



2025:DHC:2107



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Judgment pronounced on: 28.03.2025***

- + **W.P.(C) 721/2025 and CM APPL.3550/2025**
HARVINDER AND COMPANYPetitioner
versus
GOVERNMENT OF NCT OF DELHI & ANR.Respondents
- + **W.P.(C) 15673/2024, CM APPL. 65831/2024**
SHARDA PIPES PVT LTD.Petitioner
versus
GOVT OF NCT OF DELHI & ANR.Respondents
- + **W.P.(C) 16104/2024, CM APPL. 67686/2024**
BERCH HOLDINGS PVT LTD.Petitioner
versus
GOVT OF NCT OF DELHI AND ANR.Respondents
- + **W.P.(C) 16105/2024, CM APPL. 67688/2024**
ALVIRA REALITY SERVICES PVT LTD.Petitioner
versus
GOVT OF NCT OF DELHI & ANR.Respondents
- + **W.P.(C) 17977/2024, CM APPL. 76515/2024**
EXPO MEDIA DEVELOPERS PVT LTD.Petitioner
versus
GOVERNMENT OF NCT OF DELHI & ANR.Respondents
- + **W.P.(C) 17980/2024, CM APPL. 76521/2024**
FORTUNE HEALTH CARE SERVICESPetitioner
versus
GOVERNMENT OF NCT OF DELHI & ANR.Respondents
- + **W.P.(C) 326/2025, CM APPL. 1548/2025**

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Signing Date: 29.03.2025
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- MANJIT SINGHPetitioner
versus
GOVERNMENT OF NCT OF DELHI & ANR.Respondents
- + **W.P.(C) 331/2025, CM APPL. 1556/2025**
JASMEET SINGH SETHIPetitioner
versus
GOVERNMENT OF NCT OF DELHI & ANR.Respondents
- + **W.P.(C) 332/2025, CM APPL. 1558/2025**
RAVINDER PAL SINGHPetitioner
versus
GOVERNMENT OF NCT OF DELHI & ANR.Respondents
- + **W.P.(C) 446/2025, CM APPL. 2136/2025**
VRINDAVAN APPARELS PVT LTD.Petitioner
versus
GOVT OF NCT OF DELHI & ANR.Respondents
- + **W.P.(C) 451/2025, CM APPL. 2144/2025**
KASHISH
MANAGEMENT AND SERVICES PVT LTD.Petitioner
versus
GOVT OF NCT OF DELHI & ANR.Respondents
- + **W.P.(C) 497/2025, CM APPL. 2323/2025**
PIONEER GEL PVT LTDPetitioner
versus
GOVT OF NCT OF DELHI & ANR.Respondents
- + **W.P.(C) 499/2025, CM APPL. 2327/2025**
RADINTON TRADEX PVT LTD.Petitioners
versus
GOVT OF NCT OF DELHI & ANR.Respondents

Presence:



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Mr. A. Maitri, Ms. Radhika Chandrashekhar and Mr. Arnav Mudgal, Advs. for petitioners.

Mr. Mritunjay Kumar Singh, Mr. Priya Ranjan and Mr. Akash Soni, Advocates for petitioner in W.P.(C) 326/2025.

Ms. Vaishali Gupta, Panel Counsel (Civil), GNCTD in W.P.(C) 721/2025, W.P.(C) 326/2025, W.P.(C) 331/2025 and W.P.(C) 332/2025.

Mr. Arun Maitri, Advocate along with Ms. Radhika Chandrashekhar and Mr. Arnav Mudgal, Advocates for petitioners in W.P.(C) 721/2025, W.P.(C) 15673/2024, W.P.(C) 16104/2024, W.P.(C) 16105/2024, W.P.(C) 17977/2024 & W.P.(C) 17980/2024.

Mr. Prashant Manchanda, ASC, Ms. Nancy Shah, Adv. and Mr. Sumit Dabas, Excise Dept. in W.P.(C) 15673/2024, W.P.(C) 16104/2024 & W.P.(C) 16105/2024.

