

Before Ajay Kumar Mittal & Anupinder Singh Grewal, JJ.

**ARRIVE SAFE SOCIETY OF CHANDIGARH THROUGH ITS
PRESIDENT HARMAN SINGH SIDHU, R/O H.NO.268,
SECTOR 21-A, CHANDIGARH—Petitioner**

versus

STATE OF HARYANA AND OTHERS—Respondents

CWP No.1343 of 2017

March 06, 2018

Constitution of India, 1950—Arts. 47 and 51-A—State of Punjab Clause (d) of Special Conditions (2) of Rule 38 of 1956 Rules—Excise policy decision—State of Punjab and Haryana—Issuance of invoices at all liquor vends—Courts can interfere in larger public interest and issue directions—Obligatory for all liquor vendors of State to issue invoices for all sales effected by them with effect from year 2018-2019.

Held that, examining the benefits of issuance of invoices for all transactions of sale of liquor irrespective of the amount of sale, it may be noticed that the inclusion of such provision has manifold benefits. Firstly, it would help the liquor vendor in maintenance of accounts and check on the cash/credit transaction. Since majority of liquor is sold without billing/invoice, the State exchequer is bereft of huge portion of its revenue whether at State level or at Central level. It would help the income tax department for assessment and collection of appropriate tax. Secondly, a computerised invoice with vend code and actual price charged from the consumer would act as a safeguard for the consumer who would then be assured of quality and uniform pricing of the same brand across the State. A dissatisfied consumer would be able to get his grievance redressed in appropriate forum against an accountable liquor vendor. Further, with the issuance of invoice/computerised bill, the menace of spurious liquor which is being sold at vends shall come to a halt. Hundreds of people die every year after consuming spurious liquor. The matter has to be considered by the State having regard to the provisions contained in Article 47 of the Constitution of India which enjoins upon the State to prohibit consumption of intoxicating drink like liquor. Article 47 of the Constitution of India provides that it is the duty of the State to raise the level of nutrition and the standard of living of its people and the improvement of public health

(Para 13)

Further held that, no doubt, trade in liquor generates revenue, but at the same time, health of the nation is equally important. Generation of funds can be done by other means but not at the cost of health of the nation. Necessarily, to mitigate and suppress this evil, State can impose certain conditions to regulate its sale.

(Para 15)

Further held that, various factors have to be kept in mind like public safety, public health and welfare of the society at large. It is well settled that when any policy framed by the State is contrary to public interest or is violative of the constitutional principles, it is the duty of the Court to exercise its jurisdiction in larger public interest and reject the stock plea of the State that the scope of judicial review should not be exceeded beyond the recognised principles. Courts can interfere to modify such policy by inclusion of any specific clause therein which can be made mandatory.

(Para 17)

Further held that, the Court is also conscious of the fact that it should not interfere with the fiscal policies of the State. However, when it is clearly demonstrated that the policy framed by the State or its agency/instrumentality and/or its implementation is contrary to public interest or is violative of the constitutional principles, it is the duty of the court to exercise its jurisdiction in larger public interest and reject the stock plea of the State that the scope of judicial review should not be exceeded beyond the recognised parameters.

(Para 18)

Ravi Kamal Gupta, Advocate
for the petitioner.

Lokesh Sinhal, A.A.G., Haryana.

Shireesh Gupta, Sr. DAG, Punjab.

AJAY KUMAR MITTAL, J.

(1) The petitioner-Arrive Safe Society of Chandigarh through its President by way of instant petition filed under Article 226 of the Constitution of India prays for a direction to the respondents to make a provision in the upcoming Excise Policy for the year 2018-19 regarding issuance of computerized bills at all liquor vends across the States of Haryana and Punjab, prior to the auction of liquor vends for the next financial year.

