IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP-5620-2020

M/s Flyover Distillers and Bottlers Pvt. Ltd. ....Petitioner

vs.

State of Haryana and ors. ...Respondents

2. CWP-6397-2020

M/s Rock and Storms Bottler Pvt. Ltd. ....Petitioner

vs.

State of Haryana and ors. ...Respondents

3. CWP-6905-2020

M/s Oasis Resorts Pvt. Ltd. ....Petitioner

vs.

State of Haryana and ors. ...Respondents

Date of decision:- 10.10.2023

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Puneet Bali, Sr. Advocate with
Mr. Vishavjeet S. Beniwal, Advocate
for the petitioner in CWP No. 6397-2020

Ms. Radhika Suri, Sr. Advocate with
Mr. Siddhant Suri, Advocate
for the petitioner in CWP No. 5620-2020

Mr. Tushar Kanwar, Advocate and Mr. Vikram Jain, Advocate
for the petitioner in CWP No. 6905-2020

Mr. Samarth Sagar, Addl.A.G. Haryana with
Mr. Sankalp Sagar, Advcote
for the respondent-State

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Ritu Bahri, J.

1. This order shall dispose of the above three petitions wherein challenge is to Clause 9.7 of the Haryana Excise Policy, 2020-21 and 2021-22 to the extent that license L-15 for bottling of Country Liquor stands discontinued. However, the facts are being taken from CWP No. 5620-2020.

2. The facts in brief are that the petitioner has established bottling plant in about 1.5 acres for bottling of Country liquor i.e potable liquor in the State of Haryana. The Oriental Bank of Commerce sanctioned the Term Loan of 3.00 Crore to the petitioner for setting of Bottling Plant for liquor, as per copy of the sanctioned letter dated 05.04.2017 (Annexure P-3). The petitioner thereafter, received letter of intent for setting up of new plant for bottling of country liquor and Indian made Foreign- Spirits (CL & IMPL, bottling plant) (1.11 & 1.15) with 6,60,000 cases per annum i.e. 30,000 cases of country liquor and 25,000 cases of IMFL per month for which specified conditions were there which were duly fulfilled by the petitioner. The copy of Certificate of FSSAI, Certificate issued by State Pollution Control Board, Certificate of No objection from the Panchayat of village Bagwala and License under the Food Safety Act, 2006 are Annexure P-4.

3. The bottling of country liquor can be done by two categories of persons distilleries holding D-2 license which are engaged in production of Industrial Alcohol and thereafter, through blending produce country liquor and persons like the Petitioner who purchase industrial alcohol and through blending bottle country liquor. The Haryana Excise Policies have always granted licenses to the two categories for bottling of country liquor. The Petitioner was granted the license for bottling of IMFL, & Country Liquor i.e. L11 & L15 and further the license for bonded warehouse was also granted to the petitioner for storage of the

bottled liquor as per Section 22 of the Punjab Excise Act, 1914. The copy of the licenses are attached as Annexure P-5. The petitioner is doing the business of bottling of Country Liquor after receiving the L15 Licence as per Haryana Excise Policy 2018-19. The respondent had renewed the licence for the bottling of Country Liquor from 2018-19 after receiving the fees as per the Haryana Excise Policy, but in Haryana Excise Policy 2020- 21 & further in Excise policy 2021-22 the respondent suddenly discontinued the L15 licence only to benefit the firms/companies which are in business of manufacturing the rectified sprit/ENA and also in bottling of liquor. The copy of the Haryana Excise Policy 2019-20 and 2020-21 are attached as Annexure P-6 to P-7 respectively.

4. The petitioner has further challenged the clause 9.7 of new Haryana Excise Policy of 2021-22 in continuation of earlier excise Policy of 2020-21 on the same grounds as for earlier excise policy 2020-21. Copy of Haryana Excise Policy 2021-22 is attached as Annexure P-8.

