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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No. 726 of 2017

- Babulal Jaiswal S/o Rameshwar Prasad Jaiswal Aged About 55 Years R/o Janjgir-Champa, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Excise, Mahanadi Bhawan, Mantralaya, New Raipur, District- Raipur, Chhattisgarh

2. Commissioner, Excise Chhattisgarh Sunita Park, Labhandih, Excise Building Raipur, Chhattisgarh

3. Secretary, General Administration Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh

4. Chhattisgarh Marketing Corporation Limited, Through Its Chairman, Office Of Excise Commissioner Sunita Park, Labhandih, Excise Building Raipur, Chhattisgarh

---- Respondents

And

Writ Petition (C) No. 728 Of 2017

- Vigan Prasad S/o Jamunda Sao Aged About 35 Years R/o Post Ramnidih, District Janjgir-Champa, Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through Secretary, Department Of Excise, Mahanadi Bhawan, Mantralaya, New Raipur, District - Raipur, Chhattisgarh

2. Commissioner, Excise Chhattisgarh Sunita Park, Labhandih, Excise Building Raipur, Chhattisgarh

3. Secretary, General Administration Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh

4. Chhattisgarh Marketing Corporation Limited, Through Its Chairman, Office Of Excise Commissioner Sunita Park, Labhandih, Excise Building Raipur, Chhattisgarh

---- Respondents

And

Writ Petition (PIL) No. 49 Of 2017

- Justice For All People Foundation A Society Registered Under The Provisions Of The Chhattisgarh Societies Registrikaran Adhiniyam, 1973, Having Its Registered Office At B-4/96, 6th Floor, Chhattisgarh Housing Board Colony, Himalayan Height, Opp. Sabji Mandi, Dumar Taran, Tahsil Raipur, Dist. Raipur (Chhattisgarh) Through Its Executive Member Shri Nitin Sinha, S/o Late Shri Rajeev Sinha, Aged About 47 Years, R/o 31- S.B.I. Colony, Sunder Nagar, Raipur (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Department Of Excise, Mantralaya, Mahanadi Bhawan, Naya Raipur, Dist. Raipur (Chhattisgarh)
2. Commissioner, Excise, Sunita Park, Lamandi, Excise Building, Raipur (Chhattisgarh)

--- Respondents

For Petitioners	:	Mr. Amrito Das, Mr. Manoj Paranjpe, Sunil Otwani and Anshuman Shrivastava, Advocates
For State	:	Mr. J.K. Gilda, Advocate General
For Corporation	:	Mr. Avinash Singh, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per Thottathil B. Radhakrishnan, Chief Justice

11.04.2017

1. These Writ Petitions are filed challenging the Chhattisgarh Excise (Amendment) Ordinance, 2017 and consequential Rules framed to give effect to the modality of enforcing the amended provision. Writ Petition (C) No. 726/2017 and Writ Petition (C) No. 728/2017 are by two licensees who at or before coming into force the Amendment Ordinance were licensee IMFL outlets who were permitted to sell Indian made foreign liquor in retail.

The third Writ Petition, WP(PIL) No. 49/2017 is instituted in public interest.

2. The Public Interest Litigation is footed on a plea referable to constitutional amalgamation which arises out of the composite and comprehensive considerations of Article 14, 47 and 298 of the Constitution. The other two Writ Petitions are on assertions as to fundamental rights referable under Article 19(1)(g) rendered along with Article 14 thereof, as also the plea that the provisions of Article 298 of the Constitution should be understood in the backdrop of the rights of the private vendors.

3. The plea of the IMFL retailers who are before us fundamentally stands answered through the Judgment of the Apex Court in *Khoday Distilleries Ltd v. State of Karnataka*[1] wherein it was held that the right to deal in potable liquor is not available as part of the fundamental right to trade or carry on business and such activity would be *res extra commercium.* With such law laid by the Apex Court, the plea of the Petitioners in the Writ Petitions filed in private interest cannot be traced to Article 19(1)(g). That being so, much labour is not required to hold that notwithstanding the availability of the monopoly rights to the State as per Article 19(6)(ii) of the Constitution, such exclusive right of the State is also traceable to Entry 21 in List III of the Seventh Schedule of the Constitution, in terms whereof, the State gets the power to legislate in relation to the commercial and industrial monopoly. It is beyond any dispute in the realm of the constitutional law that the executive power is co-extensive with the legislative power. That being so, the granting of monopoly to institutions, or a firm, or corporation and company exclusively under the control of the Government concerned would easily stand the test as to constitutionality on the face of Article 19(1)(g) as well as

1 (1995) 1 SCC 574

Article 14 of the Constitution.

