the Ld. Trial Court *qua* the Supplementary Prosecution Complaint wherein the petitioner was arraigned as an accused, assume significance. They read as under:

*“5. The present case/ECIR was registered by the ED on 22.08.2022 in relation to the predicate offences case of the CBI, which was registered vide FIR/RC No. 0032022A0053 on*

*17.08.2022. The above predicate offences case of CBI was registered for commission of the offence of criminal conspiracy punishable U/S 120B r/w Section 477A IPC, Section 7 of the PC Act, 1988 and substantive offences thereof and this ECIR was registered as offences U/S 120B IPC and Section 7 of the PC Act are scheduled offences under the PMLA, 2002. The CBI case was registered in relation to the irregularities committed in framing and implementation of Excise policy of the Government of National Capital Territory of Delhi (GNCTD) for the year 2021-22 and it was registered on the basis of a complaint dated 20.07.2022 made by the Hon’ble Lt. Governor, Delhi and the directions of competent authority conveyed by Sh. Praveen Kumar Rai, Director, Ministry of Home Affairs (MHA), Government of India, through his letter dated 22.07.2022 and also based on some source information. Sh. Manish Sisodia, Dy. Chief Minister as well as Excise Minister of the ruling Aam Aadmi Party (AAP) in Delhi and fourteen other persons/entities were specifically named as accused in FIR of the CBI case, which included some other public servants of the Excise Department of GNCTD. It was alleged that they all, along with some other unidentified and unnamed persons/entities, were part of a criminal conspiracy hatched during the period while the above Excise policy was still at formulation stage and in furtherance of illegal objects of the said conspiracy, some loop holes were intentionally left or created in the policy, which were meant to be exploited later on to achieve the said illegal objects of the conspiracy and to favour some licensees and conspirators in the post bid period.*

*...  
7. It has been alleged in the main prosecution complaint filed earlier by the ED that investigation conducted in the present case has so far revealed that A-1 Sameer Mahandru was one of the kingpins and major beneficiaries of the above criminal conspiracy and he was actively involved not only in payment of the above kickbacks, but also in formation of the above cartel and monopoly against spirit of the said policy. It was also alleged that during the course of investigation, it has been revealed that huge kickbacks*

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<sup>12</sup> Ct. Case No. 31/2022 Filing No. 728/2022 CNR No. DLCT11-000747-2022.



of around Rs.100 crores were paid to the politicians or other public servants of the ruling party and government and some of these kickbacks are found to have been paid back or recouped to the South liquor lobby out of profit margins of wholesalers through different modes, including bank transfers and credit notes. It has further been alleged specifically that A-1 is the de-facto or beneficial owner or controller of the other four companies/entities made as accused in the main complaint and in furtherance of the above criminal conspiracy, A-4 was able to secure a wholesale liquor license (L-1) of M/s. Pernod Ricard India Pvt. Ltd. (A-12 in the supplementary complaint) and another company being beneficially owned or controlled by A-1, i.e. A-2 in main complaint namely M/S Khao Gali Restaurants Pvt. Ltd., was able to secure two retail zone licensees (L-7Z), despite the fact that A-1 was also related to liquor manufacturing business in the name and style of M/S Indo Spirits Beverages Pvt. Ltd. It had further been specifically alleged that as a result of the cartelization and monopoly achieved in furtherance of the above criminal conspiracy, a total loss of Rs. 2873 crores (approx.) has been caused to the exchequer of GNCTD and A-1 & the companies/entities connected with or related to him and made accused herein are found to have been involved in generation of proceeds of crime amounting to around Rs.295.45 crores and sufficient evidence, oral as well as documentary, had been collected during the course of investigation to substantiate the above allegations.

...

**10. The contents of this supplementary prosecution complaint filed by the ED, statements of accused & witnesses recorded during the course of investigation as well as the other documentary evidence collected by the investigating agency and filed on record with this supplementary complaint have also been carefully gone through by the court and this court is of the considered opinion that there are also sufficient grounds and material to proceed further in the matter against all the twelve accused persons being prosecuted through this supplementary complaint as they all, either directly or indirectly, are found to have attempted to or indulged in or knowingly assisted or have been a party to or actually involved in the process or activities connected with proceeds of crime generated through the above scheduled offences case, including its concealment, possession, acquisition, use and projection or claiming it to be untainted properties. A-8, A-9 and A-10 companies are alleged to be owned/ beneficially owned or controlled by A-7 P. Sarath Chandra Reddy and these three companies are alleged to have been granted five retail zone licenses, A-12 company is the liquor manufacturer which granted wholesale (L-1) license to A-4 firm/entity related to or owned by A-1 Sameer Mahandru and A-15, A-16 and A-17 companies have been alleged to be owned, beneficially or otherwise, or controlled by A-14 Amit Arora.**

[Emphasis Supplied]



47. Surely a company which is accused of committing the offence of money-laundering in connection with, *inter alia*, the framing and execution of the Delhi Excise Policy Scam, and *qua* whom a Court of competent jurisdiction has arrived at the conclusion that there is sufficient ground to proceed with trial, cannot in anybody's imagination, be considered as being without a "*criminal background*" for the purpose of complying with Section 13(1)(c) of the Delhi Excise Act.

