

**THE HONB'E SRI JUSTICE CHALLA KODANDA RAM**

**WRIT PETITION No.3914 OF 2017**

**ORDER:**

Petitioner is a company registered under Companies Act, incorporated for the purpose of engaging in business of manufacture of Indian Made Foreign Liquor as defined under the Telangana Excise Act.

2) The petitioner was granted with a Letter of Intent, dated 03.03.2016 for establishment and working of IMFL manufactory in terms of Telangana Distillery (Manufacture of Indian Made Foreign Liquor Other than Beer and Wine) Rules, 2006 (in short "Rules-2016). In terms of the LOI granted, petitioner is required to establish the production facility and obtain license for production and sale of the product manufactured. One of the conditions which the petitioner is required to comply with is fulfilment of conditions laid down under Rule 6, under which petitioner is required to furnish a Bank Guarantee in terms of Proviso to sub rule 3 of Rule 6. It is a case of the petitioner that the Government had relaxed the said condition by facilitating withholding of the amounts corresponding to each periodical instalment from the sale proceeds of the licensees in stead of providing the Bank Guarantee. It is the case of the petitioner that petitioner is aggrieved with and complaints of hostile discrimination in respondents not extending the facility vide the impugned memo which was granted to the existing licensees. It is the case of the petitioners that a huge expenditure of about Rs.50 crores is being made which is much more than the investment that was made by the existing manufacturers and further the newly established industry would

require the support of respondents as there would not be cash flows in the initial years unlike with the existing industries. There is no discernable differentiation which can be made between the existing licensees to that of the persons granted LOI who are required to obtain license both being engaged in manufacture and sale of the products only through the notified chanalising agency i.e., Telangana Beverages Corporation. It is also the case of the petitioner that the 2<sup>nd</sup> respondent, without reference to the request made by the petitioner, had directed the petitioner to comply with the Rule 6(3) for grant of license. Petitioner also submits that though Rule 6 is applicable both to the cases of newly established manufacturers as well as to the existing licence holders intending to expand their manufacturing facility, the relaxation in the impugned memo is granted only to the existing license holders and there is no rational in not extending the same to the new manufacturers like petitioner. In those circumstances, petitioner seeks a writ of mandamus declaring the Memo No.24856/Ex.II(2)2015-3, dated 24.09.2016 issued by respondent No.1 as being arbitrary, discriminatory and contrary to Article 14 of the Constitution of India and further seeks a direction to the respondents to provide similar concessions to the petitioner as were provided to existing manufactories through the impugned Memo.

3) A detailed counter affidavit is filed by the 2<sup>nd</sup> respondent contending that there is no hostile discrimination and there is differentiation between a LOI holder and a licensee. The exemption granted by the Government to the existing licence holders, who are manufacturing and supplying IMFL to the 3<sup>rd</sup> respondent, are

existing units and their monies are lying with the 3<sup>rd</sup> respondent Corporation for adjustment in the event of non-fulfilment of / the violation of license conditions. The LOI holders, not being licensees as of date, are required to comply with the Rules for granting of license. In those circumstances, the classification made by the Government is nothing unreasonable and the petitioner cannot claim the same facility as extended to the existing licence holders. It is also further stated in the counter affidavit, considering the representations made by the petitioner on 29.10.2016, 14.12.2016 and 16.12.2016 they had referred the case to the Government for necessary orders.

4) Heard the learned counsel for the petitioner and learned Government Pleader for Prohibition and Excise, who had reiterated their respective submissions as pleaded.

5) Learned counsel for the petitioner also relied on the judgments of the Supreme Court in **Om Prakash Sud and Others Vs. State of J&K and others**<sup>1</sup> and **Union of India and Others v N.S. Rathnam and Sons**<sup>2</sup> to support their contention that there cannot be micro classification within same category and there cannot be hostile discrimination.

6) Having considered the respective submissions it may be noted in the present case on hand that the Memo dated 24.09.2016 is issued by the 1<sup>st</sup> respondent Government. The prayer in the Writ Petition though worded differently and seeks to declare the memo as invalid, as a matter of fact, the relief which the petitioner seeks is to extend the memo to the petitioner also. In the facts of the present case, it is not necessary for this Court at

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<sup>1</sup> (1981) 2 SCC 270

<sup>2</sup> (2015) 10 SCC 681

this stage to elaborately consider the submissions made by the both the learned counsel. In the facts of the present case, as the 1<sup>st</sup> respondent has not yet taken a decision and considering the fact that the 2<sup>nd</sup> respondent has also referred the matter to the decision of the 1<sup>st</sup> respondent, as stated in the counter, the Writ Petition can be disposed of with a direction to the 1<sup>st</sup> respondent to take appropriate decision on the representations of the petitioner objectively. In the circumstances, there shall be a direction to the respondent No.1 to consider the representations dated 29.10.2016, 14.12.2016 and 16.12.2016 of the petitioner, the copies of which were marked to the respondent No.1, within a period of 4 weeks from the date of receipt of a copy of the order.

7) The Miscellaneous Petitions pending, if any, in this Writ Petition, shall stand closed. No order as to costs.

Date:22.08.2017,  
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**CHALLA KODANDA RAM, J**