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HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 802 of 2018**

Pernod Ricard India Pvt Ltd, Through its duly constituted Attorney, Fifth Floor, D-3, District Center, Saket, New Delhi

----Appellant**VERSUS**

1. State of Chhattisgarh, through the Secretary, Excise & Commercial Tax Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur C.G.
2. Excise Commissioner Government of Chhattisgarh, Labhandi, Chokranala, Raipur, District Raipur C.G.
3. Chhattisgarh State Marketing Corporation Limited, Through its Managing Director, Labhandi, Chokranala, Raipur, C.G.
4. Chhattisgarh State Beverages Corporation Limited, through its General Manager, Labhandi, Chokranala, Raipur, C.G.

-----Respondents**WA No. 817 of 2018**

1. State of Chhattisgarh, through the Secretary, department of Excise, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur C.G.
2. The Excise Commissioner Government of Chhattisgarh, Labhandi, Chokranala, Raipur, District Raipur C.G.

----Appellants/Respondents**Versus**

1. Pernod Ricard India Pvt Ltd, Through its authorized Representative, Fifth Floor, D-3, District Center, Saket, New Delhi.
2. Chhattisgarh State Marketing Corporation Limited, Through its Managing Director, Labhandi, Chokranala, Raipur, C.G.
3. Chhattisgarh State Beverages Corporation Limited, through its General Manager, Labhandi, Chokranala, Raipur, C.G.

-----Respondents**AND****WA No. 28 of 2019**

1. State of Chhattisgarh, through the Secretary, department of Excise, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur C.G.
2. The Excise Commissioner Government of Chhattisgarh, Labhandi,

Chokranala, Raipur, District Raipur C.G.

----Appellants/Respondents

VERSUS

1. United Spirits Limited, a company registered under the Companies Act, 1956 and having its registered office at UB Tower, No. 24, Vittal Mallya Road, Bangalore- 560001, through its Duly Constituted Attorney, Sushil Kumar Sharma, aged about 43 years, S/o Mr. J.M. Sharma, R/o Flat No. 201, Building No. C-2, Karishma Complex, Anupam Nagar, P.S. Mowa, Raipur, Chhattisgarh
2. Chhattisgarh State Marketing Corporation Limited, Through its Managing Director, Labhandi, Chokranala, Raipur, C.G.
3. Chhattisgarh State Beverages Corporation Limited, through its General Manager, Labhandi, Chokranala, Raipur, C.G.

WA No.802/18

For Appellant	:	Shri Abhishek Sinha, Advocate
For Respondent No. 1 & 2	:	Shri R.S. Baghel, Dy. Adv. General
For Respondent No.3 & 4	:	Shri Rajeev Shrivastava, Advocate

WA No.817/18 & 28/19

For Appellants	:	Shri R.S. Baghel, Dy. Adv. General
For Respondent No. 1	:	Shri Abhishek Sinha, Advocate
For Respondent No.2 & 3	:	Shri Rajeev Shrivastava, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per P.R. Ramachandra Menon, Chief Justice

09/07/2019

1. These appeals relate to the common verdict passed by the learned Single Judge on 28-9-2018 in WPC Nos.1059/18 & 1060/18.
2. Writ petitions were filed by the petitioners mainly challenging the rules known as Chhattisgarh Excise (Settlement of Licenses for Retail Sale of Country-made/ Foreign Liquor) Rules, 2017, in particular, as to the absence of a clear and transparent policy with regard to the procurement and sale of foreign liquor in the State. Prayer was raised also with reference to the newly introduced provision i.e. Section 18 A(1) of the

Rules. Specimen prayers as raised in WP(C) 1059 of 2018 are in the following terms:

“10.(i) Declare that the prevalent practice being followed by respondents for procurement of liquor as set out in paras 8.27 to 8.29 is wholly opaque, arbitrary, unfair, non-transparent, discriminatory and *ultra vires* the provisions of the Constitution including Article 14;

(ii) Issue a writ, order or direction of, or in the nature of, mandamus or any other writ, order or direction to Respondent No. 3, its officers and agents, to follow a just, fair and reasonable ordering process that is based solely on demand and to fix and maintain minimum stock levels of all brands of the Petitioner at all retail outlets in the State of Chhattisgarh by taking into account the average of the stock levels in the respective retail shops during the same month in the immediately preceding two years (except for stock levels maintained during the period from June 2017 till implementation of orders passed in terms of this prayer as this does not reflect the actual demand), or such other criteria as this Hon'ble Court may deem fit;

(iii) issue a writ of, or in the nature of, prohibition or any other writ, order or direction permanently and perpetually injuncting and restraining Respondent No. 2 or any of its officers from in any manner interfering with the process of procurement of foreign liquor by retail outlets operated by Respondent No. 3 and its authorized persons from Respondent No. 4;

(iv) issue a writ, order or direction of, or in the nature of, mandamus or any other writ, order or direction to Respondents to disclose on their respective websites the real-time stock levels of each brand of alcoholic beverages at each retail outlet of Respondent No. 3 as well as the wholesale depots of Respondent No. 4 at

any given point of time.

(v) pass any other or further orders as this Hon'ble Court may deem fit in the ends of justice, equity and good conscience.”