(2) A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The Arrive Safe Society is an Indian NGO working on developing road safety programmes to increase knowledge, awareness and skills amongst all types of road users. Besides educating the youth about liquor abuse, it also works closely with the traffic police department to improve the law enforcement regarding drunken driving. On account of constant efforts put in by the petitioner with no private interests, the Supreme Court directed the removal of liquor vends from all National and State Highways in order to curb the menace of free availability of liquor and reduce the number of deaths due to drunken driving. Not only this, the States have been directed to remove all the advertisements in any form regarding sale of liquor from Highways and the authorities have been directed to ensure that the liquor vends are neither visible nor accessible from the Highways. In the year 2015, the petitioner society filed petitions challenging the Excise policies of the States of Haryana and Punjab vide CWP Nos.5249 and 5827 of 2015 which were disposed of vide separate orders. One of the grounds for challenge in those petitions was the issuance of computerised bills across all liquor vends. The petition relating to excise policy for the State of Haryana was disposed of on 1.4.2015 but since the issue regarding issuance of bills was not dealt with in the judgment, a review petition was filed which was also disposed of on 11.5.2015. As regards State of Punjab, the petition was disposed of as infructuous on 5.4.2016. On 28.2.2017, in the present writ petition i.e. CWP No.1343 of 2017, learned counsel appearing on behalf of the State of Haryana produced a letter dated 27.2.2017 addressed by the Excise and Taxation Commissioner, Haryana to the office of the Advocate General, Haryana wherein it was stated that condition of issuing a receipt by the vendor for every purchase of liquor beyond Rs.1000/- was being proposed mandatorily and for purchases below that quantum, receipt will be issued wherever the customer so desired. In case a complaint was found true, penalty of Rs.500/- was proposed to be imposed upon the vendor for every such default. It was thus observed by the Bench that the Council of Ministers, Haryana would take all these factors into consideration before finalising the policy for the next year. On 22.3.2017, it was observed by the Bench that this petition is clearly a Public Interest Litigation and that the right of the individual customer may not be affected on account of the amended policy which makes it mandatory for the vendor to issue a receipt even for a sale of less than Rs.1000/- if the consumer demands a receipt. According to the petitioner, inspite of there being provision for

issuance of bills in the Punjab Liquor Licence Rules, 1956 for Punjab as well as in Excise Policy of State of Haryana for the year 2017-18, the respective State Governments have failed to give tenor to the assurance given to this Court in the year 2017-18. The representations filed by the petitioner have not been responded. Hence the instant petition by the petitioner.

(3) In the written statement filed on behalf of respondent Nos. 1 and 2, it has been inter alia stated that as per clause 1.7 of the Excise Policy for the year 2017-18 of the State of Haryana, it is mandatory for all the retail licensees to issue an invoice where the total sale price of liquor exceeds Rs.1000/- and in case the price is less than Rs.1000/-, the licensee shall issue an invoice if so demanded by the customer. In case of violation of this provision, a penalty of Rs.500/- per incident shall be imposed on the licensee after enquiry by the Deputy Excise and Taxation Commissioner (Excise) concerned. In view of the above provision, any customer can always demand an invoice if he/she so desires and thus, no cause of action is left for the petitioner to pursue the present writ petition. It has been further stated that a writ petition that targets policy of the State is not maintainable unless the policy is shown to be arbitrary or against the provisions of the Constitution. The Excise policy for the year 2017-18 has been framed in exercise of inherent powers under Entry 51 of State List in Schedule VII of the Constitution of India and has been duly approved by the Council of Ministers, Haryana. The e-tendering process has come into operation in accordance with this approved Excise Policy. The matter was considered by the Council of Ministers, Haryana wherein it was observed that the issue of receipt is actually not connected with the possibility of evasion of tax/duty by the vendor since the revenue is recovered through auction/e-tendering and the same is paid by the vendor in the beginning upto a certain extent followed by subsequent payments of entire licence fee in 10 instalments. As such, there should be no presumption that non-issuance of receipt helps the vendor to evade any tax, duty etc. The relevancy drawn by the petitioner that issuing a bill will result into checking of quality of liquor does not seem to be carrying much weight as the sealed liquor bottles pasted with hologram are transported under permit issued by the department and hence chances of adulteration and sale of illicit liquor at retail vends is negligible. Besides, a link between bill of sale and the liquor bottle sold can only be derived if complete details such as batch number and brand etc. are mentioned on the bill which seems to be very difficult at the hands of illiterate/semi literate salesmen during rush hours as most of

