

***Before Ajay Kumar Mittal & Raj Rahul Garg, JJ.***

**AMARJIT SINGH SIDHU—Petitioner**

*versus*

**STATE OF PUNJAB AND OTHERS—Respondents**

**CWP No. 5593 of 2016**

June 09, 2016

***Punjab Liquor License Rules, 1956—Liquor License (Amendment) Rules, 2016—S.59(d) —Constitution of India, 1950—Arts. 19(a) to (g) and 14—Sale of liquor—Held, the State is fully empowered to frame policy for the sale of liquor and the Court shall not interfere unless discriminatory—The modification in the license i.e creation of category of license L-1A in the Punjab Liquor License Rules, 1956 between the distilleries and L-1 licensee to augment the revenue and stop leakage is held to be legal and valid.***

*Held*, that in the backdrop of the settled legal principles noticed hereinabove, the question of challenge to creation of licence L-1A category in the Excise Policy 2016-17 may be dealt with. Licence L-1A category was created by amendment made in the Punjab Liquor Licence Rules, 1956 vide notification issued in 2011 in exercise of power under Section 59 of the Act as noted above. However, on 23.3.2016, the new notification has been issued incorporating the amendment creating L-1A licence in its amended form. The State is fully empowered to frame policy for the sale of liquor and the courts shall be loathe in interfering in the same unless it is shown to be discriminatory or arbitrary. The creation of category of license L-1A between the distilleries and L-1 licensee to augment the revenue and stop leakage thereof cannot be said to be arbitrary. Further, the Excise Policy for the year 2016-17 was formulated on 13.3.2016, though the notification in exercise of power under Section 59 of the Act was issued on 23.3.2016, the same having been issued before the enforcement date for Excise Policy 2016-17 to be effective, i.e. 1.4.2016, cannot, thus, be faulted. The plea of the petitioners that the notification was issued after the start of the Excise year on 1.4.2016 cannot be accepted being based on presumptions, assumptions and conjectures without there being any definite and concrete material to hold so. Thus, it is concluded that category licence L-1A in the Punjab Liquor Licence Rules 1956 in the modified form is legal and valid.

(Para 26)

Mohan Jain, Sr. Advocate with Vikram Jain, Arastu Chopra, Fateh Saini, Advocates, *for the petitioner* in CWP No. 5593 of 2016.

Ashish Aggarwal, Sr. Advocate with Ritu Pathak, Advocate, *for the petitioner* in CWP No. 5740 of 2016.

Sandeep Goyal, Advocate *for the petitioner* in CWP No. 7668 of 2016.

Ashok Aggarwal, Advocate General, Punjab with Kamal Sehgal, Addl. A.G. Punjab and Harsimran Singh Sethi, Addl. A.G. Punjab.

### **AJAY KUMAR MITTAL, J.**

(1) This order shall dispose of CWP Nos.5593, 5740 and 7668 of 2016 as learned counsel for the parties are agreed that the issues involved in these petitions are identical. However, the facts are being extracted from CWP No.5593 of 2016.

(2) In CWP No.5593 of 2016, the petitioner prays for quashing the newly created/added Clause 2.14 of L-1A licence in the Excise Policy dated 13.3.2016 for the year 2016-17, Annexure P.1 being arbitrary, illegal and against the provisions of the Punjab Excise Act, 1914 (in short, "the Act") and the Punjab Liquor Licence Rules, 1956 (for brevity, "the Rules") as Excise department has no power/authority to add, delete or cancel any kind of category of licence in the Excise policy without amending the relevant Acts and the Rules where there is a chart of liquor licences. Further prayer has been made for a direction to the respondents to bring clear cut transparency in the procedure for allotment of L-1A licence by holding draw of lots. Direction has also been sought to the respondents to decide the legal notice dated 17.2.2016, Annexure P.2 submitted by the petitioner and to stay operation of issuance of L-1A licence till the pendency of the present writ petition.

(3) A few facts relevant for the decision of the controversy involved as narrated in CWP No.5593 of 2016. The petitioner is engaged in the business of liquor trade for the past so many years in the State of Punjab. In the month of March 2016, the State of Punjab announced its Excise policy for the year 2016-17 under the Act and the Rules. In the previous excise policy for the last year, there were different classes of licences mentioned in the Rules. The controversy arose when the State Government announced its excise policy for the

year 2016-17 in which excise department has added a new dimension to the category namely L-1A licence which is above the category of L-1 licence which is a wholesale licence for the sale of Indian made foreign liquor (IMFL). The relevant portion of the terms and conditions for the allotment of new category of L-1A licence as stipulated in Clause 2.14 of the excise policy for the State of Punjab for the year 2016-17 reads as under:-

"Clause 2.14

- i) It is necessary for the applicant for this licence to have an authority/consent letter from the manufacturing unit.
- ii) Any manufacturing company cannot issue the authority/consent letter to more than one person/company/firm/organization.
- iii) The manufacturing company will give this consent letter to that person/company/firm/organization who is at Arms Length Distance from the manufacturing company provided there is no promoter, director, partner in the manufacturing company or there is no holding, subsidiary, closely held company, fully/partially owned/financed/managed firm/company.
- iv) L-1A licensee will purchase IMFL (except Beer) wine, RTD from the State or the manufacturing companies situated outside the State and will sell it to only L-1 licensees.
- v) It is proposed that the licence fees for the L-1A (IMFL) for the year 2016-17 is fixed at Rs.2.50 crores and it is proposed to have the security amount of this licence fixed at Rs.25 lacs."

According to the petitioner, the L-1A licence has been added/created just to monopolize the trade of liquor in the State of Punjab. Earlier, there was procedure in the excise policy that the person who was licensee of L-1 wholesale licence shall take the liquor directly from the manufacturing company. After adding L-1A licence, it has been specified that a person who is holder of L-1 licence will now have to take the liquor for sale from the L- 1A licensee i.e. newly created category of licence in the excise policy for the year 2016-17. It has been further claimed that the new licence has been created to monopolize the liquor trade and extend the same to the particular group

of persons namely Chadha group, Malhotra group, Doda group and AD group who are at present major stake holders in the liquor business in the State of Punjab and are instrumental in influencing the excise department for creation of new category i.e. L-1A licence for their own economic interest. The petitioner avers that there is no power with the excise department to add or cancel any classification of the licensees in the excise policy without amending the Act and the Rules. Further, it is also not specified who is the competent authority to grant the L-1A licence and who is responsible to legally monitor or scrutinize the application for grant of L- 1A licence. No criteria has been prescribed for the manufacturer to give letter of consent if more than one person shows interest for its L-1A licence. The projected number of IMFL L-1A licensees in the State of Punjab is fixed at three and there will be just two L-1A liquor licence for Beer in the entire State of Punjab which would lead to monopolization of liquor trade in the State of Punjab. Still further, the term Arms Length Distance for grant of L-1A licence only to the persons who are in any way not related to the manufacturing company is a very subjective term. The petitioner also sent a legal notice cum representation dated 17.3.2016, Annexure P.2 to the respondents but no reply has been received from the department. Hence the instant writ petition.

(4) A written statement has been filed by Additional Excise and Taxation Commissioner, Punjab for and on behalf of respondents No.1 to 3, wherein it has been inter alia stated that L-1A licence is in existence since the year 2011 and is part of the 1956 rules. The only amendment which has been done for the year 2016-17 is that earlier L-1 licensee could purchase the liquor from manufacturer also but it was matter of practice that L-1 licensee used to purchase liquor from L-1A licensee. This practice has been made as a rule now and the manufacturer is not eligible for the grant of L-1A licence and L-1A licensees who have consent from the manufacturer will sell the liquor to the other licence holders for the wholesale. The petitioner, a L-1 licensee has not stated anywhere that he wants L-1A licence or that he has been debarred from applying for L-1A licence. Further, nothing has been shown as to what prejudice will be caused to the petitioner if he gets the liquor from the L-1A licensee. Under the Act and the Rules, the State Government has power to frame rules to regulate the liquor business. Thus, the policy in question is in consonance with the Act and the Rules. On these premises, prayer for dismissal of the writ petition has been made.

(5) A short affidavit by Additional Excise and Taxation Commissioner, Punjab dated 5.4.2016 has also been filed justifying the addition of L-1A licence in the excise policy for the year 2016-17.

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

(7) The controversy in these petitions relates to the following contentions:-

a) Whether citizen has any fundamental right to trade or business in liquor as beverage?

b) Whether the State can discriminate between the citizens where the trade or business in the potable liquor is permitted by the State and the scope of judicial review in the matter of liquor trade?

c) Whether the newly added Clause 2.14 in the Excise Policy for the year 2016-17 by the State Government creating L-1A category of licence is legally valid, fair and does not suffer from the vice of arbitrariness?

(8) The marathon submissions made with vehemence by learned counsel for both the parties requires issue (c) to be sub-categorized as under:-

(i) Whether the action of the respondents in creating Licence L-1A category in the Excise Policy for the year 2016-17 is legal and valid as the policy was issued on 13.3.2016 whereas Punjab Liquor Excise Rules, 1956 were amended incorporating Licence 1-A in modified form on 23.3.2016?

ii) Whether the sub clause (ii) of Clause 2.14 of the Excise Policy 2016-17 is justified and sustainable in law or not?