4. The aforesaid position, notwithstanding, we may also notice that the learned counsel appearing for the Petitioners in Writ Petition (C) 726/2017 and Writ Petition (C) 728/2017 argued that in so far as Article 298 of the Constitution applies, the rights therein will have to understand and applied without ignoring Article 14 and the doctrine of equality emanating therefrom. Article 298 of the Constitution confers, *inter-alia,* the executive power on the State to carry on any trade or business. That power is treated as part of the executive power of the State. This is the clear indicatior in the Constitution itself. Insofar as trade and business are concerned, the power to carry on such activity is conferred and protected in favour of the State through Article 298 itself. We say this, notwithstanding that, what we have observed hereinabove; to the effect that, the executive power is co-extensive with the legislative power. We may also profitably refer to the judgment of the High Court of Kerala in *Mrs. Moni Senan and Another* v. *State of Kerala*[2] wherein It was noticed that Article 226 of the Constitution can be invoked in very limited matters, and also the legislative and management devices like statutory and non statutory controls with the Government can be created to provide monopoly control over the business in alcohol including Indian Made Foreign Liquor as also Foreign Liquor.

5. For the aforesaid reason, the challenge levied through the Writ Petitions in personal interest therefore fails.

6. Learned counsel appearing for the Writ Petition (PIL) dilated on the scope of the Article 47 of the Constitution, making reference to the decision of the

2 AIR 1985 Kerala 111

Apex Court in *Ashok Lanka v. Rishi Dikshit And Others*[3], apart from the law laid down in Khoday (supra). Learned counsel for the Petitioner argued that the debates in the Constituent Assembly would disclose that the framers of the Constitution always aimed at achieving total prohibition and this underscored principle of the Constitution stands breached in the realm of the State's activity in liquor, which is now handed over to the Chhattisgarh Beverages Corporation. The Ordinance under challenge is essentially one in violation of the ultimate goals ought to be achieved under Article 47 of the Constitution, it is argued. Learned counsel further argued that notwithstanding that Article 47 of the Constitution is among the Directive Principle of State Policy enumerated in Part IV of the Constitution, such provision does not appear to have had any guiding effect on the policy making by the State.

7. The later part of the Article 37 of the Constitution envisions that the principles laid down in Part IV of the Constitution are fundamental in the governance in the country and it shall be the duty of the State to apply those principles in making laws. Article 38(1) provides, *inter alia,* promotion of the welfare of the people by securing and protecting a social order in which justice, social, economical and political, shall inform all the institution of the national life. The concept of governance dealt with in Article 37 of the Constitution and the scope a term national life in Article 38 clearly indicates that the contents of the provisions in Part IV of the Constitution cannot be ignored by any of the institutions of governance which are part of the national life. But, governance is primary and fundamentally a matter in which judicial review would be treated as last resort; to be taken only when other institutions of governance have totally failed. Bearing this in mind, looking at

3 (2006) 9 SCC 90

Article 47 of the Constitution, the requirement therein is, among other things, that the State shall endavour to bring prohibition of the consumption of intoxicant drinks and drugs which are injurious to health. One yard stick that is provided in this provision is in the form of an exception where availability of the such materials for medicinal purpose is envisaged. As to how prohibition can be brought into force and as to when and how prohibition is to be enforced are matters of governance. The modality in which prohibition to be effected, whether partial or total, may be regulated are fundamentally matters of wisdom attendant to governance. In the structuring of the management in this Nation, the primary role of the legislators and the executives include policy making. Adherence and enforcement of the policies are matters of governance. So much so, whatever be the wisdom that the Courts may arrive at, on the sole assessment of facts and factors relating to such issues, judicial review and issuance of direction or even interference with the executive and legislative action would not follow merely because the above objective sought to be achieved may or may not be reached at by the State through legislative and executive process. It will be dangerous a zone for judicial exercise if we were to substitute the views that we may arrive at as to when, how and to what extent, prohibition in terms of Article 47 of the Constitution should be effectuated in any particular State, or in the Nation as a whole. For the aforesaid reasons the challenge levied by the impugned Ordinance fails.

8. Before parting, we may notice that, through Writ Petition (PIL), the Petitioner therein has also challenged the Rules framed to give effect to the amended Section 18(A) introduced through the Ordinance. The argument advanced is that while Section 18(A) provided statutory monopoly in favour of the

Chhattisgarh Beverages Corporation, the Rules tend to indicate that the license can be granted in the name of a human being, and that this is unsustainable. The person in whose name a license under excise law is to be granted should be at least a human agent of institution like Corporation. This is absolutely essential for the purpose of enforcement, control and regulation of the activities in terms of the license that may be issued to grantee and also for the purposes of different penal provisions in conformity with the laws relating to excise including vending of Liquor. It is therefore that the Rules have been framed granting license in the name of the human agent as may be chosen by the Corporation, which, ordinarily shall be its own Chief Executive Authority. The challenge levied to the Amendment Rules on this ground does not stand.

9. For the aforesaid reasons, the writ petition instituted as public interest litigation also fails.

10. In the result, these writ petitions are dismissed.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(P. Sam Koshy)
Judge

Kishore / Subbu