

(2004) 09 KAR CK 0008
In the Karnataka High Court

Case No : Writ Petition No's. 25940 and 25942-25943 of 2004 and Etc.

D. Sudhakar and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 28-09-2004

Acts Referred:

Karnataka Excise (Lease of the Right of Retail Vend of Liquor) Rules, 1969 — Rule 3, 4-A

Karnataka Excise Act, 1965 — Section 17

Citation : (2004) ILR (Kar) 4904 : (2004) 7 KarLJ 611 : (2005) 1 KCCR 23 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : N.K. Ramesh, K. Shashi Kiran Shetty, G.K. Bhat, B.V. Raman and Madhusudan R. Naik, Lexpertise and Hegde Associates, for the Appellant; K.N. Puttegowda, AGA for R1 to R10, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—In all these matters, since identical questions of fact and law are involved all these petitions are clubbed together and a common order is passed.

2. The petitioners in all these petitions, questioning the legality and validity of the impugned Notification dated 19th June 2004 in Proceedings No. FD 17 EDC.2004 on the file of the first respondent - State Government, have presented the instant Writ Petitions.

3. The facts of the case are that, all these petitioners claim to be the holders of licence for right of retail vend of arrack for the excise year 2003-04 being the highest bidders, and claim to be carrying on their business as per the terms and conditions of the contract in their respective Taluks and Districts. The disposal of the right of retail vend of arrack is regulated by the provisions of the Karnataka Excise (lease of Right of Retail Vend of Liquor) Rules, 1969 ("Lease Rules" for short) and u/s 17 of the Karnataka Excise Act ("Act" for brevity). The legislation has granted the power to State Government to regulate and govern the disposal

of right of retail vend of liquor. The petitioners, being successful bidders for the excise year 2003-04 have got exclusive right of retail vend of arrack in their respective Taluks and Districts in the entire State. Be that as it may.

4. The excise year 2003-04 being coming to an end, these petitioners have sought for renewal of their registration as required under Rule 4-A of the Lease Rules and had prepared themselves for the annual auctions. The further case of the petitioners is that, elaborate provisions are made under the Excise Act and Lease Rules for the Excise Department to dispose of the right of retail vend of liquor and the manner in which it has to be disposed of and the respondents authorities cannot seek to deviate from the same. The main contention of the petitioners is that, the excise year 2003-04 was coming to an end on 30th June 2004 and the first and second respondents namely the State Government, Department of Finance and Excise and the Commissioner of Excise in Karnataka are duty bound to commence the disposal proceedings before the expiry of the excise year. However, instead of commencing the disposal proceedings, the first respondent herein, all of a sudden, has issued the impugned Notification dated 19th June 2004 bearing No. FD 17 EDC 2004 virtually postponing the disposal proceedings by one month and as an interim arrangement, has decided to continue the sale of arrack for the period from 1st July 2004 to 31st July 2004 by securing a uniform increase of 15 per cent over and above the rentals of each Taluk from the existing excise contractors for the excise year 2003-04. The reasons set out in the preamble of the Notification is that, the new Excise year commences from 1st July 2004 and due to the General Elections and the change of the Government, the policy of the Government with regard to auction of arrack could not be finalized in time and the proposal of the second respondent - Excise Commissioner for disposal of right of retail vend of arrack for the excise year 2004-05 is under consideration of the Government and that a final decision has not yet been taken and the said reason assigned in the preamble is wholly extraneous, flimsy and cannot be sustained.

5. It is the further case of the petitioners that apart from this, an intended hike in the monthly rentals of 15 per cent to be paid by the existing excise contractors is also not realistic nor the same is supported by any statistical basis. Further, in the notification, it is provided that in the event the existing excise contractors do not come forward to increase the rentals and execute the contract for one month, then the second respondent is authorised to make the alternative arrangement with the stipulation that the increase should not be less than 15 per cent of the existing rentals and such excise contractors are further required to furnish the security in the form of cash deposit for an amount of equal to ten days rental and further should obtain the daily remittals from the contractors on a pro-rata basis. On a perusal of the preamble of the notification, the case of the petitioners is that, the Notification issued is one without any jurisdiction as neither under the Act nor under the Rules either the first respondent or the second respondent is entitled to make any interim arrangements beyond the excise year and to increase the rentals by 15 per cent unilaterally without even

