(1992) 01 DEL CK 0042

In the Delhi High Court

Case No : Civil Writ Appeal No''s. 1409, 1462, 1642, 1683 and 2319 of 1988

Jagatjit Industries Ltd., Jupiter Distilleries and Another, Shaw Wallce and Co. Ltd. and Others, Ajudhia Distillery and Devans Modern Breweries Ltd. — APPELLANT

Vs

Lt. Governor and Others — RESPONDENT

Date of Decision : 14-01-1992

Acts Referred:
Constitution of India, 1950 — Article 14
Delhi Liquor Licence Rules, 1976 — Rule 247

Citation : (1992) 46 DLT 535 : (1992) 22 DRJ 245

Hon'ble Judges : S.B. Wad, J;Mohd. Shamim, J

Bench : Division Bench

Advocate : D.D. Thakur, A.C. Gulati, A.K. Verma, M.G. Ramachandran, K.C. Dua, Y.P. Mahajan, S.K. Mahajan, D. Khadaria and Alka Marwaha, for the Appellant;

Judgement

Mohd. Shamim, J.

(1) These are five writ petitions preferred by M/s. Jagarjit Industries Ltd. (No-1683/88), M/s. Jupiter Distilleries & Anr. (1642/88), M/s. Shaw Wallace & Co. Ltd. & Others (2319/88), M/s. Ajudhia Distillery (1409/88), M/s. Devans Modem Breweries Ltd. (No. 1462/88). Through the above said writ petitions the petitioners want this Court to quash and set aside the order dated 1.7.1988 passed by the Excise Commissioner, Delhi whereby the maximum price for the wholesale supply of liquor to the Union Territory of Delhi was fixed. They further want that sub rules 17-A, 17-B, 17-C, of Rule 33 of Delhi Liquor license Rules of 1976 be declared as illegal and invalid and ultra virus Articles 14 and 19 of the Constitution of India. They have also prayed for issue of a direction of the respondents to pay to the petitioners the difference between the prices actually paid as per the impugned order adverted to above and the prices as claimed by the petitioners. They also claim that clause 4(c) of the Public Notice No.V of 1988-89, dated 5.4.1988 be set aside.

(2) All the above petitions are being taken up together for disposal as the common questions of law and facts are likely to arise while disposing them of.

(3) We would like to refer to the facts of the Civil Writ petition No. 1683/88 - M/s. Jagatjit Industries Ltd. vs. Excise Commissioner of Delhi only, as the said petition is a typical of the petitions filed before this Court, in order to fully and properly appreciate the points in controversy in between the parties.

(4) The respondent No.3 issued a public notice dated 6.4.1988 inviting applications for the grant of license in Form No.1-1 for the wholesale vend of I.M.F.L./Bear in the Union Territory of Delhi for the period from 1.5.1988 to 31.3.1989. The petitioners applied for the licenses in form L-l and the same were granted. license in the present petition No. 1683/88 was issued on 9.5.1988.

(5) The respondent No.3 appointed a Committee consisting of certain officers under sub rule 17-A of Rule 3 of the Delhi Liquor license Rules, 1976 in order to fix the whole sale price of IMFL & Beer. Acting on the recommendations of the said Committee, the Delhi Administration fixed the prices of the liquor to be sold in Delhi, for the financial year commencing from 1.5.1988 to 31.3.1989 with effect from 1.7.1988. The said price fixation is illegal and unconstitutional. There is no provision under the Act which empowers the said authorities to fix the prices of the liquor to be sold in wholesale or retail market. The alleged power, moreover, can be exercised by Excise Commissioner only. The Excise Commissioner can not further sub delegate his power as has been done in. the present case. Hearing of the persons affected is a condition precedent before fixing the prices. The same was never done in the present case. On receipt of the impugned order dated 1.7.1988 an application for review was moved before the Commissioner on 7.7.88. The petitioners through the said application also withdrew their earlier offer to reduce the wholesale price. Section 58 of the Excise Act (hereinafter referred to as Act) confers powers upon the Lt. Governor to frame rules for the purposes of implementation of the provisions of the Act. The Governor can fix the price of any bottle u/s 58(2)(D) of the Act. . i'' However, there is no provision where under he can fix the price of the intoxicant. The Excise Commissioner can tame rules u/s 59 of the Act with regard to matters expressly provided therein. But there is no power to frame a rule with regard to the maximum price above which an intoxicant cannot be sold. Though there is a power to frame rule whereunder the minimum price of an intoxicant can be fixed. However, there is no rule and law to fix the maximum price. Hence, the authorities can not fix the maximum sale price of liquor.

(6) Once a license to carry on trade in liquor is granted, then during the subsistence of the said license the citizen would have legitimate right to carry on trade in liquor and any restraint on their right would infringe Article 19 of the Constitution Sub Rules 17-A, 17-B, 17-C of Rule 33 of the Delhi Liquor license Rules of 1976 give an absolute, uncanalised and unguided power to fix the maximum price of the liquor. Hence, they impinge upon the subsisting rights of the petitioner lo carry on trade in liquor. Consequently, they are vocative of

Articles 14 and 19 of the Constitution.

(7) All the manufacturers of the liquor are to be treated at par and it would thus be palpably discriminatory to levy different duties of excise on different brands of liquor and thereby to treat them differently. The impugned order dated 1.7.88 thus hits article 14 of the Constitution of India. The impugned order discloses rank arbitrariness in approach and is not based on any well defined criteria or guidelines. Hence rose the necessity for the presentation of the present petitions.

(8) Respondents put in contest inter-alia on the following grounds: that an appeal is provided against an order of fixation of wholesale price passed by the Excise Commissioner as per the provisions of Delhi Excise Powers and Appeal Orders, to the Administrator of Delhi. However, no appeal was preferred. The petitioners have approached this court without exhausting the efficacious and legal remedy available to them. The petitions are thus premature and liable to be dismissed.

(9) There is no vested right in the petitioners to do trade and business in intoxicant and liquor. The State, under its regulatory powers, has a right to prohibit every form of activity or put conditions in its absolute discretion in respect of intoxicants of liquor, i.e., its manufacture, storage, export import, possession. The State in exercise of its powers of control has to take into consideration the welfare of the people. It has to ensure that the restrictions are placed on the consumption of liquor. It has further to see that the liquor which is supplied to the people is of the best quali

(10) Sub rules 17-A, 17-B, 17-C, of Rule 33 of Delhi Liquor license Rules have been framed by Lt. Governor of Delhi under the powers conferred on him by Section 58 of the Act to further the object of the Act, i.e. regulation of the and business in liquor. Thus the said rules are legal and valid and in traverse of the Act. A well reasoned and speaking order was passed by the Respondent No. 1 after giving the petitioners an opportunity of being heard. It was made clear to the petitioners that the 250 prices would be fixed afresh during the pendency of the licencing period. The order dated 29.6.1988 whereby the wholesale and retail prices of different brands of IMFL and Beer were fixed is perfectly legal and valid and in accordance with the Excise Policy for the years 1988-89. It is false and preposterous that said order in any way is in violation of Articles 14 and 19 of the Constitution of India. The writ petitions, in the circumstances stated above have got no force and are thus liable to be dismissed .

(11) Learned counsel for the petitioners Mr. D.D. Thakur has contended that the Commissioner of Excise has got no power to fix the wholesale prices of the liquor except in accordance with the terms of the license because Sections 58 and 59 of the Act do not confer any powers on him. Section 58 of the Act empowers the Lt. Governor to make rules for fixing the prices of an excise bottle only. It thus does not enable him to fix the wholesale prices of the liquor. Section 59 of the Act, on the other hand, confers powers on the Excise Commissioner to fix the strength of

the liquor or the minimum price thereof. According to the learned counsel sub rules 17-A, 17-B, 17-C of Rule 33 of the Delhi Liquor license Rules of 1976 are thus illegal, invalid and ultravires Article 14 and 19 of the Constitution of India.

(12) Learned counsel for the respondents Mr. S.K. Mahajan during the course of his arguments has raised a preliminary objection with regard to the maintainability of the present petitions. He has urged with great zeal and fervor that the petitioners have got no fundamental right to carry on trade or business in the intoxicants. Since no person has a fundamental right to deal in liquor, consequently ,he can not challenge the rules and regulations framed by the Excise Commissioner on the ground of their being either arbitrary or discriminatory.