(9) No debate is required on Issue No.1 as the matter is no longer res integra. The unanimous view of five Constitution Bench decisions in *State of Bombay and another versus F.N. Baisana*<sup>1</sup>, *Cooverjee B. Bharucha versus Excise Commissioner and the Chief Commissioner, Ajmer and others*<sup>2</sup>, *State of Assam versus N. Kidwai, Commissioner of Hills Division and Appeals, Shillong*<sup>3</sup>, *Nagendra Nath Bora and another versus The Commissioner of Hills*

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<sup>1</sup> (1951) 2 SCR 682

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

<sup>3</sup> (1957) 1 SCR 295

*Division and Appeals, Assam and others*<sup>4</sup> and *Amar Chandra Chakraborty versus Collector of Excise, Government of Tripura and others*<sup>5</sup> emphasized that the trades which were injurious to health and welfare of the public could be restricted by the State and that elimination and exclusion from the business was inherent in the nature of liquor business as it was treated as a class by themselves by all civilized societies. The plea that citizen either had a natural or fundamental right to carry on trade or business in liquor was not accepted.

(10) In *Har Shankar versus Deputy Excise and Taxation Commissioner*<sup>6</sup>, similar view was reiterated by another Constitution Bench where the question arose whether the citizen had a fundamental right to trade in intoxicants and whether the State had power to prohibit absolutely every form of activity relating to intoxicants. It was observed as under:-

"58. In our opinion, the true position governing dealings in intoxicants is as stated and reflected in the Constitution Bench decisions of this Court in Balsara's case, Cooveriee's case, Kidwai's case, Nagendra Nath's case, Amar Chakraborty's case and the R.M.D.C. case, as interpreted in Harinarayan Jaiswal's case and Nashirwar's case, There is no fundamental right to do trade or business in intoxicants. The State, under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants-its manufacture, storage, export, import, sale and possession. In all their manifestations, these rights are vested in the State and indeed without such vesting there can be no effective regulation of various forms of activities in relation to intoxicants. In "American Jurisprudence", Volume 30 it is stated that while engaging in liquor traffic is not inherently lawful,. nevertheless it is a privilege and not a right, subject to governmental control. (page 538). This power of control is' an incident of the society's right to self-protection and it rests upon the right of the State to care for the health, morals and welfare of the people. Liquor traffic is a source of pauperism and crime. (pp. 539, 540, 541)."

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<sup>4</sup> (1958) 1 SCR 1240

<sup>5</sup> (1973) 1 SCR 533

<sup>6</sup> (1975) 1 SCC 737

(11) Subsequently, another Constitution Bench in *Khoday Distilleries Limited and others versus State of Karnataka and others*<sup>7</sup> delving into the issue, whether the citizen has a fundamental right to carry on trade in liquor, upon referring to a large number of decisions, answered the issue in the negative and very succinctly summarized the legal position as under:-

"60. We may now summarize the law on the subject as culled from the aforesaid decisions.

(a) The rights protected by Article 19(1) are not absolute but qualified. The qualifications are stated in clauses (2) to (6) of Article 19. The fundamental rights guaranteed in Article 19(1)(a) to (g) are, therefore, to be read along with the said qualifications. Even the rights guaranteed under the Constitutions of the other civilized countries are not absolute but are read subject to the implied limitations on them. Those implied limitations are made explicit by clauses (2) to (6) of Article 19 of our Constitution.

(b) The right to practise any profession or to carry on any occupation, trade or business does not extend to practising a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious, and is condemned by all civilized societies. It does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are obnoxious and injurious to health, safety and welfare of the general public, i.e., *res extra commercium*, (outside commerce). There cannot be business in crime.

(c) Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is *res extra commercium* being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor. Hence the trade or business in liquor can be completely prohibited.

(d) Article 47 of the Constitution considers intoxicating drinks and drugs as injurious to health and impeding the raising of level of nutrition and the standard of living of the people and improvement of the public health. It, therefore,

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<sup>7</sup> (1995) 1 SCC 574

ordains the State to bring about prohibition of the consumption of intoxicating drinks which obviously include liquor, except for medicinal purposes. Article 47 is one of the directive principles which is fundamental in the governance of the country. The State has, therefore, the power to completely prohibit the manufacture, sale, possession, distribution and consumption of potable liquor as a beverage, both because it is inherently a dangerous article of consumption and also because of the directive principle contained in Article 47, except when it is used and consumed for medicinal purposes.

(e) For the same reason, the State can create a monopoly either in itself or in the agency created by it for the manufacture, possession, sale and distribution of the liquor as a beverage and also sell the licences to the citizens for the said purpose by charging fees. This can be done under Article 19(6) or even otherwise.

(f) For the same reason, again, the State can impose limitations and restrictions on the trade or business in potable liquor as a beverage which restrictions are in nature different from those imposed on the trade or business in legitimate activities and goods and articles which are res commercium. The restrictions and limitations on the trade or business in potable liquor can again be both. under Article 19(6) or otherwise. The restrictions and limitations can extend to the State carrying on the trade or business itself to the exclusion of and elimination of others and/or to preserving to itself the right to. sell licences to do trade or business in the same, to others.

(g) When the State permits trade or business in the potable liquor with or without limitation, the citizen has the right to carry on trade or business subject to the limitations, if any, and the State cannot make discrimination between the citizens who are qualified to carry on the trade or business.

(h) The State can adopt any mode of selling the licences for trade or business with a view to maximise its revenue so long as the method adopted is not discriminatory.

(i) The State can carry on trade or business in potable liquor notwithstanding that it is an intoxicating drink and Article

47 enjoins it to prohibit its consumption. When the State carries on such business, it does so to restrict and regulate production, supply and consumption of liquor which is also an aspect of reasonable restriction in the interest of general public. The State cannot on that account be said to be carrying on an illegitimate business.

(j) The mere fact that the State levies taxes or fees on the production, sale and income derived from potable liquor whether the production, sale or income is legitimate or illegitimate, does not make the State a party to the said activities. The power of the State to raise revenue by levying taxes and fees should not be confused with the power of the State to prohibit or regulate the trade or business in question. The State exercises its two different powers on such occasions. Hence the mere fact that the State levies taxes and fees on trade or business in liquor or income derived from it, does not make the right to carry on trade or business in liquor a fundamental right, or even a legal right when such trade or business is completely prohibited.

(k) The State cannot prohibit trade or business in medicinal and toilet preparations containing liquor or alcohol. The State can, however, under Article 19(6) place reasonable restrictions on the right to trade or business in the same in the interests of general public.

(l) Likewise, the State cannot prohibit trade or business in industrial alcohol which is not used as a beverage but used legitimately for industrial purposes. The State, however, can place reasonable restrictions on the said trade or business in the interests of the general public under Article 19(6) of the Constitution.

(m) The restrictions placed on the trade or business in industrial alcohol or in medicinal and toilet preparations containing liquor or alcohol may also be for the purposes of preventing their abuse or diversion for use as or in beverage."

(12) The question before the three Judges Bench of the Apex Court in *M/s Ugar Sugar Works limited versus Delhi Administration*

*and others*<sup>8</sup> arose regarding the validity of notification issued laying down terms and conditions for registration of different brands of Indian Made Foreign Liquor (IMFL) for supply within the territory of Delhi during 2000-01 and laying down Minimum Sales Figures (MSF) as a criteria of eligibility for grant of licence in Form L-1, whether it was violative of Articles 14, 16 and 19(1)(g) of the Constitution of India. Considering the law on the issue, it was again expressed that there is no fundamental right to trade in intoxicants like liquor and the plea of the petitioner therein to the contrary was emphatically repelled with the following observations:-

"The contention that a citizen of this country has a fundamental right to trade in intoxicating liquors refuses to die in spite of the recent Constitution Bench decision in *Khoday Distilleries*, [1995] 1 SCC 574. It is raised before us again. In *Khoday Distilleries*, this Court reviewed the entire case-law on the subject and concluded that a citizen has no fundamental right to trade or business in intoxicating liquors and that trade or business in such liquor can be completely prohibited. It held that because of its vicious and pernicious nature, dealing in intoxicating liquors is considered to be *res extra commercium* (outside commerce). Article 47 of the Constitution, it pointed out, requires the State to endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and all drugs which are injurious to health. For the same reason, the Bench held, the State can treat a monopoly either in itself or in an agency created by it for the manufacture, possession, sale and distribution of liquor as a beverage. The holding is emphatic and unambiguous. Yet an argument is sought to be built upon certain words occurring in clauses (e) and (f) of the summary contained in Para 60 of the decision. In these clauses, it was observed that creation of a monopoly in the State to deal in intoxicating liquors and the power to impose restrictions, limitations and even prohibition thereon can be imposed both under clause (6) of Article 19 or even otherwise. Seizing upon these observations, Shri Ganguly argued that this decision implicitly recognises that business in liquor is a fundamental right under Article 19(1)(g). If it were not so, asked the learned counsel, reference to Article

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<sup>8</sup> (2001) 3 SCC 635

19(6) has no meaning. We do not think that any such argument can be built upon the said observations. In clause (e), the Bench held, a monopoly in the State or its agency can be created "under Article 19(6) or even otherwise". Similarly, in clause (f), while speaking of imposition of restrictions and limitations on this business, it held that they can be imposed "both under Article 19(6) or otherwise". The said words cannot be read as militating against the express propositions enunciated in clauses (b), (c), (d), (e) and (f) of the said summary. The said decision, as a matter of fact, emphatically reiterates the holding in *Har Shanker*, [1975] 1 SCC 737, that a citizen has no fundamental right to trade in intoxicating liquors. In this view of the matter, any argument based upon Article 19(1)(g) is out of place".