Mr. Rishikesh Kumar, ASC, Ms. Sheenu Priya, Mr. Vikas Saini, Mr. Atik Gill and Mr. Sudhir, Advs. for GNCTD in W.P.(C) 17977/2024 and W.P.(C) 17980/2024.

Mr. Abhinav Sharma and Mr. Abhishek Shandilya, Advocates for R-1 and R-2 in W.P.(C) 446/2025, W.P.(C) 497/2025 and W.P.(C) 499/2025.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The petitioners in the present petitions are private retail vendors who were issued L-10 licences¹ with validity upto 30.09.2021 by respondents

¹ Retail vend of Indian Liquor and Foreign Liquor in Shopping Malls



under the erstwhile Delhi Excise Policy 2020-21 (hereinafter ‘old Excise Policy’) for retail vending of Indian and Foreign Liquor in Delhi.

2. *Vide* the present petitions, the petitioners seek reliefs as under:

“(a) issue an appropriate writ, order, directions to the Respondents to follow and to act in accordance with its own Notification / Order No. (9)/Policy/Extn./Excise/2020-21/1938 dated 01.08.2022 and to issue Retail Licences L-6, L-7, L-8, L-9, L-10, L-11 & L-23 as per its Old Liquor Policy and not to discriminate with Private Retail Vendors while following its Notification/ Order dated 01.08.2022;

(b) set-aside/quash the enforcement of Notification No. F. (9)/Policy/Extn. /Excise/2020-21/612 dated 10.09.2021 including Point 'A' to 'E', which pertains to the "New Excise Policy";

(c) direct the Respondents to issue licences for Retail Sale of Liquor to Private Retail Vendors including the Petitioner in accordance with its Notification I Order No. (9)/Policy/Extn. /Excise/2020- 21/1938 dated 01.08.2022 (Old Liquor Policy);

(d) pass such other relief(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

3. At the outset, it is noticed that the factual matrix is identical in all these petitions and the petitioners (in each of these petitions) raise similar grounds of challenge against common respondents. In the above circumstances, it is considered apposite to dispose of the petitions by way of a common order.

4. The Government of NCT of Delhi sought to effect a transition from the old Excise Policy to the Delhi Excise Policy 2021-2022 (hereinafter ‘the new Excise Policy’) w.e.f. 17.11.2021. For this purpose, *vide* a notification dated 10.09.2021 it was notified/ordered that out of the licenses which were renewed/extended till 30.09.2021 by the respondents, only certain licensees





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And whereas, in order to ensure smooth and uninterrupted supply of authorized liquor in Delhi, the above licenses were renewed / extended up to 30.09.2021 with the prior approval of Competent Authority subject to payment of proportionate pro-rata license fee vide order No.F.(S)/Policy/Extn./Excise/2020-21/304 dated 10.05.2021.

And whereas, the Government of NCT of Delhi has approved the new Excise Policy 2021-22, which is being implemented and the new retail licenses are scheduled to start from 17.11.2021.

Now therefore, in order to ensure smooth transition from the old Excise licenses to the new licenses for the year 2021-22 and to ensure the supply of bonafide liquor to the residents of Delhi, it has been decided that:-

- All wholesale licenses i.e. L-1A, L-1B and L-2 (Draught Beer) licenses will continue to operate beyond 30.09.2021 till 16.11.2021 i.e. one day prior to the scheduled date of commencement of business for new licenses granted in form of L-7Z subject to payment of pro-rata license fee under Rule 84 of the Delhi Excise Rules, 2010.
- All Government liquor vende in form of L-6/L-6FGA-6FE will continue to operate beyond 30.09.2021 till 16.11.2021 i.e. one day prior to the scheduled date of commencement of business for new licenses granted in form of L-7Z subject to payment of pro-rata proportionate license fee. This will ensure that the supply of liquor is maintained in Delhi during the transition period.
- All Government Country liquor vende in form of L-8 will continue to operate beyond 30.09.2021 till 31.08.2022 subject to payment of pro-rata proportionate license fee.
- All Government Country liquor vende holding license in form of L-14 (beer license) will continue to operate beyond 30.09.2021 till 16.11.2021 i.e. one day prior to the scheduled date of commencement of business for new licenses granted in form of L-7Z subject to payment of pro-rata proportionate license fee.
- All HCR license for service of liquor "on" the premises (L-11, L-15, L-18, L-17, L-19, L-19, L-20, L-28, L-29) will continue to operate beyond 30.09.2021 till 16.11.2021 i.e. one day prior to the scheduled date of commencement of business

for new licenses granted in form of L-7Z subject to payment of pro-rata proportionate license fee.

- All M&TP licenses L-4, L-5, L-25, L-28, L-34, L-35, P-2, P-3, P-4, P-5, P-6, DD-9, DD-10, DD-11 and Authorization Permit (AP) will continue to operate beyond 30.09.2021 till 31.08.2022 subject to payment of pro-rata proportionate license fee.
- All CSD licenses (L-23/L-23F) and L-30 (Personal Individual license) will continue to operate beyond 30.09.2021 till 31.08.2022 subject to change of duty rates for CSD under Rule 153 as and when the new amended rules come into effect.

Concerned branches shall issue separate fee order wherever required.

This issues with the approval of the Competent Authority.

(ANAND KUMAR TIWARI)
DEPUTY COMMISSIONER-1 (EXCISE)

No.F.(S)/Policy/Extn./Excise/2020-21/ 617-

Dated 10/11/21

5. However, owing to the alleged irregularities in the framework and implementation of the new Excise Policy, the said Policy was recalled by the respondents and as a consequence thereof, *vide* notification dated



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01.08.2022, the respondents *inter alia* reverted to the previous regime of excise duty-based policy w.e.f. 01.09.2022 (*as was prevalent before 17.11.2021*). The relevant portion of the said notification reads as under:

“(i) To revert to the previous regime of excise duty-based policy (as was prevalent before 17.11.2021) with effect from 01st September, 2022.

(ii) To extend retail (L 7Z 1 L7V) licenses and wholesale (L 1) licences for a period of one month i.e., till 31st August, 2022, subject to payment of licence fee as applicable, and ensuring compliance of terms and conditions of such licences.

(iii) to convey that the existing retail (L7Z/ L7V) licences and wholesale (L 1) licenses will expire on 31.08.2022 with efflux of time.”

6. The petitioners made various representations to the respondents asserting that since, the respondents have decided to revert back to the old Excise Policy, in terms thereof, the petitioners fulfilled the eligibility criteria for grant of a license. However, the respondent failed to respond to the aforesaid representation/s.

7. Pursuant thereto, the petitioner in one of the present petitions [bearing no. WP(C) 15673/2024] filed a writ petition bearing no. WP(C) 10927/2024 before this Court. *Vide* order dated 07.08.2024, this Court in WP(C) 10927/2024 directed the respondents to expeditiously respond to the representation of the petitioner, clearly specifying whether the petitioner is eligible for grant of a license as per the notification dated 01.08.2022. The relevant portion of the said order reads as under:

“3. Mr. Rajeev Aggarwal, counsel representing the Respondents, states on instructions that they have received the Petitioner's communication dated 1st August, 2024, and shall respond to the same within a period of six weeks from today, clearly specifying whether the Petitioner is eligible for grant of a license under the "Old Liquor Policy".

4. In light of the above stand, in the opinion of the Court, no further directions are necessary at this stage. All rights and contentions of the



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parties are left open. In case the Petitioner is aggrieved by the decision of the Respondents, Petitioner shall be free to avail of any remedy, as may be available to them, in accordance with law.”

8. In compliance with the aforesaid order passed by this Court, the respondents *vide* communication/letter dated 03.09.2024 responded to the queries raised by the petitioners. The respondents denied allegations of arbitrariness in issuance of the licenses and observed that the notification dated 01.08.2022 [which spoke of reversion to the previous regime of excise duty-based policy (as was prevalent before 17.11.2021)] clearly contemplated that only licenses which were in effect till 16.11.2021 are liable to be renewed, and that a bare reading of order dated 10.09.2021 clarifies that L-7¹³ and L-10 licenses were not operational at the said cutoff date. Furthermore, the respondents have also stated on record that as on the date of the aforesaid reply, in the State of NCT of Delhi, no private liquor vend is operational and the liquor vends are operational only through four government corporations. The said response to the representations made by petitioners reads as under:-

Government of NCT of Delhi
Department of Excise, Entt. & Luxury Tax
L-Block, Vikas Bhawan, I.P. Estate, New Delhi-110002
F.No.(6)/Ex/Policy/court/Misc/2022-23/PF-II / 346 DATED: 03.09.2024

To,

Advocate Arun Mathi
P-25 (Basement),
South Extension-II
New Delhi - 110049

¹³ Retail vend of Indian Liquor in private sector



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Subject :- M/s Sharda Pipes Pvt. Ltd. – Old Excise Policy.

Sir,

Kindly refer to your letters dated 30.07.2024, 31.07.2024 and 01.08.2024.

The point wise reply to your queries is as follows :-

S.No.	Question	Reply
1.	When old liquor policy have been revived then why licenses to Private Retail Vendors are not being issued as per the Old Liquor Policy?	As per the order dated 01.08.2022, it was conveyed to revert to the previous regime of excise duty based policy (as was prevalent before 17.11.2021). Therefore on 16.11.2021, the licenses which were in effect, only those were renewed. As on 16.11.2021, L-7 and L-15 licenses were not operational as evident from order No. F(9)/Policy/Extn./Excise/2020-21/612 dated 10.09.2021.
2.	Whether the Govt. of NCT Delhi is not bound by its own Order No. (9)/Policy/Extn./Excise/2020-21/1938 dated 01.08.2022?	The department has duly followed its order dated 01.08.2022.
3.	Whether issuance of Order No. (9)/Policy/Extn./Excise/2020-21/1938 dated 01.08.2022 is not a part of Excise Policy of Govt. of NCT of Delhi?	As described above,

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4.	Whether the Govt. of NCT Delhi can act contrary to its own Order No. (9)/Policy/Extn./Excise/2020-21/1938 dated 01.08.2022?	The department has acted in accordance to its order dated 01.08.2022.
5.	Whether the Govt. of NCT Delhi being part of Welfare State can discriminate the Private Retail Vendors with the Govt. Vendors?	As above
6.	Whether after the revival of Old Liquor Policy, can the Govt. issue 100% Retail Licences to Govt Vendors?	As above
7.	Whether under which Policy, Govt. / NCT of Delhi is issuing 100% Retail licences to the Govt. Vendors?	As above
8.	Whether the Govt. of Delhi is getting involved into Retail Business of Liquor?	As above
9.	Whether act of the Govt. in issuing 100% Retail licences amounts to monopolization of Liquor trade or not?	There is no monopolization of Liquor trade as Liquor vends in GNCTD are operated by four government corporations.
10.	Whether the Govt's action of issuance of 100% licences to Govt. Vendors is not in contravention of Expert Committee Report, namely, Ravi Dhawan Committee Report?	The department has followed its order No. (9)/Policy/Extn./Excise/2020-21/1938 dated 01.08.2022.
11.	Whether Govt. have formulated some other Policy other than Old Policy whereby Retail licences 100% can be given to Govt vendors?	The government is following the Excise Duty based policy.
12.	Whether Govt. is following the Model as was recommended by the Expert Committee or Model of Old Liquor Policy or Licences to Govt. vendors are being issued on some first orders?	The department has followed its order No. (9)/Policy/Extn./Excise/2020-21/1938 dated 01.08.2022.
13.	Whether inspite of revival of Old Policy, Govt. on what basis is issuing 100% licences of Retail Sales to the Govt. Vendors?	The licenses are issued on the basis of order No. (9)/Policy/Extn./Excise/2020-21/1938 dated 01.08.2022.