giving an opportunity to the petitioners for their say in the matter. Though the decision taken is on adhoc basis as an interim measure, the same violates law. The Government, without taking into consideration the mandatory provisions as envisaged under the Excise Act and Lease Rules, and without following the well settled principles of law laid down by the Hon''ble Supreme Court and this Court, has proceeded and issued the impugned Notification, which is without authority of law and contrary to the mandatory provisions, of the Excise Act and Lease Rules. The interim arrangement made by the Government for the excise year 2004-05 is not justifiable nor the same is sustainable. Therefore, the petitioners felt necessitated to approach this Court by presenting these petitions.

6. The principal submission canvassed by Sri Madhusudan R. Naik, learned Counsel appearing for petitioners in Writ Petition No. 26013/2004 and Writ Petition Nos. 26396-26397/2004, is that, the proposed action of disposal of right of retail vend of arrack by interim arrangement having not been contemplated under the provisions of Excise Act and the Lease Rules, the same is illegal and impermissible. The grounds based on which such extreme and adhoc steps are being taken, being a make belief and not true, there being extraneous consideration, the same is impermissible in law and is liable to be set aside. He submitted that, after careful reading of the said notification, it suffers from errors apparent on the face of record in as much as the first respondent has no power or jurisdiction to pass the impugned notification in as much as the same is neither traceable to Section 17 of the Act nor any other provisions of the Lease Rules framed thereunder. He submitted that, the reasons assigned for issuing the impugned Notification is neither convincing nor cogent and the same are whimsical and without any basis. He submitted that, the reasons assigned for issuing the impugned Notification that, due to the General Elections and change of Government, the policy of the Government with regard to auction of arrack could not be finalised in time, is not the basis for making the interim, adhoc arrangement, that too without following the mandatory provisions of the Excise Act and Lease Rules. Further, he vehemently submitted that, the reasons assigned in the impugned Notification cannot stall the operation of the statutory provisions as the disposal of right of retail vend of liquor is to be made before the end of the excise year as the disposal is for a period of one year under the Rules. He submitted that the registration of the excise contractors was completed by the second respondent in the second week of June 2004 itself and therefore, the impugned Notification is mischievous and only with the intent of enhancing the rentals by pressurising the existing contractors, the impugned Notification is issued which is one without application of mind. Further, he vehemently submitted that, there is no enabling provision for the first respondent to increase the existing rentals by 15 per cent unilaterally. There is no basis or statistical material for such an increase in the rentals. What is contemplated under the Rules is that, the Commissioner is empowered to accept the bid in the disposal proceedings if the offer is higher by 5 per cent compared to the rental of the previous year and in the event if it is less than the rental of the previous year

and is within 5 per cent increase than that of the previous year's rental then he has to refer the same to the Government, the first respondent. However, the first respondent herein without any power or competency has issued the impugned Notification increasing the rentals by 15 per cent that too without even hearing the petitioners in the matter. Therefore, the impugned Notification issued by the respondents is in violation of the principles of natural justice and the reasons assigned that in view of General Election and change of Government, its policy has not been formulated cannot be a ground to stall the operation of the statutory provisions. The disposal of lease of right of retail vend of liquor is not the policy decision of the Government but it is an event pursuant to the statutory provisions holding the field and therefore, the reasons assigned in the preamble of the Notification have no basis and that the said reasons assigned are neither convincing nor cogent. Hence, the impugned Notification issued by the respondents is liable to be set aside. To substantiate his submissions, he drew my attention to Rule 2-A, 3, 4, 15 and 16 of the lease Rules and placed reliance on paragraph 32 page 279 of the judgment of the Hon'ble Supreme Court of India reported in State of M.P. and Others Vs. Nandlal Jaiswal and Others, . Further, he placed reliance on paragraphs 10 and 11 of the judgment of the Apex Court reported in K.N. Guruswamy Vs. The State of Mysore and Others, and submitted that, as per the law laid down by the Hon'ble Supreme Court in K.N. Guruswamy Vs. The State of Mysore and Others, , the State Government must act within the statute and Rules and not beyond the same. He submitted that the reasons assigned by the respondents in the preamble to the impugned Notification are not the basis for making the Interim arrangement. He submitted that it is not the case of the respondents that during the interregnum period, the petitioners will get enhancement of income of more than 15 per cent, and hence the impugned notification is issued. Except making oral statement, the respondents have neither produced any material nor placed reliance on the statistical figures. He submitted that, if all these factors and the well settled law laid down by the Apex Court, as stated supra, is taken into consideration, at any stretch, the impugned Notification issued by the Government is unsustainable. Hence, it is liable to be set aside.

