

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserved: 19.08.2020

Date of Decision : 15.09.2020

+ **W.P.(C) 3494/2020 & CM No.12431/2020 (Stay)**

UDI DEPARTMENTAL STORE Petitioner

Through: Mr.Rushab Aggarwal,
Mr.Tejasvi Chaudhary,
Ms.Aayushi Jain, Advs.

versus

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr.Ramesh Singh, SC/GNCTD
with Mr.Dhananjaya Mishra,
Panel Counsel and Ms.Bhawna
Kataria, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

1. This petition has been filed by the petitioner praying for the following reliefs:-

“(a) Issue any appropriate writ, order or directions including a writ of certiorari thereby quashing the impugned Cabinet Decision No.2790 dated 11.12.2019 issued by the Respondent No.1 insofar as it directs across the board penal action against all Licensees of the L-12/L-12F category, and especially against the Petitioner who has not committed any violation in the relevant year i.e. 2019-2020.

(b) Issue appropriate writ, order or direction including a writ of prohibition restraining the Respondent No.1, from implementing the impugned Cabinet Decision bearing No.2790 dated 11.12.2019;

(c) Issue any appropriate writ, order or directions including a writ of certiorari thereby quashing/setting aside the impugned Circular dated 05.02.2020 issued by the Respondent No.2 insofar as it illegally & arbitrarily, excludes L-12/L-12F licensees from the purview of the renewal of their licenses for the year 2020-21 in terms of the Delhi Excise Act and the rules framed thereunder.

Or in the alternative to prayer (c), as above,

Issue any appropriate writ, order or directions including a writ of mandamus thereby directing the Respondent No.2 to follow the procedure for renewal of existing L-12/L-12F Licensees, and further renew them in terms of the Delhi Excise Rules, 2010 for the year 2020-21.

(d) Issue any appropriate writ, order or direction including a writ of mandamus directing the respondents to renew the L-12/L-12F licenses of the petitioner from the date of the order/interim orders passed by this Hon' ble Court till 31.03.2021 and continue to renew the same in terms of the Delhi Excise Act, Rules, Regulations and Directions."

2. It is the case of the petitioner that the petitioner was granted a License dated 19.04.2011 by the Delhi Excise Department in the L-12/L-12F category for the retail sale of beer and wine in its departmental store. The license was renewed on a year-to-year basis and was last valid till 31.03.2020. There were approximately 125 such licenses issued by the respondents to various licensees in Delhi. The

respondents, in September-October, 2019, carried out a check and 41 of such licensees were found to be in violation of the license terms. Importantly, no violation was found in the case of the petitioner or other similarly situated licensees, who were in the majority. In spite of the same, the respondent no.1 passed a Cabinet Decision No.2790 dated 11.12.2019, impugned in the present petition, directing as under:

“The Council of Ministers considered the note of Pr. Secretary (Finance) and decided as follows:

- 1. L-12/L-12F license of all departmental stores to be closed w.e.f.20.12.2019 and the license fee shall be refunded as per section 16(2) of the Delhi Excise Act, 2009.*
- 2. Revised terms and conditions for grant of new L-12/L-12F licenses to be framed by the Excise Department in the next Excise Policy.”*

3. Based on the above decision, the respondent no.2 issued an order dated 19.12.2019 against the petitioner, purportedly exercising its power under Section 16(1) of the Delhi Excise Act, 2009 (hereinafter referred to as the ‘ Act’), withdrawing the L-12/L-12F license of the petitioner forthwith. The said order reads as under:

“ Whereas, M/s UDI DEPARTMENTAL STORE was granted L-12/L-12F license bearing License ID L-12/2011/137 for sale of Beer and Wine in the Departmental Store.

And Whereas the Council of Ministers, GNCTD vide Cabinet Decision No.2790 dated 11.12.2019 conveyed vide letter No.F.3/3/2018/GAD/CN/dsgadiii/5232-42

dated 12.12.2019 has decided to withdraw all L-12/L-12F Licenses with effect from 20.12.2019.

Therefore, I, Deputy Commissioner (Excise)/Licensing Authority, in exercise of the powers conferred upon me under the provisions of Section 16(1) of the Delhi Excise Act, 2009, hereby withdraw the L-12/L-12F License in respect of the above mentioned licensee/Departmental Store forthwith. The licensee shall be eligible for refund of fee paid in advance after deducting the amount recoverable by the Government under Section 16(2) of the Delhi Excise Act, 2009.”

4. The petitioner challenged the above order before this Court by way of a writ petition, being W.P.(C) 13729/2019. This Court by its order dated 24.12.2019 was pleased to stay the operation of the order dated 19.12.2019, subject to the condition that the petitioner shall strictly comply with the terms and conditions of its license. There is no allegation that the petitioner has thereafter violated any term of the license in any manner.

5. The respondent no.2, thereafter, issued a Circular dated 05.02.2020, impugned in the present petition, inviting applications for renewal of the licenses for all categories of retail vendis for the year 2020-21 except L-12/L-12F license categories. The petitioner has challenged the said Circular to the limited extent that it excludes the L-12/L-12F license category from the scope of renewal.

6. As the petitioner was not allowed to operate the liquor vend after lifting of the Lockdown, the petitioner filed an application, being CM No.11282/2020 in W.P.(C) 13729/2019, praying for a direction to

the respondents to consider the renewal of its license and allow the petitioner to run its retail liquor vend till the new terms and conditions of the L-12/L-12F licenses are framed by the respondents.

7. This Court, noting that the license had otherwise expired on 31.03.2020, allowed the petition and the said application to be withdrawn, granting liberty to the petitioner to file an appropriate Writ Petition. The present petition was filed thereafter by the petitioner.

8. This Court vide its order dated 12.06.2020, adjourned the hearing of the petition to enable the learned counsel for the respondents to seek instructions on whether the respondents are in the process of releasing a policy for grant of L-12/L-12F license categories. On 22.06.2020, the learned Standing Counsel for the respondents submitted that presently there is no intention of the respondents to roll out the new policy for grant of such licenses.

9. The respondents thereafter filed a counter affidavit before this Court, clarifying their stand in relation to the Cabinet Decision dated 11.12.2019 and the policy with respect to the renewal of such licenses as under:

“ 11.1 That there were 125 L-12/L-12F licensees in Delhi. In September 2019, the Respondent Department had inspected 41 such departmental stores possessing such licenses, and it was found that there were large scale violations by such licensees to the extent that the said departmental stores were virtually operating as liquor vends by failing fully to comply with the Terms and Conditions of the license, in particular the stipulation that only 10% of the carpet area of the

departmental store, separately earmarked, was to be used for the sale of Beer/ Wine.

11.2 The desired objective of the L-12/L-12F was promotion of soft liquor in place of hard liquor and improving customer satisfaction and experience at the vend level. Owing to these large scale violations, it was felt that the desired objective behind the L- 12/L- 12F licenses was not being met.

11.3 The Council of Ministers vide Cabinet decision No. 2790 dated 11.12.2019 decided to withdraw L-12/L-12F licenses w.e.f 20.12.2019.

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5. That during the pendency of the said Writ Petition, the Respondent No. 2 issued Circular dated 05.02.2020 in relation to renewal of liquor licenses for the year 2020-21. In the said Circular, the category of L-12/L-12F licenses was consciously excluded in view of the Cabinet Decision dated 11.12.2019 wherein the Government had decided to withdraw the existing L-12/L-12F license policy and subsequently bring a revamped scheme with necessary modifications to plug all loopholes based on the Government's experience and the ground reality.

6. That in view of the outbreak of the Covid-19 Pandemic and associated lockdown restrictions, the Government has been taking every possible effort to tackle the unprecedented situation, and would consider framing a new policy for the L-12/L-12F licenses when the circumstances are more favorable.

7. That it is therefore submitted that the decision to exclude L-12/L-12F licenses, which were granted in terms of the earlier policy, from the purview of renewal for the year 2020-21, is a consequence of the above policy decision of replacement of the old policy with the a new one, and it is well-settled that matters in the realm

of pure policy may not be subject to judicial review, especially in the context of trade in liquor.”

10. The learned counsel for the petitioner has placed reliance on Rule 32 and Rule 42 of the Delhi Excise Rules, 2010 (hereinafter referred to as the ‘ Rules’) to contend that in terms of the said Rules, the licenses are to be automatically renewed and such renewal of license can be refused only after issuance of a notice to the holder of such license and passing an order in writing, recording the objections of the licensee thereto. He submits that in the present case, no such order has been passed by the respondents denying the renewal of the license of the petitioner.

11. The learned counsel for the petitioner further submits that the Cabinet Decision dated 11.12.2019 and the pursuant order dated 19.12.2019 cannot be sustained as the same suffer from legal malice, having been passed in colorable exercise of power. He submits that the power to suspend or cancel the license has been granted to the respondents under Section 17 of the Act, however, the same is circumscribed inasmuch as before such action of suspension or cancellation of license is taken, the respondents have to grant a reasonable opportunity of hearing to the licensee. In the present case, the entire action was based on the alleged violation found in the case of 41 licensees, however, instead of issuing notice of such violations to such licensees and taking action against them under Section 17 of the Act, the respondents decided to exercise the powers under Section

16 of the Act, even against the licensees against whom no violation was found. He submits that such exercise of power would clearly be arbitrary and unreasonable. He places reliance on the judgment of the Supreme Court in *State of Punjab & Anr. v. Gurdial Singh & Ors.*, (1980) 2 SCC 471.

12. Placing reliance on the judgment of the Supreme Court in *Kerala Bar Hotels Association & Anr. v. State of Kerala & Ors.*, (2015) 16 SCC 421, the learned counsel for the petitioner submits that a Fundamental Right under Article 19(1)(g) of the Constitution of India to trade in liquor does exist, provided the State permits any person to undertake this business. Though such right can be restricted under Article 19(6), such restriction has to be reasonable. The learned counsel for the petitioner submits that the exercise of powers by the respondents in the present case cannot be termed as reasonable and is therefore liable to be set aside by this Court.

13. Placing reliance on Rule 40 of the Rules, the learned counsel for the petitioner submits that even where the respondents are to frame a new policy, the existing license has to be allowed to continue on the same terms and conditions and on payment of the same license fee.

14. He submits that even otherwise, the petitioner had a legitimate expectation of renewal of such license and the same cannot be defeated only because the respondents are reconsidering the policy for such licenses.

15. On the other hand, the learned Standing Counsel for the respondents has submitted that there is no Fundamental Right to trade in liquor since liquor is an article which is *res extra commercium*. He submits that the grant of a license to trade in liquor is not a matter of right but a privilege and therefore, can be curtailed by the State, even without giving any reasons.

16. On the facts of the case, he submits that the reason for withdrawal of the earlier policy of grant of L-12/L-12F licenses was on account of large-scale violations of the policy being observed, wherein several departmental stores holding such licenses were brazenly found operating as *de facto* liquor vends. He submits that the exercise of power and the resultant decision dated 11.12.2019 was therefore, on valid grounds, which cannot be interfered with by this Court. He places reliance on the judgment of the Supreme Court in **Ugar Sugar Works Ltd. v. Delhi Administration & Ors.**, (2001) 3 SCC 635 and of the Bombay High Court in **Dhariwal Industries Ltd. v. State of Maharashtra**, (2013) 1 Mah LJ 41(Bom).

17. He further submits that this Court also cannot direct the respondents to frame such a policy for the current year or fix a timeframe for the same. In support of his submission, he places reliance on the judgment of the Supreme Court in **State of Kerala & Ors. v. Kandath Distilleries**, (2013) 6 SCC 573.

18. Placing reliance on the judgment of this Court in **M/s Gidney Club & Anr. v. Union of India & Ors.**, AIR 1980 Delhi 33, the learned Standing Counsel for the respondents submits that partial

prohibition in respect of one complete and distinct category of licenses across the board is permissible and valid; the same does not require any notice to be issued to the affected licensee.

19. Relying upon Section 18 of the Act, he submits that no licensee can claim any right to the renewal of the license. He submits that therefore, the reliance of the petitioner on Rules 32, 40 and 42 of the Rules is totally unfounded inasmuch they would become applicable only where such renewal is otherwise permitted. He submits that Section 18 of the Act would also negate the case of the petitioner based on the alleged legitimate expectation. In this regard, he places reliance on the judgment of the Supreme Court in ***Shree Sidhbali Steels Limited & Ors. v. State of Uttar Pradesh & Ors.***, (2011) 3 SCC 193.

20. I have considered the submissions made by the learned counsels for the parties. At the outset, reference needs to be drawn to the judgment of the Supreme Court in ***Khoday Distilleries Ltd. & Ors. v. State of Karnataka & Ors.***, (1995) 1 SCC 574, wherein the Supreme Court summarized the law on the subject relating to the right to carry on trade and business in potable liquor, as under:

“60. We may now summarise 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 civilised 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, 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.”

21. A reading of the above would clearly show that the trade in liquor has been held to be *res extra commercium*, authorizing the State to impose limitations and restrictions, which may be different in nature from those imposed on trade and business in legitimate activities or goods and articles which are *res commercium*. The limitations and restrictions placed on trade and business in potable liquor can be imposed 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. However, when the State permits the trade and business in liquor, with or without limitations, the citizen has a right to carry on such trade, subject to limitations, if any, and the State cannot discriminate between the citizens.

22. In *State of Kerala v. Kandath Distilleries* (*supra*), the Supreme Court reiterated the law as under:

“24. Article 47 is one of the directive principles of State policy which is fundamental in the governance of the country and the State has the power to completely prohibit the manufacture, sale, possession, distribution and consumption of liquor as a beverage because it is inherently dangerous to human health. Consequently, it is the privilege of the State and it is for the State to decide whether it should part with that privilege, which depends upon the liquor policy of the State. The State has, therefore, the exclusive right or privilege in respect of potable liquor. A citizen has, therefore, no fundamental right to trade or business in liquor as a beverage and the activities, which are res extra commercium, cannot be carried on by any citizen and the State can prohibit completely trade or business in potable liquor and the State can also create a monopoly in itself for the trade or business in such liquor. This legal position is well settled. The State can also impose restrictions and limitations on the trade or business in liquor as a beverage, which restrictions are in nature different from those imposed on trade or business in legitimate activities and goods and articles which are res commercium. Reference may be made to the judgments of this Court in Vithal Dattatraya Kulkarni v. Shamrao Tukaram Power, P. N. Kaushal & Others v. Union of India & Others, Krishan Kumar Narula etc. v. State of Jammu & Kashmir & Others, Nashirwar and Others v. State of Madhya Pradesh & Others, State of A. P. & Others v. McDowell & Co and Others and Khoday Distilleries Ltd. & Others v. State of Karnataka & Others.”

23. It was further held as under:

“27. Liquor policy of the State is synonymous or always closely associated with the policy of the statute dealing with liquor or such obnoxious subjects. Monopoly in the trade of liquor is with the State and it is only a privilege that a licensee has in the matter of manufacturing and vending in liquor, so held, by this Court in State of

Maharashtra v. Nagpur Distilleries (2006) 5 SCC 112. The courts are also not expected to express their opinion as to whether at a particular point of time or in a particular situation, any such policy should have been adopted or not. The 1998 policy has life only in that year and if any rights have accrued to any party, that have to be adjudicated then and there. The writ petition was moved only in the year 2000, by then, policy had been changed because the 1999 liquor policy was total ban, so also subsequent liquor policies. It is trite law that a court of law is not expected to propel into “the uncharted ocean” of State’s policies. The State has the power to frame and reframe, change and rechange, adjust and readjust policy, which cannot be declared as illegal or arbitrary on the ground that the earlier policy was better and suited to the prevailing situations. The situation which existed in the year 1998 had its natural death and cannot be revived in the year 2013, when there is total ban.”

24. In ***Kerala Bar Hotels Association*** (*supra*), the Supreme Court, while dismissing the challenge to the Abkari Policy for the year 2014-2015 of the State of Kerala, observed as under regarding the nature of the right to trade in liquor:-

“32. We disagree with the submissions of the respondents that there is no right to trade in liquor because it is res extra commercium. The interpretation of Khoday [Khoday Distilleries Ltd. & Ors. v. State of Karnataka & Ors., (1995) 1 SCC 574] put forward by Mr Sundaram is, in our opinion, more acceptable. A right under Article 19(1)(g) to trade in liquor does exist provided the State permits any person to undertake this business. It is further qualified by Articles 19(6) and 47.

The question, then, is whether the restrictions imposed on the appellants are reasonable.

33. We have had the privilege and indeed the pleasure hearing the extremely erudite arguments of a galaxy of Senior Counsel on both propositions on the interpretation of our Constitution and the laws pertaining to the right to carry on trade or business in potable liquor by this Court. In Krishan Kumar Narula [Krishan Kumar Narula v. State of J&K, AIR 1967 SC 1368] , the Constitution Bench was of the opinion that dealing in liquor is a legitimate business, although the State can impose reasonable restrictions. A few years later, however, in Khoday [Khoday Distilleries Ltd. & Ors. v. State of Karnataka & Ors., (1995) 1 SCC 574] , the concept of res extra commercium came to be accepted and applied to the business of manufacture and trade in potable liquor. This Court, however, did not place any embargo or constraints on the State to transact this business. History has painstakingly made it abundantly clear that prohibition has not succeeded. Therefore, strict State regulation is imperative. The State of Kerala had in the past forayed into prohibition, but found it to be unimplementable. Thereafter, keeping in mind the heavy consumption of alcohol within the territory, it has experimented with other measures to user temperance if not abstemiousness. So far as this trade is concerned, Article 47 of the Constitution places a responsibility on every State Government to at least contain if not curtail consumption of alcohol. The impugned policy, therefore, is to be encouraged and is certainly not to be struck down or discouraged by the courts. How this policy is to be implemented, modified, adapted or restructured is the province of the State Government and not of the judiciary. The consumption of tobacco as well as liquor is now undeniably deleterious to the health of humankind. Advertising either of these intoxicants has been banned in most parts of the world, the avowed

purpose being to insulate persons who may not have partaken of this habit from being seduced to start. Banning public consumption of either of these inebriants cannot be constrained as not being connected in any manner with the effort to control consumption of tobacco, or as we are presently concerned, with alcohol. Vulnerable persons, either because of age or proclivity towards intoxication or as a feature of peer pressure, more often than not, succumb to this temptation. Banning public consumption of alcohol, therefore, in our considered opinion, cannot but be seen as a positive step towards bringing down the consumption of alcohol, or as preparatory to prohibition.

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38. *We now move to the arguments predicated on Article 19 of the Constitution. We have already noted that the business in potable liquor is in the nature of res extra commercium and would, therefore, be subject to more stringent restrictions than any other trade or business. Thus, while the ground of Article 19(1)(g) can be raised, in light of the arguments discussed with regard to Article 14, it cannot be said that the qualification on that right is unreasonable.”*

25. This now brings this Court to the provisions of the Delhi Excise Act, 2009. Section 11 of the Act contains provisions on prohibition to trade in liquor, except in accordance with the terms and conditions of a license or letter of intent or permit granted under the Act and the Rules framed thereunder. The State having decided, as a matter of policy, that it would not be issuing any license under the L-12/L-12F categories, as of now, applying the ratio of the above judgments, the petitioner cannot claim grant of such license as a matter of right.

26. This Court in exercise of its powers of judicial review cannot interfere with the policy decisions of the State, unless the same can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness. As held by the Supreme Court in *Ugar Sugar Works Ltd.* (*supra*), “The courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State.”

27. In *State of M.P. & Ors. v. Nandlal Jaiswal & Ors.*, (1986) 4 SCC 566, the Supreme Court, in relation to the liquor policy of the State, had observed as under:-

“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 [(1981) 4 SCC 675 : 1982 SCC (Tax) 30 : AIR

1981 SC 2138 : (1982) 1 SCR 947] . 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* [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 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 [57 L Ed 730] ”

“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 [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.”

28. In *Kerala Bar Hotels Association* (*supra*), the Supreme Court, while testing the policy of grant of licenses only to five-star hotels in the State of Kerala, observed as under:-

“41. There has been abundance of litigation on the question of the courts' interference in State policy. Judicial review is justified only if the policy is arbitrary, unfair or violative of fundamental rights. Courts must be loathe to venture into an evaluation of State policy. It must be given a reasonable time to pan out. If a policy proves to be unwise, oppressive or mindless, the electorate has been quick to make the Government aware of its folly. As was recently held by a three-Judge Bench of this Court in Census Commr. v. R. Krishnamurthy [Census Commr. v. R. Krishnamurthy, (2015) 2 SCC 796 : (2015) 1 SCC (L&S) 589] : (SCC p. 809, para 33)

“33. From the aforesaid pronouncement of law, it is clear as noonday that it is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. The court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded ipse dixit offending the basic requirement of Article 14 of the Constitution. In certain matters, as often said, there can be opinions and opinions but the court is not expected to sit as an appellate authority on an opinion.”

29. The respondents in their counter affidavit have asserted that in September 2019, it had inspected 41 out of 125 L-12/L-12F licensees/departmental stores, and it was found that there were large-scale violations by such licensees, to the extent that the said

departmental stores were virtually operating as liquor vends by failing wholly to comply with the terms and conditions of the license, in particular the stipulation that only 10% of the carpet area of the departmental store, separately earmarked, was to be used for the sale of Beer/Wine. The Council of Ministers vide the Cabinet Decision dated 11.12.2019 decided to close all L-12/L-12F licenses of the departmental stores and issue “ revised terms and conditions for grant of new L-12/L-12F licenses to be framed by the Excise Department in the next Excise Policy.”

30. Based on the above decision, the license of the petitioner was sought to be withdrawn vide order dated 19.12.2019. The said decision was however, stayed by this court vide its order dated 24.12.2019 passed in W.P.(C) 13729/2019, filed by the petitioner, and the petitioner was able to complete the full tenure of its license. The question of whether the respondents, on the basis of the above decision, could have taken recourse to the powers vested in it under Section 16 of the Act, therefore, has been rendered academic in nature.

31. Even otherwise, I find no merit in the submission of the learned counsel for the petitioner of this being a colorable exercise of power by the respondents. Section 16 of the Act is reproduced hereunder:-

“ 16. Power to withdraw licence and permit.-

(1) Whenever the authority which granted a licence or permit under this Act, considers that such licence or permit should be withdrawn for any reason, it may do so on expiry of fifteen days’ notice of its intention to do so or forthwith for reasons to be recorded.

(2) If any licence or permit is withdrawn, the licensee or the permit holder shall be refunded any fee paid in advance or deposit made by the licensee or the permit holder in respect thereof after deducting the amount recoverable by the Government.”

32. Section 17 of the Act, on the other hand, provides as under:-

“ 17. Power to suspend or cancel licence and permit.-

(1) Subject to such restrictions as the Government may prescribe, the authority granting any licence or permit under this Act may suspend or cancel it in the following circumstances after giving reasonable opportunity of being heard -

(a) if the licence or permit is transferred or sublet by the holder thereof without the permission of the licensing authority;

(b) if any excise revenue payable by the holder thereof is not duly paid;

(c) in the event of any breach by the holder of such licence or permit or by his servant, or by any one acting on his behalf, with his express or implied permission, of any of the terms and conditions of such licence or permit;

(d) if the holder of licence or permit or his agent or employee is convicted of an offence punishable under this Act or any other law for the time being in force, relevant and connected with excise matters relating to excise revenue or of any cognizable and non-bailable offence under any other relevant law;

(e) if the purpose for which the licence or permit was granted ceases to exist;

(f) if the licence or permit has been obtained through mis-representation or fraud.

(2) When a licence or permit is cancelled under sub-section (1), the aforesaid authority may cancel any other licence or permit granted to such person under this Act or under any other law relating to excise revenue.

(3) In the case of cancellation or suspension of licence under sub-section (1), the fee payable for the balance of the period for which any licence would have been current but for such cancellation or suspension, may be recovered from the ex-licensee as excise revenue.

(4) The holder of a licence or permit shall neither be entitled to any compensation for the cancellation or suspension thereof nor to refund of any fee paid or deposit made in respect thereof.”

33. A conjoint reading of the above two provisions would show that, while under Section 17 of the Act, action is contemplated and provided for against a particular licensee or permit holder for the circumstances provided in the said Section, Section 16 is not aimed against a particular licensee or permit holder but a particular specie of license or permit. Resort to Section 16 is taken when there is no allegation of particular breach against a particular licensee or permit holder. It is for this reason that under sub-section (2) of Section 16, the licensee or permit holder is to be refunded the fee paid in advance or deposit made. Action under Section 17 being on default of the license or permit holder and being *in personam*, not only is hearing to be granted to such license holder before suspension or cancellation of the licence, but on such cancellation or suspension of license, the licensee

is not entitled to any refund of fee paid or deposit made in respect of such license.

34. In the present case, though the Cabinet Decision was based on an inspection and alleged violations found only in respect of 41 licensees, it was also observed by the respondents that there were serious flaws in the terms and conditions of the license itself and that the same needed to be reframed. A decision was therefore taken to cancel all L-12/L-12F licences and not grant the same till such terms and conditions are redrafted. This would be a decision falling within the ambit and scope of Section 16 of the Act, as it is not aimed at any individual defaulter but is a policy decision.

35. As far as the failure of the respondents to issue or renew the L-12/L-12F licenses for the year 2020-21 is concerned, the respondents in their counter affidavit have stated that such licenses were consciously excluded in view of the Cabinet Decision dated 11.12.2019, wherein it had been decided to “bring a revamped scheme with necessary modifications to plug all loopholes based on Government’ s experience and the ground reality” . It was further asserted that in view of the outbreak of the COVID-19 pandemic and the associated Lockdown restrictions, the Government has been taking every possible effort to tackle the unprecedented situation and would consider framing a new policy for the L-12/L-12F licenses when the circumstances were more favorable.

36. The decision of the respondents not to issue/renew L-12/L-12F licenses for now in absence of formulation of the revised terms and

conditions and the earlier terms and conditions of L-12/L-12F licenses being found lacking in some manner, cannot be stated to be perverse or so unreasonable so as to warrant any interference by this Court in its exercise of powers of judicial review. As stated above, this would be matter of policy decision, which is normally not to be interfered with, unless found to be mala fide or wholly arbitrary. No such case has been made out by the petitioner. In fact, the State would be failing to discharge its duty under Article 47 of the Constitution if, without addressing the shortcomings in its policy, it was to grant/renew such licenses.

37. As far as the timing of such policy is concerned, again, keeping in view that the case in hand relates to trade in liquor, it is not for this Court to issue any direction to the respondents to expedite the process of framing the revised terms and conditions for such licenses.

38. As far the plea of the petitioner based on a perceived vested right of renewal is concerned, the same is stated to be rejected. Section 18 of the Act completely negates any such claim and is quoted hereinunder:-

“18. Bar to the right of renewal and to compensation. -
No person to whom a licence or permit has been granted, shall be entitled to claim any renewal thereof, and no claim shall lie for damages or otherwise in consequence of any refusal to renew a licence or permit on the expiry of the period for which the same remains in force.”

39. The reliance of the petitioner on Rule 32 and 42 of the Rules is also unfounded. The same are reproduced hereunder:-

“ 32. Class of licences and authorities to grant and renew licences.- (1) Subject to the provisions of sub-rule (2), the following classes of licences may be granted and renewed by authorities noted against each, on payment of prescribed fee:-

S.No	Form	Details of Licenses	Authority empowered to grant	Authority empowered to renew
xxx	xxx	xxx	xxx	xxx
17	L-12	Retail vend of Beer and Wine in Department al Store	Deputy Commissioner	Deputy Commissioner
18	L-12F	Retail vend of Foreign Beer and Wine in Department al Store to the holder of licence in form L-12.	Deputy Commissioner	Deputy Commissioner

42. Notice to be issued when it is decided not to renew licence or permit. - Whenever it is proposed not to renew a licence or permit, which is renewable and granted on a fixed fee, the authority competent to renew it shall give notice to the holder of such licence or permit, record objections, if any, put forward by the licensee or the permit holder and pass an order in writing. The licensee or the permit holder may be given, an authenticated copy of such order free of cost.”

40. Rule 32 of the Rules merely prescribes the Authority empowered to grant or renew a license. It does not create a right to renewal.

41. Similarly, Rule 42 of the Rules would be attracted only where “a” particular license or permit, “which is renewable”, is proposed not to be renewed. That is to say, where, though renewable under the policy of the State and under the Rules, if a particular license of a particular licensee is proposed not to be renewed, a notice shall be issued to that particular license-holder and after considering his objections, a decision in writing shall be taken by the Authority competent to renew such license. It would have no application where the category of licenses, as a class, is decided by the State not to be renewed.

42. This Court in *M/s Gidney Club* (*supra*), rejected a similar challenge, observing as under:-

“(2) The Delhi Liquor License Rules, 1976 were made before the decision of the Delhi Administration was taken in 1977 to bring about prohibition in Delhi. Rule 13, therefore, does not deal with non-renewal of the license on the ground of the prohibition policy. In the absence of prohibition policy, licensees whose licenses are not to be renewed have to be individually noticed and heard before an order of refusal to renew is passed. But this procedure has no application when a general policy of prohibition is adopted and the decision not to renew the licenses of the Club is not based on any consideration relating to the particular Club, but is based on a general policy. No question of giving notice to the individual Clubs and hearing their objections arises when a policy decision of general application is the

reason for non-renewal of L-19 licenses of all the Clubs. The first answer to this contention is that Rule 13 has no application when non-renewal is based on the policy of prohibition.”

43. The reliance of the petitioner on Rule 40 of the Rules is also unfounded. Sub-Rule (1) of Rule 40, on which reliance has been placed, is reproduced here-under:-

“40. Licence to continue after its expiry, provided licence fee is paid. -

(1) Where a licence is granted otherwise than by auction or tender it may be continued after the period of its expiry in respect of the same premises, with the permission of the licensing authority, provided that the requisite licence fee has been paid by the licensee. However, when any such licence has been determined by reason of surrender, cancellation or order of non-renewal or other cause or where it is proposed to issue licence in respect of the premises to persons not previously licensed, a new licence may be issued, provided —

(a) a new licence is not required on account of the addition of or removal of a partner on the application of all the partners or the change of a representative of a company or society;

(b) a licence continued to the legal heirs of a deceased licensee for the remaining period of the licence shall not be deemed to be a new licence.”

44. A reading of the above Rule would make it abundantly clear that the license is to continue after the period of its expiry only with the permission of the licensing Authority. In the present case, the

petitioner has no such permission and in fact, cannot have any such permission because of the categorical stand of the respondents that till issuance of the revised terms and conditions, no such license shall be granted/renewed.

45. In view of the above, I find no merit in the present petition. The same is dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

September 15, 2020/Arya



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