

Chapter VI

Retail Shops and Licenses

Sections

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SECTION XXVIII- Number, Location and Site of Shops

316. Rules relating to number, location and site of shops are given in Part II of Excise Manual, Volume I.

३१७. देशी शराब की उप दुकानों का सृजन— शासन ने अवैध मद्यनिष्कर्षण वाले क्षेत्रों में तथा सुदूर क्षेत्रों में तथा सुदूर देहाती क्षेत्रों में अवैध नकली देशी व विदेशी शराब की बिक्री रोकने तथा शुद्ध, स्वच्छ व मानक मदिरा की बिक्री के उद्देश्य से, के प्राविधानों के अन्तर्गत देशी मदिरा की दुकानों के क्षेत्र में देशी शराब की उप दुकानों को खोलने की अनुमति प्रदान की है। प्रति १० लाख लीटर के न्यूनतम कोटे के आधार पर एक उप दुकान खोलने की अनुमति दी जाती है। यदि किसी जिले में कोटे के आधार पर खोली जा सकने वाली उप दुकान की आवश्यकता न हो तो चार्ज के उप आबकारी आयुक्त अपने चार्ज के भीतर इस प्रकार एक जिले की अवाञ्छित उप दुकान को दूसरे जिले में सृजन की अनुमति दे सकते हैं। उदाहरण के लिये यदि कोटे के आधार पर कानपुर चार्ज के कानपुर नगर में ६ उप दुकानें खोली जा सकती हैं और उन्नाव में ३ दुकानें, खोली जा सकती हैं किन्तु कानपुर जिले में ३ उप दुकानों की आवश्यकता है तो शेष तीन दुकानें, यदि उप आबकारी आयुक्त चाहें तो उन्नाव में सृजित कर सकते हैं। यहाँ पर स्पष्ट करना आवश्यक है कि यदि किसी जिले का पूरा न्यूनतम गारंटीड कोटा ५ लाख लीटर से कम है तो उस जिले में कोई दुकान नहीं खुल सकेगी, यदि कोटा ५ लाख लीटर से ऊपर है किन्तु १० लाख लीटर से कम है तो भी एक दुकान खोली जा सकेगी। अधिक कोटे वाले जिलों के लिए भी उपरोक्तानुसार सिद्धान्त लागू होगा।

ये दुकानें देशी शराब की दुकानों के एकान्तिक विशेषाधिकार क्षेत्र के भीतर ही अनुज्ञापि द्वारा खोली जा सकती हैं। उप दुकानों के स्थल चयन में वही नियम लागू होंगे जो नयी दुकानों के लिए निर्धारित है। दुकानों की साइट उक्त नियमों के प्राविधानों के अनुसार होगी और संबंधित जिले के जिलाधिकारी द्वारा अनुमोदित होगी। जिलाधिकारी द्वारा अनुमोदित न की गई साइट पर कोई दुकान नहीं खोली जायेगी। दुकानों का साइट उक्त नियमों के प्राविधानों के अनुसार होगी और संबंधित जिले के जिलाधिकारी द्वारा अनुमोदित होगी। जिलाधिकारी द्वारा अनुमोदित न की गई साइट पर कोई दुकान नहीं खोली जायेगी। दुकानों का साइट का चयन करने में नियमानुसार पूर्ण सावधानी बरती जाये।

SECTION XXIX-AWARD, ISSUE AND CANCELLATION OF LICENCES

318. Licences by whom signed- All licences shall be signed by the Collector or the District Excise officer, and all licences under section 24 by the Collector himself.

These officers are reminded that they are personally responsible that all licences issued and counterparts accepted are strictly in accordance with the terms as sanctioned by higher authority and duly executed according to law.

319. No licence shall be issued in the name of a company or firm unless such company or firm is a registered joint stock company. Where a licence has been granted to an unregistered private company or firm, the licence should be issued in the names of the individuals as representing the corporate body and not in the name of the corporate body itself.

Cf. F. C's
letter No.
8473/X-
2220, dt.
Feb. 1, 1928.