7. Learned Counsel appearing for petitioners in all other petitions submitted that they would adopt the arguments advanced by Sri Madhusudan R. Naik in the above petitions.

8. Per contra, the learned Additional Government Advocate appearing for respondents in all these petitions inter alia, contended and substantiated the impugned notification issued by the Government stating that, the same is issued in strict compliance of the mandatory provisions of the Excise Act and Lease Rules. Further, he submitted that, this is not the first time that, such a Notification is issued by the Government. As a matter of fact, on earlier occasions also, the Government has issued the Notification on 30th May 1996 for the excise year 1996-97 and on 30th June 1997 for the excise year 1997-98. Further the learned Additional Government Advocate has drawn my attention to

the statement of objections filed by him and stated that, after detailed interactions with the officials who are well acquainted in excise matters, the Government has taken a conscious decision and issued a Notification dated 25th June 2004 to dispose of the lease of right of retail vend of liquor for the excise year 2004-05 with effect from 1st August 2004 by adhering to Section 17 of the Karnataka Excise Act read with Rule 3 of the Lease Rules. He submitted that, a uniform policy decision has been taken by the new Government since the earlier Government being a care taker Government, could not take the policy decision. In view of the General Election to the parliament and assembly, the disposal of the right of retail vend of liquor for the excise year 2004-05 could not be completed and further, it is the case of the respondents that the main source of revenue for the State is from Excise Department and as such, when the Government changes, it is always open for the new Government to change its policy and accordingly, the new Government has taken the conscious decision by uniformly increasing the rentals by 15 per cent over and above the present year rentals for a period of one month only and the Government is also envisaging to bring in certain changes in the arrack policy. The draft rules are also being issued in this regard. Regarding the registration of the applications of the petitioners, he submitted that, the registration formalities for excise contractors for the year 2004-05 was not fully completed. Further, he vehemently submitted that though the petitioners have registered as Excise Contractors, they have no fundamental right to insist upon the authorities to act in a particular manner and within a particular period. The Government has not made any interim arrangement without obtaining any securities. Since the interim arrangement is only for a limited period of one month in addition to the securities already furnished by the existing contractors, an additional security equivalent to ten days' rentals value including 15 per cent increase will be taken from the respective contractors. In normal circumstances, these petitioners are liable to pay the rentals on monthly basis. However, having regard to the ground reality and the difficulty faced by the existing contractors, the respondents have demanded only for ten days' rentals value as security and during this extended period, the excise contractors are required to make daily payment on pro-rata basis. The Government has arrived at 15 per cent figure on the basis of increase of revenue/rental from the last thirty years. In fact, except five years, the remaining 24 years, revenue/rentals has been increased many folds and taking into consideration the past years' revenue/rentals, the Government has arrived at 15 per cent increase since there was a drought during the last two years and a minor set back compared to immediate previous year. Further, the Government is intending to make substantial increase and the fixation of uniform increase of 15 per cent in rentals for the limited period is just and reasonable and no arbitrary or capricious decision as such has been taken by the Government in issuing the impugned Notification. Further, he submitted that, for the present excise year from 1st September 2004 to 30th June 2005, the respondents have increased the rentals by 52.72 per cent. This increase shows that the petitioners are in no way affected by the increase of 15 per cent rentals over and above the rentals done

by way of interim arrangement. More over, some of the petitioners have participated in the auction proceedings and have become successful bidders and obtained the right of retail vend of liquor for the excise year 2004-05. Therefore, there is no error or illegality as such committed by the Government in issuing the impugned Notification. The petitioners have not made out any good grounds to interfere in the impugned Notification issued by the Government. Further, to substantiate his submission regarding the policy decision, the learned Additional Government Advocate placed reliance on the well settled law laid down by the Hon"ble Supreme Court reported in M/s. Siel Ltd. and Others Vs. Union of India and Others, and BALCO Employees Union (Regd.) Vs. Union of India and Others, and submitted that, the Government has taken uniform decision after taking into consideration the average increase for the last twenty four years, that too after collecting the report from the Deputy Commissioners of Excise for the respective Districts. He submitted that, after serious deliberations, threadbare, a conscious decision has been taken and the petitioners have no fundamental right to seek for a direction to respondents to act in a particular manner and to take a particular decision, which is impermissible. Therefore, the Writ Petitions filed by the petitioners are liable to be set aside.

9. I have heard Sri Madhusudan R. Naik, learned Counsel appearing for the petitioners in Writ Petition No. 26013/2004 and Writ Petition No.26396-26397/2004 and the learned Additional Government Advocate appearing for respondents for considerable length of time. After careful evaluation of the material available on record, threadbare, after considering the law laid down by the Hon"ble Supreme Court and this Court relied upon by the learned Counsel appearing for the parties, after taking into consideration the rival contentions of the petitioners and the learned Additional Government Advocate appearing for respondents, the points that arise for consideration are as to:

i) Whether the Government has got the power u/s 17 of Excise Act r/w. Rule 3 of the Lease Rules to issue the impugned Notification dated 19th June 2004?

ii) Whether the impugned Notification issued by the Government is sustainable in law?

Re: point (i):

To understand the scope of Section 17 of the Act, the legislature has granted power to the State Government to grant lease or right of manufacture etc, it is worthwhile to extract the said provision which reads as follows:-

Section 17: Power to grant lease of right to manufacture etc-

(1) The State Government may lease to any person, on such conditions and for such period as it may think fit, the exclusive or other right -

(a) of manufacturing or supplying by wholesale or of both or;

(b) of selling by wholesale or by retail; or

(c) of manufacturing or supplying by wholesale; or of both and of selling by retail; any Indian liquor or intoxicating drug within any specified area.

[(1-A) No lease granted under Sub-section (1) shall be transferred:

Provided that the State Government may grant permission to the lessee to transfer the lease or a part thereof, in favour of any other person subject to such terms and conditions (including the transferee entering into an agreement of lease with the State Government) as may be prescribed.]

(2) The licensing authority may grant to a lessee [under Sub-section (1), or a transferee under Sub-section (1-A)] a licence in the terms of his lease; and when there is no condition in the lease, which prohibits sub-letting may, on the application of the lessee, grant licences to any sub-lessee approved by such authority.

[(3) A lease referred to in Sub-section (1) or Sub-section (1A) may be determined _

(a) If any duty or fee payable by the lessee is not duly paid, or

(b) In the event of breach of any term or condition of the lease by the lessee or any of his servants or any person acting on behalf of or under the express or implied permission of the lessee; or

(c) If the lessee becomes incapable of carrying on the business or

(d) If the conditions of the lease provide for determination at will; Provided that no such determination shall be made unless the person affected has had a reasonable opportunity of showing cause against such determination.

(4) Where a lease is determined under Clause (a) (b) or (c) of Sub-section (3), the State Government may direct the Deputy Commissioner, to take the right under his management and to lease it again by re-sale, or otherwise; and if on such management or re-sale, the amount realised is less than the amount payable under the lease which was determined, the loss shall be payable by the person whose lease was determined]"

After careful reading of the aforesaid provision, it is evident that, the legislature has granted power to the State Government to lease the right of retail vend of arrack for the excise year 2004-05 purely as an interim arrangement. Hence, the same is justifiable.

So far as Rule 3 of the Lease Rules is concerned, the said provision provides for the manner in which the lease of retail vend can be disposed of. It provides for disposal of the right of retail vend of liquor either by tender or by auction; by tender cum auction; or in any other manner; as the State Government may, by order, specify, provided that, if the disposal is not finalised in any one manner, the State Government may, by order, direct that it may be done in any other

manner. It is worthwhile to extract Rule 3 of the Lease Rules which reads as follows:

Rule 3: Lease of Retail Vend:

[(1) The right of retail vend of liquors may be disposed of__

(i) by tender;

(ii) by auction;

(iii) by tender-cum-auction; or

(iv) in any other manner;

as the state Government may, by order, specify;

provided that, if the disposal is not finalised in any one manner. the State Government may, by order.-direct that it may be done in any other manner.

[(2) xxx]

[(3) The right of retail vend of arrack disposed under these rules shall be the exclusive right but in such districts as may be specified by the Government [only bottled arrack or arrack in polythene sachet] [xxx] shall be sold to consumer.]

[Provided that if for any reason supply of [bottled arrack or arrack in polythene sachet] cannot be arranged in sufficient quantity. Government may specify the areas in which bulk arrack may be permitted to be sold subject to the conditions specified therein]"

(emphasis supplied)

10. After careful reading of the Rule extracted above, it is crystal clear that, the State Government has got the power to make the interim arrangement provided that if the disposal is not finalised in any one manner stated in Rule 3 regarding disposal of the right of retail vend of arrack for the excise year 2004-2005. When the State Government was not able to take a final decision: being a care taker Government, pending finalisation of the disposal of the retail vend of liquor in any one of the manner prescribed under Rule 3, the State Government has thought it fit to dispose of the right of retail vend of liquor by making an interim arrangement for the limited period of one month from 1st July 2004 to 31st July 2004 by uniform increase of rentals by 15 per cent over and above the rentals for the excise year 2003-04 in the State. Moreover, this is not the first time that such an interim arrangement has been made by the State Government, as rightly pointed out by the learned Additional Government Advocate appearing for respondents. On previous occasions viz. for the excise years 1996-97 and 1997-98 also, similar interim arrangement had been made by the then State Government. The State Government, in the preamble to the impugned Notification has specifically mentioned that, in view of the declaration of the general elections and in the absence of a regular Government, the State

Government is unable to take a final decision for disposal of retail vend of arrack for the excise year 2004-05 and hence, the sale of arrack for the period from 1st July 2004 to 31st July 2004 is made purely on interim arrangement basis by securing uniform increase of 15 per cent over and above the rentals of 2003-04 for each taluk/unit from the existing excise contractors for the year 2003-04. This interim arrangement has been made in view of the fact that there is a total bar under the Constitution that a caretaker Government is not supposed to take any major policy decisions in strict adherence of the code of conduct prescribed by the Chief Election Commissioner. Therefore, I am of the considered view that, the State Government has got the power u/s 17 read with Rule 3 of the Lease Rules for making the impugned interim arrangement under the heading "in any other manner" mentioned in Rule 3 of Lease Rules and the submission made by the learned Counsel for the petitioners that the Government has no power to make such an interim arrangement holds no water. The exclusive right to manufacture and sell liquor and sell that right to raise revenue vests in the State. In view of the dangerous character of the trade, the citizen has no fundamental right to carry on a trade in intoxicating liquor as this commodity is Res Extra Commercium. But, if the law, or the policy of Government, allows a trade in liquor, then there can be a right to trade in liquor if it is allowed to be brought and sold. Therefore, having regard to all these factors, it can be very well said that, the power exercised by the respondents is well within the parameters of the Excise Act and the Lease Rules and the petitioners have not made out any good grounds to entertain these Writ Petitions.

11. Re: point (ii):

It is not in dispute that all these petitioners are the holders of licence for retail vend of arrack and are the excise contractors for the excise year 2003-04. Due to the declaration of general election to the Parliament and Assembly, the care taker Government was not supposed to take any major decision as well as the policy decision of disposal of the right of retail vend of arrack for the excise year 2004-05. However, immediately after completion of election process, declaration of results and after formation of the new Government, the present Government, after collecting the report from the Deputy Commissioners of the respective Districts for a period of past thirty years and after taking into consideration all the relevant factors, being the supreme authority, has taken a conscious decision. After careful perusal of the impugned Notification issued by the State Government, I do not find any error of law, much less material irregularity as such committed by the State Government in making the impugned interim arrangement of disposal of the right of retail vend of arrack for the excise year 2004-05 by securing uniform increase of 15 per cent over and above the rentals of 2003-04 pending finalisation of the same in one of the manner prescribed under Rule 3 of the Lease Rules. In the preamble to the impugned Notification, the reasons have been assigned to continue the sale of arrack for the period from 1st July 2004 to 31st July 2004 stating that, the same is purely as an interim arrangement basis. The said decision has been taken after considering