the sale of liquor takes place in a couple of hours generally in the evening and issue of receipt to each and every customer will take a long time and would lead to a very long queues before the liquor vends which may further lead to disturbance to the public at large. It has further been stated that there is a feeling however in the officers now that the proposal of making the issuance of a receipt for every sale of liquor beyond Rs.1000/- as mandatory and issue of receipt wherever the customer so desires for sale of liquor upto Rs.1000/- is a unique order and needs to be watched for its impact in this year. Accordingly, the provision as approved has been incorporated in the Excise Policy for the year 2017-18. Further the State will consider extending the issue of invoice/receipt for every purchase during the policy finalization for the financial year 2018-19 after considering the implementation of this unique step in the Excise Policy for the year 2017-18.

(4) Reply has also been filed on behalf of respondent Nos. 3 and 4 by way of affidavit of Shri Gurtej Singh, Additional, Excise and Taxation Commissioner, Punjab wherein it has been inter alia stated that excise policy for the year 2017-18 has been framed in exercise of inherent powers under entry 51 of State list in Schedule VII of the Constitution of India and has been duly approved by the Council of Ministers, Punjab. Further, provision has already been mentioned in Rule 38 in special condition (2) for clause (d) of the Punjab Liquor Licence Rules, 1956 (in short, "the 1956 Rules") which has been inserted by the respondent Department vide notification dated 26.3.2012 with respect to issue of cash memo in form M-66A to a customer. Para 34 of Excise policy for the year 2017-18 is related to retail sale rates. Thus, it has been concluded that the instant writ petition is liable to be dismissed as the point of issuance of sale bills and penalty provisions has already been provided in the rules mentioned above.

(5) We have heard learned counsel for the parties.

(6) Learned counsel for the petitioner made the following submissions:-

- i) Issuance of bills with the help of a bar code does not involve any hardship to the vendor and rather secures the rights of the consumer;
- ii) Issuance of computerised invoice would help the income tax department for assessment and collection of appropriate tax because usually after the end of the financial year, the

partnership firms get dissolved and the partners are not traceable;

iii) A computerised invoice will help the vendor in maintenance of accounts and check cash/credit transactions;

iv) The problem of spurious liquor would get curtailed to some extent as the vendor would not be able to sell spurious liquor or low quality liquor in expensive bottles;

v) There is no rationale for issuing bills for more than Rs.1000/- but not for an amount lesser to it. A computerised bill would ensure uniformity in price in same district at least, if not in entire State;

vi) Despite the assurance of State of Haryana to penalise the vendor who does not issue a bill on being asked, if the sale is below Rs.1000/- or otherwise, no action is being taken on any vendor inspite of various complaints to the Excise Department;

vii) Provision for issuing bills in respect of a transaction of sale, whole sale or retail sale has been made in Punjab Liquor Licence Rules, 1956, Clause (d) in Special condition (2) of Rule 38. However, the State has not been able to implement the same till date.

viii) If vendors in Delhi can issue computerised receipts then why should States of Haryana and Punjab not come forward and bag the title of smart cities.

(7) Reliance was placed on judgments in *State of Tamil Nadu represented by Secretary and others* versus *K.Balu and another*¹ and *Centre for Public Interest Litigation and others* versus *Union of India*² in support of his submissions.

(8) On the other hand, learned counsel for the State of Haryana made the following submissions:-

(i) Unless policy decision is absolutely capricious, unreasonable and arbitrary and based upon mere ipse dixit of the executive authority or is violative of any constitutional or statutory mandate, the court would not

¹ (2017) 6 SCC 715

² (2012) 3 SCC 1

interfere in the same. Reference has been made to certain judgments of the Apex Court holding that policy decision is in the domain of the executive authority of the state and the court should not embark on the uncharted ocean of public policy and should not question the efficacy or otherwise so long as the same does not offend any provision of the State or the Constitution of India;

- (ii) So far as policy for the year 2017-18 is concerned, the State of Haryana has already made it mandatory for retail licensees to issue an invoice where the total sale price of liquor exceeds Rs.1000/- and in case the total sale price of liquor is less than Rs.1000/-, the licensee shall issue an invoice if so demanded by the customer;
- (iii) The matter has been considered by the Council of Ministers, Haryana wherein it has been observed that the issue of receipt is actually not connected with the possibility of evasion of tax/duty by the vendor since the revenue is recovered through auction/e-tendering and the same is paid by the vendor in the beginning upto a certain extent followed by subsequent payments of entire license fee in 10 installments. However, the above proposal is proposed to be watched for its impact in this year;
- (iv) With regard to sale of spurious/illicit liquor, it is submitted that sealed vendor liquor bottles pasted with hologram are transported under permit issued by the department and hence chances of adulteration and sale of illicit liquor at retail vends is negligible. Moreover, such liquor is never sold at liquor vend as Excise authorities may at any time inspect any liquor vend;
- (v) Unlike other businesses of retail, in the liquor business the Government prescribes minimum retail price and not maximum retail price and thus no customer has any interest in receiving the receipt.
- (vi) Issuance of invoice has already been made compulsory in the retail vends in shopping malls or posh markets as in the National capital Territory of Delhi. However, such a condition cannot be imposed on all the liquor vends as

most of the vends in the State of Haryana are in rural and semi urban area;

(9) Reliance has been placed upon judgments in *MP Oil Extraction and another* versus *State of MP and others*³ and *Delhi Bar Association (Regd.)* versus *Union of India and others*⁴.

(10) In the case of the State of Punjab, as per affidavit dated 3.11.2017 filed by Shri Gurtej Singh, Additional excise and Taxation Commissioner, Punjab, provision has already been made in Rule 38 in special condition (2) Clause (d) of the 1956 Rules, which has been inserted by the respondent Department vide notification dated 26.3.2012 with respect to issue of cash memo in form M-66A to a customer. Para 34 of Excise policy for the year 2017-18 is related to retail sale rates. Clause (d) in Special Condition (2) of Rule 38 of the 1956 Rules reads thus:-

“Clause (d) in Special Condition (2) of Rule 38: The licensee shall issue in respect of a transaction of sale, wholesale or retail sale, a cash memorandum in Form-M-66A to a customer who demand for the same. A serially numbered bearing the name and address of the licensee with the name of the vend, his license number, date of sale, particulars and quantity of the liquor sold and sale price thereof and shall preserve a carbon copy of such cash memorandum till the close of the financial year in which the cash memorandum is issued.”

(11) The core issue that arises for consideration in this petition is as to whether provision regarding issuance of invoices at all liquor vends across the States of Haryana and Punjab be included in the upcoming Excise policy for the year 2018-19?

(12) Before considering the main issue, a few facts discerning from the pleadings of the parties are required to be noticed. In the Excise Policy for the year 2015-16 in Clause 1.6 of the policy, it was mentioned that the Modern Shops shall issue machine generated invoices (POS). CWP No.5249 of 2015 was filed in this Court seeking amongst other directions, a direction to the State to make the issuance of bills mandatory for all retail vendors. That writ petition was disposed of on 1.4.2015 but without any directions in this respect. Subsequently,