It was concluded thus:-

"15. In view of this settled position of law, any argument impugning the policy decision of the State Government, as reflected in the impugned notification, based upon Article 19(1)(g) is totally out of place and merits outright rejection and we have no hesitation in doing so most emphatically."

(13) Further, this issue has been subject matter of discussion and consideration in numerous other pronouncements of different courts and the view expressed therein has been repetition and in consonance with the authoritative enunciation of law by the Apex Court. One of the questions before the Full Bench of the Madhya Pradesh High Court in *Naresh Gupta versus State of Madhya Pradesh* (CWP No.1636 of 2010 decided on 26th March 2010) was regarding whether liquor policy which related to renewal of licence was a valid policy and whether such policy created any monopoly in favour of all such persons who were ready and willing to give 20% extra on the existing licence fee. Opining on the nature of right to deal in business of liquor, the Full bench had elaborately considered it and expressed as under:-

"25. The Constitution Bench of the Supreme Court in *Har Shankar and Others etc. v. The Deputy Excise and Taxation Commissioner and others, etc.*, AIR 1975 SC 1121 while dealing with right to deal in the business of intoxicants approved the ratio of earlier decisions, namely, decision of the Constitution Bench in the *State of Bombay vs. F.N. Balsara*, AIR 1951 SC 318 and *Cooverjee B. Bharucha v.*

*Excise Commr. And the Chief Commr. , Ajmer*, AIR 1954 SC 220, *State of Assam v. A. N. Kidwai* AIR 1957 SC 414, *Nagendra Nath Vora and another vs. Commissioner of Hills Division*, AIR 1958 SC 398, *Amar Chandra Chakraborty v. Collector of Excise, Government of Tripura*, AIR 1972 SC 1863, *State of Bombay vs. R.M.D.Chamarbaugwala*, AIR 1957 SC 699, *State of Orissa v. Harinarayan Jaiswal*, AIR 1972 SC 1816 and *Nashirwar etc. vs. State of M.P. and others*, AIR 1975 SC 360 and has held that there is no fundamental right to do the business or deal in intoxicants.

26. Another constitution Bench of the Supreme Court in *Khoday Distilleries Ltd. And Others v. State of Karnataka and Others*, (1995)1 SCC 574 after taking note of all previous decisions on the nature of right to deal in business of liquor summarized the law on the subject as follows:

"60. We may now summarize the law on the subject as culled from the aforesaid decisions.

(a) The rights protected by Article 19(1) are not absolute but qualified. The qualifications are stated in clauses (2) to (6) of Article 19. The fundamental rights guaranteed in Article 19(1) (a) to (g) are therefore, to be read along with the said qualifications. Even the rights guaranteed under the Constitutions of the other civilized countries are not absolute but are read subject to the implied limitations on them. Those implied limitations are made explicit by clauses (2) to (6) of Article 19 of our Constitution.

(b) The right to practice any profession or to carry on any occupation, trade or business does not extend to practicing a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious, and is condemned by all civilized societies. It does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are obnoxious and injurious to health, safety and welfare of the general public, i.e., *res extra commercium*, (outside commerce). There cannot be business in crime.

(c) Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is *res extra commercium* being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor.

Hence, the trade or business in liquor can be completely prohibited."

(14) The irresistible conclusion which emerges from the above discussion is that the fundamental rights enshrined in Article 19(1) of the Constitution of India are not absolute but qualified and are circumscribed by conditions contained in clauses (2) to (6) of Article 19 thereof. In other words, the fundamental rights guaranteed under Article 19(1)(a) to (g) of the Constitution of India have certain restrictions as enumerated in clauses (2) to (6) of the said Article 19. Further, the State is empowered to restrict or prohibit trades which are injurious to health and welfare of the public. Thus, citizens cannot claim fundamental right to trade or carry on business in such activities and potable liquor is one which falls in this category. Thus, trade of liquor can be completely prohibited by the State.

(15) Adverting to the next issue, it has overlapping traits with the first issue. It shall not detain us longer as it had been subject matter of deliberations in various decisions of different courts. The Apex Court in *State of M.P. and others versus Nandlal Jaiswal and others*<sup>9</sup> opined that though a citizen has no fundamental right to carry on trade or business of liquor but where the State decides to grant the right or privilege to carry on this trade, in such a situation, the State cannot escape the rigour of Article 14. The relevant observations are quoted as under:-

"The State under its regulatory power has the power to prohibit absolutely every form of activity in relation to intoxicants, its manufacture, storage, export, import, sale and possession. No one can claim as against the State the right to carry on trade or business in liquor and the State cannot be compelled to part with its exclusive right or privilege of manufacturing and selling liquor. But when the State decides to grant such right or privilege to others the State cannot escape the rigour of Article

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<sup>9</sup> (1986) 4 SCC 566

14. It cannot act arbitrarily or at its sweet will. It must comply with the equality clause while granting the exclusive right or privilege of manufacturing or selling liquor. It is, therefore, not possible to uphold the contention of the State Government and Respondents 5 to 11 that Article 14 can have no application in a case where the licence to manufacture or sell liquor is being granted by the State Government. The State cannot ride roughshod over the requirement of that article."

In *In Khoday Distilleries Ltd. and Others v. State of Karnataka and Others* [(1995) 1 SCC 574], a Constitution Bench of this Court upon referring to a large number of decisions summed up its findings in the following terms:

"60.(g) When the State permits trade or business in the potable liquor with or without limitation, the citizen has the right to carry on trade or business subject to the limitations, if any, and the State cannot make discrimination between the citizens who are qualified to carry on the trade or business."

(16) A Division Bench of this Court in *Ram Chander versus State of Haryana and others*<sup>10</sup> was considering the policy and grant of contracts or licences in the trade and business of liquor. After elaborately discussing this issue and considering relevant decisions on the subject, it was held that every action of the State must be fully transparent on the public records satisfying the tests of Article 14 of the Constitution of India. If there is no transparency and fairness in the action of the State, the same cannot be sustained in the eye of law and such an action is clearly violative of Article 14 of the Constitution of India. The relevant observations read thus:-

"16. Before proceeding further, we may notice the law on the subject. It is well settled that there is no fundamental right to do business or trade in intoxicants. However, if the State decides to grant such right or privilege, it cannot escape rigour of Article 14 of the Constitution and act arbitrarily or at will. While applying Article 14 of the Constitution in such a case, the court will be slow to interfere with the policy for grant of liquor or award of

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<sup>10</sup> 2006 (3) PLR 392

contracts unless the same was arbitrary, illegal or mala fide. In a given case, the State could review its policy in public interest. It is well settled that if decision making process is vitiated by arbitrariness, unfairness, illegality or irrationality, this court could strike down the same as well as consequential actions, in exercise of its power of judicial review.

17. In *Har Shankar and others etc. v. The Deputy Excise and Taxation Commissioner and others etc*, AIR 1975 SC 1121, it was observed:-

"53. In our opinion, the true position governing dealings in intoxicants is as stated and reflected in the Constitution bench decisions of this Court in *Balsara's case* 1951 SCR 682 = (AIR 1951 SC 318); *Cooverjee's case* 1954 SCR 873 = (AIR 1954 SC 220); *Kidwai's case* 1957 SCR 295 = (AIR 1957 SC 414); *Nagendra Nath's case* 1958 SCR 1240 = (AIR 1958 SC 398); *Amar Chakraborty's case* (1973) 1 SCR 533 = (AIR 1972 SC 1863) and the RM DC case 1957 SCR 874 = (AIR 1957 SC 699) as interpreted in *Harinarayan Jaiswal's case* (1972) 3 SCR 784 = (AIR 1972 SC 1816) and *Nashirwar's case* (AIR 1975 SC 360). There is no fundamental right to do trade or business in intoxicants. The State, under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants its manufacture, storage, export, import, sale and possession. In all their manifestations, these rights are vested in the state and indeed without such vesting these can be no effective regulation of various forms of activities in relation to intoxicants...."

In *State of MP and others etc. v. Nand Lal Jaiswal and others etc*, AIR 1987 SC 251, in paras 32 and 33, it was observed:-

"32.. Now, it is true and it is well settled by several decisions of this court including the decision in *Har Shanker v. Deputy Excise & Taxation Commr.* (1975) 3 SCR 254 : (AIR 1975 SC 1121) that there is no fundamental right in a citizen to carry on trade or business in liquor. The State under its regulatory power has the power to prohibit absolutely every form of activity in relation to intoxicants its

manufacturer, storage, export, import, sale and possession. No one can claim as against the State the right to carry on trade or business in liquor and the state cannot be compelled to part with its exclusive right or privilege of manufacturing and selling liquor. But when the State decides to grant such right or privilege to others, the state cannot escape the rigour of Article 14. It cannot act arbitrarily or at its sweet will. It must comply with the equality clause while granting the exclusive right or privilege of manufacturing or selling liquor. It is, therefore, not possible to uphold the contention of the State Government and respondents Nos.5-11 that Article 14 can have no application in a case where the licence to manufacture or sell liquor is being granted by the State Government. The State cannot ride roughshod over the requirement of that Article.