48. From the discussion above, it may be concluded that the petitioner, as on date, is not eligible for an L-1 license as per Section 13(1)(c) of the Delhi Excise Act.

49. At this stage, three principles concerning administrative law and the exercise of writ jurisdiction may be taken note of.

50. **First**, a Writ Court ought not to set aside/quash an order which revives another illegal order. The said principle has been recently re-iterated by the Supreme Court in *M/s Al-Can Export Pvt. Ltd. v. Prestige H.M. Polycontainers Ltd. & Ors.*,<sup>13</sup> the material portion of which reads as under:

*"74. It is well settled principle in law that issuance of a writ or quashing/setting aside of an order if revives another pernicious or wrong or illegal order then in that eventuality the writ court should not interfere in the matter and should refuse to exercise its discretionary power conferred upon it under Article 226 of the Constitution of India. The writ court should not quash the order if it revives a wrong or illegal order. Vide : Gadde Venkateswara Rao v. Government of Andhra Pradesh, AIR 1966 SC 828; Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar, (1999) 8 SCC 16; AIR 1999 SC 3609; 1999 AIR SCW 3623; M.C. Mehta v. Union of India, (1999) 6 SCC 237; AIR 1999 SC 2583; Mallikarjuna Mudhagal Nagappa v. State of Karnataka, (2000) 7 SCC 238; AIR 2000 SC 2976; 2000 AIR SCW*

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<sup>13</sup> 2024 INSC 500.



3289; and *Chandra Singh v. State of Rajasthan*, (2003) 6 SCC 545: AIR 2003 SC 2889: 2003 AIR SCW 3518 and *Raj Kumar Soni v. State of U.P.*, (2007) 10 SCC 635.”

51. **Second**, a Court much less a writ Court does not grant directions or orders which are futile to ensure compliance with a formality when the outcome of a decision shall remain the same. The decision of the Supreme Court in *Canara Bank v. VK Awasthy*,<sup>14</sup> captures the aforementioned principle in the following words:

*“17. What is known as “useless formality theory” has received consideration of this Court in M.C. Mehta v. Union of India [(1999) 6 SCC 237]. It was observed as under : (SCC pp. 245-47, paras 22-23)*

*“22. Before we go into the final aspects of this contention, we would like to state that cases relating to breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case-law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of ‘real substance’ or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed. See Malloch v. Aberdeen Corpn. [(1971) 2 All ER 1278 : (1971) 1 WLR 1578 (HL)] (per Lord Reid and Lord Wilberforce), Glynn v. Keele University [(1971) 2 All ER 89 : (1971) 1 WLR 487], Cinnamond v. British Airports Authority [(1980) 2 All ER 368 (CA)] and other cases where such a view has been held. The latest addition to this view is R. v. Ealing Magistrates’ Court, ex p Fannaran [(1996) 8 Admn LR 351] (Admn LR at p. 358) (see de Smith, Suppl. p. 89) (1998) where Straughton, L.J. held that there must be ‘demonstrable beyond doubt’ that the result would have been different. Lord Woolf in Lloyd v. McMahon [(1987) 1 All ER 1118 : 1987 AC 625 : (1987) 2 WLR 821 (CA)] (WLR at p. 862) has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand Court in McCarthy v. Grant [1959 NZLR 1014] however goes halfway when it says that (as in the case of bias), it is sufficient for the applicant to show that there is ‘real likelihood — not certainty — of prejudice’. On the other hand, Garner Administrative Law (8th Edn., 1996, pp. 271-72) says that slight proof that the result would have been different is sufficient. On the other side of the argument, we have apart from Ridge v. Baldwin [1964 AC 40 : (1963) 2 All ER 66 : (1963) 2 WLR 935 (HL)], Megarry, J.*

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<sup>14</sup> (2005) 6 SCC 321.