(NA)



14.	Whether is it not mandatory for Govt to deal with Public in a most transparent manner and to notify the Policy under which 100% licences for Retail Sales are being issued to Govt vendors?	The government has already notified vide its orders dated 10.09.2021 and 01.08.2022 which licences and policy will be in operation. The orders are available on Excise Online portal- https://delhiexcise.gov.in/DelhiExcise/pages/ratsc/login.jsp
15.	Please supply the copy of Policy / Circular / Notification under which 100% licences of Retail Sales are being issued to Govt vendors?	Kindly refer to Excise Department order No. F(9)/Policy/Extn/Excise/2020-21/612 dated 10.09.2021 and order no. No. (9)/Policy/Extn/Excise/2020-21/1930 dated 01.08.2022.
16.	Whether Govt have any Profit motive in issuing 100% licences of Retail Sales to Govt vendors?	The Government revenue is only earned through Excise Duty and VAT. There is no profit motive.
17.	Whether can you specify on whose orders, 100% licences of Retail Sales are being issued to Govt Vendors?	Kindly refer to Excise Department order No. F(9)/Policy/Extn/Excise/2020-21/612 dated 10.09.2021 and order no. (9)/Policy/Extn/Excise/2020-21/1930 dated 01.08.2022.
18.	Whether the Govt. of NCT Delhi can partially Revive the Old Liquor Policy and ignore the remaining part?	The policy have been revived in accordance to order No. F(9)/Policy/Extn/Excise/2020-21/612 dated 10.09.2021.
19.	Whether it is not correct that Govt. of NCT Delhi is charging same licence fee from Govt. Vendors as was earlier being charged from the Private Retail Vendors?	The licence fee is levied according to Delhi Excise Act 2009 and Delhi Excise Rules 2010.
20.	Whether as per Excise Act and Delhi Excise Rules (as Amended) 2021, can statutory Authorities such as Commissioner of Excise & Deputy Commissioner and their offices can be got involved in Sale & Purchase of Liquor through the Govt vendors?	There is no such involvement of any Excise Officer in sale and purchase of liquor through Govt Vendors.

Further, it is pertinent to mention that as of now, no private liquor vend is operational in GNCT of Delhi in Excise Duty Based Regime. The liquor vends are only operational through four government corporations.

This issues with prior approval of competent authority.

Yours sincerely,

Wua/944

Assistant Commissioner
(Excise)

Encl:- 1. Order dated 10.09.2021
2. Order dated 01.08.2022

9. In the above circumstances, the petitioners being aggrieved by the



response of the respondents as contained in the aforesaid communication/ letter, have approached this Court for direction/s *qua* the issuance of liquor licenses to the petitioners/private retail vendors under the Delhi Excise Policy notified *vide* notification dated 01.08.2022.

10. Learned counsel on behalf of the petitioners submitted that in the past two-decades, neither has a policy ever discriminated/disallowed private retail vendor to obtain a licence for selling liquor nor empowered the government to either monopolize the liquor trade or prohibit a private vendor from running a liquor shop. Moreover, the rights of petitioners for doing business in liquor trade as a private retail vendor stands protected by a judgment rendered by the Supreme Court in ***Krishna Kumar Narula Etc. vs State of Jammu and Kashmir and Ors***, 1967 SCC Online 125 wherein it has been held that “dealing in liquor is a business and citizen has a right to pursue business in the said commodity”.

11. Further, it is submitted that pursuant to the issuance of notification dated 01.08.2022, respondents began to discriminate against private retail vendors by issuing licenses exclusively to the Government vendors. It is alleged that unilateral enforcement of the old Excise Policy to the extent it serves the purpose of respondents is not only violative of petitioners right under Article 14 and 19(1)(g) of the Constitution of India but is also in contravention of the notification dated 01.08.2022 whereby respondents have categorically decided to revert to the policy which was existing before the implementation of the new Excise Policy.