33. But, while considering the applicability of Article 14 in such a case, we must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor. The Court would, in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy of regulating, manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the court would hesitate to intervene and strike down what the State Government had done, unless it appears to be plainly arbitrary, irrational or mala fide. We had occasion to consider the scope of interference by the Court under Article 14 while dealing with laws relating to economic activities in *R.K. Garg v. Union of India*, (1982) 1 SCR 947 : (AIR 1981 SC 2138). We pointed out in that case that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. We observed that the legislature should be allowed some play in the joints because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the

nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. We quoted with approval the following admonition given by Frankfurter, J. in *Morey v. Doud*, (1957) 354 US 457:

"In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events self limitation can be seen to be the path to judicial wisdom and institutional prestige and stability."

What we said in that case in regard to legislation relating to economic matters must apply equally in regard to executive action in the field of economic activities, though the executive decision may not be placed on as high a pedestal as legislative judgment in so far as judicial deference is concerned. We must not forget that in complex economic matters every decision is necessarily empiric and it is based on experimentation or what one may call 'trial and error method' and, therefore, its validity cannot be tested on any rigid 'a priori' considerations or on the application of any strait jacket formula. The court must while adjudging the constitutional validity of an executive decision relating to economic matters grant a certain measure of freedom or 'play' in the "joints" to the executive. "The problem of Government" as pointed out by the Supreme Court of the United States in *Metropolis Theatre Company v. State of Chicago*, (1912) 57 L Ed 730 "are practical ones and may justify, if they do not require, rough accommodations, illogical, 20 of 56 it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not discernible, the wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review. It is only its palpably arbitrary exercise which can be declared void". The Government, as was said in *Permian Basin Area Rate cases*, (1968) 20 L Ed (2d) 312, is entitled to make pragmatic adjustments which may be

called for by particular circumstances. The Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The Court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide. It is against the background of these observations and keeping them in mind that we must now proceed to deal with the contention of the petitioners based on Article 14 of the Constitution."

The above principles were reiterated in *Khoday Distilleries Ltd. And others v. State of Karnataka and others*, (1995) 1 SCC 574, wherein para 62, it was observed:-

"62. We, therefore, hold that a citizen has no fundamental right to trade or business in liquor as beverage. The State can prohibit completely the trade or business in potable liquor since liquor as beverage is *res extra commercium*. The State may also create a monopoly in itself for trade or business in such liquor. The State can further place restrictions and limitations on such trade or business which may be in nature different from those on trade or business in articles *res commercium*. The view taken by this court in K.K.Narula case as well as in the second Synthetics and Chemicals Ltd. Case is not contrary to the aforesaid view which has been consistently taken by this court so far."

This was also reiterated by majority of Judges in *State of Punjab and another v. Devans Modern Breweries Ltd. And another*, (2004) 11 SCC 26. It was observed in para 113:-

"In my opinion, Articles 301 and 304(a) of the Constitution are not attracted to the present case as the imposition of import fee does not, in any way, restrict trade, commerce and intercourse among the States. In my opinion, the permissive privilege to deal in liquor is not a 'right' at all. The levy charged for parting with that privilege is neither a tax nor a fee. It is simply a levy for the act of granting permission or for the exercise of power to part with the privilege. In this context, we can usefully refer to *Har Shankar v. Dy. Excise and Taxation Commr.* (AIR 1975 SC 1121 and *Panna Lal v. State of Rajasthan* (1975) (2)

SCC 633). As noticed earlier, dealing in liquor is neither a right nor is the levy a tax or a fee. Articles 301-304 will be rendered inapplicable at the threshold to the activity in question. Further, there is not even a single judgment which upholds the applicability of Articles 301-304 to the liquor trade. On the contrary, numerous judgments expressly hold these articles to be inapplicable to trade, commence and intercourse in liquor. We can beneficially refer to the judgments in *State of Bombay v. RMD Chamarbaugwala* (AIR 1957 SC 699), Har Shankar case, *Sat Pal and Co. v. Lt. Governor of Delhi* [(1979) 4 SCC 232]). The learned counsel for the respondent submitted that Articles 301-304 are violated or transgressed. In view of discussions in the paragraphs above, it is clearly demonstrated as to how and why Articles 301-304 are inapplicable to liquor trade in any form."

In *PTR Exports (Madras) Pvt.Ltd. v. Union of India and others*, (1996) 5 SCC 268, it was observed in para 5 by the Hon'ble Supreme Court that in a given set of facts, it may be open to the Government to evolve a new scheme and the court will not bind the Government to the policy which existed on the date of the application if the change in policy was necessary in public interest, which is as under:-

"5. It would, therefore, be clear that grant of licence depends upon the policy prevailing as on the date of the grant of the license. The court, therefore, would not bind the Government with a policy which was existing on the date of application as per previous policy. A prior decision would not bind the Government for all times to come. When the Government is satisfied that change in the policy was necessary in the public interest, it would be entitled to revise the policy and lay down new policy. The court, therefore, would prefer to allow free play to be Government to evolve fiscal policy in the public interest and to act upon the same. Equally, the Government is left free to determine priorities in the matters of allocations or allotments or utilisation of its finances in the public interest. It is equally entitled, therefore, to issue or withdraw or modify the export or import policy in accordance with the scheme evolved. We, therefore, hold that the petitioners have no vested or accrued

right for the issuance of permits on the MEE or NQE, nor is the Government bound by its previous policy. It would be open to the Government to evolve the new schemes and the petitioners would get their legitimate expectations accomplished in accordance with either of the two schemes subject to their satisfying the conditions required in the scheme. The High Court, therefore, was right in its conclusion that the Government is not barred by the promises of 23 of 56 legitimate expectations from evolving new policy in the impugned notification."

In Common Cause, a **Registered Society v. Union of India and others**, AIR 1999 SC 2979, it was observed:-

"43. Government decisions regarding award of contracts are also open to judicial review and if the decision-making process is shown to be vitiated by arbitrariness, unfairness, illegality and irrationality, then the Court can strike down the decision-making process as also the award of contract based on such decision. This was so laid down by this Court in **Tata Cellular v. Union of India**, (1994) 6 SCC 651 : AIR 1996 SC 11 : (1994 AIR SCW 3344). Initially the Supreme Court was of the opinion that while the decision-making process for award of a contract would be amenable to judicial review under Articles 226 or 32 of the Constitution, a breach of a contractual obligation arising out of a contract already executed would not be so enforceable under such jurisdiction and the remedy in such cases would lie by way of a civil suit for damages. (See: **Radhakrishna Agarwal v. State of Bihar**, (1977) 3 SC 457: (1977) 3 SCR 249: AIR 1977 SC 1496). But the Court changed its opinion in subsequent decisions and held that even arbitrary and unreasonable decisions of the government authorities while acting in pursuance of a contract would also be amenable to writ jurisdiction. This principle was laid down in **Gujarat State Financial Corpn. v. Lotus Hotels (P) Ltd**, (1983) 3 SCC 379 : AIR 1983 SC 848. This Court even went to the extent of saying that the terms of contract cannot be altered in the garb of the duty to act fairly. (See: **Asstt. Excise Commr. v. Issac Peter**, (1994) 4 SCC 104 : (1994) 2 SCR 67 : (1994 AIR SCW 2616). Duty 24 of 56 to act fairly in respect of contracts was also the core question in **Mahabir**

Auto Stores v. Indian Oil Corpn. (1990) 1 SCR 818 : (1990) 3 SCC 752 : AIR 1990 SC 1031 in which this Court relied upon its earlier decisions in E.P. Royappa v. State of T.N, (1974) 2 SCR 348 : (1974) 4 SCC 3 : AIR 1974 SC 555; Maneka Gandhi v. Union of India ; (1978) 1 SCC 248: (1978) 2 SCR 621: AIR 1978 SC 597; Ajay Hasia v. Khalid Mujib Sehravardi; (1981) 1 SCC 722: (1981) 2 SCR 79: AIR 1981 SC 487, Ramana Dayaram Shetty v. International Airport Authority of India, AIR 1979 SC 1628 as also Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay, (1989) 3 SCC 293 : (1989) 2 SCR 751 : AIR 1989 SC 1642."

(17) As recorded by Division Bench of this Court in **Ram Chander's case** (*supra*), the issue is answered in the affirmative. Article 14 of the Constitution of India would be clearly attracted wherever State decides to grant contracts or licences in the trade and business of liquor to be carried on by the citizens and the action of the Government would be amenable to judicial review wherein it violates any statutory provision or rights guaranteed under the Constitution of India.

(18) Examining the third issue, necessarily it would be expedient to advert to the relevant statutory provisions, rules framed thereunder and the Excise Policy for the year 2016-17. By Section 58 of the Act, the State Government may make rules for the purpose of carrying out the provisions of this Act whereas Section 59 of the Act empowers the Financial Commissioner to make rules by notification in respect of the subject covered therein. Section 59 of the Act is in following terms:-

"59. Powers of Financial Commissioner to make rules.- The Financial Commissioner may, by notification, makes rules.

(a) regulating the manufacture, supply, storage or sale of any intoxicant, including :-

(i) the character, erection, alteration, repair inspection, supervision, management and control of any place for the manufacture, supply, storage or sale of such article and the fitting, implements, apparatus and register to be maintained therein ;

(ii) the cultivation of the hemp plant and the collection of spontaneous growth of such plant and the preparation of any intoxicating drug.

(iii) the tapping of drawing of tari from any tari producing tree.

(b) regulating the bottling of liquor for purposes of sale ;

(c) regulating the deposit of any intoxicant in a warehouse and the removal of any intoxicant from any warehouse or from any distillery or brewery.