*in John v. Rees [(1969) 2 All ER 274 : 1970 Ch 345 : (1969) 2 WLR 1294] stating that there are always ‘open and shut cases’ and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but for the authority to consider. Ackner, J. has said that the ‘useless formality theory’ is a dangerous one and, however inconvenient, natural justice must be followed. His Lordship observed that ‘convenience and justice are often not on speaking terms’. More recently, Lord Bingham, has deprecated the ‘useless formality’ theory in R. v. Chief Constable of the Thames Valley Police Forces, ex p Cotton [1990 IRLR 344] by giving six reasons. (See also his article ‘Should Public Law Remedies be Discretionary?’ 1991 PL, p. 64.) A detailed and emphatic criticism of the ‘useless formality theory’ has been made much earlier in ‘Natural Justice, Substance or Shadow’ by Prof. D.H. Clark of Canada (see 1975 PL, pp. 27-63) contending that Malloch [(1971) 2 All ER 1278 : (1971) 1 WLR 1578 (HL)] and Glynn [(1971) 2 All ER 89 : (1971) 1 WLR 487] were wrongly decided. Foulkes (Administrative Law, 8th Edn., 1996, p. 323), Craig (Administrative Law, 3rd Edn., p. 596) and others say that the court cannot prejudge what is to be decided by the decision-making authority. De Smith (5th Edn., 1994, paras 10.031 to 10.036) says courts have not yet committed themselves to any one view though discretion is always with the court. Wade (Administrative Law, 5th Edn., 1994, pp. 526-30) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a ‘real likelihood’ of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their ‘discretion’, refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in State Bank of Patiala v. S.K. Sharma [(1996) 3 SCC 364 : 1996 SCC (L&S) 717] , Rajendra Singh v. State of M.P. [(1996) 5 SCC 460] that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived.*

*23. We do not propose to express any opinion on the correctness or otherwise of the ‘useless formality’ theory and leave the matter for decision in an appropriate case, inasmuch as, in the case before us, ‘admitted and indisputable’ facts show that grant of a writ will be in vain as pointed out by Chinnappa Reddy, J.’”*



52. **Third**, when issue concerns public interest as it inherent does when the Court is grappling with a liquor trade which is *res extra commercium*, the principle of *Mohinder Singh Gill and Anr. v. Chief Election Commissioner and Ors.*,<sup>15</sup> has been severely diluted to the effect that reliance can be placed on documents and reasoning which does not bear out, strictly, from the order impugned. For the said proposition reliance can be placed on the decision of the Supreme Court in *All India Railway Recruitment Board v. K. Shyam Kumar*,<sup>16</sup> paras. 44 and 45 of which read as under:

*“44. We are also of the view that the High Court has committed a grave error in taking the view that the order of the Board could be judged only on the basis of the reasons stated in the impugned order based on the report of Vigilance and not on the subsequent materials furnished by CBI. Possibly, the High Court had in mind the Constitution Bench judgment of this Court in Mohinder Singh Gill v. Chief Election Commr. [(1978) 1 SCC 405]*

*45. We are of the view that the decision-maker can always rely upon subsequent materials to support the decision already taken when larger public interest is involved. This Court in Madhyamic Shiksha Mandal, M.P. v. Abhilash Shiksha Prasara Samiti [(1998) 9 SCC 236] found no irregularity in placing reliance on a subsequent report to sustain the cancellation of the examination conducted where there were serious allegations of mass copying. The principle laid down in Mohinder Singh Gill case [(1978) 1 SCC 405] is not applicable where larger public interest is involved and in such situations, additional grounds can be looked into to examine the validity of an order. The finding recorded by the High Court that the report of CBI cannot be looked into to examine the validity of the order dated 4-6-2004, cannot be sustained.”*

53. In the present case setting aside the Impugned Order and accepting the case of the petitioner would amount to affirming the Approval Letters which in themselves are against the Delhi Excise Act insofar as they grant

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<sup>15</sup> (1978) 1 SCC 405.

<sup>16</sup> (2010) 6 SCC 614.



approval to a person not otherwise eligible under the Statute. Further, the conclusion reached by the Court in para. 48 above having been reached on admitted facts, and the case of the respondents herein being that the petitioner is ineligible for the grant of license, remanding back the matter in the instant case would naturally cause a direction and order being issued, that the petitioner is declared ineligible in terms of Section 13(1)(c) of the Delhi Excise Act.

54. This being the case, there is no requirement of delving into the procedure followed by the respondents while dealing with the Applications of the petitioner. However, notwithstanding the same, the decision-making process cannot be considered as being arbitrary, illegal, or non-compliant with the principles of reasonableness.