³ (1997) 7 SCC 592

⁴ (2008) 13 SCC 628

a review application was filed which was disposed of on 11.5.2015 with an observation that the Excise Policy for the year 2015-16 stood already framed and implemented and therefore, the State was directed to consider this issue while framing Excise policy for the next year i.e. 2016- 17. Accordingly, the issue was deliberated while framing Excise policy 2016- 17 but ultimately, it was decided not to enforce this condition upon all the retail vendors as it was not considered to be resulting in any extra benefit but was considered as having a demoralizing effect on the auction. However, the L-2 licensees in urban area having license fee equal to or above Rs.3 crores were required to issue POS and L-2 licensee in urban area having license fee equal to or above Rs.2 crores was given an option to convert his vend into modern shop. The present petition has been filed seeking the same directions. While issuing notice of motion on 24.1.2017, this court directed the State counsel to seek direction regarding decision on this issue. The department informed the State counsel that the matter was under active consideration and has proposed to make issuance of bill mandatory in case sale price exceeds Rs.1000/- and in case where the sale price remains below Rs.1000/- it was to be issued on demand. It was also conveyed that the proposal was yet to be approved by the Council of Ministers. On 28.2.2017, this court observed that Council of Ministers Haryana should consider whether it should be mandatory to issue a receipt only in respect of purchases beyond Rs.1000/- . If the vendor in any event is to issue a receipt even for purchases less than Rs.1000/- if the customer so desires, it would be necessary for the vendor to arrange for the issuance of receipts and the recording of the same in any event. Thus, it would not be an additional burden on the vendor even if receipts are to be issued in respect of the sales of a value less than Rs.1000/-. Accordingly, the matter was considered by the council of Ministers. It has been observed by the Council of Ministers that there is a feeling however in the officers now that the proposal of making the issuance of a receipt for every sale of liquor beyond Rs.1000/- as mandatory and issue of receipt wherever the customer so desires for sale of liquor upto Rs. 1000/- is a unique order and needs to be watched for its impact in this year. Accordingly, the provision as approved had been incorporated in the Excise Policy for the year 2017-18. Further, it was observed that the State will consider extending the issue of invoice/receipt for every purchase during the policy finalization for the financial year 2018-19 after considering the implementation of this unique step in the Excise Policy for the year 2017-18.

(13) Examining the benefits of issuance of invoices for all

transactions of sale of liquor irrespective of the amount of sale, it may be noticed that the inclusion of such provision has manifold benefits. Firstly, it would help the liquor vendor in maintenance of accounts and check on the cash/credit transaction. Since majority of liquor is sold without billing/invoice, the State exchequer is bereft of huge portion of its revenue whether at State level or at Central level. It would help the income tax department for assessment and collection of appropriate tax. Secondly, a computerised invoice with vend code and actual price charged from the consumer would act as a safeguard for the consumer who would then be assured of quality and uniform pricing of the same brand across the State. A dissatisfied consumer would be able to get his grievance redressed in appropriate forum against an accountable liquor vendor. Further, with the issuance of invoice/computerised bill, the menace of spurious liquor which is being sold at vends shall come to a halt. Hundreds of people die every year after consuming spurious liquor. The matter has to be considered by the State having regard to the provisions contained in Article 47 of the Constitution of India which enjoins upon the State to prohibit consumption of intoxicating drink like liquor. Article 47 of the Constitution of India provides that it is the duty of the State to raise the level of nutrition and the standard of living of its people and the improvement of public health. It reads thus:-

“47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health – The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption, except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

(14) From plain reading of the aforesaid Article 47 of the Constitution of India, it is evident that the State has to make endeavour to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to health except wherever they are consumed for medicinal purposes. Liquor consumption is definitely injurious to health. There is no inherent right in a citizen to sell intoxicating liquor by retail. It is also not a privilege of a citizen. It being a business attended with danger to the community, can be permitted to be carried on under such conditions as will limit its evils.

(15) No doubt, trade in liquor generates revenue, but at the same time, health of the nation is equally important. Generation of funds can

be done by other means but not at the cost of health of the nation. Necessarily, to mitigate and suppress this evil, State can impose certain conditions to regulate its sale. The State Government has already taken laudable steps whereby the State of Haryana has provided that issuance of invoices would be mandatory for sales exceeding Rs.1000/- whereas it would be required to be issued by the liquor vendor for sales less than Rs.1000/- on demand and in the case of State of Punjab, in terms of Clause (d) of Special Condition (2) of Rule 38 of 1956 Rules, the vendor shall issue invoice in respect of a transaction of sale to the customer on demand.

(16) Issuance of bills does not involve any hardship to the vendor and rather secures the rights of the consumer. Similar provision has already been made in Delhi with regard to sale of liquor only through bar code. Circular dated 16.1.2018 has been issued by the Government of NCT Delhi wherein computerised receipts and its benefits have been enumerated. A computerised bill would ensure uniformity in price in same district at least, if not in entire State. Once the State Government has provided that it would be mandatory to issue invoice in respect of purchases beyond Rs.1000/- and if the vendee demands where the sale is for less than Rs.1000/-, it would be necessary for the vendor to arrange for the issuance of receipts and the recording of the same in any event. In such circumstances, it cannot be suggested that it would create additional burden on the vendor even if receipts are to be issued in respect of sales below Rs.1000/-. To illustrate, where in all the retail purchases below Rs.1000/-, the vendees demand invoices to be issued to them, necessarily, the vendor would be obligated to issue receipts to them. In such a situation, issuance of receipts for all transactions would not have any adverse effect on his maintenance of accounts whether he is in rural area or in urban area. Nothing has been placed on record by both the States to show that issuance of bills for sale above Rs.1000/- and for sales below Rs.1000/- on demand had any negative impact on the auction of liquor vends for the year 2017-18.

(17) Now taking up the plea of the State of Haryana that it being a policy decision should not be interfered with by the Court in exercise of judicial review, it may be noticed that excise policy is infact not a policy which cannot be interfered with at all. For framing such policy, various factors have to be kept in mind like public safety, public health and welfare of the society at large. It is well settled that when any policy framed by the State is contrary to public interest or is violative of the constitutional principles, it is the duty of the Court to exercise its

jurisdiction in larger public interest and reject the stock plea of the State that the scope of judicial review should not be exceeded beyond the recognised principles. Courts can interfere to modify such policy by inclusion of any specific clause therein which can be made mandatory. This type of interference does not amount to assumption of legislative function by the court. In the present case, since the government had already included the clause in the Excise policy 2017-18 for issuance of invoices for the sale exceeding Rs.1000/- and where sales are less than Rs.1000/-, invoice to be issued on demand, giving directions for issuance of bills for every transaction irrespective of the amount of sale whether demanded or not does not interfere with the policy decision of the State.

(18) Adverting to the case law on the subject, in ***Centre for Public Interest Litigation's*** case (supra) relied upon by the learned counsel for the petitioner, it was observed by the Apex court that there cannot be any quarrel with the proposition that the court cannot substitute its opinion for the one formed by the experts in the particular field and due respect should be given to the wisdom of those who are entrusted with the task of framing the policies. The court is also conscious of the fact that it should not interfere with the fiscal policies of the State. However, when it is clearly demonstrated that the policy framed by the State or its agency/instrumentality and/or its implementation is contrary to public interest or is violative of the constitutional principles, it is the duty of the court to exercise its jurisdiction in larger public interest and reject the stock plea of the State that the scope of judicial review should not be exceeded beyond the recognised parameters. When matters like these are brought before the judicial constituent of the State by public spirited citizens, it becomes the duty of the court to exercise its power in larger public interest and ensure that the institutional integrity is not compromised by those in whom the people have reposed trust and who have taken an oath to discharge duties in accordance with the Constitution and the law without fear or favour, affection or ill will and who, as any other citizen, enjoy fundamental rights and at the same time are bound to perform the duties enumerated in Article 51-A of the Constitution of India. The relevant observations recorded by the Supreme Court read thus:-

“99. In majority of judgments relied upon by learned Attorney General and learned counsel for the respondents, it has been held that the power of judicial review should be

exercised with great care and circumspection and the Court should not ordinarily interfere with the policy decisions of the Government in financial matters. There cannot be any quarrel with the proposition that the Court cannot substitute its opinion for the one formed by the experts in the particular field and due respect should be given to the wisdom of those who are entrusted with the task of framing the policies. We are also conscious of the fact that the Court should not interfere with the fiscal policies of the State. However, when it is clearly demonstrated that the policy framed by the State or its agency/instrumentality and/or its implementation is contrary to public interest or is violative of the constitutional principles, it is the duty of the Court to exercise its jurisdiction in larger public interest and reject the stock plea of the State that the scope of judicial review should not be exceeded beyond the recognised parameters.