(13) Since, the learned counsel for the respondents has challenged the very maintainability of the present petitions before this court, hence, we need not go into any other question raised by the learned counsel for the petitioners till the said point is adjudicated upon.

(14) Admittedly, the petitioners are the dealers and the manufacturers of the liquor. The liquor, nobody would dispute, is something which is injurious and detrimental, and fatal for health. Nay, it is not only detrimental and injurious for health but it is the source and the fountain from which spring many other ailments which the present society or a country suffers from. The evils of the liquor are too many to be penned on the parchment or to be given vent to by the tongue. Instances are not lacking when a man ravished his own daughter or sold his own wife while under the influence of liquor. Thus the liquor is a source of quite a good number of crimes in the Society. The fact that a man becomes prone to crime while under the influence of liquor has been recognised by even the Legislators in their wisdom while framing section 85 of the indian Penal Code.

(15) Liquor is not only source of crime but it also leads to many other vices. A man who gets addicted to drinking is reduced almost to state of penury. He expends his hard earned money on the purchase of liquor instead of spending the same to meet the demands and the requirements of his family with the result that they are either almost starved or become victims to all sorts of diseases which they suffer from, on account of malnutrition.

(16) The evils of liquor cannot be better described than in the words of Richard Bulmer-

"WE drink for joy and become miserable. We drink for sociability and become argumentative. We drink for sophistication and become obnoxious. We drink to held us sleep and awake exhausted .We drink for exhilaration and end up depressed. We drink to gain confidence and become afraid. We drink to make conversation flow and become in-coherent. We drink to diminish our problems and see them multiply."

(17) Shakespeare in his Suigeneris style has got following to say with regard to

liquor. He has put the words cited below in the mouth of one of his characters in Other to Ii, 3, "0 God, that men should put an enemy in their mouths to steal away their brains! that we should, with joy, pleasance, revel and applause ,transform ourselves into beasts!"

(18) It is manifest from the aforesaid discussion that the liquor is something which is very harmful and detrimental not only to an individual who consumes it but to the Nation as a whole. It was in view of the above that the framers of our Constitution cast a duty on the shoulders of the State under Article 47 of the Constitution of India to make efforts to bring about prohibition. We are tempted over here to cite in extenso Article 47 of the Constitution. It is in the following words:

"47..... The State shall regard the raising of level of nutrition and the standard of living of its people an the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

(19) One of the primary functions of the State as is evident from above is to look after the welfare of citizens of the State, their health, their standard of living and the level of nutrition. One of the ways by which it can be done is to have control over the trade in liquor. It is with the said end in view that nobody is permitted to trade in liquor except with the prior permission of the State through a license. The State is further empowered to regulate and to check and to put restrictions on the trade of intoxicants.

(20) The Stale under its wide powers has the right to prohibit absolutely every form of activity in relation to intoxicants. Thus nobody can be said to have fundamental right to trade in liquor. This right vests only in the State and the Stale can part with it in discerning few cases with certain conditions attached thereto. Thus nobody can challenge the said restrictions when they arc put in the form of the fixation of the prices minimum or maximum by alleging that it puts certain restrictions on his right to trade in liquor under Article 19 of the Constitution of India. Similarly, nobody can he heard to say that the fixation of the prices is arbitrary and discriminatory and thus infringes his fundamental right as enshrined in Article 14 of the Constitution of India. 19. The petitioners through the present petitions want to challenge the fixation of the price of the liquor by the State on the ground that the same infringes their fundamental rights under Article `14 and 19 of the Constitution of India. To our mind this they can not do as admittedly they arc the dealers in liquor and they have got no fundamental right to do so. A question very much akin to the question in hand arose before their lordships of the Supreme Court as reported in Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others, . The contention before the Court was that every citizen has got an unfettered right to carry on trade in liquor under article 19 of the Constitution of India and, Therefore, the provisions of the Ajmer Excise Regulation I of 1915

which conferred powers on the Excise Commissioner to restrict the number of liquor shops and to license them by auction to the highest bidder were void as creating a monopoly in liquor trade. Mahajan, C.J. while repelling the sid contentions observed as under:

(12) "IT can also not be denied that the State has the power to prohibit trades which are illegal or immoral or injurious to the health and welfare of the public. Laws prohibiting trades in noxious or dangerous goods or trafficking in women cannot be held to be illegal as enacting prohibition and not a mere regulation.

(21) It was then argued in the said case that the sale of intoxicating liquors by retail in small quantities should be atleast permitted without any restriction because every person has a right which inheres in him, i.e., a natural right to carry on trade in intoxicating liquors and that the State has no right to create a monopoly in them. The said contention was rejected and while rejecting the same their lordships cited with approval the observations of Field J. in Crowley vs. Christenses, (1980) 34 Law Ed. 620 as under: "There is in this position an assumption of a fact does not exist, that when the liquors are taken in excess the injuries are confined to the party offending. The injury, it is true, first falls upon him in his health, which the habit undermines; in his morals, 253 which it weakens; and in the self-abasement which it creates. But as it leads to neglect of business and waste of property and general demoralization ,it affects those who are immediately connected with and dependent upon him. ....The statistics of every State show a greater amount of crime and misery attributable to the use of ardent spirits obtained at these retail liquor saloons...... There is no inherent right in a citizen to thus sell intoxicating liquors by retail; it is not a privilege of a citizen of the State or of citizen of the United States. As it is a business attended with danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limits to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority. That authority may vest in such officers as it may deem proper the power of passing upon applications for permission to canny it on, and to issue licenses for the purpose. It is a matter of legislative will only."

(22) Their lordships of the Supreme Court again reiterated the above view in Hari Shankar & Ors. v. Deputy Excise and Taxation Commissioner & Ors., Air 1975 Sc P. 1181. There is no fundamental right to do trade or business in intoxicants. The State, under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants - its manufacture, storage, export, import, sale and possession. In all their manifestation, these rights are vested in the State and indeed without such vesting there can be no effective regulation of various forms of activities in relation to intoxicants. .....The wider right to prohibit absolutely would includes the narrower right to permit dealings in intoxicants on such terms of general application as the State deems expedient. .... Since the rights in regard to intoxicants belong to the State, it is open to the Government to part with those rights for a consideration." To the

same effect are also the observations as reported in Embassy Restaurant and Others Vs. Delhi Administration and Others, .

(23) Mr. Thakur, learned counsel for the petitioner has argued that once the State decides to grant license for trade in liquor then the State cannot escape the rigour of Article 14 of Constitution of India, the learned counsel in support of his argument has cited State of M.P. v. NandLal, Air 1987 Sc 257. However, to our mind the said authority which is a judgment given by two judges of the Supreme Court is of no avail to the petitioners in view of the judgment in Hari Shankar''s case (Supra) delivered by a Constitution Bench consisting of seven judges.

(24) The next contention put forward by the learned counsel for the respondents. Mr. Mahajan, is that the present writ petitions even otherwise also are not maintainable in as much as an order passed by the Excise Commissioner on 30.6.1988 fixing the wholesale prices is an appealable order. An appeal is provided to the Lt. Governor under the Delhi Excise Powers And Appeal ORDERS. However, no appeal was preferred in any of the writ petitions except in writ petition No. 1409/88 - M/s. Ajudhia Distillery vs. Delhi Administration. However, even in the said writ petition the petitioners did not await for the result and rushed to this Court. We Find ourselves in perfect agreement with the learned counsel for the respondents. The petitioners have filed the present writ petitions without exhausting the equally efficacious and legal remedy which was available to them. Hence, the present writ petitions are premature and are not maintainable on this score also.

(25) Assuming argue do ,that the present writ petitions are maintainable even then they are also libel to be dismissed on merits for the reasons given below.

(26) It has been urged for and on behalf of the petitioners that the Excise Commissioner has no power to fix the wholesale prices except in accordance with the terms of the license on account of the fact that section 58 and 59 do not confer any such power on him. According to the learned counsel section 58 gives powers to the Lt. Governor to make rules for fixing the price of an Excise Bottle only. Section 59 of the Excise Act confers power on the Excise Commissioner only to fix strength of liquor or the minimum price. Hence, the Excise Commissioner could not have fixed the maximum price of the liquor beyond which it could not have been sold by the petitioners. The contention of the learned counsel, we feel, is without any force. Since we are concerned with the construction of the above two sections it would be just and proper to examine the relevant provisions of the law before proceeding any further in the matter Section 58 is to the following effect: "58. The Lt. Governor of Delhi may, by notification, make rules for the purpose of carrying out the provisions of this Act or any other law for the time being in force relating to excise revenue. (2)........ (a)........ (b) .... (c)........ (d) regulating the import, export, transport or possession of any intoxicant or excise bottle and the transfer, price or use of any type or description of such bottle." Section 59 of the Excise Act deals with the powers of the Excise Commissioner to make rules. It reads as under: " The Excise Commissioner may,

by notification, make rules- 255 (a) .... (i) .... (ii) .... (iii) .... (a) .... (b) .... (c) .... (d) .... (e) .... (f) .... (i) .... (ii) .... (iii) the fixing of the strength, or price below which any intoxicant shall not be sold. supplied or possessed." The learned counsel on the basis of the law alluded to above has urged that clause (d) of sub section (2) of Section 58 empowers the Lt. Governor to make rules with regard to the price of an Excise Bottle only. It does not confer on him any power to make. rules with regard to the price of the liquor. The contention of the learned counsel to say the least is puerile. We feel that the learned counsel has construed miss the provisions of clause (d) of sub section (2) of Section 58. A close scrutiny of the above said provision of law would reveal that the clause (d) adverted to above not only deals with regulating the price of the Excise Bottle only but it also deals with regard to the regulation of the price of any intoxicant Admittedly, a liquor is an intoxicant. Hence, it is well within the power of the Ltd. Governor to make rules with regard to the price of the liquor.

(27) It has next been urged that the Excise Commissioner no doubt is competent to fix the minimum price as per the provisions of Section 59 sub clause (iii) of clause (f). However, he has got no power to fix the maximum price above which the liquor cannot be sold as was the case in the present case. The contention of the learned counsel is an ingenious one but can be brushed side within an anon. We feel while 256 interpreting sub clause (iii) of clause (f) of Section 59 the learned counsel is oblivious of clause (a) of Section 59 of the Excise Act. A perusal of the same reveals that the Excise Commissioner has been authorised there under to regulate the manufacture, supply, storage, or sale of any intoxicant including: (i).......... (ii)........... Thus sub clause (iii) of clause (f) of Section 59 cannot be read in isolation. It is to be read for the purpose of interpretation Along with clause (a) of Section 59. If so read, it empowers the Excise Commissioner to regulate the manufacture, supply and sale of intoxicants. While regulating the sale the Excise Commissioner would have ample power to regulate the price. The word sale relates to the price at which an intoxicant which includes liquor is to be sold in the market. In the absence of the power to regulate the price, the sale of the liquor cannot be regulated. Hence, we feel that the Excise Commissioner is competent enough to frame rules with regard to the fixation of the minimum as well as the maximum price of the liquor. Thus we are of the view that the Excise Commissioner was competent enough to frame sub rule 17-A, 17-B, and 17-C of Rule 33 of the Delhi Liquor license Rules, 1976. It would not be out of place over here to reproduce the said rules as they can be adverted to with profit: "17-A. The Commissioner may after giving an opportunity to be heard to the person licensed to sell such liquor, Fix the price or the maximum price of any liquor in wholesale or in retail or in both. 17-B. In fixing the price under sub-rule 17-A, the Commissioner for reasons to be recorded in writing, may increase or decrease the whole sale or retail prices existing at the time in the Union Territory of Delhi after giving an opportunity to the applicant licensee of being heard." In fixing any price under sub rule 17-A the

Commissioner may after giving an opportunity to be heard to the person licensed to sell such liquor fix the price or the maximum price of any liquor in retail or whole sale.

(28) It is fully manifest from above that the Excise Commissioner was well within his power to frame the above said rules. In the light of our discussion above, we are further of the view that he was fully empowered under the said provisions of law to fix the maximum price beyond which liquor cannot be sold.

(29) The learned counsel for the petitioner has further urged that a public notice in the instant case was issued on 6.4.1988 inviting applications for the grant of license in Form No.1 for the wholesale vend of IMFL/Beer in the Union Territory of Delhi for the period from 1.5.1988 to 31.3.1989. The petitioners applied for the license in form L-l and the same were granted. After the grant of the license sub rule 17-A was amended on 14.6.1988. The learned counsel has thus contended that the said amended rule which obviously came into force much after the issue of the public notice issued on 6.4.1988 inviting applications for the grant of the license cannot be made applicable to the case of the petitioners.

(30) The next limb of the argument of the learned counsel for the petitioners is that the conditions for the grant of the license cannot be varied and altered to the disadvantage of the petitioners during subsistence of the license period, i.e. from 1.5.1988 to 31.3.1989. The contention of the learned counsel, we feel, does not hold any water.

(31) The public notice inviting applications was issued on 6.4.1988. The licenses, admittedly, were to be issued on the terms and conditions mentioned in Annexure ''A'' to the petition. Thus the said licenses were issued subject to the terms and conditions enumerated therein. A perusal of the condition No.5(3) reveals that the Commissioner was empowered to revise and review the price of the liquor during the licensing period. We are inclined over here to reproduce the said term, i.e, 5(3) in order to fully and properly appreciate the point involved herein. It reads as under:

"THE wholesale price of various brands of IMFL and Beer shall remain same as those are operating preceding to the period of grant of license unless revised, reviewed by an order of the Excise Commissioner and licenses shall sell such liquor at such prices, as the Excise Commissioner may approve or at a price not higher than such maximum price as the Excise Commissioner may fix. The Excise Commissioner will also have the authority to reduce the prices of a brand of liquor at any time during the licensing period if in his discretion it is noticed that the prices prevailing in the neighbouring States are lower than the Delhi prices of the brand."

(32) Sub para 4 of paragraph 5 of the above terms and conditions further provides:

"RATIONALISATION of prices would be done in respect of the brands of IMFL/

Beer for which licenses are granted for the licencing period 1.5.1988 to 31.3.1989 as required/provided under the Delhi Liquor license Rules, 1976."

(33) It is abundantly clear from the relevant terms and conditions alluded to above that the license was granted subject to the authority of the Excise Commissioner to very or alter the prices as and when deemed proper by him and it was left exclusively to his discretion. Furthermore, it was specifically mentioned under term 5(4) of the Terms and Conditions for the grant of license that the rationalisation of the prices was to be done during the subsistence of the licensing period. In view of the above, we are of the view that the amendment, if any, of sub rule 17-A was made in accordance with the terms and conditions alluded to above. Furthermore, we find that the Excise Commissioner was competent enough to amend the said rule as per the Section 59 of the Excise Act.

(34) Learned counsel for the petitioners has then argued that the State cannot levy an Excise Duty except on the manufacture and production of liquor. The State cannot levy duty which is not reliable to such production and manufacture. Admittedly, there is no manufacture of liquor within the Union Territory of Delhi. Hence, no Excise Duty should have been levied by the Delhi Administration on the liquor. The contention of the learned counsel, we feel, is devoid of any merit. In this connection we would like to refer to the provisions of section 31 of the Punjab Excise Act in order to show and prove that the Lt Governor of Delhi is fully competent to levy Excise Duty on the liquor imported from outside Union Territory of Delhi. The provisions of Section 31 of the Punjab Excise Act are in the following words:

"31.An excise duty or countervailing duty, as the case may be, at such rate or rates as the Lt. Governor of Delhi shall direct, may be imposed either generally or for any specified local area, or any excisable article- (a) imported, exported or transported in accordance with the provisions of Section 16; or (b) manufactured or cultivated under any license granted u/s 20; or (c) manufactured in any distillery established or any distillery or brewery licensed u/s 21."

(35) It is crystal clear from the relevant provisions of the law adverted to above that the Lt. Governor of Delhi is not only competent to levy an excise duty on the items/ articles which are manufactured and exported or cultivated within Union Territory of Delhi but excise duty can be levied on the excisable articles which are imported from outside Union Territory of Delhi.

(36) It has then been urged for and on behalf of the petitioners that the wholesale prices which were fixed in the instant case varied from manufacturer to manufacturer and from brand to brand. The mechanism which was evolved by the Delhi Administration for determination of the prices was to take into account the ex- distillery price of a particular brand adding to it the incidental expenditure such as export pass fee, freight charges, handling charges, insurance, and then arriving at a landed price to which were added the local transport charges and a profit of 5% on the landed cost. The wholesale price which was per unit so

accordingly calculated, and the amount by which the wholesale price was reduced was ordered to be credited to State Exchequer by increasing so called excise revenue without making any change in the retail price. As a result of this reduction the petitioner suffered heavy losses whereas the petitioner''s competitors from south, central and eastern States got much higher price than those conceded to the petitioners because of export pass fee and freight being much higher in the case of the said States. The petitioners, we feel, should have no quarrel on the said score. The Excise Policy was formed and evolved for the year 1988-89 with clear cut guidelines and parameters within which the licenses were to operate and for fixation of the price of the liquor. The wholesalers who bought liquor from far away places in the Sought ,Central and Eastern States must have paid higher freight charges and higher export pass fee. Thus there was nothing unnatural in granting them the said margin while fixing their prices in proportion to the amounts so spent by them. We do not find any discrimination on the said score alleged to have been made in case of the petitioners by the respondents.

(37) It has next been contended that the petitioners were not heard before fixing the prices of the liquor. The impugned order thus passed on 1.7.1988 is illegal and invalid and is liable to be set aside on (he said score. The contention of the learned counsel does not hold any water. A perusal of the Counter affidavit in Writ Petition No. 1683/88- Mis. Jagatjit Industries Vs. The Excise Commissioner reveals that the petitioners were heard on 9.5.1988 and 25.6.1988 when they were present through Shri M.L. Goyal, Vice-President of the petitioners. Similarly, the petitioners in Petition No.2319/88- Shaw Wallace & Co. Ltd. Vs. The Lt. Governor & Ors. were given sufficient hearing on 7.5.1988 and 27.6.1988. The petitioners were present through Shri A. Swarup, Zonal Manager and Shri A.R. Dutta, Attorney of the petitioners. The hearing in Cwp No.1 642/88 - M/s. Jupiter Distillery Vs. The Lt. Governor was given on 8.6.1988 with regard to the fixing of the wholesale prices. The petitioners were present through one Mr. Virender Singh. In the case of Devan Modern Breweries, Cwp No. 1642/88 the prices were fixed after giving due hearing to the petitioner and in this connection Shri P.P. Behl, Attorney and Shri. R.K. Mahajan, General Manager of the petitioner were present. The petitioners in Cwp No. 1409/88 - M/s. Ajudhia Distillery Vs. Delhi Administration were heard on 16.5.1988 and 20.6.1988 and on 30.6.1988. We thus feel that it does not lie in the mouth of the petitioners now to allege that they were not given adequate hearing. In fact, the petitioners have also conceded the factum of hearing though bit obliquely in their writ petitions.

(38) It was then urged in writ petition No.2319/88/ Shaw Wallace & Co. Ltd. Vs. The Lt. Governor that the term 4-C of the terms and conditions annexed with the license is illegal and invalid in as much as it provides that the brands of IMFL or Beer for which licenses L-I are being granted would be only those which were being sold for the last 2 years in the Capital of the State manufacturing the same the same, i.e., for the period from 1.4.1987 to 31.3.1988 and in the Capital of one any other State or Union Territory other than Delhi. According to the learned

counsel, the said term is illegal and invalid in as much as it is arbitrary and discriminatory. We are sorry we are unable to agree with the contention of the learned counsel. The said argument was raised before a division bench of this Court in Cwp No.454/88/ Modi Spinning & Weaving Mills Co. Vs. The Lt. Governor and the said writ petition was dismissed by the Division Bench consisting of Justice S.B. Wad and Justice G.C. Jain with the following observations:

"THE writ petition is not maintainable in view of the Harishankar & Others Vs. Dy. Excise & Taxation Commissioner as reported in Air 1975 Delhi P. 1121. Even otherwise we feel that the restriction imposed by clause (4)(c) of the Public Notice is reasonable and in public interest for procuring the standard liquor."

(39) In view of the above, we are of the view that the present writ petitions have got no force and are thus liable to be dismissed. We hereby dismiss the Writ Petitions No. 1409, 1462, 1642, 1683 and 2319 of 1988, with Costs.

