IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10240 OF 2021

Aurangabad Distillery Ltd.,
having its registered Office and
Factory at Gat No.45/2, 47/2, 48/2 and
50/2, Village Rangaon (Ranmodwadi),
Walchand Nagar, Tq. Indapur,
District Pune through
It's authorized signature
and 10 others. .. PETITIONERS.

VERSUS

The State of Maharashtra
through its Secretary
State Excise Department,
Mantralaya, Mumbai 400 032
and others. .. RESPONDENTS.

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Mr. P.K. Joshi, Advocate for petitioners
Mr. A.R. Kale, AGP for respondents-State

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CORAM : NITIN W. SAMBRE AND
S.G. CHAPALGAONKAR, JJ.

DATE : 26th APRIL, 2023.

<u>FINAL ORDER : [PER S.G. CHAPALGAONKAR, J] :-</u>

1. The petitioner, under Article 226 of constitution of India, impugns the Government Resolution No.MPL-0119/Pra.Kra.07/Raushu-3 and a communication No. Mali-112014/Andajpatrak/27/5-A dated 29th

June, 2020 issued by the State of Maharashtra/respondent no.1

2. Mr. P. K. Joshi, learned counsel appearing for the petitioners would submit that, the petitioners are the manufacturers of "Ethanol and Extra Neutral Alcohol (ENA)/Rectified Spirits" and/or products made there from, Indian Made Foreign Liquor (IMFL), Country Liquor as per the terms and conditions imposed by the State Excise Department. The petitioners are purchasing Molasses which is raw material for the aforesaid manufacturing from the Sugar Factories situated within the State/ Region. The petitioners are operating their distilleries by using the molasses as Prime raw material.

3. Mr. Joshi, learned counsel appearing for the petitioners would further submit that the respondent nos.1 and 2 with intention to protect the interest of the distilleries and similarly situated production activities, restricted sugar factories situated within the State from transporting the Molasses, to other States or exporting abroad. The manufacturers like petitioners, under the policy of the State/Central Government were provided various incentives and concessions for establishment of the industries. The petitioners are operating their distilleries smoothly without operational hazard, such as scarcity of raw material (molasses). The restriction on export of molasses was imposed

under the Government Resolution dated 27.12.2019 to ensure continuous supply of raw material and smooth operation of industries like petitioners.

4. Mr. Joshi, learned counsel appearing for the petitioners would further submit that on 27.6.2020 abruptly, respondent no.1 lifted ban/restriction imposed on the sugar factories and permitted them to transport molasses to other State or export abroad. He would submit that, the action on the part of respondent/State of Maharashtra is inconsistent with the policy of the Government of India, which has been prepared and declared under “Roadmap for Ethanol Blending in India” for the period of 2020-2025. According to him, the requirement of Ethanol is going to increase day-by-day, since the Government of India has banned Ethanol blending in the fuel. He would further submit that the State of U.P. which is largest manufacturer of Molasses has restricted the export or transportation to the other State or abroad with intention to protect the interest of distilleries. He would further submit that due to abrupt action on the part of the respondent/State authorities, under impugned Government Resolution and communication dated 29.6.2020 the sugar factories are refusing the orders for supply of Molasses from the petitioner and similarly situated distilleries. Their business has been seriously prejudiced for want of supply and availability of Molasses to

meet their requirement. He would urge that the impugned decision taken by the Government is unreasonable and arbitrary. He would submit that, the state authorities are under obligation to regulate the supply of Molasses to the petitioners/distilleries and only after complying their requirement excessive production of the Molasses can be permitted to be exported or transported beyond the State of Maharashtra.

5. Mr. P. K. Joshi, learned Advocate appearing for the petitioners would submit that, action on the part of the respondents is without examining the availability of Molasses within the State, its demand by distilleries / industries within state. Further, the action is completely in disregard to original policy of the State by which the Adequate supply of Molasses was ensured for distilleries and only surplus stock was permitted to be sold out of State or abroad. He would further submit that Ethanol is also used by oil manufacturing companies as per Government of India Policy. The blending of Ethanol in oil up to 20% will be achieved by the year 2022. This would further affect availability of the Molasses to the distilleries.

6. Mr. A. R. Kale, learned AGP appearing for respondents would oppose the submissions made on behalf of the petitioners. He would contend that, in December, 2019 the review was undertaken regarding

estimated production of the Molasses. The average production of the Molasses within the State of Maharashtra till year 2019 was 35 to 40 Lakhs Metric Tons. Approximately, 32 Lakhs Metric Tons Molasses is required by the distilleries engaged in production of liquor. About 2.5 Lakh Metric Tons Molasses is required for production of veterinary food. The estimated molasses production during the season from 2019 to 2020 was approximately 22.20 Metric Ton, which was much less than average production of Molasses in the past. Further, in view of the policy of the Central Government, use of 10% Ethanol was permitted to be blended in the oil. Therefore, it was apprehended that requirement of Molasses within the State would be hampered thereby causing decrease in production of liquor and other products. To cope-up with the aforesaid situation, a policy decision was taken to restrict the export or transportation of Molasses outside the State of Maharashtra for limited period.

7. Mr. Kale, learned AGP would further submit that subsequently, the stock of the situation was taken during progress of sugarcane crushing season. It was found that about 3.02 Metric Ton Molasses was stocked with the Sugar Factories and production of 24.10 Lakh Metric Ton was achieved, which was beyond the earlier estimation.