320. In all cases where licence-holders have been provisionally selected, the licence should be prepared in anticipation of sanction, so that they may be distributed as soon as sanction is received. In the case of licences under section 33 of the Act and recorded. Such counterparts are of the nature or ordinary agreements and chargeable with a duty payable under Articles (5)b Schedule I, Act II of 1869, should be stamped as such at the expense of the licensee.

321. Transfer and sub-lease of licences:-

(1) All licences are personal to the licensees whose favour they are granted.

(2) Whenever any application is received for transfer, sub-lease, or partnership in respect of an Excise licence, the Collector shall call for a report from the Assistant Excise Commissioner of the charge.

(b) On receipt of the report from the Assistant Excise Commissioner and further enquiry, if any, the Collector shall refer suitable cases to the Excise Commissioner for approval.

Cf. E. C's
Order No.
18864/IX-
297, dated
Feb. 29,
1952

(c) No transfer or sub-lease or partnership of Excise licence shall be allowed by the Collector without the prior approval of the Excise Commissioner.

(3) Partnership may also be permitted in the case of shops under the auction system but they should not be sanctioned as a matter of course. They should be allowed only in exceptional circumstances when it is clear that the shop cannot be well managed by the existing licences without a partner and that the partnership will not result in any loss of revenue. Nor more than two partners can be allowed to hold the shop. No distinction should be drawn between the legal liabilities of the two partners who will be jointly and severally responsible.

Cf. E.C's
Letter No.
2139/x-210,
dt. May 25,
1936.

(4) In the case of licences granted under the surcharged or fixed fee system no transfer for sub-lease of a licence shall be permitted, nor shall a

licensee be allowed to enter into private partnership in the business covered by the licence. If the licensee desires to withdraw from the business he shall be required to resign and the shop resettled in the manner prescribed by paragraphs 329 to 332.

(5) Partnership may, however, be permitted for shops settled under the graduated surcharge system as provided for in paragraph 334.

322. In all cases where compensation has to be paid for default of notice of cancellation of licence, a full report should be submitted for the orders of the Excise Commissioner explaining the circumstances which necessitated the action taken and stating the demand for the year, the licence fees remitted and the amount proposed to be paid as compensation for default of notice. On receipt of orders the claim shall be adjusted.

323. Cancellation and resale of forms- The sanction of the Excise Commissioner is necessary to the cancellation of any licence under section 24, Reasons for recommendation in such cases should be fully explained. Resale of all such licences requires the sanction of the Excise Commissioner.

324. Arrears of deceased licensees how recovered- If a licensee be in arrears at the time of his death, the amount of such arrears should be recovered from his security deposit to the extent of the dues in arrears. If the arrears exceed the amount of the deposit, the case should be dealt with under paragraph 341 or, failing that, refer for orders.

Sub-licensees or farmer's agents hold their licences conditionally on the continuance of the licence or form from which they derive their right.

SECTION XXX-CONDITIONS TO BE OBSERVED BY ALL LICENSEES

325. Licensees bound to observe excise laws, rules and conditions of licence- Every licensee for the retail vend of intoxicants shall be bound to observe both the general and special condition (if any) of his licence; and all directions, prohibitions and orders of the excise laws for the time being in force, whether such directions, prohibitions and orders be embodied in the conditions of his licence or not, and all directions, orders and prohibitions contained in rules lawfully made under the excise laws of which he shall have received due notice.

326. Conditions governing licences are given in the relevant rules contained in Part II of Excise Manual, Volume I.

327. The danger of corruption among the licensees is increased by the appointment of too many salesmen and in order to check dishonest practices, the number of salesmen allowed to a shop generally be smaller than E. C's Order 6333/IX-112, dated Sept, 8,

prescribed. Selection of salesmen also requires careful scrutiny by the Collector. Unless the District Excise Officer has personal knowledge on any person, a report should always be obtained from the Excise Inspector concerned about his suitability before selection his as a salesman. 1937.