12. The learned counsel on behalf of the petitioners further submits that



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since the notification dated 10.09.2021 was neither notified as an 'Excise Policy' nor any Public Notice was issued pertaining to the same by the respondents, the said notification cannot be given the status and meaning of an 'Excise Policy', and at the most can be construed as an Executive/Administrative Order which was issued at that time for enforcement of the new Excise Policy.

13. Learned Counsel on behalf of the respondents has refuted the above submissions, and has bifurcated the different phases/periods of the Excise policies as under:-

- a. Between 01.04.2021 till 30.09.2021, respondents implemented the old Excise Policy, wherein all licenses, including that of petitioners were applicable. It is stated that the petitioners herein, under the said policy were granted extensions upto 30.09.2021 *vide* orders dated 16.03.2021 and circular dated 10.06.2021.
- b. In the period between 01.10.2021 till 16.11.2021, i.e., pursuant to the expiry of old Excise Policy and before implementation of the new Excise Policy, *vide* notification dated 10.09.2021, licenses of only government vends were allowed to operate (hereinafter 'extant policy').
- c. Between 17.11.2021 till 31.08.2022, licenses came to be issued as per the new Excise Policy by the respondents.

It is submitted that pursuant to the recall of the new Excise Policy, the respondents *vide* notification dated 01.08.2022 adopted the extant policy.



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14. It is further submitted that the aforesaid decision to revert back to extant policy is a conscious decision taken by the Cabinet *vide* Cabinet Decision No. 3091 dated 31.07.2022 and has also been approved by the Finance Department of Government of NCT of Delhi along with concurrence from the Lieutenant Governor of NCT of Delhi. Thus, it is the case of the respondents that a decision to allow only government agencies to operate retail vends is a policy decision and falls squarely within the purview of the Government.

15. Having considered the rival submissions of the respective counsel, I find no merit in the submissions made on behalf of the petitioners.

16. At the outset, the contention on behalf of the petitioners that their rights under Article 19(1)(g) of the Constitution of India are violated due to non-issuance of liquor license is misconstrued as it is no longer *res integra* that a trade or business of liquor is '*res extra commercium*'. A Constitution Bench of the Supreme Court in ***Khoday Distilleries Ltd and Ors. vs State of Karnataka and Ors***, (1995) 1 SCC 574 has held that a citizen has no fundamental right to trade or business in liquor as it squarely falls within the purview of '*res extra commercium*'. The relevant portion of the judgment reads 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.

17. **Khoday Distilleries** (supra) also deals with the previous judgment of the Supreme Court in the case of **Krishna Kumar Narula** (supra), which has been relied upon by the petitioner. The relevant observations in **Khoday Distilleries** (supra) reads as under:-

61. This Court neither in K.K. Narula case [(1967) 3 SCR 50 : AIR 1967 SC 1368] nor in the second Synthetics and Chemicals Ltd. case [(1990) 1 SCC 109] has held that the State cannot prohibit trade or business in potable liquor. The observations made in K.K. Narula case [(1967) 3 SCR 50 : AIR 1967 SC 1368] that a citizen has a fundamental right to trade or business in liquor are to be understood, as explained above, to mean only that when the State does not prohibit the trade or business in liquor, a citizen has the right to do business in it subject to the restrictions and limitations placed upon it. Those observations cannot be read to mean that a citizen has an unqualified and an absolute right to trade or business in potable liquor. This position in law is explained by this Court also in Har Shankar case [(1975) 1 SCC 737 : (1975) 3 SCR 254] . The decision in the second Synthetics and Chemicals Ltd. case [(1990) 1 SCC 109] also cannot be read to mean that the Court in that case has taken the view that a citizen has a right to trade or business in potable liquor. That decision is confined to trade or business in industrial alcohol which is legitimately used for industrial purpose and not for consumption as an intoxicating drink. The Court has also there not taken any exception to the right of the State to place reasonable restrictions on the trade or business even of industrial alcohol to prevent



its diversion for the use in or as intoxicating beverage.