100. When matters like these are brought before the judicial constituent of the State by public spirited citizens, it becomes the duty of the Court to exercise its power in larger public interest and ensure that the institutional integrity is not compromised by those in whom the people have reposed trust and who have taken an oath to discharge duties in accordance with the Constitution and the law without fear or favour, affection or ill will and who, as any other citizen, enjoy fundamental rights and, at the same time, are bound to perform the duties enumerated in Article 51A. Reference in this connection can usefully be made to the judgment of the three Judge Bench headed by Chief Justice Kapadia in Centre for *P.I.L.* versus *Union of India*⁵.”

(19) Similarly, in *K.Balu's* case (supra), the issue before the Supreme Court was the effect of presence of liquor vends on National and State highways across the country. After considering the matter in detail, it was observed by the Supreme Court that while exercising its jurisdiction, the court has neither formulated policy nor had assumed a legislative function. The effect and purport of the directions was that in the interest of public safety and public health, the distance from the outer edge of National or State highways or a service lane alongwith

⁵ (2011) 4 SCC 1

the highway was to be maintained of 500 meters. This did not amount to the assumption of a legislative function by the court. Infact, the requirement of maintaining a distance from the highway ensures that the prohibition on the grant of licences along the highway was not defeated by the presence of outlets in close proximity to the highway. The relevant observations read thus:-

“18. The submission of the Attorney General (representing the State of Tamil Nadu) and of other learned senior counsel who adopted the same line of argument, which is based on the state excise rules is lacking in substance. The state excise rules contain enabling provisions. They provide for a discretion for the grant of liquor licences. No individual has a vested right to obtain a licence. There is no fundamental right to carry on business in liquor since as a matter of constitutional doctrine, Article 19(1)(g) does not extend to trade in liquor which is consistently regarded as *res extra commercium*. Where an excise rule which has been formulated by a state government provides for the maintenance of a specified distance from an institution or amenity, what this postulates is that no licence can be granted at all by the State Government within that distance. The state has a discretion on whether a licence should be granted under its enabling powers. No individual can assert a right to the grant of a licence: trading in liquor is a privilege conferred by the state. The directions which have been issued by this Court do not breach any norm in the nature of a prohibition nor do they operate to lift a prohibition imposed by law. The effect and purport of the directions is that in the interest of public safety and public health, the distance from the outer edge of national or state highways or a service lane along the highway is to be maintained of 500 metres. This does not amount to the assumption of a legislative function by the Court. In fact the requirement of maintaining a distance from the highway (which even according to the submission of counsel is adopted in a large number of states) ensures that the prohibition on the grant of licences along the highway is not defeated by the presence of outlets in close proximity to the highway. The maintenance of an adequate buffer is a necessary incident of the principle, which is to prevent ready availability of liquor to users of a highway. In any event, no private individual can be heard to make a grievance of the prescription of 500 metres which is

manifestly in public interest.”

(20) In all fairness, we now refer to the judgments relied upon by the learned counsel for the respondents. In *M.P. Oil Extraction's* case (supra), relied upon by learned counsel for the respondents, it was held by the Supreme Court that the executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the state. Policy decision is in the domain of the executive authority of the state and the Court should not embark on the uncharted ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the constitution of India.

(21) In *Delhi Bar Association's* case (supra), the challenge before the Supreme Court was to the notification dated 28.6.2000 issued by the Delhi Government dividing NCT of Delhi into nine districts. The policy decision was taken to cope up with pressure of increased litigation. There was also a direction from the Supreme Court for creation of judicial districts. It was held that policy decision taken by the Government cannot be faulted with unless it suffers from unreasonableness, arbitrariness or unfairness or it is beyond legislative powers.

(22) The propositions of law enunciated in the above judgments are unexceptionable. However, suffice it to notice, the factual background as enumerated hereinabove, the issue is not covered and governed by the said decisions.

(23) In view of the above, we, for the various reasons discussed hereinbefore, consider it appropriate that the State Governments of Haryana and Punjab make it obligatory for the liquor vendors to issue invoices for all the sales effected by them from their vends with effect from the year 2018-19 onwards. Ordered accordingly. As a result, the writ petition is allowed.