He would further point out that on 9.6.2020, total 8.47 Lakh Metric Tons Molasses was in stock with sugar factories and 5.43 Lakh Metric Ton Molasses was in stock with distilleries. As such total 13.90 Lakh Metric Ton Molasses was available. The Commissioner of Sugar estimated production of 36 to 38 Lakh Metric Tons during season 2020-2021. Further, due to outbreak of Covid-19 Pandemic, the demand of Molasses had been substantially reduced. In that view of the matter, it was resolved to withdraw the Ban imposed under the Government Resolution dated 27.12.2019. He would submit that the decision was taken to balance the interest of the Sugar Factories and also requirement of Molasses for production of liquor, sanitizer and other products. He would further submit that a centralized system was introduced for monitoring export through the Commissioner of State Excise. Mr. Kale, urge that, the State has every right to take appropriate policy decision while balancing the interest of the stake holders. He would urge that challenge raised by the petitioners may not be entertained in the judicial review, since no ground requiring interference in writ jurisdiction by this court are made out.

8. We have heard learned Advocates appearing for the respective parties. With their able assistance, we have gone through the record.

9. Perusal of the Government Resolution dated 27.12.2019 would indicate that the decision was taken to impose the ban on export of Molasses, considering the fact that during sugarcane crushing season 2019-2020, production of Molasses was expected to the extent of 22.20 metric ton, which is approximately 60% of average production during past seasons. The Commissioner of sugar based on survey, particularly, flood situation in western Maharashtra Region and drought in Marathwada Region, apprehended drop in production of sugarcane; consequently, drop in production of Molasses. The report of the sugarcane Commissioner was taken into consideration and policy decision had been taken to impose ban was against export/transportation of Molasses outside the State of Maharashtra. The object of such decision was to ensure availability of the Molasses for the distilleries and other manufacturing activities. Pertinently, ban was imposed for limited period up to 30.9.2020.

10. What we found from the contents of the Government Resolution that the decision to put ban on export/transportation of Molasses outside the State of Maharashtra was for limited duration as an ad-hoc measure to overcome purported shortage of the Molasses for consumption within the State. It was not intended to be a permanent

ban. In that view of the matter, it is difficult for us to accede with the contention of the petitioners that such decision was to be operated in perpetuity, dehors the estimation of availability of Molasses during the future seasons.

11. After going through the impugned Government Resolution dated 29.6.2020, what can be observed is that the State Government has taken stock of the situation as on 9.6.2020. It has been recorded that the production of the Molasses has crossed the estimated figures and further huge stock was found to be stored within the Sugar Factories and distilleries. The Molasses stock was found to be beyond requirement within the State of Maharashtra. Pertinently, due to outbreak of Covid-19 Pandemic, the demand of distilleries was reduced as compared to the availability of the Molasses. Even, sugar factories, were burdened with additional Molasses in their stock, causing loss to them. In that view of the matter, the State Authorities were prompted for premature withdrawal of ban imposed under Government Resolution dated 27.12.2019 and permit Molasses manufacturers to transport/export the same outside the State of Maharashtra.

12. The Petitioners, who are the manufacturers of liquor are contending that, after withdrawal of Ban, the Molasses manufacturers

have refused to accept their orders for supply of Molasses and their interest has been prejudiced. However, no specific material is placed before us to show that the business activities of the petitioners were affected in such a manner that the right under Article 19(1) (G) of the Constitution of India has been violated. The petitioners could not demonstrate before us that decision of withdrawal of Ban on molasses export, under impugned decision is tainted with malafide. If the petitioners are seeking judicial review of the policy decision, it is for them to demonstrate that such a decision is arbitrary and violative of the Constitutional, statutory or any other provisions of law. When Government forms a policy, it is based on number of circumstances, facts, law including constraint based on resources. Even, it is based on expert's opinion. The Courts cannot be expected to test the utility benefit, beneficial effect of the policy or its appraisal based on facts set out on the affidavits.

13. The petitioner cannot claim absolute right in a welfare State and secure its own benefits in exclusion of the benefit of other section of the industry. The individual right claimed by petitioner, cannot override the right of molasses producers. It is the cardinal principal that it is not within the legitimate domain of the Court to determine whether a

particular policy decision can be served better by adopting any policy different from what has been laid down. Even it would not be open for the Court to examine correctness of the reasons which prompted the Government in the decision while taking one course of action instead of another. The state authorities must be given leverage to adopt the policy decision considering the points from different angles. The Court is not expected to examine the policy decision as an Appellate Forum and replace its opinion as against review of the Government. In the facts present case, Government has exercised discretion to decide its own priorities and provided relief to the molasses manufacturers.

14. In the present case, what we noticed is that, earlier under Government Resolution dated 27.12.2019 policy decision was taken with a view to cope-up with shortage of Molasses that was foreseen based on estimated production of sugarcane during current sugarcane crushing season. Even such decision to impose Ban was for limited duration and it was to expire on 30.9.2020. However, in the month of June, 2020, based on the surveys of estimate of production and requirement of Molasses within the State of Maharashtra and circumstances arising from pandemic situation, the review of earlier decision was taken and the Ban imposed under the Government Resolution dated 27.12.2019 has been

withdrawn. It was never being a policy of the State to have permanent ban on export or transportation of Molasses out of state and priorities its availability to the liquor production. Even, State cannot have such a policy. The State would be under obligation to balance the interest of Molasses manufacturer vis-a-vis the liquor manufacturers. The sugar factories/Molasses manufacturers cannot be burdened only to protect interest of liquor manufacturers. The right of molasses producers in state particularly, from cooperative sector to earn good returns by exporting the molasses to consumers beyond state cannot be permanently closed.

15. For the aforesaid reasons, we do not find merit in the writ petition. Accordingly, we proceed to pass the following order.

-:O R D E R:-

[a] Writ petition stands dismissed.

[b] No order as to costs.

[S.G. CHAPALGAONKAR]
JUDGE

[NITIN W. SAMBRE]
JUDGE

aaa/- ....