5. On notice of the writ petition, a reply of amended writ petition was filed by Joint Excise and Taxation Commissioner-cum-Collector (Excise), Excise and Taxation Department, Haryana i.e respondent Nos. 1 to 3 on 09.05.2022 stating therein that that Article 246 of the Constitution of India confers an exclusive power upon the State Legislature to make laws in respect of any of the matter enumerated in List-11 of 7 Schedule of the Constitution. The Punjab Excise Act, 1914 has been enacted under Entry 8 and Entry 51 of List-11. The Haryana Liquor License Rules, 1970 have been framed as per the provisions of Section 59 of the Punjab Excise Act, 1914. Every year, Haryana State Excise Policy is formulated after suitable modifications in the previous year's Excise Policy and is

approved by the Council of Ministers, to carry out the mandate of the aforesaid Act/Rules.

6. Further, the framing of Excise policy falls in the exclusive domain of the State Government and the Excise Policy of 2020-21 and 2021- 22 has been duly approved by the Council of Ministers, Haryana and, therefore, a writ petition that targets the Policy of the State is not maintainable unless the policy is shown to be arbitrary or against the provisions of the Constitution. The petitioner has no fundamental right to trade in liquor or to run a Bottling Plant. The Policy is not discriminatory in so far as it seeks not to renew the licenses of all the Bottling Plants engaged in bottling of Country Liquor These licenses are given for a period of one year coterminous with the Policy. As per Policy 2020-21 and 2021-22, Bottling Plants henceforth will be allowed to bottle only Indian Made Foreign Liquor (IMFL).

7. As per the conditions mentioned in the License Form L-11 and L-15, the petitioner/licensee cannot claim the CAR renewal of license as a matter of right. Even in the neighboring State of Punjab and Himachal Pradesh, where Punjab Excise Act, 1914 is applicable, the bottling plants of Country Liquor have not been allowed by any of the States. Presently there are four L- 15 Licenses which were granted in the year 2017-18, 2018-19. While granting these L-15 licenses, the Department could not adequately examine the manufacturing capacity of the existing Distilleries in the State. As a matter of fact, the installed capacity of existing Distilleries is much more than the maximum basic quota for CL & IMFL of the State.

8. The distilleries carry out the complete process manufacturing of liquor leading upto bottling. As against this Bottling Plants carry out only bottling. As per

the project proponents, a Distillery required an investment of 200-250 Crore plus land and a Bottling Plant requires an investment of Rs. 4-5 Crore plus land. Usually the Bottling Plants are allowed as a stop gap arrangement, when the Distilleries do not have sufficient bottling capacity. Secondly, liquor being a completely regulated trade, the Maximum Basic Quotas of liquor are also fixed by the government in the Excise Policy itself. The Haryana has 15 number of licensed Distilleries whose production capacity is much more than three times the Maximum Basic Quota. Even if exports out of the State and Additional Quota after payment of Additional Excise Duty at the present level are considered, the production capacity of Distilleries is far too much in excess. While considering grant of L-15 licenses, somehow, these details could not be deliberated on their files.

9. The liquor being a controlled trade, the Ex-Distillery Price (EDP) of Country Liquor. The quota of Country Liquor, margins of manufacturers as well as of wholesalers, cost price and selling price of Country Liquor are directly controlled and regulated by the Government. Since, Country Liquor is primarily consumed by the lower strata of the society, the EDP of the Country Liquor is kept at lowest possible rates by the Government, so as to keep the retail prices of Country Liquor on lower side. Therefore, the margins of the Distillers themselves are very thin. In order to sustain and survive in the trade, high volumes are required to be produced by the Distillers. With addition of more and more players in the trade, be it in the form of Distillery or a bottling Plant, the production volume of each manufactory is bound to decrease and consequently the trade becomes unviable after a point especially for those manufactories whose sale volumes are low. Coupled with this, the fact that keeping in view the commitment of the State,

not to allow too much consumption of Country Liquor, the basic quota is not increased that much. This fact can be appreciated by comparing the basic quota of Country Liquor for the year 2010-11with that of 2020-21. In the last ten years, the quota has just been increased from 900 lac P.L. to 1050 lac PL only. The margins of the Distilleries while selling ENA to the Bottling Plants and the Excise Duties leviable there on, further reduce the economic viability of the Bottling Plants when compared to a Distillery. In other words the margins for the Distilleries themselves, in manufacturing of Country Liquor, are kept very low. The Distilleries often keep representing for price increase. Even these low margins tend to disappear in case of Bottling Plants as they have to purchase ENA from Distilleries. During consultations in the month of December 2019, it was a regular complaint from Retail Country Liquor Licensees that large quantities of Country Liquor are being dumped in the market by the manufactories at lower than fixed prices by evading Excise Duty. The Department used to get Additional Excise Duty on Country Liquor to the tune of approximately Rs.10 Crore in the year 2016-17 which has drastically declined to merely Rs. 8.00 lakh in the year upto 2020.

10. A comparison showing the receipt of excise duty for the financial year 2011-12 and 2019-20 is tabulated below:-

Sr.No.	Financial year	Distilleries in the State	Bottling Plant	Excise Duty/Addl. Excise Duty
1.	2011-12	08	Nil	268 lacs
2.	2019-20	15	04	235 lacs with no additional excise duty

11. With a view to resurrect the situation, the Government has taken several decisions by way of amendments in the Punjab Excise Act 1914 and in the Excise Policy for the year 2020-21 and 2021-22. Discontinuation of license of Bottling Plants to the extent of bottling of Country Liquor is only one of several such decisions. The petitioner may continue to bottle IMFL. As of today, all the licensee petitioners have composite licenses (L-11 & 1-15) for bottling of both IMFL & Country Liquor. That way they can continue the bottling of IMFL on the basis of their existing L-11 licenses and they will require to discontinue the bottling of Country Liquor only.

12. The State Assembly has passed an Amendment Bill to amend several provisions of Punjab Excise Act, 1914. This Bill has received consent from the Governor, Haryana on 17 March 2020 only and has been notified on 31 March, 2020 The Amendment has made several offences under the Act Non- Bailable and prescribes higher punishments to act as deterrent in cases of illegal manufacture, transport, sale etc. of liquor which are basically intended to evade Excise Duty.

13. The Excise Policy for the year 2020-21 and 2021-22 has several provisions which are incorporated to address the issue of Excise Duty evasion and safeguard the Government revenue on this court above. These provisions can be summarized as under:-

1) As per clause 3.2 of the Excise Policy 2019-20, 40% of the Basic Quota of Country Liquor is fixed and is distributed equally among all the distilleries operating from Haryana. Keeping in view the fact that protectionism breeds inefficiencies and also keeping in view the fact that market forces alone should be allowed to determine the quality of liquor, it has been decided to do away with this fixed quota concept over a period of two years. In the Financial Year 2020-21 this quota is being reduced from 40% to 20% and for financial year 2021-22 it has been reduced from 20 % to 15%. It is expected that inefficient Distilleries and Distilleries with poor quality Country Liquor would be forced to windup their operation by the market forces.

ii) As per clause 3.4.4 of the Excise Policy 2019-20, the licensees could transfer their quota on quarterly basis with other licenses. This resulted *in unnecessary movement of liquor from one place to another. Similar problem was also being faced due to fixed quota as the licensees were exchanging permits of Country Liquor. This was creating lots of problems in tracking of movement of liquor and it was becoming difficult to check evasion of Excise Duty. This provision has been removed in the Excise Policy 2020-21 and 2021-22.*

iii) The petitioner has challenged the third such provision regarding discontinuance of the license in Form L-15. Detailed reasons for the same are already provided in the reply.

iv) As per clause 9.7.2 of the Excise Policy 2020-21, no new LOI shall be granted for setting up of any Distillery Bottling Plant till actual capacity utilization becomes at least 90% of the installed production capacity of the existing Distilleries in the State. It has been experienced lately that excess installed capacity is being misused to manufacture/bottle Country Liquor beyond Basic Quota with the intention of selling it by evading Excise Duty. However in the Excise Policy for the year 2021-22,

v) It has also been decided as per clause 9.7.2 of the Policy that if LOI holders for setting up of Distillery or Bottling Plant fail to set up the plant with in prescribed time limit, the Letter of Intent (LOI), will not be revalidated.

vi) As per clause 12,2 of the Excise Policy 2020-21 and 2021-22, it has been decided to install flow meters in all the distilleries of the State to effectively assess and monitor the quantity of ENA produced and utilized by the distilleries, Any mismatch in the quantities of ENA produced and duty paid Country Liquor would directly expose the Manufactories trying to evade Excise Duty

vii) The Government has also decided to depute police personnel at all the Distilleries and Bottling Plants of the State for round o'clock monitoring of the manufactories. One Constable of Police and one Peon of the department will soon be deployed in three shifts in the premises to maintain an account of vehicles entering and leaving the premises of the manufactories besides other vigil.

14. In compliance of order dated 13.07.2022, an additional affidavit dated 27.07.2022 of Mani Ram Sharma, Excise and Taxation Commissioner, Haryana was filed wherein the additional Excise Duty collected on country liquor was mentioned in the table below:-

Additional Excise Duty on Country Liquor	
Excise Policy Year	Amount (in Rs.)
2017-18	104,735,349
2018-19	422,204,872
2019-20	1,081,472
2020-21	1,022,854,055
2021-22	1,130,405,535

15. The process adopted by the distillery and bottling plant is annexed as Annexure R-1 and R-2 to clarify the major difference between the working of Distillery (Holder of D-2 license) and bottling plant (L-15). The major difference between the working of distillery (Holder of D-2 license) and bottling plant is mainly because of the nature of functions/activities which are performed. The holder of D-2 license undertakes the process starting from grain storage, grain cleaning, milling, slurry preparation, liquefaction, saccharification, instantaneous fermentation, distillation, decantation and other related activities. As a result of this combined process following types of alcohol is produced:-

a. Industrial alcohol or Rectified spirit.
b. Absolute alcohol
c. Denatured spirit.
d. Extra Neutral Alcohol.
e. Perfumery grade alcohol.

16. The bottling plant on other hand does not perform the above mentioned processes. The bottling plant simply means a plant where drinks/alcoholic beverages are put into bottle through the process of blending Winding can simply be described as "*to mix or combine things together, or to mix or combine with something else, to make one substance;*"

17. The ENA or Rectified Spirit which is manufactured by the distillery is procured by the bottling plant from distilleries having D-2 license After procuring

the ENA or Rectified Spirit, the bottling plant process the ENA by diluting the ENA to 75 degree proof which is IMFL and further dilution of ENA to 50 degree proof is Country Liquor. After dilution of ENA to the degrees mentioned above, it is bottled by the bottling plant and labels are affixed on the bottle. It is submitted that for the bottling plant to operate, there is primary requirement of ENA or Rectified Spirit which is manufactured by the distillery only.

18. The discontinuance of L-15 will not affect the bottling plant as alleged by the petitioners as the machinery could be easily used for bolting of IMFL under L-11 license. The Government offered the opportunity of conversion of L-15 license to L-11 license at very nominal fee in the Excise Policy for the year 2021-22 under clause 9.7.1. The clause 9.7.1 of Haryana Excise Policy for the year 2021-22 read as under-

> *"L-15 license was discontinued in the last year's policy. Bottling Plants hitherto having L-15 license, will be allowed to take L-11 license after paying one time conversion fee of Rs. 10.00 Lakh along with other fees of L-11 license*

19. After the implementation of Excise Policy for the year 2020-21, ***M/s Global Bottlers*** applied for conversion of its L-15 license into L-11 in the Excise Policy for the year 2021-22. The application for conversion was submitted by the petitioner on 28.06.2021 in the department, which was approved on 02.09.2021. Similarly, ***M/s Flyover distillers*** renewed its L-11 license for the Excise Policy of the year 2020-21. The application for renewal of L-11 was submitted by the petitioner on 11.05.2020 which was renewed on 21.05.2020. ***M/s Rock & Storm*** had submitted no application for renewal of L-11 for the Excise Policy of the year 2020-21. ***M/s Oasis Resort Pvt. Ltd*** (A company of Oasis Group) remained holder of L-11 license and L-15 license for the year 2018-19 and 2019-20. After the

discontinuance of L-15 license in the Excise Policy for the year 2020-21, M/s Oasis Resort Pvt. Ltd, did not submit an application for the renewal of L-11 license in the Excise Policy for the year 2020-21.

20. M/s Oasis Resort Pvt. Ltd. (A company of Oasis Group) is having its registered office address at HD-8, Pitampura near Madhuban Chowk, New Delhi-110034. There are two distilleries (Holder of D-2 license) already working in the State of Haryana at Ambala under the name of M/s Oasis Commercial Pvt. Ltd.. Village Jatwar, Tehsil Naraingarh and M/s Oasis Overseas Exports Pvt. Ltd., Village Jatwar, Tehsil Naraingarh. M/s Oasis Commercial Pvt. Ltd. (Holder of D-2 license) is having it registered office address as that of M/s Oasis Resort Pvt. Ltd., Bhiwani (Bottling plant) at HD-8, Pitampura near Madhuban Chowk, New Delhi-110034. M/s Oasis Commercial Pvt. Ltd. and M/s Oasis Overseas Exports Pvt. Ltd. (Both holder of D-2 license) are having its head office at 40, North Avenue, West Punjabi Bagh, Delhi-110026. All the above mentioned commercial establishments are related entities.

21. The matter regarding regulation of liquor falls in the state list at entry 51 and therefore the state has exclusive right to make laws in respect of such matters. The Government has thus rightly exercised its powers to discontinue the L-15 license in order to safeguard the revenue involved.

22. As per Section 43 of Punjab Excise Act, 1914, no person is entitled to claim renewal thereof as a matter of right and no claim shall lie for damage or otherwise in consequence of refusal to renew license. Section 43 of Punjab Excise Act, 1914 is reproduced as under:-

> *"No claim in consequence of refusal to renew a license etc.-No person to whom a license permit or pass may have 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 license, permit or pass on the expiry of the period for which it remains in force."

23. The State Legislature derives its power to grant L-15 license from above mentioned clauses. **The clause 9.7.2 have been omitted by Government of Haryana vide gazetted notification no. 26/X-I/P.A. 1/1914/5.59/2020 dated 01.04.2020.** The petitioners have not challenged the above mentioned gazette notification, vide which the L15 license has been discontinued for the Excise Policy of the year 2021-2021.

24. Reference has been made to judgment of Hon'ble the Supreme Court of India in a case of ***M/s Sugar Works Ltd vs. Delhi Administration,*** 2001 (3) SCC 635 wherein Hon'ble the Supreme Court has observed as under:-

"There is no fundamental right to trade in liquor - To regulate manufacture, sale and distribution of liquor is a policy matter of each State which is made in exercise of statutory powers of the State under the Act. The court cannot interfere with such policies of the State unless the same is found mala fide, unreasonable, arbitrary or unfair. It has been held that no direction can be given or expected from the Court regarding "correctness' of an executive policy unless while implementing such policies, there is infringement or violation of any constitutional or statutory provision. The matters of economic and financial policies, ought to be left to be decided by the Government itself. Further, the Hon'ble Supreme Court of India para 15 which is mentioned below has observed as under:-

"State has every right to regulate the supply of liquor within its territorial jurisdiction to ensure that what is supplied is 'liquor of good quality."

25. Reference has further been made to judgment of this High Court dated 06.04.2020 titled as "***Vishal Singla vs. State of Haryana and others***, (CM-4252-CWP-2021 in/and CWP-17625-2020), wherein it has been held as under:-

"Furthermore the matters of economic and financial policies ought to be left to be decided by the Government itself. The Court cannot strike down a policy decision taken by the State in the form of letter Annexure P-15"

26. Learned counsel for the petitioner has referred to a judgment of Hon'ble the Supreme Court of India in a case of ***Khoday Distillries Ltd and others vs. State of Karnataka and others***, 1995 (1) SCC 574, wherein it has been held that a citizen has no fundamental right to trade or business in liquor as a beverage. Activities which are res extra commercium cannot be carried on by any citizen. The State can prohibit completely trade or business in potable liquor since trade or business in liquor as a beverage is res extra commercium. The State can also create monopoly in itself for trade or business in such liquor. The State can further place restrictions and limitations on such trade or business in res commercium. Such restrictions and limitation under Article 19 (6) can be placed by subordinate legislation as well. The State is not precluded from regulating the trade and business in potable liquor merely because it imposes tax or fee on purchase or sale and income is derived from such liquor. But the State cannot discriminate between citizens carrying business in liquor within the restrictions. ***The State cannot prohibit business in medicinal and toilet preparations or industrial alcohol containing liquor but it can impose reasonable restriction on right to trade or business therein.***

27. A reply has been filed on behalf of the petitioner (CWP-5620-2020) to the additional affidavit filed by Mani Ram Sharma, Excise and Taxation Commissioner, Haryana (Link Officer) stating therein that the discontinuance of L-15 license has created monopoly in the State of Haryana, as the respondent has allowed D-2 licence holders to continue with the bottling of country liquor only

because they have spent more money than the bottling plant. Further the data as given in para No. 4 of the affidavit that the additional excise duty of country liquor had fallen from 42,22,04,872/- (for excise policy 2018-19) to Rs.10,81,472/- (for excise policy 2019-20) and further declined to Rs.1,02,28,54,055/- because of discontinuance of L-15 license is totally wrong as on 20.03.2020 lock down had been imposed all over the India due to COVID 19 Pandemic, therefore, the decline in additional excise duty was only due to Covid-19 Pandemic. The rise in additional excise duty from the policy year 2019-20 to 2020-21 is not due to discontinuance of L-15 license.

28. The respondents imposed restriction in ex-issue distillery price to sell low brand of IMFL at fixed rate due to which many bottling plants and distilleries transferred in to metro country liquor of 65 degree proof, which also is admitted fact of rise in additional excise duty from excise policy year for the year 2019-20 and 2020-21. Further from 2017-18 to till date, various F.I.Rs had been registered against the different distilleries and huge amount of penalties were imposed against them for dumping of cases and for evasion of excise duty. But in case of bottling plants, no illegal activity like dumping of country liquor or evasion of excise duty is found in all these years and the dumping mentioned by the department is done by distilleries and not any bottling plants. The Government suspended license of many distilleries due to the fact that they were dumping liquor and evading excise duty which results in harming the reputation of the petitioner having no criminal record. Few F.I.R's are mentioned below:-

1. Kaithal-F.I.R No. 0517 dated 03.11.2018
2. Karnal-F.I.R No. 0188 dated 19.12.2016
3. Ambala-F.I.R No. 0101 dated 27.06.2017

4. Ambala-F.I.R No. 0541 dated 03.11.2018
5. Ambala-F.I.R No. 0101 dated 27.06.2017
6. Ambala-F.I.R No. 0102 dated 27.06.2017
7. Ambala-F.I.R No. 0143 dated 26.06.2019
8. Kurukshetra-F.I.R No. 0222 dated 25.05.2019
9. Kurukshetra-F.I.R No. 0302 dated 10.07.2019
10. Kaithal-F.I.R No. 517 dated 03.11.2018

29. It is also admitted fact that some of the distilleries even after being holder of D-2 licenses used to purchase ENA from other distilleries. Therefore, it cannot be said that there is difference between the process adopted by D-2 licence holders and bottling plants as the process for manufacturing of country liquor is same for both. The distilleries which are purchasing ENA from other distilleries are Associated Distillery Ltd, Frost Falcon Distillery, Piccadily Sugar and Allied Industries, Haryana Distilleries.

30. Heard learned counsel for the parties at length.

31. In ***Khoday Distilleries Ltd's case (supra),*** Hon'ble the Supreme Court was dealing with question that whether the appellant/petitioners have fundamental right to carry on trade in liquor and whether the State can prevent the petitioners from carrying on with the business of liquor as apart from trade, during the unexpired period of licences. Hon'ble the Supreme Court after hearing the parties, summarized the law as under:-

> *"(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 (8) 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 on 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 a 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."

32. Hon'ble the Supreme Court has held that a citizen has no fundamental right to trade or business in liquor as beverage. The State can prohibit completely the trade or business in potable liquor since liquor as beverage is rex extra commercium. The State may also create a monopoly in itself for trade or business in such liquor. The State can further place restrictions and limitations on such trade or business which may be in nature different from those on trade or business in articles res commercium.

33. Reference at this stage can also be made to a Division Bench judgment of this Court in a case of ***Amarjit Singh Sidhu vs. State of Punjab and others***, CWP No. 5593-2016, decided on 09.06.2018 wherein the petitioner prayed for quashing the newly created/added clause 2.14 of L-1A licence in the Excise Policy dated 13.03.2016 for the year 2016-17 being arbitrary, illegal and against the provisions of Punjab Excise Act, 1956 as Excise Department had no authority to add, delete or cancel any kind of category of licence in the Excise Poloicy without amending the relevant Acts and the Rules where there is a chart of liquor

licenses. The petitioner was engaged in the business of liquor trade for the past so many years in the State of Punjab. In the month of March 2016, the State of Punjab announced its Excise policy for the year 2016-17 under the Act and the Rules. In the previous excise policy for the last year, there were different classes of licences mentioned in the Rules. The controversy arose when the State Government announced its excise policy for the year 2016-17 in which excise department has added a new dimension to the category namely L-1A licence which is above the category of L-1 licence which is a wholesale licence for the sale of Indian 2 of 56 made foreign liquor (IMFL). The L-1A licence has been added/created just to monopolize the trade of liquor in the State of Punjab. Earlier, there was procedure in the excise policy that the person who was licensee of L-1 wholesale licence shall take the liquor directly from the manufacturing company. After adding L-1A licence, it has been specified that a person who is holder of L-1 licence will now have to take the liquor for sale from the L-1A licensee i.e. newly created category of licence in the excise policy for the 3 of 56 year 2016-17. It has been further claimed that the new licence has been created to monopolize the liquor trade and extend the same to the particular group of persons namely Chadha group, Malhotra group. Doda group and AD group who are at present major stake holders in the liquor business in the State of Punjab and are instrumental in influencing the excise department for creation of new category i.e. L-1A licence for their own economic interest. The petitioner avers that there is no power with the excise department to add or cancel any classification of the licensees in the excise policy without amending the Act and the Rules. Further, it is also not specified who is the competent authority to grant the L-1A licence and who is responsible to legally monitor or scrutinize the application for grant of L- LA licence. No criteria has been prescribed for the manufacturer to give letter of consent if more than one person shows interest for its L-1A licence. The projected number of IMFL L-1A licensees in the State of Punjab is fixed at three and there will be just two L-1A liquor licence for Beer in the entire State of Punjab which would lead to monopolization of liquor trade in the State of Punjab. Still further, the term Arms Length Distance for grant of L-1A licence only to the persons who are in any way not related to the manufacturing company is a very subjective term. The petitioner also sent a legal notice cum representation dated 17-3-2016, Annexure P.2 to the respondents but no reply has been received from the department. In para 35 and 36 of the above judgment, it has been observed as under:-

> *"35. Equally, the plea of the respondents for dismissal of the writ petition for want of necessary parties being impleaded has no weight. As noted earlier, the notification amending the Rules was issued on 23.3.2016 during the pendency of the writ petition. Further, on April 12, 2016, on the no objection of the learned Advocate General, Punjab, it was directed that allotment of licences L-1A shall be subject to the further orders to be passed by this Court in this writ petition. The order dated 12.4.2016 is reproduced for ready reference which reads thus:-*
>
> > *"Further submissions have been made by the learned Advocate General, Punjab.*
> >
> > *For remaining arguments, to come up on 26.4.2016.*
> >
> > *Learned counsel for the petitioner(s) made a prayer that the allotment of licences under category L-1A be made subject to the further orders to be passed by this court in the writ petition(s), as no permit has been issued to the licencees L-1A so far. Learned Advocate General, Punjab pleads no objection to the same.*
> >
> > *54 of 56 In view thereof, it is observed that the allotment of licences L-1A shall be subject to the further orders to be passed by this Court in this writ petition(s)."*

The successful applicants had derived any right, if any, thereafter only. In view of the above and especially when the challenge had been laid to the policy decision of creating L-1A licence itself in the Excise Policy 2016-17 even before issuance of any licence, the writ petition cannot be held to be not maintainable for want of impleadment of the licencees, if any, of L-1A category in the writ petition.

36. Keeping in view the consideration of revenue of the State and the subsequent events, we mould the relief as under:-

(1) The respondent is empowered to incorporate sub clause (ii) of clause 2.14 in the Excise Policy 2016-17 but the same is held to be invalid and inoperative to the extent it does not prescribe the manner and the method of its issuance by the manufacturers or the distilleries. It shall be open to the respondent-authorities to make appropriate amendment and prescribe necessary guidelines to the manufacturers/distilleries for issuing consent/authority letter to eligible applicants either by draw of lots, auction or any other mode providing equal opportunities in a transparent and objective manner. It shall, however, be open for the respondents to retain such right with the concerned authority, if so required.
(2) If often taking corrective measures and inviting fresh applications/offers, in case no fresh offer or application comes forth, the allotments, if any, already made shall continue for the rest of the period.