### **C. THE DECISION-MAKING PROCESS WHILE ADJUDICATING UPON THE APPLICATIONS**

#### ***(i) Whether the L-1 Licenses were granted/issued to the petitioner***

55. It is the petitioner's case that "*in the guise of rejecting the petitioner's license applications, the respondent no. 1 has cancelled licenses already granted, by citing a pending prosecution, only to circumvent the threshold for a cancellation u/s. 17 of the Excise Act, i.e., a conviction.*"<sup>17</sup>

56. It is only when a license has been finally granted/issued to a person that the powers under Section 17 of the Excise Act for suspension/cancellation can be resorted to. The material on record nowhere

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<sup>17</sup> Brief Note of Submissions on Behalf of the Petitioner dated 11.05.2026.



suggests that the licenses *qua* the Applications were, in fact, granted to the petitioner.

57. The 1<sup>st</sup> Writ Petition, which preceded the Deputy Commissioner's Order, was filed by the petitioner to grant the L-1 license for the year 2022-23. The 1<sup>st</sup> HC Order records as much in the following terms:

*“2. The present petition has been filed by the Petitioner company-Pernod Ricard India Pvt. Ltd. seeking directions to be issued to the Respondent No. 2-Department of Excise, Government of NCT of Delhi, to grant an L-1 license to the Petitioner for the licensing year 2022-2023...*

*3. The Petitioner has been constrained to approach this Court owing to the alleged delay and inaction of the GNCTD on its application for the grant of an L-1 license...*

...

*6. The grievance of the Petitioner is that despite all documents having been submitted and the amount having been deposited, no decision is being taken on the license of the Petitioner...*

...

*8. Thus, it is the submission of Mr. Akhil Sibal, Id. Sr. Counsel that the Petitioner is suffering due to non-issuance of license by the Respondents as it is unable to sell its products within the territory of Delhi.”*

58. The operative portion of the said order also directs the respondents to take a decision *qua* the grant of L-1 license and in respect of the representation dated 13.12.2022 within a period of two weeks. Further, the 2<sup>nd</sup> HC Order also notes that *vide* the 1<sup>st</sup> HC Order, the Court had *“...directed respondent no. 2 to take a decision on the L-1 license application within two weeks with a reasoned order.”*<sup>18</sup>

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<sup>18</sup> 2<sup>nd</sup> HC Order, para. 4.



59. The reliance placed by the petitioner upon the Approval Letters to contend the final grant/issuance of the L-1 licenses is also unfounded. The said letters, similarly, framed read as under:

**“GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI  
OFFICE OF THE EXCISE COMMISSIONER  
L & N BLOCK : VIKAS BHAWAN : I.P ESTATE : NEW DELHI-110002**

*Application Reference Number: ARN000070043*

*Dated: 31/08/2022*

*To,  
BOTTLING PLANT/SUB-LEASE M/S GW ALCOBREW PRIVATE  
LIMITED, RAIRU FARM, AGRA-MUMBAI ROAD, GWALIOR, GWALIOR,  
MADHYA PRADESH*

*Subject: Grant of L1 license for the year 2022-2023*

*With reference to your application dated 26/08/2022 on the subject cited above, I am directed to convey the approval of competent authority for grant of L1 License to BOTTLING PLANT for the year 2022-2023 for your aforesaid unit.*

*The approval has been granted for the registration of the following brands under L1 licence:*

<b>S. No.</b>	<b>Brand Name</b>
1.	100 Pipers Exceptional Blended Scotch Whisky Aged 12 YO
2.	Passport Blended Scotch Whiskly

*You are therefore requested to deposit the following fees (as prescribed in the terms and conditions) for the L1 license for the year 2022-2023 year immediately so that further necessary action may be initiated:*

*Payee code of the licensee : WV11984*

<b>License Fee Details</b>	
<i>License Fee (Rs.)</i>	5000000.00
<i>Label Registration Fee</i>	40000.00



(Rs.)	
Bonded Warehouse Fee (Rs.)	200000.00
Total Amount Payable (Rs.)	5240000.00
Security Deposit in the form of FDR (Rs.)	400000.00

*It is to emphasize that further action will be initiated only after deposit of above mentioned fees. The licensee shall be liable to pay the additional amount, if any account of fees in case of any short/ revised charges.*

*In case the requisite fee is not deposited within 7 days of issue of this letter, the approval of grant of licence may be withdrawn.*

***Subject To Condition:***

*Issue Offer letter*

*Assistant Commissioner (IL/FL)”*

60. The above-noted letters, which according to the petitioner is the “approval” for the license, is in stark contrast with its earlier relied upon license dated 02.07.2020 which reads as under:

**“GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI  
OFFICE OF THE EXCISE COMMISSIONER  
L & N BLOCK : VIKAS BHAWAN : I.P ESTATE : NEW DELHI-110002**

***Form L1***

***(Rules 32 & 66(1))***

***Category of Licence – L1 Licence for a Wholesale vend of Indian Liquor***

***Licence ID/ Registration - No. L1/201905370***

***Name and style of company/firm etc. - PERNOD RICARD INDIA PVT.  
LTD., Company***

***Name of Authorised Director - RAKESH VASISTHA***



**Address of office** - UNIT GWALIOR ALCOBREW PVT. LTD., RAIRU FARM,  
AGRA-MUMBAI ROAD,  
GWALIOR, GWALIOR, MADHYA PRADESH

**Address of Warehouse** - B-142 FIRST FLOOR OKHLA INDUSTRIAL PHASE-1,  
DELHI, SOUTH DELHI, DELHI-110020

**Hours of sale** - 8 AM - 8 PM

**Licence fee (Rs.)** - 2100000

**Transaction Number** - 02072071318

**Licence valid up to** - 31/03/2021

...

**Date of Issuance of License** – 02/07/2020

**Conditions:**

*This licence is granted subject to observance of the provisions of the Delhi Excise Act 2010 the Rules framed thereunder, terms and conditions of licence and the instructions issued by the licensing authority from time to time.”*

61. Additionally, prayers b) to d) made in the instant petition may also be noted which read as under:

*“b) Pass an appropriate writ/order or direction to the Excise Department to grant the license for the present/relevant financial year as and when applied for by the Petitioner;*

*c) Alternatively, pass an appropriate writ/order or direction to the Excise Department to consider the application for the present/relevant financial year uninfluenced by the pendency of the criminal proceedings; and/or*

*d) In the alternative, pass an appropriate writ/order or direction to the Excise Department to consider the application for grant of the license for the present/relevant financial year uninfluenced by the observations of the Financial Commissioner and the Excise Commissioner, and strictly in light of the remand order dated 13.02.2025 passed by the Financial 13.02.2025 Commissioner”*

[Emphasis Supplied]



62. Rule 32 of the Delhi Excise Rules, 2010 (“**Excise Rules**”), provides that a license for, *inter alia*, wholesale vend of Indian and foreign liquor shall be granted in Form L-1 by the Deputy Commissioner. It is also the case of the petitioner that an actual and final license is granted and issued in Form L-1 by the Deputy Commissioner. The prayers made in the instant petition also are premised on the stand that there is no approval/issuance of the license to the petitioner.

63. It may, thus, be concluded that there was never a final license granted/issued to the petitioners *qua* the Applications.

***(ii) Whether it was open to the Respondents to examine compliance with Section 13 of the Excise Act after having issued the Approval Letters***

64. Far more interesting is the issue as to whether it was open for the respondents to examine compliance with Section 13 of the Excise Act after having issued the Approval Letters, whereby, the “*approval of competent authority for grant of L1 License*” to the petitioner was communicated.

65. The communication dated 02.09.2022 sent by the respondents one day after the Approval Letters were issued to the petitioner reads as under:

**“GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI  
OFFICE OF THE COMMISSIONER OF EXCISE, ENTERTAINMENT  
AND LUXURY TAX  
L & N BLOCK, VIKAS BHAWAN, I.P. ESTATE, NEW DELHI-110002**

*No. L-1/IL/EX/IMFL/2022-23/3091*

*Dated: 7/9/2022*

*M/s Pernod Ricard India Pvt. Ltd.,  
Ateren No.10, Level 1, Worldmark 2,  
Aerocity, New Delhi-110037*



**Subject: FIR against Sh. Manoj Rai, Ex. Employee of M/s Pernod Ricard India Pvt. Ltd.**

Sir,

Please refer your application received in this office vide letter dated 31.08.2022 regarding grant of L-1 Licence. In this regard, terms & conditions of the license and Section 13 (c) & (g) of the Delhi Excise Act, 2009 stipulates as under:-

**Qualification for grant of License - (1) While considering an application for grant of license or permit, the licensing Authority shall have regard that the applicant:**

**Section 13 (c): Possesses good moral character and has no criminal background or has not been convicted of any offence punishable under this or other relevant Act:**

**PROVIDED that in case he is selected as licensee, he shall furnish within thirty days of the grant of license a certificate issued by the Superintendent of Police of the district or the Commissioner of Police, as the case may be, of which place he is the resident, showing that he possesses good moral character and has no criminal background or criminal record;**