the report as to how they arrived at uniform increase of 15 per cent over and above the rentals for the excise year 2003-04. It is relevant to note that, the respondents have produced a chart along with the statement of objections, showing therein the name of the Taluk names of the contractors for 2003-04, monthly rentals for the excise year 2003-04, 15 per cent increase on 2003-04 rentals, taluk-wise, district-wise in the entire State of Karnataka and also the excise year wise arrack auction results, showing the rentals per month from the year 1975-76 to 2003-04. The said charts are marked as Annexures R-3 and R4 to the statement of objections filed by the learned Additional Government Advocate. After perusal of the said Annexures, it is seen that all the details have been furnished as to how the respondents have collected the statistics taluk-wise, district-wise etc. and a 30 year average increase/decreased in rentals has been worked out. This shows that, before taking the decision, the authorities have applied their mind and placed the matter before the competent authority, viz. the State Government for securing a uniform increase of 15 per cent which is just and reasonable. Therefore, I do not find any error or illegality as such committed by the respondents in disposing of the right of retail vend of arrack for a limited period by making the impugned interim arrangement for the excise year 2004-05. The reasons assigned in the preamble to the impugned Notification by the State Government and the stand taken by them in their objections statement are just and reasonable. Further, this is not the first time that, the State Government has taken the decision by making an interim, adhoc arrangement for disposal of the right of retail vend of liquor, as rightly pointed out by the learned Additional Government Advocate appearing for respondents. Further, the stand taken by the respondents at paragraph 5 of their statement of objections that, it is always open for the new Government to change its policy and in that line they have already taken a decision and draft Rules are also being issued in this regard. The learned Additional Government Advocate appearing for respondents submitted that subsequently the right of retail vend of arrack for the excise year 2004-05 from 1st September 2004 to 30th June 2005 has been disposed of with increase of rentals by 52.72 per cent. This final figure indicates that, the decision taken by the respondents to secure a uniform increase of 15% in the rentals by way of interim arrangement is highly just and reasonable. Therefore, I do not find any arbitrariness or unreasonableness in taking such a decision by the State Government in the instant Writ Petitions, in view of the well settled law laid down by the Apex Court in series of matters that, the Courts must be very reluctant to interfere in the policy decisions taken by the Government. The latest judgment on this point by the Hon"ble Supreme Court is, in the case of BALCO Employees Union (Regd.) Vs. Union of India and Others, of the said judgment reads thus:

"46. It is evident from the above that it is neither within the domain of the courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our courts inclined to strike down a policy at the behest of a petitioner

merely because it has been urged that a different policy. Paragraph 46 would have been fairer or wiser or more scientific or more logical."

-Further, it is held that,

"xx xx The courts have consistently refrained from interfering with economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on owner or so adherent to reason, that the courts would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within limits of authority."

12. Further, the Division Bench of this Court in the case of JAGADALE AND SONS v. STATE OF KARNATAKA, has followed the well settled law laid down by the Apex Court in the case of R.K. GARG, The Apex Court in the said case has proceeded to observe as follows.

"What we said in that case in regard to legislation relating to economic matters must apply equally in regard to executive action in the field of economic activities, though the executive decision may not be placed on as high a pedestal as legislative judgment in so far as judicial deference is concerned. We must not forget that in complex economic matters every decision is necessary empiric and it is based on experimentation or what one may call "trial and error method" and, therefore its validity cannot be tested on any rigid a priori considerations or on the application of any strait jacket formula. The Court must while adjudging the constitutional validity of an executive decision relating to economic matters, grant a certain measure of freedom or "play" in the "joints" to the executive. The problems of Government" as pointed out by the Supreme Court of the United States in *Metropolis Theatre Company v. State of Chicago* (1912) 57 L Ed 730 are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not discernible, the wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review. It is only its palpably arbitrary exercise, which can be declared void". The Government, as was said in *Permian Basic Area Rate cases* (1968) 20 L Ed 312, is entitled to make pragmatic adjustments which may be called for by particular circumstances. The Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The Court can interfere only if the policy decision is patently arbitrary discriminatory or mala-fide. It is against the background of these observations and keeping them in mind that we must now proceed to deal with the contention of the petitioners based on Article 14 of the Constitution".