62. We, therefore, hold 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 res 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. The view taken by this Court in K.K. Narula case [(1967) 3 SCR 50 : AIR 1967 SC 1368] as well as in the second Synthetics and Chemicals Ltd. case [(1990) 1 SCC 109] is not contrary to the aforesaid view which has been consistently taken by this Court so far.

63. One of the incidental contentions, viz., whether the State can create monopoly in trade or business in potable liquor is already answered above. This is apart from the fact that Article 19(6) provides for such monopoly in favour of the State even in trades and businesses which are legitimate. It is not, therefore, necessary to dilate upon this aspect any further.

64. The last contention in these groups of matters is whether the State can place restrictions and limitations under Article 19(6) by subordinate legislation. Article 13(3)(a) of the Constitution states that law includes “any ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law”. Clauses (2) to (6) of Article 19 make no distinction between the law made by the legislature and the subordinate legislation for the purpose of placing the restrictions on the exercise of the respective fundamental rights mentioned in Article 19(1)(a) to (g). We are concerned in the present case with clause (6) of Article 19. It will be apparent from the said clause that it only speaks of “operation of any existing law insofar as it imposes ...” “from making any law imposing” reasonable restrictions on the exercise of the rights conferred by Article 19(1)(g). There is nothing in this provision which makes it imperative to impose the restrictions in question only by a law enacted by the legislature. Hence the restrictions in question can also be imposed by any subordinate legislation so long as such legislation is not violative of any provisions of the Constitution. This is apart from the fact that the trade or business in potable liquor is a trade or business in res extra commercium and hence can be regulated and restricted even by executive order provided it is issued by the Governor of the State. We, therefore, answer the question accordingly.”



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18. Furthermore, the Supreme Court in *Uga Sugar Works Ltd vs Delhi Administration and Ors*, (2001) 3 SCC 635; *State of Bihar vs Nirmal Kumar Gupta*, (2013) 2 SCC 565; *State of T.N vs K. Vinayagamurthy*, (2002) 7 SCC 104; *State of Punjab vs Devans Modern Breweries Ltd.* (2004) 11 SCC 26; *State of Kerala vs Kandath Distilleries*, (2013) 6 SCC 573; *State of Tamil Nadu vs K. Balu and Anr.*, (2017) 2 SCC 281 etc., has consistently taken a view consistent with the principles laid down by the Constitution Bench in *Khoday Distilleries Ltd and Ors. vs State of Karnataka and Ors* (supra).

19. The contention of the learned counsel for the petitioner that the order dated 10.09.2021 does not evince any policy that was existing prior to the implementation of the new Excise Policy with effect from 17.11.2021, cannot be accepted. It is clearly discernible from the order dated 10.09.2021 that the same contemplates grant/continuation of licenses only to Government corporations. It is clearly discernable that the same does not envisage grant of retail licenses to any private player. This is the policy that the respondents have adopted in supersession of the policy that was introduced with effect from 17.11.2021. There is no mandatory legal imperative that the extant policy of the Government must enable/provide for licenses to be issued in favour of private parties.

20. The Supreme Court in *Khoday Distilleries Ltd and Ors. vs State of Karnataka and Ors* (supra) has clearly taken a view that the power of State to regulate and to restrict business in potable liquor impliedly includes



power to carry on such trade to the exclusion of others. Relevant portion of the said judgment reads as under:-

“55. The contention that if a citizen has no fundamental right to carry on trade or business in potable liquor, the State is also enjoined from carrying on such trade, particularly in view of the provisions of Article 47, though apparently attractive, is fallacious. The State's power to regulate and to restrict the business in potable liquor impliedly includes the power to carry on such trade to the exclusion of others. Prohibition is not the only way to restrict and regulate the consumption of intoxicating liquor. The abuse of drinking intoxicants can be prevented also by limiting and controlling its production, supply and consumption. The State can do so also by creating in itself the monopoly of the production and supply of the liquor. When the State does so, it does not carry on business in illegal products. It carries on business in products which are not declared illegal by completely prohibiting their production but in products the manufacture, possession and supply of which is regulated in the interests of the health, morals and welfare of the people. It does so also in the interests of the general public under Article 19(6) of the Constitution.