**Section 13 (g): shall not employ any salesman or representative who has criminal background or suffers from any infectious and contagious disease or is below twenty-one years of age.**

**Further, a reference of FIR vide no. RC0032022A0053 dated 17.08.2022/PS CBI ACB/Criminal Conspiracy, falsification of account and undue advantage is received in this office.**

**In view of above, you are hereby directed to provide the Police Verification Certificate of all the Directors of the Company, as per Section 13 (c) of Delhi Excise Act, 2009 within three working days.**

**This issues with the prior approval of Deputy Commissioner (Excise)/ Licensing Authority.**

Assistant Commissioner (Excise)

Copy to:-

1. PPS to Commissioner (Excise), Excise Deptt., Govt. of NCT of Delhi
2. PS to Dy. Commissioner (Excise), Excise Deptt., Govt. of NCT of Delhi.”

[Emphasis Supplied]



66. It appears that the re-opening of issues pertaining to the compliance with Section 13(1)(c) of the Excise Act took place owing to certain information received in the office of the Assistant Commissioner pertaining to the CBI's FIR. The said FIR, *inter alia*, has also been relied upon to arrive at a finding in the Impugned Order as also in the original Deputy Commissioner's Order, that there is non-compliance with the Excise Act.

67. While the petitioner has relied upon a letter dated 30.08.2022 sent by it to the Excise Commissioner which mentions and apprises the latter of the CBI's FIR, to contend that while granting the Approval Letters, the respondents were aware and after examining, had closed the said issues; there is no receiving attached with the said letter. Further, though the respondents in the instant petition have, yet again, with a lackadaisical attitude, not furnished a para-wise reply to the contents of the petition, it appears that in the previous round of litigation between the same parties concerning the same *lis* and letters, it was the explicit stand of the respondents as recorded in para. 12 of the 2<sup>nd</sup> HC Order, that this letter dated 30.08.2022 was never received by the respondents.

*“12. The above letter dated 30<sup>th</sup> August 2022 is disputed by the Respondents who argue that no acknowledgement exists for this letter. Thus, the issuance of this letter is itself suspect, as per the Respondents whose stand is that the existence of criminal complaint against one of the employees was deliberately concealed by the Petitioner.”*

68. There is, therefore, a justification in the form of novel and material information received by the office of the respondents, to re-open, if at all, the closed issues concerning the examination of the Applications *qua* Section 13(1)(c) of the Excise Act. Such a re-examination was warranted, as



noted above, owing to there not being a final L-1 license granted/issued to the petitioner, and the route of a Section 17 cancellation not being open to the respondents.

69. It may further be noted that while there is no inherent right of the petitioner for the grant of a license concerning liquor,<sup>19</sup> there remains a right to have an application considered in terms of the policy/rule/regulation enacted by the State. Non-compliance with the enacted policy, may, amount to an action of the State becoming susceptible to the vice of arbitrariness and violative of Article 14 of the Constitution.<sup>20</sup> However, deviation from the policy, if at all, ought to be considered depending upon the facts and circumstances of a given case.

70. It may additionally be considered that the case at hand concerns the granting of a privilege to the petitioner. The activity concerning the trade of liquor, as has been noted above is *res extra commercium*, there can be no right to such a business. However, when the State, after applying its mind, chooses to grant/bestow such a benefit/privilege upon a person, a right gets crystallised. It is to prevent infringement of this right that there is a specific procedure provided for the cancellation, suspension and withdrawal of a license under the Delhi Excise Act. The said procedure, incorporates aspects of principles of natural justice, including, *inter alia*, a provision of notice to the licensee.

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<sup>19</sup> *Khoday Distilleries Ltd. v. State of Karnataka*, (1995) 1 SCC 574, para. 60; *State of Kerala v. Kandath Distilleries*, (2013) 6 SCC 573, para. 24.

<sup>20</sup> *State of MP v. Nandlal Jaiswal*, (1986) 4 SCC 566.



71. At the time of grant of a license no such exercise is contemplation as there is no right in favour of a party. This does not, in any case, imply that the State can act arbitrarily when considering applications; however, there does, in any case, exist a marked difference when a case of grant of a license is the subject matter of a *lis* as opposed to an already granted license. The licensee in the latter category of case, is in the position to demand a higher degree of scrutiny in the decision making process of the State.

72. The aforementioned distinction was recognised by the Allahabad High Court in ***Dinesh Kumar Pandey. State of U.P.***,<sup>21</sup> where relying upon its full bench decision in ***Kailash Nath v. State of U.P.***,<sup>22</sup> the following was observed:

*“81. Then came a Larger Bench decision of five Judges in Kailash Nath v. State of U.P., AIR 1985 All 291. Here also the matters which were referred for opinion of Larger Bench had arisen out of orders passed by licensing authority cancelling gun licence and directing licence holders to deposit weapons. These cases, therefore, related to Section 17 of Act, 1959. The District Magistrate passed orders without any show cause notice to licence holders, relying on the observations of Full Bench in Chhanga Prasad Sahu (supra) that the licensing authority if satisfied of the existence of facts enumerated in clauses (a) to (e) of Section 17(3), he can pass order of suspension or revocation of licence without issuing any notice and without holding any inquiry. These observations of Full Bench are quoted in Kailash Nath (supra) in para 1 of the judgment. The Court held that before refusing to grant licence, the principle of natural justice, i.e., principles relating to opportunity or notice, would not apply since the process of grant of licence is not such so as to have the effect of infringing any civil right of an individual and, therefore, it would have no application. In other words, the Court observed that so long as a licence has not been granted there is no question of infringement of any existing right and, therefore, principle of natural justice relating to show cause notice i.e. audi alteram partem would not apply at the stage when licensing authority refused to grant licence but*

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<sup>21</sup> 2012 SCC OnLine All 4113.

<sup>22</sup> AIR 1985 All 291.



*it would be a different case when a licence, already granted, is sought to be cancelled. This is evident from the following observations:—*

*“A right is distinct from a mere privilege. The case of a licensee to possess or use fire arm is materially different from a case of licence to deal in or sell firearms.....In my opinion the above analysis cannot be legitimately extended to the exercise of such discretionary power or grant of privileges such as the initial issuing of a firearm licence. The shift in the cases is reflected only where the question determined is one “affecting the rights of subjects”.” (Para 3)*

*“But the orders refusing to renew a licence or withdrawal or cancellation of an existing licence share an entirely different legal complexion..... To equate a decision sum marily to revoke a licence with a decision not to, grant a licence in the first instance may be still more unrealistic. Here the “privilege” concept may be peculiarly inapposite, and its aptness has not been enhanced by the manner in which it has been employed.” (Para 4)”*

73. The conclusion reached by the Allahabad High Court in the said case though concerning the license for fire arms, captures the principle elucidating the distinction between the pre-award and post-award grant of licenses in the following words:

*“(iv) The factors relevant for grant or refusal of firearm licence travel in a distinct field. Hence the principle of audi alteram partem is inapplicable. But once licence is granted, any power to take away such a right would depend on distinct considerations and would at tract the said principle.”*

74. Similarly, a Division Bench of the Karnataka High Court in *State of Karnataka v. G. Lakshman*,<sup>23</sup> observed as under:

*“37. Though the above observations were made in the context of giving opportunity to the claimant for renewal of the licence, the said observation shows that even a privilege to get a licence may fructify itself in to a right at the time of seeking renewal of a licence. The right claimed by the licensee under Section 15(3) is certainly more valuable to him than his right to seek a licence originally under Section 13. If the non-renewal of the licence is based on non-existent grounds, the licensee is entitled to the licence as a matter of course under Section 15(3). For this reason also, the learned Single Judge was perfectly justified in issuing the Writ.”*

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<sup>23</sup> 1987 SCC OnLine Kar 140.



75. In the context of the aforementioned position of law, it may be noted that the Approval Letters issued to the petitioner neither grant a vested right in favour of the petitioner to get a license issued in its favour nor does it close the right of the respondents to scrutinise the application of the petitioner for the grant of the license.

76. There is, importantly, no embargo either in the 2022 Policy or the Excise Act that prevents the competent authority to revisit a view formed by it regarding the eligibility of a given claimant. While the Court having regard to the certainty and predictability which is expected, as a matter of course, from the State, would be cautious in stating, as a matter of general proposition, that an administrative authority after having examined, scrutinized and analysed an issue, could re-open the same. In the facts of this case, the conduct of the respondents, through worthy of depreciation, is not arbitrary, illegal, or violative of Article 14 of the Constitution

77. Thus, with the stage of grant/issuance of license, as contemplated under Rule 32 of the Excise Rules, not having been reached, the respondents were well within their powers to scrutinize and test the petitioner's Applications for compliance with the eligibility conditions as provided for under Section 13 of the Delhi Excise Act. The said exercise, in the facts of the instant case was permissible — *first*, owing to the sufficient material brought to the notice of the respondent authorities concerning the eligibility of the petitioner; and *second*, the petitioner herein, as the discussion which follows shall reveal, itself not being compliant with Section 13 of the Excise Act.