Excise Inspector should be careful not to recommend a large number of salesmen for any shop than would strictly suffice for its needs.

All Excise Inspectors should keep up-to-date information about the number of salesmen employed at various shops in their circle and other particular regarding them.

SECTION XXXI- ORDERS RELATING TO GRADUATED LICENCE FEES SYSTEM

The graduated surcharge fee system

328. Assessment- Under this system the licence-fee for a calender month is assessed according to a prescribed scale on the quantity of intoxicant taken for sale during that month. The fee is recovered in the next month following. Licences for the retail vend of country spirit and hemp drugs under the contract supply system can be granted under this system when in vogue. Cf. G.O. No. 10/XIII-284 dt. Feb. 25, 1929.

(a) Procedure for the renewal of licences and for the salection of licence- holders for new shops.

329. (1) The Collector shall decide whether a licence shall be renewed to the existing licensee or not in the forthcoming year. For this purpose, he shall examine the list of existing licensees in consultation with the Deputy Excise Commissioner as far as possible between December 1 and 15 every year (i) for excise shops to be licensed with effect from April. 1, and (ii) between July 1 and 15 for tari shops which are licensed from October I every year. If he considers that the conduct of any licensee has been suitable/throughly satisfactory, he shall order the renewal of the licence. If any existing licensee is reported to be unsuitable, the Collector shall call upon such licensee to show cause, within a specified period why his licence should not be terminated and, in doing so, shall inform him of the reasons for believing him to be unsuitable. If after considering the explanation, the Collector finds the licensee to be unsuitable he shall not renew the licence and invite applications.

(2) The applications shall be in Form G-28 and shall be addressed to the District Excise Officer. The District Excise Officer shall scrutinise all the applications received by him and draw up a list. In preparing the list he shall be guided by the principles laid down in Paragraphs 833 and 334. He shall also prepare a second list containing the names of those applicants whose

names have not been included in the list of suitable candidates. He shall then proceed in accordance with the Uttar Pradesh Licensing under the Surcharge Fee System Rules, 1968 for the selection of the licensee.

Note- Each application shall be accompanied by a Treasury receipt for Rs. 25. Applications not accompanied by such a Treasury receipt shall not be attended to.

330. The procedure prescribed above for selection of a new licensee when an existing licensee has been found unsuitable, shall apply to cases when a licensee has to be selected in the event of a new shop being opened or a shop previously closed being reopened.

331. Shops may fall vacant during the course of a year in the following circumstances:

(a) Death of a licensee, or

(b) Surrender or cancellation of a licence under sections 34 and 35 of the Act.

332. (1) As soon as a shop falling vacant in the circumstances mentioned in the preceding paragraph, the Collector may select a temporary licensee for carrying on the work and shall handover the shop to him.

(2) He shall then proceed in accordance with the Uttar Pradesh Licensing under the Surcharge Fee System Rules, 1968 for the selection of a permanent licensee. The temporary arrangement made by the Collector shall cease as soon as a permanent licensee has been selected.

333. The following general principles are laid down for the selection of licensees:

(i) Honesty and ability to supervise the shop personally are the principal qualifications of a licensee. Preference should generally be given to a local resident. Education alone is not sufficient, nor does the possession of a large capital make a man a suitable vendor. Capitalists who leave the work to managers and salesmen should be excluded as far as possible.

(ii) As far as possible no licensee should be given more than one shop.

(iii) Settlements shall be made of individual shops and licences granted for one year.

334. Partnerships in shops shall be allowed only under the following conditions:

(a) Where an existing licensee applies voluntarily to take a person into partnership and the collector considers such person suitable to hold a licence

and is further of opinion that the shop cannot be managed well by a single licensee aided by one or more salesmen. Attempts of licensees to transfer their shops be severely discontinued. Ordinarily, a man who cannot devote enough time to his shop should be asked to resign instead of being allowed to take in a partner. Only if he cannot manage the shop in spite of devoting all his time to it, should a partner be allowed.