3. Similar prayers were raised also by the petitioner in WP(C) No. 1060 of 2018.
4. The course of action pursued by the State was sought to be substantiated with reference to the facts and figures and also the relevant provisions of law. After detailed analysis with reference to the provisions of law and the binding precedents, a finding was rendered by the learned Single Judge giving the conclusions, as stated in 'paragraph 59' of the common judgment as aforesaid. We find it appropriate to have the same extracted below for easy reference:-

“59. On the basis of above-stated analysis, my conclusions are as under: -

(1) A citizen has no fundamental right to carry-on any trade or business in liquor or beverage, as trade in liquor has been regarded as *res extra commercium*, but once the State permits trade and business in liquor, it cannot discriminate between person or suppliers who are qualified to carry-on trade or business.

(2) Section 18-A(1) of the Act of 1915 was introduced with effect from 21-4-2017 in the Act of 1915 giving power to the State Government to grant exclusive right for sale of liquor to any Corporation wholly owned and controlled by the State Government. Section 18-A(2) of the Act of 1915 was also introduced giving power and jurisdiction subject to the rules made by the State Government to grant necessary license to the Corporation owned and controlled by the State Government. The Rules of 2017 have also been framed by the State Government in this regard in its rule making power under Section 62(d) of the Act of 1915.

(3) The State Government has constituted respondent No.3, a Corporation namely, Chhattisgarh State Marketing Corporation Limited; though sale of liquor has been handed-over to the said Corporation, but no

order general or special has been passed by the State Government giving exclusive right for sale of liquor to the Corporation as provided under Section 18-A(1) of the Act of 1915. Likewise, the Excise Commissioner has also not granted any license to respondent No.3 Corporation as mandated under Section 18-A(2) of the Act of 1915, which is clearly impermissible in law. The State Government and thereafter, the Excise Commissioner, both, have failed to perform their statutory function envisaged under Section 18-A(1) & 18-A(2) of the Act of 1915.

(4) The petitioners have placed sufficient data on record to show that they are being discriminated by respondent No.3 in procurement of liquor for want of a fair and transparent policy for procurement of liquor.

(5) The State Government has not come out on record with a clear and transparent policy of procurement of liquor except relying upon the website designed by NIC and the Rules of 2017 stating that it has resulted in a neutral non-apprehending and transparent procedure for sale of liquor while adopting the return and stand taken by respondent No.3 Corporation and the said Corporation has changed its stand regarding procurement of liquor during the hearing of these petitions.

(6) The officers of respondents No.1 and 2 are holding additional charge and working as officers with respondent No.3 on various posts such as General Manager, Deputy General Manager, Manager, Deputy Manager, Assistant Manager, Excise Constable etc.. Even the Joint Secretary of the Government is working as Working Director in respondent No.3, which is in conflict with the principle of law laid down in *Rajendra Shankar Shukla (supra)*”.

Accordingly, the learned Single Judge directed the State Government to consider the above-mentioned factors and to frame necessary guidelines to procure liquor, issuance of orders and indents to the manufacturers/petitioners and maintain equality in procurement of liquor, within four weeks from the date of receipt of a copy of the verdict.

5. The said direction, according to the State, is not correct or sustainable and has virtually encroached into the field occupied by the State; besides

being a matter of policy. This made them to have it challenged by filing separate appeals i.e. Writ Appeal Nos.817 of 2018 & 28 of 2019. In the meanwhile, as evident from the proceedings forming part of Writ Appeal No. 802 of 2018 (which has been filed by the first respondent in Writ Appeal No. 817 of 2018 i.e. the manufacturer/ seller) that pursuant to the verdict passed by the learned Single Judge, the matter has been considered by the State and a new policy has been evolved. By virtue of the said course, apparently, the judgment passed by the learned Single Judge has been complied with. However, there is a case for the manufacturer (1st respondent in WA No. 817 of 2018) that the new guidelines formulated by the State are not in the conformity with the directions given by the learned Single Judge and hence, it has been sought to be challenged which made them to file Writ Appeal No.802 of 2018.

6. Heard the learned counsel representing the State as well as learned counsel representing the manufacturers.
7. After hearing both the sides, we find that, as on date, the judgment passed by the learned Single Judge has been given effect to and new guidelines have been formulated by the State, declaring its new policy. This being the position, nothing remains to be considered in the appeals preferred by the State against the said verdict and hence, Writ Appeals No. 817 of 2018 & 28 of 2019 are dismissed as infructuous.
8. Coming to Writ Appeal No.802 of 2018, the contention is that newly formed policy/guidelines, requires scrutiny, as it is allegedly not in the conformity with the direction given by this Court in paragraph 59 of the judgment under challenge, besides causing the market ratio to be

reduced further. If this be the position, the remedy for the said appellant is to challenge the said proceedings by filing separate proceedings in accordance with law which can't be by way of any writ appeal. In the said circumstances, without prejudice to rights and liberties of the above appellant to challenge the newly formed guidelines/ policy of the State (pursuant to the verdict passed by the learned Single Judge) by way of separate proceeding in accordance with law, interference is declined and this appeal also stands dismissed.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge