

(1978) 11 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 1462, 1507 and 1518 of 1976 and Criminal Miscellaneous No. 2977 of 1977

Darshan Lal

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 07-11-1978

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 245, 246, 252
Government of India Act, 1935 — Section 103, 293
Punjab Excise Act, 1914 — Section 3(14)

Citation : AIR 1979 P&H 102

Hon'ble Judges : Kulwant Singh Tiwana, J;D.S. Tewatia, J

Bench : Division Bench

Judgement

D.S. Tewatia, J.—In these three writ petitions, namely, Civil Writs Nos. 1462, 1507 and 1518 of 1976, as also in Criminal Miscellaneous No. 2977 of 1977 common questions of law and facts, excepting the names of the parties and the places where they carry on their business, are involved and, therefore, we propose a common judgment for them. For the purpose of reference the facts and assertions stated in Civil Writ No. 1462 of 1976 and the respondent's return thereto shall be taken notice of wherever found necessary.

2. The petitioners are engaged in the business of selling drugs (medicinal preparations) and cosmetics (toilet preparations), alcoholic and non-alcoholic, in the State of Punjab under licences issued under the provisions of the Drugs and Cosmetics Act No. 23 of 1940, and the rules framed thereunder, as amended from time to time. (hereinafter called the "Drugs Act").

3. The petitioners, besides impugning Notification No. S. O. 2/P, A. I/14/ 3/76, dated 6-2-1976, Annexure P. 9 to the writ petition, issued in pursuance of the provisions of sub-section (14) of Sec. 3 of the Punjab Excise Act, V914 (Punjab Act 1 of 1914), hereinafter referred to as, the Excise Act, and all other powers thereunder whereby the Governor of Punjab declared all the medicinal and toilet

preparations containing 20 per cent or more proof strength of alcohol as liquor except 19 items of medicinal and toilet preparations mentioned in the impugned notification, have also sought to have the provisions of S. 3(14) of the Excise Act, the provisions of the Punjab Intoxicating Spirituous Preparations Import, Export, Transport, Possession and Sale Rules, 1952 and the provisions of Punjab Excise and Fiscal Order, 1932 (hereinafter referred to as the 1932 Fiscal Order) declared as invalid and ultra vires of Arts. 14, 19, 246, 252 and 254 of the Constitution of India insofar as the same concerned the manufacture, distribution, control, possession, import, export, transport and sale of the drugs (medicinal preparations) and cosmetics (toilet preparations). They have also sought a mandamus against the respondent not to declare the said drugs and toilet preparations under S. 3(14) of the Excise Act as liquor.

4. According to the petitioners, the effect of the issuance of the impugned notification dated 6-2-1976 would be that all medicinal and toilet preparations containing 20 per cent or more proof strength of alcohol, except the items mentioned in the said notification, would be regarded as liquor and would be sold only by such dealers who would obtain licence under the Punjab Intoxicating Spirituous Preparations Import, Export, Transport, Possession and Sale Rules, 1952 (hereinafter referred to as the 1952 Rules), and such dealers would sell the medicinal and toilet preparations either to the other licensees or to a registered medical practitioner or a recognised dispensary or hospital only., that a dealer would not sell these preparations to any ordinary citizen for his use unless a registered medical practitioner had prescribed the use of such medicinal and toilet preparations that even when so pre-scribed the maximum quantity, which could be sold, would not exceed 30 millilitres at any one time--the petitioners' lament is that if a citizen wanted to get a toilet preparation such as Dettoline, After-shave Lotion. Eau-de-cologne, Listerin, Toilet Water, Hair Lacquer and Mist, Perfumes spray etc. and other medicinal preparations of ordinary use, which are generally used by a citizen and kept at home for use in case of accident and emergent treatment, he would not be able to do so without being put to lot of inconvenience, which the securing of the prescription and the limited quantity that could be obtained thereon would entail as result of the impugned notification, and that the impugned notification, which attracted the application of the 1952 Rules to such medicinal and toilet preparations as contained 20 per cent or more proof strength of alcohol, imposed an unreasonable restriction on the rights of the petitioners under Article 19(1)(g) of the Constitution of India.

5. In the affidavit In reply of Shri S. R. Sharma, Assistant Excise and Taxation Commissioner, the stand taken is that neither the impugned provisions of the Excise Act, nor of the 1952 Rules are invalid or ultra vires of any of the provisions of the Constitution nor the impugned notification and the provisions, which are attracted as a result of the said notification to the medicinal and toilet preparations containing 20 per cent or more proof strength of alcohol impose any unreasonable restriction on the fundamental rights of the petitioners under Art, 19(1)(g) of the Constitution of India.

6. As would be clear from the Prayer clause in the writ petition and the law points canvassed in para. 21(a) of the petition, the attack against the impugned notification, the relevant provisions of the Excise Act, of the 1952 Rules, and the 1932 Fiscal Order, falls under three heads:

(1) that to the extent the impugned notification, the provisions of the Excise Act, the provisions of the 1952 Rules, and the provisions of the 1932 Fiscal Order dealing with the manufacture, distribution, control, possession, import, export, transport and sale of the medicinal and toilet preparations containing 20 per cent or more proof strength of alcohol, are invalid, as the same are beyond the legislative competence of the State legislature, as the subject of drugs (medicinal preparations) and cosmetics (toilet preparations and the levy of duty, thereon) exclusively fall within the legislative Jurisdiction of the Union Parliament;

(2) that the provisions of S. 3(14) of the Excise Act confers an unguided, arbitrary and unregulated power to declare any substance to be "liquor" even if the same did not contain alcohol and thus the said provision is ultra vires the provisions of Art. 14 of the Constitution; and

(3) that the said impugned notification and the provisions of the 1952 Rules impose unreasonable restriction under Article 19(1) (f) and (g) of the Constitution and are ultra-vires the said provision and thus invalid.

7. Let us first examine the validity of the relevant provisions of the Act, the 1952 Rules, the 1932 Fiscal Order, and the impugned notification from the standpoint of the legislative competency of the State legislature and the State Government, for an agreement with the contention of the learned counsel for the petitioners on this point would render further consideration of the matter on other grounds unnecessary.

To appreciate the point, a little history of the constitutional development and the enactment of the various statutes having a bearing on the articles brought within the purview of the expression "liquor" is clearly called for.

8. Regarding the legislative sphere the position under the Government of India Act, 1935 (Seventh Schedule) was that the intoxicating liquor, opium and other narcotic drugs were included in the Provincial List, vide item No. 31 which reads-

"LIST II--Provincial Legislative List.

* * * * * 31. Intoxicating liquors and narcotic drugs, that is to say, the production manufacture possession, transport, purchase and sale of Intoxicating liquors, opium and other narcotic drugs, but subject as respects opium to the Provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List I and, as respect poisons and dangerous drugs, to the provisions of List III"

Opium was included in List I--Federal Legislative List--vide item No. 31, which is as under:

"LIST I--Federal Legislative List.

* * * * * 31. Opium. so far as regards cultivation and manufacture, or sale for export."

Poisons and dangerous drugs were included in the Concurrent List--Concurrent Legislative List--vide item No. 19 on List III, which reads-

"LIST III--Concurrent Legislative List.

* * * * * 19. Poisons and dangerous drugs."

The subject of levying duty of excise on medicinal and toilet preparations containing alcohol manufactured in the Province was included in the Provincial Legislative List. vide item No. 40 of List II, which reads-

"LIST II--Provincial Legislative List.

* * * * * 40. Duties of excise on the following goods manufactured or produced in the province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India-

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;

(c) medicinal and toilet preparations containing alcohol or any substance included in sub-para. (b) of this entry."

9. On the promulgation of the Constitution of India, the subject of "narcotic drugs" was taken out of the Provincial List II and all kinds of drugs were Put in the Concurrent List III, vide entry No. 19 of Concurrent List III of the Seventh Sch. to the Constitution of India which entry is In the following terms-

"19. Drugs and poisons, subject to the provisions of entry 59 of List I with respect to opium."

The subject of levying duty of excise on medicinal and toilet preparations is included in the Union List I of the Seventh Schedule to the Constitution of India, vide entry No. 84 which Is in the following terms-

"84. Duties of excise on tobacco and other goods manufactured or produced in India except-

(a) alcoholic liquors for human consumption,

(b) opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in sub-para. (b) of this entry."

10. The result has been that the contents of entry No. 31 of List II--Provincial List--in Government of India Act, 1935. have shrunked to the one mentioned

against entry No. 8 on List II--State List--in the Seventh Sch. to the Constitution of India, which reads-

"8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors."

Entry No. 59 in Union List I in the Constitution (Seventh Schedule) is equivalent to Entry No. 31 in the Federal List I of the Government of India Act, 1935, and it reads-

"31. Opium, so far as regards cultivation, and manufacture or sale for export."

The contents of Entry No. 40 pertaining to the levy of excise duty in the Provincial List II in the Government of India Act, 1935, have undergone a change, as would be clear from the corresponding Entry No. 51 in the State List II of the Constitution of India (Seventh Sch) which is in the following terms-

"51. Duties of excise on the following goods manufactured or produced in the State and countervailing, duties at the same or lower rates on similar goods manufactured or produced elsewhere in India.

(a) alcoholic liquors for human consumption;

(b) opium Indian hemp and other narcotic drugs and narcotics; but not including medicinal and toilet preparations containing alcohol or any substance included in sub-para. (a) of this entry."

11. As a result of this change, the power of the State legislature to provide for levy of excise duties on medicinal and toilet preparations containing alcohol or any substance included in sub-para. (b) of Entry No. 51 in the State List II of the Constitution of India (Seventh Sch.) had been excluded.

12. The Government of India appointed an Excise Committee which made its recommendations regarding the excise matters. The Government of India accepted the conclusions of the Excise Committee as to the necessity for a new enactment and approved the lines on which the new excise Acts were to be framed. However, it decided that in-stead of an Act of general application being passed, each Province should en-act for itself a separate Act. It was, in these circumstances. that the Punjab Excise Act, 1914, was enacted. Initially, it referred to excisable articles, whose possession, manufacture, sale, import, export and transport was regulated by the provisions made in the Act. "Excisable articles" were initially defined in S. 3(6) as meaning "any liquor or intoxicating drug as defined by or under this Act." The expression "liquor" was defined in S. 3(14) and the expression "intoxicating drug" was defined in S. 3(13). The definition of the expression "intoxicating drug" was substituted by Government of India Act (Act II of 1935) and the present definition continues to be the same.

Since It was for the first time under Government of India Act, 1935, that vide Entry No. 40 of List II the State legislature could legislate regarding imposition of the excise duty on medicinal and toilet preparations containing alcohol, so

instead of framing a separate legislation in that regard, the needful was done by incorporating necessary amendments in the Excise Act by Government of India (Adaptation of Laws) Order, 1937, issued on 18-3-1937 under S. 293 of 1935 Act empowered His Majesty's Government to provide for the adaptation of any law in force in British India or my, part of British India till they were ram, pealed or amended by the competent legislature.

13. The amendments to the Excise Act mentioned in Sch "VI" of the said Order were adopted with such modifications, as mentioned in the said Schedule. The Punjab Excise Act was referred to at 1937 Lah. L T .148 The Act had referred to the "excisable articles" in all the provisions of the Act, It was Provided in the said Order that reference to "excisable articles" will be substituted with the expression "intoxicants" in all the sections of the Act except in Ss. 31 and 32 (referring to levy of duty and fees m excisable articles). The definition of "excisable articles" was changed in sub-section (6) of S. 3 of the Act as a result to read as under:

"3. (6) "excisable article" means-

(a) any alcoholic liquor for human consumption or

(b) any intoxicating drug."

A new sub-section (12-a) of S. 3 of the Excise Act was added to define "intoxicant" as under-

"3. (12-a) "intoxicant" means any liquor or intoxicating drug."

14. In view of the change brought about by the contents of Entry No. 84 in the Union List and Entry No. 51 of the State List, maintains the learned counsel, a change became necessary in the definition of "excisable articles" occurring in sub-section (6) of S. 3 of the Excise Act which was brought about by the Government of India (Adaptation of Laws) Order, 1950. whereby sub-cl.(c) of sub-section (6) of See. 3 of the Excise Act was deleted. However, excise duty on medicinal and toilet preparations containing alcohol continued to be. levied under the Excise Act in view of the provisions of Art. 372 of the Constitution till the Union Parliament translated its powers under Entry No. 84 of the Union List by enacting the Medicinal and Toilet Preparations (Excise Duties) Act No. 16 of 1955, which came into force on, 1-4-1957. S. 21 thereof provided that-

"21. If, Immediately before the commencement of the Act there is in force in any State any law corresponding to this Act, that law is hereby repealed:

* * * * *

15. Section 103 of the Government of India Act, 1935, empowered the Federal legislature to pass an Act on a subject falling within the Provincial List for two or more than two Provinces if the legislatures of those States passed resolutions empowering the Federal legislature to pass the same. The provincial legislatures Passed resolutions and the Federal legislature acting thereon en. acted the Drugs

Act of 1940 with a view to regulate the import, manufacture and sale of drugs. The Act was amended in 1962 with a view to bring in the subject of "cosmetics" under the purview of the Act and the Act was then renamed as the Drugs and Cosmetics Act, 1940. The Act was further amended to regulate the manufacture and sale of Ayurvedic (including Siddha) and Unani drugs and it is this Act, as held in the Indian Chemical and Pharmaceutical Works Vs. State of Andhra Pradesh and Others, , which is mainly concerned with the manufacture of standard and quality drugs.

16. The learned counsel for the petitioners has advanced two contentions in the context of the changes in the contents of entries in the Seventh Sch. in the Government of India Act specifying the subjects which fell within the legislative sphere of the Provincial legislature the Federal legislature and the common sphere of both brought about after the promulgation of the Constitution of India and the changes made in the definition of "excisable articles" occurring in sub-section (6) of S. 3 of the Act by the Government of India (Adaptation of Laws) Orders 1937 and 1950.

17. The first contention is that medicinal and Toilet Preparation containing alcohol formed never a part of either the expression "intoxicant" or the expression "liquor" as defined in sub-s (14) of S. 3 of the Act, for medicinal and toilet preparations containing alcohol were included in the definition of "excisable articles" only for the Purpose of levy of excise duty, because it was for the first time in the Government of India Act of 1935 that the subject of levy of excise duty on medicinal and toilet preparations was included within the legislative sphere of the Provincial legislature by way of Entry No. 40 in List II. Seventh Schedule to the Government of India Act, 1935. It was open to the Provincial legislature to enact separate law dealing with the excise duty on medicinal and toilet preparations. Instead of doing so, it chose to so amend the Provisions of the Excise Act as to levy excise duty on medicinal and toilet preparations by the very Act thus obviating a separate legislation for the said purpose, which purpose was achieved by substituting the expression "excisable articles" by the expression "Intoxicants" In all the provisions of the Act excepting those in S. 3 which defines various expressions and Ss. 31 and 32 which deal expressly with the levy of excise duty.

18. Since after the promulgation of the Constitution of India, the subject Pertaining to the levy of excise duty on medicinal and toilet preparations containing alcohol was Included in the Union List, vide Entry No. 84, so it became necessary to bring the Punjab Excise Act in accord with the constitutional provisions. This was achieved again with a simple device of omitting Clause (c) of sub-section (6) of S. 3 from the definition of "excisable articles".

19. The amplitude of the definition of the expression "liquor" occurring in Section 3(14) of the Excise Act, as already observed, is wide enough, as was found by their Lordships of the Supreme Court in the State of Bombay v. F. N. Balsara AIR 1951 SC 318, to cover all liquids and substances containing alcohol and,

therefore, it cannot be said that the moment any liquid or substance containing alcohol is labelled to be a medicinal or a toilet preparation it would go out of the purview of the definition of the word "liquor" and thus from the purview of the Excise Act.

While the "drugs", which include medicinal preparations under the Government of India Act of 1935, was decidedly an exclusively State subject, as would be clear from Entry No. 31, the "cosmetics" neither found any mention in any of the Lists in the Seventh Schedule to the Government of India Act, 1935 nor in any List of the Seventh Schedule to the Government of India. But It may be noticed that the subject of "public health", however, earlier in 1935 Act under Entry No. 14 (Provincial List II) and now under Entry No. 6 (State List II) under the Constitution of India continued to be exclusively a State subject. Both medicinal and toilet preparations have, in our view, something to do with the "health" and, therefore, the State legislature, more particularly, by virtue of Art. 47 of the constitution of India, will be well within its right to enact legislation to regulate the use of medicinal and toilet preparations in a manner so that these do not affect the health of the citizens. The impugned notification, with the aid of 1952 Rules, is a measure of the aforesaid kind.

20. The second contention advanced on behalf of the petitioners is that the provisions of the Excise Act, the 1952 Rules and the 1932 Fiscal Rules to the extent that these by virtue of the impugned notification, deal with the manufacture, distribution, control, possession, import, export, transport and sale of the drugs (medicinal, toilet and cosmetic preparations) and the levy of excise duty thereon went beyond the legislative competence of the State legislature inasmuch as that the subject of "poisons and dangerous drugs" appeared in the Concurrent List by virtue of Entry No. 19 and the subject of "duty of excise....." (on medicinal and toilet preparations) fell exclusively within the Union List, vide Entry No. 84.

21. In substance the argument is that by virtue of the provisions of Articles 245 and 246 of the Constitution of India, which demarcated the legislative sphere of the State legislature and the Union Parliament and Art. 254 of the Constitution of India, which rendered void any provisions of a State Act to the extent it came in conflict with the Act of the Union Parliament dealing With a subject on the Concurrent List, the provisions of the Excise Act and the 1952 Rules and the 1932 Fiscal Rules are said to be coming in conflict with the Drugs Act and the Medicinal and Toilet Preparations (Excise Duties) Act, 1955. in so far as a result of the impugned notification the State Government would be able to levy excise duty and be able to regulate the distribution etc. of such of the medicinal and toilet preparations as contained 20 per cent or more proof strength of alcohol.

22. The Punjab Excise Act and the various Rules giving effect to the provisions of the said Act fall within the category of the-existing law, as defined by Clause (10) of Art. 366 of the Constitution, and as had been held in *Pritpal Singh Rattan Singh Vs. The Chief Commissioner of Delhi and Another*, , and their continued

application, are saved by Art. 372 of the Constitution of India till such time these are altered, repealed or amended by a competent legislature or other competent authority.

23. The attack on the provisions of the said Act, which fall within the category of the "existing law" i.e. law in force before the commencement of the Constitution of India, on the strength of Arts. 245 and 246 of the Constitution of India, was repelled by their Lordships of the Supreme Court as far back as in 1964 (see in this connection *The South India Corporation (P) Ltd. Vs. The Secretary, Board of Revenue Trivandrum and Another*,). When their Lordships while interpreting the scope of Art. 372 of the Constitution of India held that the expression "other" occurring in the said article referred to the Articles other than Arts. 245 and 246 of the Constitution of India, as would be clear from the following observations (at p. 213):

"The object of this article is to maintain the continuity of the pre-existing laws after the Constitution came into force till they were repealed, altered or amended by a competent authority. Without the aid of such an article there would be utter confusion in the field of law. The assumption underlying the article is that the State laws may or may not be within the legislative competence of the appropriate authority under the Constitution. The article would become ineffective and purposeless if it was held that pre-Constitution laws should be such as could be made by the appropriate authority under the Constitution. The words "subject to the other provisions of the Constitution" should, therefore, be given a reasonable interpretation, an interpretation which would carry out the intention of the makers of the Constitution and also which is in accord with the constitutional practice in such matter. The article posits the continuation of the pre-existing laws made by a competent authority notwithstanding the repeal of Article 395; and the expression "other" in the article can only apply to provisions other than those dealing with legislative competence."

24. As to whether the expression "other" occurring in Art. 372 of the Constitution of India refers to Art. 254 thereof, the doubts in this regard were dispelled by their Lordships of the Supreme Court much earlier in *B.V. Patankar and Others Vs. C.G. Sastry*, when dealing with the validity of the Mysore House Rent Control Order of 1948 on the ground of repugnancy with the provisions of the T. P. Act, as would be clear from the following (at p. 274):

"The argument, therefore, that as from April 1, 1951, as a result of repugnancy the House Rent Control Order of 1948, stood repealed must be repelled as unsound and cannot be sustained, because it was an existing law which was saved by Art. 372 of the Constitution and remained unaffected by Art. 254....."

25. The only point now in the above context that survives for consideration is the constitutional validity of the provisions of the Excise Act, the 1952 Rules and the 1932 Fiscal Rules insofar as the same authorised the levy of excise duty on such medicinal and toilet preparations as contained 20 per cent or more proof

strength of alcohol in view of Section 21 of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, which repealed the corresponding provisions in the State Act. It was argued that since the competent legislature or authority had repealed the corresponding provisions envisaging levy of excise duty in the aforesaid State Act and the rules made thereunder, so the same could do longer be regarded as "existing law" and thus being saved under Art. 372 of the Constitution of India insofar as the levy of excise duty on the notified medicinal and toilet preparations is concerned.

26. In para 20(a) to (c) of the return filed by the respondent, reference is made to Order 8 of the Punjab Excise Fiscal Order, 1932, which expressly provides that medicinal and other preparations containing rectified spirit would be exempt from the provisions of the Punjab Excise Act insofar as the levy of excise duty thereon is concerned. Although it is further expressly mentioned that if a spirituous preparation was declared to be liquor under Sec. 3(14) of the Excise Act, the said exemption would not be applied. In the return, it is further made clear that the respondent would not levy any duty on medicinal and other preparations falling within the ambit and scope of the Medicinal and Toilet "Preparations (Excise Duties) Act, 1955, and the rules made thereunder.

27. It may be stated here that in certain respects the matter before us is not *res integra*. This Court has dealt with the matter at two earlier occasions--Once in the case of *Dr. Bishambar Nath Vs. The State of Punjab and Another*, ; and again in the case of *Pritpal Singh Rattan Singh Vs. The Chief Commissioner of Delhi and Another*, , Full Bench. In *Dr. Bishambar Nath's* case, out of the three propositions that were formulated, one was whether the definition of "liquor" in the Excise Act of 1914 was *ultra vires* the Constitution. Following the Supreme Court in *F. N. Balsara's* case AIR 1951 SC 318 (*supra*), in which their Lordships had to consider an identical attack on the definition of the word "liquor" as given in S. 2(24) of the Bombay Prohibition Act, 1949, which was identical with the definition as given in S. 3(14) of the Excise Act and, in fact, had taken into account the definition as given in the Excise Act and held that the said provisions of the Bombay Act did not contravene Art. 13 of the Constitution, this Court also held in *Dr. Bishambar Nath's* case (*supra*) that the provisions of S. 3(14) of the Excise Act did not contravene the provisions of Art. 13 of the Constitution. Art. 13 of the Constitution provides that "all laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part (Fundamental Rights--Part III), shall, to the extent of such inconsistency, be void". A finding that a given Provision is not *ultra vires* the provisions of Article 13 of the Constitution would amount to saying that the said provision of a statute is not *ultra vires* the provisions of Art. 14 etc. of Part III of the Constitution dealing with the Fundamental Rights of the citizens. With respect, we find ourselves in entire agreement with the view taken by the Division Bench of this Court in *Dr. Bishambar Nath's* case (*supra*) in this regard.

28. The learned counsel for the petitioners, however, pointed out that the words occurring at the fag-end of the definition of "liquor" given in Sec. 3(14) of the Excise Act "also any substance which the State Government may by notification declare, to be liquor for the purposes of this Act" do not occur in the definition of "liquor" as given in Section 2(24) of the Bombay Prohibition Act, 1949, and by virtue of the definition of "liquor" as given in Sec. 3(14) of the Excise Act, it would be open to the State Government to declare as "liquor" even a substance which does not include alcohol.

29. We do not think the provisions of S. 3(14) of the Excise Act suffer from such arbitrariness. The objectionable expression, to which reference has been made by the learned counsel, has to be read in the context of the words preceding the same in the definition which are "'liquor' means intoxicating liquor and includes Lahan and all liquid consisting of or containing alcohol" and, therefore, the fears expressed by the petitioners of even a non-alcoholic sub-stance being declared as "liquor" are purely imaginary.

30. This Court in Punjab Distilling Industries Ltd. Vs. Commissioner of Income Tax, Punjab, Pepsu, etc., had also specifically examined the validity of the contention that the restriction imposed by the 1952 Rules regarding the sale of the articles declared to be "liquor" was contrary to the provisions of Art. 19(1)(f) of the Constitution of India. Before the Division Bench, the petitioners in that case, in support of their contention, placed reliance on the Supreme Court decision in F. N. Balsara's case AIR 1951 SC 318 (supra), in which provisions of Ss. 12 and 13 of the Bombay Prohibition Act, 1949, were struck down as imposing unreasonable restriction on the fundamental rights of the citizens under Art. 19(1)(f) of the Constitution. The Division Bench after comparing the provisions of Ss. 12 and 13 of the Bombay Prohibition Act with the provisions of S. 24 of the Excise Act, which deal with the possession of intoxicants, and S. 26, which deal with the sale thereof, held that there was wide difference between the provisions of Ss. 12 and 13 of the Bombay Act and and the provisions of Ss. 24 and 26 of the Punjab Act.

31. Sections 12 and 13 of the Bom-bay Prohibition Act, 1949. are as follows:

"12. No person shall-

- (a) manufacture liquor;
- (b) construct or work any distillery or brewery;
- (c) import, export, transport or possess liquor; or
- (d) sell or buy liquor."

"13. No person shall-

- (a) bottle any liquor for sale;
- (b) consume or use liquor; or

(c) use, keep or have in his possession any materials, still, utensils, implements or apparatus whatsoever for the manufacture of any liquor."

32. Sections 24 and 26 (only the relevant portion) of the, Punjab Act are as follows:

"24. (1) No person shall have in his possession any quantity of any intoxicant in excess of quantity as the State Government has under S. 5, declared such to be the limit of retail sale, except under the authority and in accordance with the terms and conditions of-

(a) a licence for the manufacture, sale or supply of such article; or

(b) in the case of intoxicating drugs. a licence for the cultivation or collection of the plants from which such drugs were produced., or

(c) a permit granted by the Collector in that behalf.

* * * * * 26. No liquor shall be bottled for sale and no excisable article shall be sold, except under the authority and subject to the terms and conditions of a licence granted in that behalf * * * * *

33. It was observed that In the Bombay Act prohibition was absolute while the Punjab Act did not envisage absolute prohibition and. therefore, the ratio of the judgment of the Supreme Court In Balsara's case AIR 1951 SC 318 (supra) did not apply to the facts of Dr. Bishambar Nath Vs. The State of Punjab and Another, . It was further observed that in the case before them the Government was not prohibiting the possession and sale of medicinal drugs which fell within the definition of liquor" under the Punjab Excise Act. as it merely regulated their possession and sale in the general public interest and allowed possession and sale to take place under conditions which were neither un-understandable nor oppressive by means of licenses and permits.

34. The aforesaid view of the Division Bench of this Court was approved by a Full Bench of this Court in Pritpal Singh Rattan Singh Vs. The Chief Commissioner of Delhi and Another, while considering the reasonableness of the restrictions regarding sale etc. of all liquids and substances, besides the exempted ones containing 20 per cent proof strength of alcohol as declared to be "liquor" by the Chief Commissioner, Delhi, under S. 3(14) of the Excise Act. The rules, that were under consideration, were the Delhi Intoxicating Spirituous Preparations. Import. Export, Transport, Possession and Sale Rules, 1952, as amended up to 13-12-1961. These rules were the virtual copy of the 1952 Rules without any substantial modifications but only modification in the designation of the authority under the Rules. The reason for the authorities in Delhi, the purposes, did not have the designation of offices comparable to those in the Punjab. The 1961 Delhi Rules, which were under challenge, amended the 1952 Delhi Rules. but by and large followed exactly the same pattern with slight modification necessitated by the new development and circumstances. The only change that had been made by the 1961 Rules was the extension of definition of the word "liquor"

consequent upon the first impugned notification by the Chief Commissioner declaring spirituous preparations containing more than 20 per cent proof strength of alcohol to be "liquor" under S. 3(14) of the Act. By that declaration the subject of the Rules had not remained confined to 37 items of intoxicating spirituous preparations as under the 1952 Rules, for as a result of the declaration by the Chief Commissioner all spirituous preparations with 20 per cent or more proof strength of alcohol in them were declared to be liquor, Mchh Singh, J. as he then was, who delivered the opinion for the Bench, observed that (at p. 14)-

"The impugned notification of Dec. 7, 1961, merely extends the scope of the application of the rules from 37 intoxicating spirituous preparations to all spirituous preparations having contents 20 Per cent proof alcohol. Now this extension by itself would apparently be seen not to make any substantial alteration or change in the situation. It probably results in a certain measure of irksomeness but that is no ground for striking down either the rules or the notifications as constitutionally invalid....."

The learned Judge examined the reasonableness of each rule and while dealing with Rr. 3 and 3-A which made the prescription of a registered medical practitioner necessary and also gave the right to such a practitioner to set the limit of purchase of intoxicating spirituous preparation in the prescription, held that there was nothing un-reasonable or, in any way, objectionable in that a person who was to buy for himself or for a relation or a friend any intoxicating spirituous preparation being a medicine would not be purchasing such a preparation except when prescribed by a medical practitioner and in accordance with such a prescription, Mehr Singh, J. distinguished the ratio of F. N. Baleara's case AIR 1951 SC 318 (supra) in holding the relevant impugned provisions to be reasonable and finally observed AIR 1966 P & H 15 :

"The 1961 Rules when read with the notification of Dec. 7, 1961, make the picture quite clear that the sale of intoxicating spirituous preparations with 20 per cent proof alcohol content is only permissible subject to the 1952 and 1961 Rules and so also the possession, import, export and transport of the same. The position with regard to" the present impugned rules and notifications is not the same as in The State of Bombay and Another Vs. F.N. Balsara, where the challenge was to the constitutional validity of the Bombay Prohibition Act, 1949. In considering whether restrictions as in the impugned rules and the notifications are reasonable or are not reasonable, the circumstances which have led to them cannot be ignored and the other matter that has to be kept in view is whether they are so excessive as to be in themselves unreasonable. Reference has already been made to the circumstances which have compelled the authorities to proceed in the manner in which they have done by the impugned rules and the notifications so as to put a stop to the use of intoxicating, alcohol and not as medicine. The main matters which are provided by the impugned rules and the notifications are the limitation of the quantity that may be purchased by a person and the requirement of a licence or a permit or a pass as a particular situation

demands under the rules. Neither in its term is an excessive restriction. The limitation on the quantity permitted to be sold is only circumscribed with the requirements of person for the purposes of his health and hence on the basis of a medicinal prescription. This cannot be considered excessive from any angle. The requirement of a licence or a permit or a pass as has been explained is not excessive either. So that this last argument on the side of the petitioner cannot be accepted that the rules to which reference has been made, and no other rule has been under attack by the learned counsel for the petitioner, are in any way providing unreasonable restrictions on the sale, possession, import, export or transport of intoxicating spirituous liquors in so far as the petitioner as a druggist and a chemist is concerned or in so far as the general public is concerned in purchasing such preparations as a requirement for health."

35. Yet another argument, advanced in *Pritpal Singh Rattan Singh Vs. The Chief Commissioner of Delhi and Another*, and reiterated before us, that the impugned notification made under S. 3(14) of the Excise Act declaring all spirituous preparations containing more than 20 per cent proof strength of alcohol for the purposes of the Act was violative of Art. 301 of the Constitution, was repelled by the Bench on the ground that the Excise Act being existing law including S. 3(14) thereof, under which the impugned notification had been issued, was thus saved by Art. 305 of the Constitution from an attack based on Arts. 301 and 303 of the Constitution of India.

36. With respect, we not only concur in the aforesaid view, but, in fact, so far as this Court is concerned, are bound by the said authoritative view of the Full Bench of this Court.

37. What is more one has to take notice of the fact that Art. 47 enjoins upon the State to improve public health. The action of the State Government in issuing the impugned notification was dictated by its concern for the health of the citizens, because the unscrupulous druggists and chemists resorted to the misuse of so-called medicinal preparations containing alcohol to the detriment of the health of the citizens and the abuse and misuse of the intoxicating spirituous preparations had assumed menacing proportions to such an extent, that liquor addicts not having means to purchase foreign liquor or country liquor began to satisfy their cravings by taking spirituous preparations as substitute for liquor to the detriment of their health. The diversion of these preparations to illicit channel created an abnormal state of affairs and as notification No. SO5/PAI/14/S. 3/72, dated 12-3-1972, issued by the State Government exempting 53 medicinal and toilet preparations from the operation of the 1952 Rules was found inadequate to deal with the abuse which was assuming dangerous proportions. So as a last resort the impugned notification had to be promulgated.

38. For the reasons stated, we find no merit in these writ petitions and the same are dismissed, as also the miscellaneous petition, but we make no order as to costs.

Kulwant Singh Tiwana, J.

39. I agree.

40. Petitions dismissed.