(b) Where at or before the time to making applications for shops two persons jointly apply for a licence in partnership and the Collector fines both of them to be suitable persons for placing on the aforesaid list, their names shall be treated as one name only.

(c) In no case shall more than two persons be permitted to hold a licence jointly.

335. Cancellation of licences during the currency of their term- The malpractices by licensed vendors given below are considered serious by the department. If any licensee is convicted of any one of them, his licence, if granted under the graduated surcharge system, should unless there are special reasons to the contrary, be forthwith cancelled under section 34. A mere non renewal of the licence at the end of the year will not be enough. Serious malpractices are (1) dilution of liquor or tampering with the pilfer proof caps on sealed bottles, (2) short measure of weight, (3) sale during prohibited hours, (4) sale to minors and (5) adulteration.

Cf. G.O. No. 105/XII-234 dt. Febr. 25, 1929 and No. 406/XIII-234, dated July 7, 1932.

336. Maintenance of daily accounts by licences- Every licensee selected under paragraph 329 or 330 shall unless exempted by the Collector in writing and the exception endorsed on the licence, maintain a correct account of all receipts and sales of intoxicants at his shop in the form prescribed in the licence.

District officers may exempt illiterate licensees of country spirit or hemp drugs shops in rural areas from maintaining accounts where this is unavoidably necessary.

Ordinarily, however, inability on the part of an applicant for a shop to maintain accounts either by himself or through a literate salesman should be considered as much a disqualifications as his inability to attend and supervise the shop personally. Only if no suitable literate applicant is forthcoming should a shop be settled with an illiterate person and exemption granted to him from keeping accounts.

Cf. G.O. No. 648/XIII-234 dt. Dec. 18, 1929

337. (a) Every selected vendor, before a licence is issued to him shall be required to deposit, on or before March 15, as security for the due observance of the conditions of his licence, a sum in cash, Government promissory notes, postal cash certificates of equivalent market value or postal savings banks account equal to twice the amount of licence fee leviable on the

Cf. G.O. No. 105/XIII-234, dt. Feb. 25, 1929 and G.O. No.

average monthly issues made to the shop during the nine months April to December preceding the year for which the licence is to be granted in accordance with the scale of fees prescribed for the intoxicants for which the shop is licensed. 125/XIII-162, dt. March 2, 1929.

(b) If the security is deposited in cash, the amount shall be credited into the headquarters treasury as "Revenue deposit", and, if not confiscated for any breach of the conditions of licence, may be renewed from year to year, should the licensee so desire in the event of the renewal of his licence. If the security is deposited in the form of Government promissory notes, postal cash certificates or postal saving bank account, the Government promissory notes, Postal cash certificates or postal saving bank account should be endorsed in favour of the Collector, vide rule 5 of the Government security manual and section 45 of the Post Office Saving Bank Rules. If the calculated amount of deposit in any year is larger than the deposit for the previous year by over Rs. 25, the difference shall be realized from the licensee and credited to the original deposit.

(c) All vendors who pay their security deposit must duly execute an agreement in Form G-34, giving the necessary authority to the Collector to appropriate the whole or a portion of their securities, as the case may be, in the event of forfeiture of the same under the terms of their licences or under the excise, opium or dangerous drugs laws.

338. Issues in advance- In the case of new licences the Collector may sanction the issue of intoxicants a day or two before the commencement of the excise year according to the distance of the shop from the warehouse on payment of duty to the rate for the new year; and licence fees will be payable at the rates to be in force in the new year.

339. Return of security- On final termination of a licence the security deposit of the outgoing vendor, if refundable, shall be refunded to him within two months of the date of termination of licence, after adjustment of all dues own by him to Government.

340. Resettlement of shops- Whenever resettlement of a shop become necessary during the course of the excise year, the licensing authority should make the resettlement in the manner prescribed by paragraphs 331 and 332 and report the change to the Excise Commissioner for information.

Auction System

341. Rules relating to auction system are contained in Part II of this

volume.

Tender-cum-Auction system

342. Rules relating to tender-cum- auction system are given in Part II of this volume.