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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 255 of 2015

1. Dhananjay Kumar Singh S/o Shri Baliram Singh, Aged About 35 years, Resident of Tahsilpara, Kondagaon, Police Station And Tahsil Kondagaon, District Kondagaon (C.G.)

---- Petitioner

Versus

1. State Of Chhattisgarh through the Secretary, Department Of Commercial Tax, Mahanadi Bhawan, Capital Complex, Mantralaya, Raipur, District Raipur (C.G.)
2. The Excise Commissioner, Chhattisgarh, Raipur, District Raipur (C.G.)

---- Respondents

And

WPC No. 307 Of 2015

1. Ganesh Yadav S/o Jamidar Yadav, Aged About 30 years R/o Imlipara, Mahasamund, P.S. Mahasamund, Tahsil & District Mahasamund (C.G.)

---- Petitioner

Vs

1. The State of Chhattisgarh, through the Secretary Department of Commercial Tax, Mahanadi Bhawan, Mantralaya, Naya Raipur, Tahsil & District Raipur (C.G.)
2. The Excise Commissioner, Chhattisgarh, Raipur, Tahsil & District Raipur (C.G.)

---- Respondents

And

WPC No. 309 Of 2015

1. Jitendra Singh S/o Late Jaigovind Singh, Aged About 25 years Santoshi Ward, Kumharpara, Bastar, Tahsil & District Bastar At Jagdalpur (C.G.)

---- **Petitioner**

Vs

1. The State of Chhattisgarh, through the Secretary Department of Commercial Tax, Mahanadi Bhawan, Mantralaya, Naya Raipur, Tahsil & District Raipur (C.G.)
2. The Excise Commissioner, Chhattisgarh, Raipur, Tahsil & District Raipur (C.G.)

---- **Respondents**

And

WPC No. 327 Of 2015

1. Ramesh Singh S/o Late Kartik Singh, Aged About 54 years R/o Kisan Rice Mill Namnakala, Ambikapur, P.S. Ambikapur, District. Surguja (C.G.)

---- **Petitioner**

Vs

1. The State Of Chhattisgarh through the Secretary, Department of Commercial Tax, Mahanadi Bhawan, Mantralaya, Naya Raipur, P.S. Rakhi, Tahsil & District Raipur (C.G.)
2. The Excise Commissioner Chhattisgarh, Raipur, Tahsil & District Raipur (C.G.)

---- **Respondents**

For Petitioners :-

Shri B.P. Sharma, Shri Kishore Bhaduri, Shri S.C. Verma and Shri Sushil Dubey, Advocates for the respective petitioners.

For Respondent/State :-

Shri J.K. Gilda, Advocate General and Shri Prafull Bharat, Additional Additional Advocate General with Shri Arun Sao, Dy. Advocate General.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

10/03/2015

1. In these petitions under Article 226 of the Constitution of India, the petitioners are seeking direction to the respondent/State to fix appropriate rates/excise duty of the liquor shops situated in Kondagaon, Mahasamund, Bastar and Surguja Districts; to frame a scheme/policy for unified rate of licence; to appoint any independent agency for licensing and deciding the permissible enhancing rate/licence fee/tender price for various liquor shops; and to quash the rate of revenue/price of the shops as mentioned in Annexures-P-2 & P-3 of W.P.(C) No.327 of 2015.
2. The above stated reliefs have been claimed on the basis that the rate of excise duty has been enhanced in districts Kondagaon, Mahasamund, Jagdalpur (Bastar) and Surguja exorbitantly to the extent of 187% for Kondagaon, 52% for Mahasamund, 74% for Bastar and 105% for Surguja, and whereas in other bigger and important districts of the State like Raipur and Durg the increase is 10% or less whereas for Bilaspur the increase is about 17%.
3. It has been argued that the increase in payable excise duty which corresponds to increase in the Minimum Guaranteed Quantity (for short 'the MGQ') which the licensee is required to lift is to be increased uniformly so as to provide level playing field to all the contractors whether big or small, however, the same having not been done, the petitioners who are