(d) prescribing the scale of fees or the manner of fixing the fees payable in respect of any licence, permit or pass or in respect of the storing of any intoxicant;

(e) regulating the time, place and manner of payment of any duty or fee;

(f) prescribing the authority by, the restrictions under, and the conditions on, which any licence, permit or pass may be granted including provision for the following matters :-

(i) the prohibition of the admixture with any intoxicant of any substance deemed to be noxious or objectionable;

(ii) the regulation or prohibition or the reduction of liquor by a licensed manufacturer or licensed vendor from a higher to a lower strength.

(iii) the strength at which intoxicant shall be sold supplied or possessed;

(iiia) the fixing of the price below or above which any intoxicant shall not be sold or supplied by the licensed vendors ;

(iv) the prohibition of sale of any intoxicant except for cash;

(v) the fixing of the days and hours during which any licensed premises may or may not be kept open, and the closure of such premises on special occasions;

(vi) the specification of the nature of the premises in which any intoxicant may be sold, and the notice to be exposed at such premises ;

(vii) the form of the accounts to be maintained and the return to be submitted by license holders; and

(viii) the prohibition or regulation of the transfer of licenses;

- (g) (i) declaring the process by which spirit shall be denatured
- (ii) for causing spirits to be denatured through the agency or under the supervision of its own officers;
- (iii) for ascertaining whether such spirit has been denatured;
- (h) providing for the destruction or other disposal of any intoxicant deemed to be unfit for use ;
- (i) regulating the disposal of confiscated articles ;
- (j) prescribing the amount of security to be deposited by holders of leases, licenses, permits or passes for the performance of the conditions of the same."

(19) By Clause (d) of Section 59 of the Act, the Financial Commissioner is authorized to make rules "prescribing the scale of fees or the manner of fixing the fees payable in respect of any licence, permit or pass etc. in respect of the storing of any intoxicant." In pursuance of Section 59(d) of the Act, the Excise and Taxation Commissioner on whom the powers of the Financial Commissioner are conferred by the State Government, framed the Punjab Liquor Licence Rules, 1956 (for brevity, the Rules"). Rule 1 thereof contains a Table where the classes of licences, their mode of grant and the authorities who can grant and renew the licences are specified. Part I of the table deals with Foreign Liquor and refers to various categories of liquor licences. Rule 24 of the Rules specifies the kind of fees payable in respect of licences which are issued under the Rules whereas under Rule 25 of the Rules, the amount of fixed fee and security in respect of different kinds of licences thereunder has been specified. The category of licences that may be granted on fixed fee by inviting applications for a licencing unit has been prescribed under Rule 35 of the Rules. Rule 36 of the Rules prescribes the procedure for the grant of licences. Special conditions for grant of licences have been enumerated in Rule 38 of the Rules. The relevant portion of these rules is quoted below:-

"Rule 24. The fees payable in respect of licences under these rules are of the following kind:-

- a) fixed fee;
- b) assessed fees; and
- c) fees fixed by auction; and

d) tender fee;

Rule 25: (1) The amount of fixed fee and security in respect of different kinds of licenses, granted under these rules, shall be as follows:-

Sr. No.	Kind of license	Rate of annual license fee (Rs.)	Rate of security (Rs)
1.	L-1 (Grant and renewal)	30,00,000	15,000
2.	L-1 A	12,00,000	
	Sale upto 50000 cases	18,00,000	15000
	Sale from 500001 to 75000 cases	1,00,00,000	15000
	Sale from 75001 to 100000 cases		15000
	L-1 A dealing exclusively BIO brands		
	L-1A		
	(i) sale upto 1000 cases	2,00,000	15000
	(ii) sale from 1001 to 50000 cases	5,00,000	15000

XX"

35. (1) The following licences may be granted on fixed fee by inviting applications for a Licencing Unit, namely :-

(2) xxxxxxxxxxxxxx A person shall not be allowed to submit more than 50 applications per licencing unit or group or zone in Corporation areas. However, in other urban areas and Nagar Panchayat areas, a person shall not be allowed to file more than 100 applications irrespective of the number of licencing units or groups in that area. Similarly, in rural

areas, the limit shall be of 100 applications for each licencing unit or group.

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36. Procedure to grant the licence: The following procedure is prescribed for the grant of liquor licenses referred to in Rule 35, namely :-

(1) The applications shall be in the prescribed form;

(2) The application form for the grant of liquor vends shall be available in the office of the Assistant Excise and Taxation Commissioner (hereinafter referred to as AETC), In-charge of the district. The application Forms can also be downloaded from the website of the department ([www.pextax.com](http://www.pextax.com)). In addition, these application forms shall also be available in various bank branches authorized by the department for receipt of application forms. The applicant can submit his application for any Licensing Unit/Group/Zone of any district in any of the bank branches. The cost of application forms shall be as under:-

(i) A licensing unit or group of units of License fee upto Rs. 2 crore	Rs. 15,000/-
(ii) A zone/group of units of license fee upto Rs. 4 crore.	Rs. 25,000/-
(iii) A zone/group of units of License fee upto Rs. 6 crore.	Rs. 35,000/-
(iv) A zone/group of units of License fee upto Rs. 8 crore.	Rs. 45,000/-
(v) A zone/group of units of License fee upto Rs. 10 crore.	Rs. 55,000/-
(vi) A zone/group of units of License fee upto Rs. 10 crore.	Rs. 70,000/-

The fee shall not be refundable or adjustable. If the first or any subsequent allotment procedure is cancelled by the department or, any application form is rejected by the department being invalid and not put to draw of lots, then the amount of application fee shall be refunded to the concerned applicant, after deducting two thousand rupees

per application as processing fee. Out of the total proceeds from the sale of application form, fifty percent shall be deposited in Development Fund constituted under the Punjab Development Fund Act, 2014 (Punjab Act No. 1 of 2015). The application forms shall be serially numbered at three places, i.e. in the application form, in the slip of draw of lots and on the receipt, issued to the applicant."  
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Rule 38 "The licences shown in this rule are granted subject to the special conditions noted under each in addition to the conditions laid down in Rule 37.

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"(e) The licensee shall purchase Indian Made Foreign Liquor, Beer, Wine and Ready to Drink Beverages (Indian and Imported) from L-1A licensee."

"(1-A) (i) A license in Form L-1A(IMFL) for the wholesale vend of Indian Made Foreign Liquor (except Beer), Wine and Ready to drink beverages to the L-1 licensee only, authorized to purchase liquor from distilleries, bottling plants and Wineries (Manufacturing units of IMFL, Wine and RTD) from both within and outside the State:

(a) The licensee shall purchase Indian Made Foreign Liquor (except Beer), Wine and Ready to drink beverages from distilleries, bottling plants and Wineries (Manufacturing units of IMFL, Wine and RTD) from both within and outside the State and sell to L-1 licensees only of the State ;

(b) The licensee shall obtain consent/authority letter from concerned manufacturing unit/company;

(c) The manufacturing unit/company shall not give/issue authority/consent letter to more than one person/company/firm/institution;

(d) The manufacturing unit/company shall issue consent letter to such person/company/firm/institution who/which is at arms length distance from the manufacturing unit/company i.e. he should not be the promoter/Director/partner etc. in the liquor manufacturing unit/company or not its holding, subsidiary, closely held company fully/partially

owned/financed/managed firm/company; (Emphasis supplied).

(e) Licensee shall maintain accounts of receipts and supply of liquor;

(f) No breakage shall be allowed to a licensee;

(g) The licensee shall provide separate excise office for Excise Inspector within the premises; and

(h) Licensee shall install CCTV Cameras on the premises.

(ii) L1-A (BIO) Whole sale vend of Imported Foreign Liquor ( BIO Brands) to the L-1 and L-1B licensees only, authorized to purchase and import foreign liquor (BIO brands) from custom bond both within and outside the State;

(a) Only L-1A (IMFL) license holder can apply for this license.

(iii) L-1A (Beer) Whole sale vend of Beer, to the L-1 licensee only authorized to purchase Beer from breweries both within and outside the State;

(a) The conditions applicable to license L-1A (IMFL) shall apply to this license."

(20) In the year 2011, the State Government made amendment in the Punjab Liquor License Rules, 1956, whereby, for the first time, L-1A category of Licence was notified. The relevant portion of the Rules as notified in 2011 is as under:-

"L-1A. A wholesale vend of Indian Made Foreign Liquor, Imported Foreign Liquor including BIO Brands, Beer, Ready to drink beverages and Wine to the trade only authorized to purchase and import liquor from any other State and from any foreign country."

As per the aforesaid amendment, L-1A licensee was added who could purchase the liquor manufactured outside the State of Punjab and outside the country.

(21) In exercise of powers conferred by Section 59 of the Act, the Excise Commissioner, Punjab exercising the power of the Financial Commissioner issued Punjab Liquor Licence (Amendment) Rules, 2016 vide which notification No.G.S.R.19/P.A.1/1914/5.59/Amd.(127)/

2016 dated 23.3.2016 has been issued assigning new terminology to licence L-1A which is in the following terms:-

L-1A (IMFL)	Whole sale vend of Indian Made Foreign Liquor (except Beer), Wine and Ready to Drink beverages to the L-1 license only, authorized to purchase liquor from distilleries, bottling plants and wineries (manufacturing units of IMFL, Wine and RTD) from both, within and outside the State.	Fixed fee	Collector with the prior approval of Excise commissioner.	Collector
L-1A (BIO)	Wholesale vend of imported Foreign Liquor (BIO Brands) to the L-1 License and L-1B V licenses only authorized to purchase imported foreign liquor (BIO Brand) from custom bond both, within and outside the State.	Fixed fee	Collector with the prior approval of Excise commissioner.	Collector
L-1A (Beer)	Wholesale vend of Beer, to L-1 license only, authorized to purchase Beer from breweries both, within and outside the State.	Fixed fee	Collector with the prior approval of Excise commissioner.	Collector

(22) The change/amendment which has been brought about by virtue of it, is that now L-1A licensee shall purchase the liquor from the breweries/distilleries whereas L-1 licensee is mandatorily required to purchase the liquor from L-1A licensee only. According to the procedure before the amendment, L-1 licensee was directly purchasing

the liquor from the manufacturing company. This has caused grievance to the petitioners.