13. The Government is the guardian of the finances of the State. It is expected

to protect the financial interests of the State. When, the Government, after collecting the material from the concerned Department and after analysing the same, has taken the conscious decision, the question of interference by this Court does not arise and the same is uncalled for in view of the well settled principles of law laid down by the Apex Court and this Court referred above. Nor the petitioners have made out any good grounds to entertain these petitions.

14. Further, it is worthwhile to state that in the case of *IRA MUNN v. STATE OF ILLINOIS* (1876) 94 US 113 (see AIR 2004 SCW 3903) it is held as follows:

"The Courts cannot be called upon to undertake the Government duties and functions. The Court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a judge should not be invoked as a substitute for the judgment of the legislative bodies."

15. So far as the reliance placed by the learned Counsel for the petitioners on paragraph 32 of the judgment of the Apex Court in the case of *State of Madhya Pradesh v. Nandlal Jaiswal and Ors.* reported in 1987 SC 251, is concerned, there is no dispute regarding the well settled principles of law laid down by the Apex Court in the said case. But it is important to go through paragraph 33 of the same judgment, as rightly pointed by the learned Additional Government Advocate appearing for respondents, which 33 reads as follows:

"33. But, while considering the applicability of Article 14 in such a case, we, must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor. The Court would, in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy of regulating, manufacture and trade in liquor. Moreover, the grant of licences for manufacture and a sale of liquor would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the State Government has done, unless it appears to be plainly arbitrary, irrational or mala fide. We had occasion to consider the scope of interference by the Court under Article 14 while dealing with laws relating to economic activities in *R.K. Garg V. Union of India* (1982) 1 SCR 947 : AIR 1981 SC 2138. We pointed out in that case that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. We observed that the legislature should be allowed some play in the joints because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait jacket formula and this is particularly true in case of legislation dealing with economic matters, where having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. We quoted with approval the following admonition given by Frankfurter, J in *Morey V. Doud* (1957) 354 US 457:

"In the utilities, tax and economic regulation cases, there are good reasons for

judicial self-restrain if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The Courts have only the power to destroy not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events - self limitation can be seen to be the path to judicial wisdom and institutional prestige and stability."

16. From the above, it is clear that, the Court must while adjudging the constitutional validity of an executive decision relating to economic matters grant a certain measure of freedom or "play" in the "joints" to the executive.

17. Further, the learned Counsel appearing for the petitioners relying on paragraphs 10 and 11 of the judgment of the Apex Court reported in AIR 1954 592 submitted that, the State Government is bound to act within the parameter of the statute and Rules and not beyond the same. But in the instant case, there is no bar for the Department to proceed with the matter. The reasons assigned in the preamble to the impugned Notification is that, in view of declaration of general election to the Parliament and Assembly and that, a care taker Government could not take any decision is fully justified. The respondents have acted well within the statute and Lease Rules. There is no dispute or second thought regarding the well settled principles of law laid down by the Hon'ble Supreme Court, but the principles of law learned Counsel aid down, by the Apex Court in the said decision is not applicable to the facts and circumstances of the instant cases. The said settled law was laid down by the Courts taking into consideration the reasons, objects and the ground reality existed as on that date and the facts and circumstances of that case is entirely different from the one on hand. Therefore, the submission made by the learned Counsel appearing for the petitioners has no force nor it can be made applicable to the facts and circumstances of the instant case.

18. Having regard to the facts and circumstances of the case, as stated above and having regard to the factual legal aspect of the matter, as enumerated above, I do not find any justification or good grounds to interfere in the impugned Notification issued by the first respondent nor the petitioners have made out any good grounds to interfere in the impugned. Accordingly, the Writ Petitions filed by the petitioners are dismissed as devoid of any merits.