small contractors shall be eliminated from competition leaving the field only for big contractors. It has been strenuously urged by the petitioners that such exorbitant increase in the price of shops for the districts in question has no nexus with the object sought to be achieved and the decision is irrational. According to the learned counsel for the petitioners, there being no change in demographic features or constituents of the districts, such increase is not justifiable, as the same is not based on any quantifiable data. Learned counsel placed reliance on the decisions of the Supreme Court rendered in **Ramana Dayaram Shetty v. International Airport Authority of India and Others**¹, **Union of India and Another v. International Trading Co. and Another**², **Calcutta Municipal Corpn. and Others v. M/s Shrey Mercantile Pvt. Ltd. and Others**³, **Bharat Petroleum Corporation Ltd. v. Maddual Ratnavalli and Others**⁴ and **Chairman, All India Railway Recruitment Board and Another v. K. Shyam Kumar and Others**⁵.

4. Per contra, learned Advocate General and the Additional Advocate General, would submit that the petitioners being desirous of obtaining liquor licence wherein no individual has any fundamental right to carry on such business, a writ petition challenging rate/price of a particular liquor shop or group of shops is not maintainable. Learned counsels have argued that the impugned decision is in the nature of policy decision of the

1 (1979) 3 SCC 489

2 (2003) 5 SCC 437

3 AIR 2005 SC 1879

4 (2007) 6 SCC 81

5 (2010) 6 SCC 614

State Government, therefore, the scope of judicial review, as decided by the Supreme Court in umpteen number of cases, being very limited, the petitions deserve to be dismissed. They have placed before this Court materials to demonstrate that the fixation of the MGQ of liquor which determines the price of a shop is based on the percentage of increase of revenue collection from the concerned districts together with many other relevant factors which have a bearing on the liquor trade, therefore, the writ petitions, challenging fixation of price of a shop, deserve to be dismissed.

5. Trade in country/foreign liquor in the State of Chhattisgarh is governed by the Chhattisgarh Excise Act, 1915 (for short 'the Act 1915'). Section 62 of the Act, 1915 empowers the State to frame rules for the purpose of carrying out the provisions thereof. Exercising the said power read with powers conferred under Section 18, the State Government has framed the rules for settlement of excise licence by the name Chhattisgarh Excise Settlement of Licences for Retail Sale of Country/Foreign Liquor Rules, 2002 (for short 'the Rules'). Rule 4 thereof provides for formation of groups of liquor shops whereas Rule 5 prescribes that the licence to be issued under the rules would be for a period of one excise year, which has been defined under Rule 2 (2) to mean the financial year starting from 1st April of a calendar year and ending on 31st March of the next calendar year. Rule 8 prescribes the procedure for grant of licence. Under this rule, whenever a new licence is proposed to be granted in an area or

locality, the licensing authority shall invite the applications for this purpose after giving wide publicity through daily newspapers having circulation in that area and that a list of shops of country/foreign liquor for which the licensing authority proposes to grant licence shall be exhibited along with shop wise licence fee, **minimum month-wise guaranteed quantity**, security amount, and annual quantity. Rule 9 provides for eligibility conditions for the applicants whereas Rule 11 provides for selection procedure. After selection the settlement of licence is made under Rule 12 whereas the payment of licence fee and security amount is governed under Rule 13. Rule 14 makes provision regarding lifting of liquor whereas Rule 15 speaks about lifting of the MGQ and the consequences of failure thereof.

6. In accordance with the scheme of rules, the respondent Excise Commissioner, Chhattisgarh issued advertisement for settlement of excise licenses for the year 2015-16 mentioning therein the MGQ, the amount of excise duty and licence fees payable for each of the district, group of shops and the individual shops falling in a particular group. It is this fixation of the MGQ, which is under challenge before this Court on the grounds mentioned in the preceding paragraphs.
7. In course of hearing of these petitions, this Court wanted to ascertain from the respondents as to what are the parameters or factors or the components which determines the MGQ of a particular shop, and as to whether there are any fixed norms in the shape of rules or instructions

which determines such fixation; learned counsel appearing for the State submitted that no such rules or instructions have been framed by the State. According to the learned Advocate General, this is the practice prevalent in the department since long and the department has never felt the desirability of issuing any such instruction.