(23) Adverting to the judicial precedents, it has been held by the Apex Court in *Khoday Distilleries's case (supra)* that any mode of selling the licences for trade or business in order to maximize its revenue can be adopted by the State so long as the method adopted is not discriminatory. Further, the State can create a monopoly either in itself or in the agency created by it for the manufacture, possession, sale and distribution of the liquor as a beverage and is also authorized to sell the licences to the citizens for the said purpose by charging fees. The State is also empowered to impose limitations and restrictions on the trade or business in potable liquor as a beverage which restrictions are in nature different from those imposed on the trade or business in legitimate activities and goods and articles which are *res commercium*. The extent of restrictions and limitations can extend to the State carrying on the trade or business itself to the exclusion and elimination of others and/or to preserving to itself the right to sell licences to do trade or business in the same, to others.

(24) The scope of interference in policy matters in exercise of power of judicial review was considered by the Full Bench of the Madhya Pradesh High Court in *Naresh Gupta's case (supra)*, where after referring to catena of judgments of the Apex Court, the principles of law were summarized. The relevant observations of the Bench are quoted below:-

"37. Scope of interference in policy matters in exercise of powers of judicial review is well settled by a catena of decisions. In *T.N. Education Deptt., Ministerial and General Subordinate Services Assn. v. State of T.N.*, (1980) 3 SCC 97 the Supreme Court while noticing the jurisdictional limitation to analyse and to find fault with the policy held that the Court in exercise of its power of judicial review cannot sit in judgment over the policy matters except on limited grounds., namely, whether the policy is arbitrary, mala fide, unreasonable or irrational. Each State is empowered to formulate its own liquor policy.

38. In *Nandlal Jaiswal and others (Supra)* the Supreme Court held that while considering the applicability of Article 14 of the Constitution in case pertaining to trade or business in liquor, the Court would be slow to interfere with the

policy laid down by the State Government for grant of licence for manufacture and sale of liquor. More over, grant of licence for manufacture and sale of liquor would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the Government has done unless it appears to be plainly arbitrary, irrational or mala fide. It was further observed that the Court must while adjudging the Constitutional validity of an executive decision relating to economic matter grant a certain measure of freedom or "play in the joint" to the executive. The Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The Court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide. *In Delhi Science Forum and others v. Union of India and Another*, (1996) 2 SCC 405 Supreme Court while dealing with a challenge to action of grant of licences by the State Government to nongovernment companies including foreign collaborated companies for establishing, maintaining and working of telecommunication system of the country pursuant to Government policy of privatization and telecommunication, observed that since parting of privilege exclusively vested with the Government it can be questioned only on the ground of bad faith, based on irrelevant or irrational consideration, noncompliance with prescribed procedure or violation of any constitutional or statutory provisions.

39. *In State of Punjab and Ors. V. Ram Lubhaya Bagga and Others*, (1998)4 SCC 117 It was held by Supreme Court that it is not normally within the domain of any court to weigh pros and cons of the policy except where it is arbitrary or violative of any constitutional, statutory or any other provisions of law. The Court would dissuade itself from entering into the realm of policy which belongs to executive. In *Balco employees' Union (Regd. ) v. Union of India and Others*, (2002) 2 SCC 333, while dealing with the question of disinvestment of public sector undertaking, it was held that in a case of policy decision pertaining to economic matters, the Court should be very circumspect in conducting any enquiry and investigation and must be most

reluctant to impugn the judgment of the experts who may have arrived at a conclusion. *In Federation of the Railway Officers' Association and Others v. Union of India*, (2003) 4 SCC 298, it was once again reiterated by the Supreme Court that unless policy or action is inconsistent with the Constitution and the laws, or arbitrary or irrational the Court will not interfere with such matter.

40. In a recent decision of Supreme Court rendered in case of *Villianur Iyarkkai Padukappu Maiyam v. Union of India and Others*, (2009) 7 SCC 561, the Supreme Court once again reiterated that in the matters of economic policy the scope of judicial review is very limited and the Court will not interfere with economic policy of the State unless the same is shown to be contrary to any statutory provision or the Constitution. The court cannot examine the relative merits of different economic policies and cannot strike down a policy merely on the ground that another policy would have been fairer and better. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review. It was further held that in matters relating to economic issues, the Government while taking the decision has right to 'trial and error' so long it is bona fide and within the limits of the authority. For testing the correctness of a policy the appropriate forum is Parliament and not the Courts. It was further held that there is always a presumption that Governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it lacks reasonableness and is not in public interest. The onus is heavy one and has to be discharged to the satisfaction of the Court by bringing proper and adequate material on record.

41. From the aforesaid decisions of the Supreme Court the principles of law which can be culled out can be summarized as follows:

(i) grant of licence for manufacture and sale of liquor is a matter of economic policy where the Court would be slow to interfere unless the policy is plainly arbitrary, irrational or malafide.

(ii) The court must while adjudging the constitutional validity of an executive decision relating to economic matters grant certain measure of freedom or 'play in joint' to the executive.

(iii) The court cannot strike down a policy merely because it feels that another policy would have been fairer or wiser or more scientific or logical.

(iv) Parting of privilege exclusively vests with the Government and the same can be questioned only on the ground of bad faith, based on irrational or irrelevant consideration, violation of any constitutional or statutory provision.

(v) It is not normally within the domain of the Court to weigh the pros and cons of the policy. In case of policy decision on economic matters the Court should be very circumspect and must be most reluctant to impugn the judgment of experts who have arrived at a conclusion.

(vi) Court cannot examine relative merits of different economic policy. In a democracy it is a prerogative of each elected Government to formulate its policy. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review.

(vii) In matters relating to economic issues, the Government has while taking a decision right to "trial and error" as long as both trial and error are bona fide and within limits of the authority.

(viii) Normally there is a presumption that governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness and the burden is a heavy one which has to be discharged to the satisfaction of the Court by bringing proper and adequate material on record."

(25) The settled legal position emerging from various decisions of the Apex Court relating to challenge to any policy framed for selling liquor on the ground of Article 14 was reiterated by the Full bench in the following words:-

"42. Let us now examine the challenge to the new policy on the ground that same is discriminatory or arbitrary and

violative of Article 14 of the Constitution of India. In order to deal with question of infringement of constitutional guarantee contained in Article 14 it would be expedient to notice case law on the subject.

43. In *Cooverjee B. Bharucha* (supra) the Constitution Bench of the Supreme Court while dealing with the provisions of Ajmer Excise Regulations repelled the challenge on the ground of violation of Article 19 (6) of the Constitution of India and held as under:

"Elimination and exclusion from business is inherent in the nature of liquor business and it will hardly be proper to apply to such a business principles applicable to trades which all could carry. The provisions of the regulation cannot be attacked merely on the ground that they create a monopoly. Properly speaking, there can be a monopoly only when a trade which could be carried on by all persons is entrusted by law to one or more persons to the exclusion of the general public. Such, however, is not the case with the business of liquor."44. Another Constitution Bench of the Supreme Court in *Amar Chandra Chakraborty* (supra) while considering the question whether Section 43 of the Bengal Excise Act under which a licence of a liquor contractor was withdrawn violated Article 14 and 19 (1) (g) of the Constitution, repelled the contention with regard to violation of Article 14 with the following observations:

"Trade or business in country liquor has from its inherent nature been treated by the State and the society as a special category requiring legislative control which has been in force in the whole of India since several decades. 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. Principle applicable to trades which all persons carry on free from regulatory y controls do not apply to trade or business in country liquor; this is so because of the impact of this trade on society due to its inherent nature."

45. In *Harinarayan Jaiswal* (supra) the Highest bidder in an auction held for granting the exclusive privilege for selling

country liquor challenged the order rejecting its bid. It was argued that power retained by the Government to accept or reject any bid without assigning any reason was an arbitrary power and was violative of Article 14 and 19 (1) (g) of the Constitution. It was held as follows: "The fact that the Government was the seller does not change the legal position once its exclusive right to deal with those privileges is conceded. If the Government is the exclusive owner of those privileges, reliance on Article 19(1) (g) or Article 14 becomes irrelevant. Citizens cannot have any fundamental right to trade or carry on business in the properties or rights belonging to the Government nor can there be any infringement of Article 14, if the Government tries to get the best available price for its valuable rights."

46. In view of the Constitution Bench decision of Supreme Court in *Cooverjee B. Bharucha* (supra) and in *Amar Chandra Chakraborty* (supra) following principles emerge:

(i) In liquor business, elimination and exclusion from business is inherent, and the principles applicable to other business or trades cannot be applied to trade or business in liquor. Properly speaking there can be a monopoly only when a trade which could be carried on by all persons is entrusted by law to one or all persons to the exclusion of general public. Such however, is not the case with the business of liquor.

(ii) Trade or business in liquor has from its inherent nature been treated by State or society as a special category and must be treated a class by itself and cannot be placed on same pedestal as other trades while considering the applicability of Article 14.

(iii) Where the State Government frames a policy with the object to secure or ensure maximum revenue for parting with its privilege to deal in liquor, action of the State Government cannot be assailed on the ground that it infringes Article 14."

(26) In the backdrop of the settled legal principles noticed hereinabove, the question of challenge to creation of licence L-1A category in the Excise Policy 2016-17 may be dealt with. Licence L-1A category was created by amendment made in the Punjab Liquor

Licence Rules, 1956 vide notification issued in 2011 in exercise of power under Section 59 of the Act as noted above. However, on 23.3.2016, the new notification has been issued incorporating the amendment creating L-1A licence in its amended form. The State is fully empowered to frame policy for the sale of liquor and the courts shall be loathe in interfering in the same unless it is shown to be discriminatory or arbitrary. The creation of category of license L-1A between the distilleries and L-1 licensee to augment the revenue and stop leakage thereof cannot be said to be arbitrary. Further, the Excise Policy for the year 2016-17 was formulated on 13.3.2016, though the notification in exercise of power under Section 59 of the Act was issued on 23.3.2016, the same having been issued before the enforcement date for Excise Policy 2016-17 to be effective, i.e. 1.4.2016, cannot, thus, be faulted. The plea of the petitioners that the notification was issued after the start of the Excise year on 1.4.2016 cannot be accepted being based on presumptions, assumptions and conjectures without there being any definite and concrete material to hold so. Thus, it is concluded that category licence L-1A in the Punjab Liquor Licence Rules 1956 in the modified form is legal and valid.

(27) Whether Clause 2.14 of the Excise Policy for the year 2016-17 is valid or not, it would be imperative to extract the relevant portion of Clause 2.14 as contained therein:-

"Clause 2.14

- i) It is necessary for the applicant for this licence to have an authority/consent letter from the manufacturing unit.
- ii) Any manufacturing company cannot issue the authority/consent letter to more than one person/company/firm/organization.
- iii) The manufacturing company will give this consent letter to that person/company/firm/organization who is at Arms Length Distance from the manufacturing company provided there is no promoter, director, partner in the manufacturing company or there is no holding, subsidiary, closely held company, fully/partially owned/financed/managed firm/company.
- iv) L-1A license will purchase IMFL (except Beer) wine, RTD from the State or the manufacturing companies situated outside the State and will sell it to only L-1 licensees.

v) It is proposed that the licence fees for the L-1A (IMFL) for the year 2016-17 is fixed at Rs.2.50 crores and it is proposed to have the security amount of this licence fixed at Rs.25 lacs."

(28) The grievance of the petitioners is relating to sub clause (ii) as noticed above whereby any manufacturing company has been authorized to issue the authority/consent letter to one person/company/firm/organization for the issuance of license L-1A by the competent authority. According to the petitioners, sub clause (ii) of Clause 2.14 of the Excise Policy for the year 2016-17 prescribes that the manufacturing company cannot issue the consent letter to more than one person/company/firm/organization, but in the entire policy, no criteria or parameters have been laid down for the manufacturers for issuing the consent letter. Even no parameters or criteria have been laid down for cancellation of the consent/authority letter issued by the manufacturing unit and, therefore, ultra vires.

(29) It is trite law that whenever a contract is to be awarded or a licence is to be given, the public authority is under legal obligation to adopt transparent and fair method for making selections so that all the eligible persons/aspirants get a fair opportunity of competition. In other words, wherever issue of disposal of public property is concerned either by issuance of licence or otherwise, the State and its agencies/instrumentalities are required to adopt a rational method for its disposal and no attempt should be made to scuttle the claim of eligible applicants. This can be achieved either by holding public auction and where there are more applicants, then by draw of lots as well. The first-come-first served policy in the matters involving award of contracts or grant of licence or permission to use public property has been deprecated by the Apex Court in *Re: Special reference No.1 of 2012*<sup>11</sup>, where it was observed as under:-

"80. Dealing with Questions (iii) and (iv) in paras 94 to 96 of the judgment, this Court opined as follows: "

94. There is a fundamental flaw in the first-come-first-served policy inasmuch as it involves an element of pure chance or accident. In matters involving award of contracts or grant of licence or permission to use public property, the

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<sup>11</sup> (2012) 3 SCC 1

invocation of first-come-first-served policy has inherently dangerous implications.

Any person who has access to the power corridor at the highest or the lowest level may be able to obtain information from the government files or the files of the agency/instrumentality of the State that a particular public property or asset is likely to be disposed of or a contract is likely to be awarded or a licence or permission is likely to be given, he would immediately make an application and would become entitled to stand first in the queue at the cost of all others who may have a better claim.

95. This Court has repeatedly held that wherever a contract is to be awarded or a licence is to be given, the public authority must adopt a transparent and fair method for making selections so that all eligible persons get a fair opportunity of competition. To put it differently, the State and its agencies/instrumentalities must always adopt a rational method for disposal of public property and no attempt should be made to scuttle the claim of worthy applicants. When it comes to alienation of scarce natural resources like spectrum, etc. it is the burden of the State to ensure that a non-discriminatory method is adopted for distribution and alienation, which would necessarily result in protection of national/public interest.

96. In our view, a duly publicised auction conducted fairly and impartially is perhaps the best method for discharging this burden and the methods like first-come-first-served when used for alienation of natural resources/public property are likely to be misused by unscrupulous people who are only interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values. In other words, while transferring or alienating the natural resources, the State is duty-bound to adopt the method of auction by giving wide publicity so that all eligible persons can participate in the process."

(30) Further, in *Reliance Energy Ltd. versus Maharashtra State Road Development Corpn. Ltd.*<sup>12</sup>, following its earlier decision

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<sup>12</sup> (2007) 8 SCC 1

in *Union of India (UOI) and another versus International Trading Co. and another*<sup>13</sup>, the Apex Court observed as under:-

36. We find merit in this civil appeal. Standards applied by courts in judicial review must be justified by constitutional principles which govern the proper exercise of public power in a democracy. Article 14 of the Constitution embodies the principle of "non-discrimination". However, it is not a free-standing provision. It has to be read in conjunction with rights conferred by other articles like Article 21 of the Constitution. The said Article 21 refers to "right to life". It includes "opportunity". In our view, as held in the latest judgment of the Constitution Bench of nine Judges in *I.R. Coelho v. State of T.N.* [(2007) 2 SCC 1], Articles 21/14 are the heart of the chapter on fundamental rights. They cover various aspects of life. "Level playing field" is an important concept while construing Article 19(1)(g) of the Constitution. It is this doctrine which is invoked by REL/HDEC in the present case. When Article 19(1)(g) confers fundamental right to carry on business to a company, it is entitled to invoke the said doctrine of "level playing field". We may clarify that this doctrine is, however, subject to public interest. In the world of globalisation, competition is an important factor to be kept in mind. The doctrine of "level playing field" is an important doctrine which is embodied in Article 19(1)(g) of the Constitution. This is because the said doctrine provides space within which equally placed competitors are allowed to bid so as to subserve the larger public interest. "Globalisation", in essence, is liberalisation of trade. Today India has dismantled licence raj. The economic reforms introduced after 1992 have brought in the concept of "globalisation". Decisions or acts which result in unequal and discriminatory treatment, would violate the doctrine of "level playing field" embodied in Article 19(1)(g). Time has come, therefore, to say that Article 14 which refers to the principle of "equality" should not be read as a stand alone item but it should be read in conjunction with Article 21 which embodies several aspects of life. There is one more aspect which needs to be mentioned in the matter of implementation of the

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<sup>13</sup> (2003) 5 SCC 437

aforestated doctrine of "level playing field". According to Lord Goldsmith, commitment to the "rule of law" is the heart of parliamentary democracy. One of the important elements of the "rule of law" is legal certainty. Article 14 applies to government policies and if the policy or act of the Government, even in contractual matters, fails to satisfy the test of "reasonableness", then such an act or decision would be unconstitutional.

37. In *Union of India v. International Trading Co.* [(2003) 5 SCC 437] the Division Bench of this Court speaking through Pasayat, J. had held: (SCC p. 445, paras 14-15) "14. It is trite law that Article 14 of the Constitution applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional.

15. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualised than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness."

38. When tenders are invited, the terms and conditions must indicate with legal certainty, norms and benchmarks. This

"legal certainty" is an important aspect of the rule of law. If there is vagueness or subjectivity in the said norms it may result in unequal and discriminatory treatment. It may violate doctrine of "level playing field".

(31) In *Pawan Bhatia and others versus State of Haryana and others*<sup>14</sup>, this court observed thus:-

"26. The licences have been granted on the basis of first come first served basis. The principle of first come first served basis has been commented adversely in Centre for Public *Interest Litigation and others v. Union of India and others*, (2012)3 SCC 1. The Court examined inter-alia the following questions:-

"(i) Whether the Government has the right to alienate, transfer or distribute natural resources/national assets otherwise than by following a fair and transparent method consistent with the fundamentals of the equality clause enshrined in the Constitution? xx xx xx

(iv) Whether the policy of first-come-first-served followed by DoT for grant of licences is ultra-vires the provisions of Article 14 of the Constitution and whether the said policy was arbitrarily changed by the Minister of Communications and Information Technology (hereinafter referred to as 'the Minister of Communications and Information Technology'), without consulting TRAI, with a view to favour some of the applicants?"

27. The Court answered the said questions when it held to the following effect:-

"94. There is a fundamental flaw in the first-come-first-served policy inasmuch as it involves an element of pure chance or accident. In matters involving award of contracts or grant of licence or permission to use public property, the invocation of first-come-first-served policy has inherently dangerous implications. Any person who has access to the power corridor at the highest or the lowest level may be able to obtain information from the Government files or the files of the agency/instrumentality of the State that a particular public property or asset is likely to be disposed of or a

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<sup>14</sup> (2015) 4 RCR (Civil) 666

contract is likely to be awarded or a licence or permission is likely to be given, he would immediately make an application and would become 48 of 56 entitled to stand first in the queue at the cost of all others who may have a better claim.

95. This Court has repeatedly held that wherever a contract is to be awarded or a licence is to be given, the public authority must adopt a transparent and fair method for making selections so that all eligible persons get a fair opportunity of competition. To put it differently, the State and its agencies/instrumentalities must always adopt a rational method for disposal of public property and no attempt should be made to scuttle the claim of worthy applicants. When it comes to alienation of scarce natural resources like spectrum etc., it is the burden of the State to ensure that a non- discriminatory method is adopted for distribution and alienation, which would necessarily result in protection of national/public interest.

96. In our view, a duly publicised auction conducted fairly and impartially is perhaps the best method for discharging this burden and the methods like first- come-first-served when used for alienation of natural resources/public property are likely to be misused by unscrupulous people who are only interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values. In other words, while transferring or alienating the natural resources, the State is duty bound to adopt the method of auction by giving wide publicity so that all eligible persons can participate in the process."

28. The issue of grant of state privileges by the process of auction alone came up for answer in the Presidential Reference, since reported as Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1. The Constitution Bench held that action of the State, whether it relates to distribution of largesse, grant of contracts or allotment of land, is to be tested on the touchstone of Article 14 of the Constitution. The action has to be fair, reasonable, non- discriminatory, transparent, non- capricious, unbiased, without favouritism or nepotism, in pursuit of promotion of healthy competition and equitable

treatment. It should conform to the norms which are rational, informed with reasons and guided by public interest, etc. The Court held:-

"107. From a scrutiny of the trend of decisions it is clearly perceivable that the action of the State, whether it relates to distribution of largesse, grant of contracts or allotment of land, is to be tested on the touchstone of Article 14 of the Constitution. A law may not be struck down for being arbitrary without the pointing out of a constitutional infirmity as *State of A.P. v. McDowell & Co.*, (1996)3 SCC 709, has said. Therefore, a State action has to be tested for constitutional infirmities qua Article 14 of the Constitution. The action has to be fair, reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism, in pursuit of promotion of healthy competition and equitable treatment. It should conform to the norms which are rational, informed with reasons and guided by public interest, etc. All these principles are inherent in the fundamental conception of Article 14. This is the mandate of Article 14 of the Constitution of India.

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129. Hence, it is manifest that there is no constitutional mandate in favour of auction under Article 14. The Government has repeatedly deviated from the course of auction and this Court has repeatedly upheld such actions. The judiciary tests such deviations on the limited scope of arbitrariness and fairness under Article 14 and its role is limited to that extent. Essentially, whenever the object of policy is anything but revenue maximisation, the executive is seen to adopt methods other than auction.

130. A fortiori, besides legal logic, mandatory auction may be contrary to economic logic as well. Different resources may require different treatment. Very often, exploration and exploitation contracts are bundled together due to the requirement of heavy capital in the discovery of natural resources. A concern would risk undertaking such exploration and incur heavy costs only if it was assured utilisation of the resource discovered: a prudent business venture would not like to incur the high costs involved in

exploration activities and then compete for that resource in an open auction. The logic is similar to that applied in patents. Firms are given incentives to invest in research and development with the promise of exclusive access to the market for the sale of that invention. Such an approach is economically and legally sound and sometimes necessary to spur research and development. Similarly, bundling exploration and exploitation contracts may be necessary to spur growth in a specific industry.

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146. To summarise in the context of the present Reference, it needs to be emphasised that this Court cannot conduct comparative study of the various methods of distribution of natural resources and suggest the most efficacious mode, if there is one universal efficacious method in the first place. It respects the mandate and wisdom of the executive for such matters. The methodology pertaining to disposal of natural resources is clearly an economic policy. It entails intricate economic choices and the Court lacks the necessary expertise to make them. As has been repeatedly said, it cannot, and shall not, be the endeavour of this Court to evaluate the efficacy of auction vis-à-vis other methods of disposal of natural resources. The Court cannot mandate one method to be followed in all facts and circumstances. Therefore, auction, an economic choice of disposal of natural resources, is not a constitutional mandate. We may, however, hasten to add that the Court can test the legality and constitutionality of these methods. When questioned, the courts are entitled to analyse the legal validity of different means of distribution and give a constitutional answer as to which methods are ultra vires and intra vires the provisions of the Constitution. Nevertheless, it cannot and will not compare which policy is fairer than the other, but, if a policy or law is patently unfair to the extent that it falls foul of the fairness requirement of Article 14 of the Constitution, the Court would not hesitate in striking it down."

(32) In the present case, no doubt the Financial Commissioner in exercise of power conferred under Section 59(d) of the Act had amended the category of Licence L-1A by issuing notification dated

23.3.2016 in conformity with the Excise Policy for the year 2016-17. However, sub-clause (ii) of clause 2.14 of the Excise Policy nowhere prescribes the manner or method for the distillery or the competent authority to be adopted for issuing authority/consent letter to one person/company/firm/organization only. It does not satisfy the requirement of being transparent, objective and very importantly gives "Level Playing Field" to all applicants. The procedure does not eliminate the vices of unfairness, unreasonableness, discrimination, non-transparency, favouritism or nepotism in the award of authority/consent letter to an applicant. Thus, sub clause (ii) to that extent would not satisfy the mandate of reasonableness as enshrined under Articles 14 and 19(1)(g) of the Constitution of India.

(33) In all fairness, we proceed to deal with two ancillary points raised by learned Advocate General. Firstly, the locus standi of the petitioners and maintainability of the petitions was questioned on the ground that the petitioners had never approached any distillery or the manufacturer for the grant of consent/authority letter as envisaged under sub clause (ii) of clause 2.14 of the Excise Policy 2016-17. Next, it was urged that the writ petition was liable to be dismissed on the ground that necessary parties who had been awarded L-1A licence in pursuance to consent/authority letter issued by the distillery or the manufacturer have not been impleaded as party-respondents in the writ petition.

(34) It has been claimed in the writ petition that the petitioner is engaged in the business of liquor trade for the past so many years in the 53 of 56 State of Punjab and the newly added/created L-1A licence would deprive the rights of the petitioner in carrying out the liquor trade in the State of Punjab. Another factor needs mention is that the petitioner had filed the writ petition on 19.3.2016 which was heard by motion bench on 22.3.2016 challenging the very creation of amended L-1A category in the Excise Policy 2016-17 without amending the Punjab Liquor Licence Rules, 1956. The notification amending the said rules was issued during the pendency of the writ petition on 23.3.2016. It would not, thus, debar the petitioner from maintaining the writ petition.

(35) Equally, the plea of the respondents for dismissal of the writ petition for want of necessary parties being impleaded has no weight. As noted earlier, the notification amending the Rules was issued on 23.3.2016 during the pendency of the writ petition. Further, on April 12, 2016, on the no objection of the learned Advocate General, Punjab,

it was directed that allotment of licences L-1A shall be subject to the further orders to be passed by this Court in this writ petition. The order dated 12.4.2016 is reproduced for ready reference which reads thus:-

"Further submissions have been made by the learned Advocate General, Punjab.

For remaining arguments, to come up on 26.4.2016.

Learned counsel for the petitioner(s) made a prayer that the allotment of licences under category L-1A be made subject to the further orders to be passed by this court in the writ petition(s), as no permit has been issued to the licencees L-1A so far. Learned Advocate General, Punjab pleads no objection to the same.

In view thereof, it is observed that the allotment of licences L-1A shall be subject to the further orders to be passed by this Court in this writ petition(s)."

The successful applicants had derived any right, if any, thereafter only. In view of the above and especially when the challenge had been laid to the policy decision of creating L-1A licence itself in the Excise Policy 2016-17 even before issuance of any licence, the writ petition cannot be held to be not maintainable for want of impleadment of the licencees, if any, of L-1A category in the writ petition.

(36) Keeping in view the consideration of revenue of the State and the subsequent events, we mould the relief as under:-

- (i) The respondent is empowered to incorporate sub clause (ii) of clause 2.14 in the Excise Policy 2016-17 but the same is held to be invalid and inoperative to the extent it does not prescribe the manner and the method of its issuance by the manufacturers or the distilleries. It shall be open to the respondent-authorities to make appropriate amendment and prescribe necessary guidelines to the manufacturers/distilleries for issuing consent/authority letter to eligible applicants either by draw of lots, auction or any other mode providing equal opportunities in a transparent and objective manner. It shall, however, be open for the respondents to retain such right with the concerned authority, if so required.
- (ii) If after taking corrective measures and inviting fresh applications/offers, in case no fresh offer or application

comes forth, the allotments, if any, already made shall continue for the rest of the period.

(37) The writ petition are disposed of in the manner indicated above.

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*Dr. Payel Mehta*