**D. WHETHER POST THE 1<sup>ST</sup> FC ORDER IT WAS OPEN TO THE EXCISE COMMISSIONER TO NOT GRANT THE LICENSE TO THE PETITIONER**

78. To recapitulate the facts, the detailed Deputy Commissioner's Order, after the 1<sup>st</sup> HC Order, came to be assailed in a statutory appeal under Section 72(2) of the Excise Act before the Excise Commissioner. The Excise Commissioner dismissed the appeal on grounds that the requirement provided for under Section 13(1)(c) of the Excise Act had not been complied with. While arriving at this conclusion reference was made to a decision of the Allahabad High Court in *Jugal Kishore Pandey* (supra). The said decision of the Excise Commissioner was impugned before the Financial Commissioner under Section 72(3) of the Excise Act, which *vide* the 1<sup>st</sup> FC Order, while observing, "*It is not clear as to why reliance has been placed on the judgement delivered by the Hon'ble Allahabad High Court when enough judgments have already been passed by the Hon'ble Supreme Court of India on the subject matter*" and remanded the matter back in the following terms:

*"19. In the light of all the above, this Court is of the considered view that it will be in the fitness of things if the Commissioner of Excise revisits the impugned orders dated 23.07.2024 taking into consideration the clear law laid by the Hon'ble Supreme Court of India on the issue that in order to take adverse inference against any accused person who had been named in the FIR/Chargesheet, there has to be a clear finding that the person is guilty of committing such offence by a competent court. Accordingly, the impugned order dated 23.07.2024 passed by the Commissioner of Excise is set aside and the matter is remanded to the Commissioner of Excise to revisit the same afresh after taking into consideration all the above observations and pass a speaking order within three months after duly affording an opportunity of being heard to the Appellant or any other concerned party as deemed fit.*



*20. Needless to say that this Court has refrained from commenting on investigations of Central Bureau of Investigation and the Enforcement Directorate and/or case pending before the competent court as both these issues are outside the purview of this Court.”*

79. Thereafter, post the remand direction in the 1<sup>st</sup> FC Order, the Excise Commissioner after granting a fresh opportunity of hearing to the petitioner, passed an order dated 13.04.2023 (“**2<sup>nd</sup> EC Order**”), again rejecting the petitioner’s appeal from the Deputy Commissioner’s Order and consequently its Applications for the grant of L-1 licenses. The said order was yet again assailed before the Financial Commissioner, which passed the Impugned Order/2<sup>nd</sup> FC Order dismissing the petitioner’s appeal and affirming the rejection of the petitioner’s Applications. It is this order which the petitioner has challenged in the instant petition.

80. The 2<sup>nd</sup> EC Order, as required by the 1<sup>st</sup> FC Order rightly considered the law declared by the Supreme Court and arrived at a reasoned and speaking decision.

81. The principle of *State of MP v. Nandlal Jaiswal*,<sup>24</sup> where a Writ Court was moved assailing the order of a sub-ordinate authority, to ensure that it complies with the order/direction of a superior authority, does not apply in the instant case where the order of the sub-ordinate authority has merged into the order of the superior authority.

82. The argument that the Financial Commissioner and Excise Commissioner were bound by the decision of the 1<sup>st</sup> FC Order is, therefore, palpably erroneous.



#### IV. CONCLUSION

83. From the discussion above, the following conclusions are drawn:

- a. The condition for not being convicted of a criminal offence under Section 13(1)(c) of the Delhi Excise Act is the floor and not the ceiling for a person to not have a criminal background. The word “*or*” as it appears in the said provision, between the expression “*has no criminal background*” and “*has not been convicted of any offence*” is to be read as “*and*”;
- b. The petitioner herein, as on date, has a “*criminal background*” as per Section 13(1)(c) of the Delhi Excise Act and is ineligible for the grant of L-1 license; and
- c. The decision-making process of the respondents while adjudicating upon the petitioner’s Applications was not arbitrary, illegal, or violative of Article 14 of the Constitution.

#### V. ORDER

84. The present petition is bereft of any merit and is dismissed.

85. Liberty is, however, granted to the petitioner to apply for a license afresh in case there is a change in the in the stage/status of the criminal cases presently pending in relation to it.

**PURUSHAINDR KUMAR KAURAV, J**

**MAY 29, 2026/aks/Rao**

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<sup>24</sup> (1986) 4 SCC 566.