56. The contention further that till prohibition is introduced, a citizen has a fundamental right to carry on trade or business in potable liquor has also no merit. All that the citizen can claim in such a situation is an equal right to carry on trade or business in potable liquor as against the other citizens. He cannot claim equal right to carry on the business against the State when the State reserves to itself the exclusive right to carry on such trade or business. When the State neither prohibits nor monopolises the said business, the citizens cannot be discriminated against while granting licences to carry on such business. But the said equal right cannot be elevated to the status of a fundamental right.

57. It is no answer against complete or partial prohibition of the production, possession, sale and consumption etc. of potable liquor to contend that the prohibition where it was introduced earlier and where it is in operation at present, has failed. The failure of measures permitted by law does not detract from the power of the State to introduce such measures and implement them as best as they can.”

21. Further, a Division Bench of this Court in ***Rattan Singh vs.***



Government of NCT of Delhi and Anr., WP (C) 10309/2021 while considering an interim application for stay, dealt with similar issue wherein a private retail vendor challenged the notification dated 10.09.2021 on the premise that non-renewal of licenses of the private vends after 30.09.2021 and extension of Government vends till 16.11.2021 violates Article 14 of the Constitution. Although, the aforesaid petition was subsequently dismissed as withdrawn, this Court while dismissing the application for interim stay as prayed by the petitioner held as under:

“7. We also do not find any merit in the contention that there is violation of Article 14 of the Constitution of India. It is categorically averred in the affidavit filed by the Respondents that the decision of not continuing the existing retail licenses in private sector is a considered decision, in the light of approval of the new Excise Policy. It is also brought out that no renewal / extension has been granted with respect to any of the licenses for private vends and only the L-6 license, which is with respect to the Government vends have been renewed and that too upto 16.11.2021. Since none of the licenses with respect to the private vends have been renewed beyond 30.09.2021, there is no discrimination between similarly placed private vendors and certainly, the Petitioner cannot claim parity with the Government vends.”

22. The Division Bench of this Court in **Rattan Singh** (supra) clearly took note of the fact that the decision, as incorporated in the notification dated 10.09.2021, of not continuing / renewing the retail licenses to the private sector, was a considered decision. Further, the same was not arbitrary inasmuch as the respondents were consistent in not granting licenses to private vends at all.

23. It is well-settled that while exercising the jurisdiction under Article 226 of the Constitution of India, this Court cannot impinge upon the



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executive decision making power of the Government or to sit in judgment over any policy, unless the same is manifestly arbitrary, unconstitutional and violative of the fundamental rights¹⁴. As noticed, this is not the position here.

24. In the circumstances, this Court is not inclined to issue any writ in the nature of *Mandamus* or any direction/s to the respondents to issue licenses for retail/sale of liquor to private retail vendors.

25. However, the petitioners are not precluded from, and are at liberty to make appropriate representation to the Government which shall be duly considered in accordance with law.

26. Accordingly, the present petitions are dismissed with the aforesaid liberty. Pending applications also stand disposed of.

SACHIN DATTA, J

MARCH 28, 2025/sl

¹⁴ *In Re: Section 6A of the Citizenship Act 1995*, 2024 SCC OnLine SC 2880; *Ashwini Kumar vs Union of India and Ors.*, (2020) 13 SCC 585; *State of Himachal Pradesh vs Satpal Saini*, (2017) 11 SCC 42.