34. This judgment will not be applicable to the facts of the present case as in the present case, as per Excise Policy 2020-21, the issue of L-15 license has been done away with.

35. The question for consideration in the present writ petition is that whether petitioners who had set up their bottling plant, can be denied license L-15 for bottling of Country Liquor

36. In the present case, the L-15 license has been discontinued for those bottling plants which are still having L-11 license. As per additional affidavit dated

27.07.2022 of Excise and Taxation Commissioner, Haryana (Link Officer), it has been stated that the discontinuance of L-15 license has been taken by the respondents after due deliberations and to protect the evasion of excise duty. It has further been submitted that the major difference between the working of distillery (Holder of D-2 license) and bottling plant is mainly because of the nature of functions/activities which are performed. The holder of D-2 license undertakes the process starting from grain storage, grain cleaning, milling etc. The bottling plant does not perform the above mentioned process. It simply means a plant where drinks/alcoholic beverages are put into bottle through the process of blending.

37. It is not in dispute that as per reply filed dated 09.05.2022, presently there are four L- 15 Licenses which were granted in the year 2017-18, 2018-19. While granting these L-15 licenses, the department could not adequately examine the manufacturing capacity of the existing Distilleries in the State. The installed capacity of existing Distilleries is much more than the maximum basic quota for CL & IMFL of the State. The Haryana has 15 number of licensed Distilleries whose production capacity is more than three times of the Maximum Basic Quota. Even if exports out of the State and Additional Quota after payment of Additional Excise Duty at the present level are considered, the production capacity of Distilleries is far too much in excess. As per clause 9.7.2 of the Excise Policy 2020-21, no new LOI shall be granted for setting up of any Distillery plant till actual capacity utilization becomes at least 90% of the installed production capacity of the existing distilleries in the State. The excess installed capacity is being misused to manufacture/bottle country liquor beyond basic quota with the intention of selling it by evading Excise Duty. Further all the licensee petitioners have composite licenses (L-11 and L-15) for bottling of both IMFL and Country

Liquor. They can thus continue the bottling of IMLF on the basis of their existing L011 licenses and they will require to discontinue the bottling of country liquor only.

38. The framing of Excise Policy falls in the exclusive domain of the State Government and the Excise Policy of 2020-21 and 2021-22 has been duly approved by the Council of Ministers, Haryana. The petitioners have no fundamental right to trade in liquor or to run a bottling plant. The liquor being a controlled trade, the Ex-Distillery Price of Country liquor, the quota of country liquor, margins of manufacturers as well as of wholesalers, cost price and selling price of country liquor are directly controlled and regulated by the Government. At this stage, the petitioners cannot seek interference of this Court on the ground that change in policy is adversely affecting them. The matters of economic and financial policies, ought to be left to be decided by the Government itself. It has been rightly decided to do away with fixed quota concept over a period of two years from 40% to 15%, as it was expected that inefficient Distilleries and Distilleries with poor quality Country Liquor would be forced to windup their operation by the market forces.

39. Thus, the clause 3.2 cannot be held to be arbitrary. It is not in dispute that the Government offered the opportunity of conversion from L-15 license to L-11 license at very nominal fee in the Excise Policy for the year 2021-22 under Clause 9.7.1 but as discussed above, only one or two bottling Plants chose to opt for L-11 license. In the present case, while making the Excise Policy, the State has decided to discontinue L-15 license to everyone and there is no pick and choose policy. Further chance was given for conversion from L-15 to L-11 license but they have chosen not to apply for the same. The amendment in the policy has been

made in public interest. The cancellation/revocation of the license falls within the executive function of the State whereas any amendment or discontinuation of any provision/section falls under the legislative power of the State and the State legislature has absolute powers to make laws/provisions to regulate the trade of liquor.

40. In view of the discussion made, the present petitions stand dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

10.10.2023
G Arora

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No