IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 6633 of 2015

Biswajit Jena and Others .... ***Petitioners***

Mr. Arun Kumar Patra, Advocate

-versus-

State of Odisha and Others .... ***Opposite Parties***

Mr. Debakanta Mohanty, Addl. Govt. Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

Order No. **ORDER**
16.11.2022

05. 1. The challenge in the present petition is to the demand notice dated 18th March, 2015 (Annexure-3) issued by the Odisha State Beverage Corporation Ltd. for the period from 1st April, 2010 to 31st August, 2013 basing upon the audit reports submitted by Superintendent of Excise, Balasore in respect of IMFL OFF Shops located at Baliapal Kalipada, Bidu, Khaira, Rupsa, Sahadevkhunta, Thhana Chhak, Haldipada, Golapokhari, Saragaon.

2. Learned counsel for the petitioner states that the issue involved in this case is covered by the ratio decided by this Court on 24th August, 2018 in W.P.(C) No. 5679 of 2015 and a batch of writ petitions. The relevant portion of the said order reads as follows:

> "It appears from the submissions made at the bar and from the records that the method adopted by the authorities is firstly to determine the price at which

various excisable products will be procured into the State of Odisha from the manufacturers/suppliers. Thereafter, they determine the rate at which such goods are to be sold to retailers (after including profit of margin therein for "OSBCL") and thirdly they also indicate at what maximum retail price (MRP) that a retailer can sale the product. These three determinations are done by a committee formed by the State known as the Price Fixation Committee (PFC). It is the case of the "OSBCL" that it has strictly complied with the guidelines issued by "PFC" from time to time for the purpose of pricing both at the time of procurement, sale to the retailers as well as fixing the maximum price at which the retailers can sale the products to the consumer.

In the present case, after hearing the learned counsel for the respective parties, we W.P.(C) No. 7483 of 2015 2 are of the considered view that there appears to be some confusion at the end of the "OSBCL" insofar as the manner for determining the "maximum retail price". From time to time the State policy has expanded the definition of maximum retail price "to include retailers margin and all taxes & duties". It is also a matter of fact that after the Accountant General Audit pointed out certain errors in the computation being made by the "OSBCL", it is now following the revised method in terms of Annexure-B/1 extracted hereinabove. Now the only issue that remains for determination relates to the demands for a period which is prior to the period covered under the notification annexed as Annexure-B/1. The earlier MRP was fixed as per the policy relating to calculation of MRP prevailing during 2009- 2013 as is revealed from Annexure-A/1. The new calculation policy under Annexure-B/1 which was implemented with effect from 2015- 16, which does not have any retrospective operation. Therefore, the impugned demands for a prior period having been made relying on such new calculation policy, are clearly arbitrary and unreasonable thus inviting the mischief of Article-14 of the Constitution of India. Further, it is not disputed that "OSBCL" has not suffered any loss. Moreover, we are of the considered view that there has been no undue enrichment by the petitioner inasmuch as there is no allegation of even a single retailer selling above the maximum retail price i.e. MRP. It may further be noted that the term maximum retail price as defined and as accepted is not necessarily the rate at which the products are always sold. It is verily possible that products are sold below the MRP and any assumption that the entire stock purchased by the retailers was sold at the maximum retail price would be an assumption which in our considered view may not be correct, without any evidence thereof being brought on record. The aforesaid facts have been noted by us to highlight the aspect that in 3 the case at hand, even though maximum retail price has been fixed, yet, it is the market conditions that determine whether a retailer can sale their products at the maximum retail price or offer a discount thereon.

Consequently the assumption on behalf of the corporation that the petitioner made an undue profit, in our considered view, is misplaced.

It would be appropriate to take note of the fact that in the instant case "OSBCL" had acted in terms of the Policy (as then in force) for the years 2009 to 2013 under Annexure A/1. Therefore, no fault can be attributed to the "OSBCL" for having followed the same while computing the rate at which the sales would be effected to the retailers as well as while computing the MRP since it was inconsonance with the Policy as it stood then. Assuming for the sake of argument that any error existed in the Policy, no fault can be found either with the "OSBCL" or with the retailers. The said Policy subsequently changed and the changed policy under Annexure-B/1 is presently in force. It would be also important to note herein that Annexure-B/1 relied upon by the "OSBCL" was issued pursuant to Liquor Sourcing Policy of 2015-16, which amended the mode of computation of MRP. As indicated earlier, such policy cannot have retrospective effect and only prospective effect. Consequently, applying the new formula to the transactions which had already taken place for the earlier years, in our considered view, would be clearly arbitrary, irrational and unreasonable. Apart from the above, when we queried from the counsel for the "OSBCL" as to under which law or contract the present impugned demand has come to be made, he has fairly stated there is no such specific law or terms in the contract under which "OSBCL" has made the demand except highlighting the fact that the same is being done on the basis of the Audit Report. Thus, there appears to be no 4 law for such recovery and the assumption that the retailers have made undue profit itself appears in our considered view not supported by any documentary evidence on record. In view of the aforesaid discussions, we are of the view that the impugned demands raised towards recovery of TCS amount included in the MRP for the period stated in the impugned demand and the amount stated therein have no legal foundation or basis to stand. Accordingly, this writ application is allowed and the impugned demands stand quashed.

Since rest of the batch of writ petitions involve the similar issue, accordingly the impugned demands pertaining to the said writ petitions are also accordingly quashed.

It is made clear that if any of the petitioners have made any payment to the "OSBCL" against the impugned demands which have been set aside by this order, the "OSBCL" shall refund/adjust the

> same immediately within a period of three months from today vis-à-vis such petitioners.
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> Free copy of this order be handed over to the learned counsel for the State for necessary communication and compliance."

3. This writ petition is, therefore, disposed of in terms of the order passed by this Court on 24th August, 2018 in W.P.(C) No. 5679 of 2015 and a batch of writ petitions.

4. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S.K. Jena/Secy.