8. In **Har Shankar and others v. The Deputy Excise and Taxation Commissioner and others**⁶, the Supreme Court has held that fixation of the amount payable by the licensees on the basis of the bids offered by them in auctions and on the basis of 'Fixed and Assessed Fees' is neither a fee in the technical sense nor a tax but is in the nature of the price of a privilege.
9. Thus, on the basis of **Har Shankar** (supra) fixation of MGQ would also be in the nature of one component of a privilege i.e. price of a shop. There being no challenge to the authority of the Excise Commissioner to fix such price, it is open for the State to fix the price in accordance with its assessment of the relevant factors including the increase in consumption of liquor percentage wise. It is also settled law that the licensor has the authority to fix the price obtainable for the grant of privilege to sell liquor, therefore, such price having been fixed in the shape of increase in the MGQ, the same is not assailable.

6 AIR 1975 SC 1121

10. The Supreme Court in **Shri Sitaram Sugar Company Limited and another v. Union of India and others**⁷, has held thus:-

57. Judicial review is not concerned with matters of economic policy. The court does not substitute its judgment for that of the legislature or its agents as to matters within the province of either. The court does not supplant the “feel of the expert” by its own views. When the legislature acts within the sphere of its authority and delegates power to an agent, it may empower the agent to make findings of fact which are conclusive provided such findings satisfy the test of reasonableness. In all such cases, judicial inquiry is confined to the question whether the findings of fact are reasonably based on evidence and whether such findings are consistent with the laws of the land. As stated by Jagannatha Shetty, J. in *Gupta Sugar Works*: (SCC p. 479, para 4)

“... the court does not act like a chartered accountant nor acts like an income tax officer. The court is not concerned with any individual case or any particular problem. The court only examines whether the price determined was with due regard to considerations provided by the statute. And whether extraneous matters have been excluded from determination.”

58. Price fixation is not within the province of the courts. Judicial function in respect of such matters is exhausted when there is found to be a rational basis for the conclusions reached by the concerned authority. As stated by Justice Cardozo in *Mississippi Valley Barge Line Company v. United States of America*:

“The structure of a rate schedule calls in peculiar measure for the use of that enlightened judgment which the Commission by training and experience is qualified to form.... It is not the province of a court to

7 (1990) 3 SCC 223

absorb this function to itself.... The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body.”

59. It is a matter of policy and planning for the Central Government to decide whether it would be, on adoption of a system of partial control, in the best economic interest of the sugar industry and the general public that the sugar factories are grouped together with reference to geographical-cum-agro-economic factors for the purpose of determining the price of levy sugar. Sufficient power has been delegated to the Central Government to formulate and implement its policy decision by means of statutory instruments and executive orders. Whether the policy should be altered to divide the sugar industry into groups of units with similar cost characteristics with particular reference to recovery, duration, size and age of the units and capital cost per tonne of output, without regard to their location, as recommended by the BICP, is again a matter for the Central Government to decide. What is best for the sugar industry and in what manner the policy should be formulated and implemented, bearing in mind the fundamental object of the statute, viz., supply and equitable distribution of essential commodity at fair prices in the best interest of the general public, is a matter for decision exclusively within the province of the Central Government. Such matters do not ordinarily attract the power of judicial review.

60. We would, in this connection, recall the words of Justice Frankfurter in *Secretary of Agriculture v. Central Roig Refining Company*:

“Congress was ... confronted with the formulation of policy peculiarly with its wide swath of discretion. It would be a singular intrusion of the judiciary into the legislative process to extrapolate restrictions upon the formulation of such an economic policy from those deeply rooted notions of justice which the Due Process Clause expresses....”

“Suffice it to say that since Congress fixed the quotas on a historical basis it is not for this Court to reweigh the relevant factors and, perchance, substitute its notion of expediency and fairness for that of Congress. This is so even though the quotas thus fixed may demonstrably be disadvantageous to certain areas or persons. This Court is not a tribunal for relief from the crudities and inequities of complicated experimental economic legislation.”

11. In **State of M.P. and others v. Nandlal Jaiswal and others**⁸, the Supreme Court, relying on **Har Shankar** (supra), held that there is no fundamental right in a citizen to carry on trade or business in liquor, however, 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. Thus, the argument that Article 14 has no application in cases where the licence to manufacture or sell liquor granted by the State Government was negated. The Supreme Court, thereafter, noted a word of caution by saying that Courts should be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor with further observation that 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 and the following has been held in para 34 :

8 (1986) 4 SCC 566

34. 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 has 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*. 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. Dond*:

“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 insofar 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 Co. v. State of Chicago*”

“are practical ones and may justify, if they do not require, rough accommodations, illogical, 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 exercises which can be declared void.”

The Government, as was said in *Permian Basin Area Rate* cases 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.

12. The Supreme Court in **Khoday Distilleries Ltd. and others v. State of Karnataka and others**⁹, approving its earlier decision rendered in **Har Shankar** (supra) has held thus:-

26. It is also contended that the fee of Rs 25,000 for the approval of any one variety of labels is exorbitant and totally disproportionate to the work involved. Therefore, such levy violates Article 14. But, in this connection, it is necessary to bear in mind that the State under its regulatory powers has the right even to prohibit absolutely every form of activity in relation to intoxicants, its manufactures, storage, export, import, sale or possession. In all these respects the right to regulate these activities or to carry on these activities vests in the State. When, therefore, such rights are parted with, it is open to the State to part with such rights for a consideration. The fee for approval of labels is an aspect of the right to sell or distribute liquor which right the State Government has parted with for consideration in the form of a fee. The increase in the fee from Rs 100 to Rs 25,000 may appear, at first glance, to be exorbitant. But it constitutes an extremely small percentage of the total turnover of various products to which these labels are affixed. The fee for approval cannot, therefore, be considered as exorbitant or its imposition wholly arbitrary. It is not the case of the petitioners that their trade in liquor is seriously affected by the levy of this increased fee. In the case of *Har Shankar v. Dy. Excise & Taxation Commr.* (SCR at p. 278) this Court upheld the right of the State to prohibit absolutely all forms of activities in relation to intoxicants. It said that the wider right to prohibit absolutely would include the narrower right to permit dealing in intoxicants on such terms of general application as the State deems expedient. The Court said that the Government has the power to charge a price for parting with its rights. It also further observed that the licence fee which the State

9 (1996) 10 SCC 304

Government charged to the licensee through the medium of auctions or the fixed fee which was charged to the vendors of foreign liquor holding licences need bear no quid pro quo to the services rendered to the licensees. The word 'fee' in this context is not used in the technical sense of the expression. By 'licence fee' or 'fixed fee' is meant the price or consideration which the Government charges to the licensees for parting with its privileges and granting them to the licensees. As the State can carry on a trade or business, such a charge is the normal incidence of a trading or business transaction. The contention, therefore, of the petitioners that there is no quid pro quo between the increased label fee and the services rendered also has no merit. It is based upon a misconception of the nature of the levy.

13. The above stated legal position in the matters concerning grant of licence to manufacture or sell of liquor leaves this Court to decide as to whether fixation of the MGQ to the extent the same has been done in the subject districts is arbitrary and unreasonable offending the principle enshrined under Article 14 of the Constitution of India.
14. The State has produced before this Court a comparative chart of increase of the MGQ in various districts for the last four years. Similarly, on a direction by the Court, the State has also produced a chart to demonstrate the increase in actual consumption of liquor in all the districts. Perusal of the chart would indicate that there is definite pattern of increase in consumption in liquor in percentage terms in new revenue districts formed on or after the year 2010-11.

15. It is also to be seen that before deciding to fix the MGQ, the Excise Commissioner wrote letter to all the Collectors of various districts of the State seeking details of consumption of liquor in the district and this information was sought with specific reference to fixing the MGQ for the year 2015-16. The issue appears to have been discussed in a high level meeting, therefore, the State authorities have applied its mind on the data available before it to arrive at the MGQ. Thus, it is not a case where the decision has been taken without due deliberation.
16. The chart would also demonstrate that in the other bigger part of the old district, out of which new districts have been created, the increase in sale of liquor in percentage terms are not so large as compared to the increase in consumption of liquor in percentage terms in the newly formed districts. Since this is one of the major factor which prevailed upon the State to increase the MGQ in the subject districts, it cannot be said that the decision was without any material or foundation. Thus, the decision is not arbitrary and is not hit by Article 14 of the Constitution of India.
17. Consequently, all the writ petitions, being *sans substratum*, stand dismissed without any order as to costs.

J u d g e

Gowri