

**(1998) 06 KAR CK 0054**

**In the Karnataka High Court**

**Case No :** Writ Petition No's. 19314 to 19323 of 1998 connected with Writ  
Petition No's. 19481 to 19536 and 20030 ot 20119 of 1998

Karnataka Wine Merchants Association (Registered),  
Bangalore and others

**APPELLANT**

**Vs**

State of Karnataka and others

**RESPONDENT**

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**Date of Decision :** 30-06-1998

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226

Karnataka Excise (Sale of Indian and Foreign Liquor) Rules, 1968 — Rule 8 (1), 8-A

**Citation :** (1999) 2 KarLJ 612

**Hon'ble Judges :** V.K. Signal, J

**Bench :** Single Bench

**Advocate :** Sri R.N. Narasimhamurthy, for M/s. Shetty and Hegde, Associates  
and Sri G.K. Bhat, for the Appellant; Smt. Sujatha, High Court Government  
Pleader, for the Respondent

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**Judgement**

1. All these writ petitions are disposed of by this common order since the controversy involved is common.

2. The dispute is with regard to enhancement of the licence fee in respect of liquor under the Karnataka Excise (Sale of Indian and Foreign Liquor) Rules, 1968. An amendment was made in sub-rule (1) of Rule 8 of the said rules by which the fee was enhanced in respect of different types of licensees. Rule 8-A was also inserted on 18-6-1998 providing additional licence fee. Rule 8-A reads thus:

"8-A. Additional licence fee.--In respect of a licence granted under these rules an additional licence fee equivalent to fifteen per cent of the licence fee levied in respect of each kind of licence under Rule 8 shall be levied for a period of two years with effect from the First day of July, 1998 for the purpose of equity investment in the Karnataka Infrastructure Development and Finance Corporation".

The notification dated 18-6-1998 enhancing the licence fee in respect of different categories reads thus:

"..... (i) for item (1), the following shall be substituted namely.-

(1) Wholesale Licence:--

(a) If the sale is within the limits of Municipal Corporation having population more than 20 lakhs.

Rs. 4,50,000/- per year.

(b) If the sale is in other areas.

Rs. 3,75,000/- per year.

(ii) for item (2), the following shall be substituted, namely. --

(2) Retail shop licence referred to in clause (2) of Rule 3, in the case of. --

(a) City Municipal Corporations having population more than 20 lakhs.

Rs. 1,12,000/- per year.

(b) Other Corporations

Rs. 90,000/- per year.

(c) City Municipal Council.

Rs. 80,000/- per year.

(d) Town Municipal Council/Town Panchayat.

Rs. 60,000/- per year.

(e) Other areas.

Rs. 45,000/- per year.

(iii) for item (1), the following shall be substituted, namely. --

(4) Licence to clubs in case of.--

(a) City Municipal Corporation areas having population more than 20 lakhs.

Rs. 50,000/- per year.

(b) Other areas

Rs. 30,000/- per year.

(iv) for item (7), the following shall be substituted, namely. --

(7) Hotels and Boarding House Licence referred to in clause (7) of Rule 3, in the case of. --

(a) City Municipal Corporation areas having population more than 20 lakhs.

Rs. 1,65,000/- per year.

(b) Other Corporations

Rs. 1,42,500/- per year.

(c) City Municipal Council.

Rs. 1,05,000/- per year.

(d) Town Municipal Council/Town Panchayat

Rs. 90,000/- per year.

(e) Other areas

Rs. 67,500/- per year.

(v) for item 9, the following shall be substituted, namely. --

(9) Refreshment from (Bar) Licence in case of.--

(a) City Municipal Corporation areas having population more than 20 lakhs.

Rs. 1,35,000/- per year.

(b) Other City Municipal Corporation areas.

Rs. 1,12,500/- per year

(c) City Municipal Council areas.

Rs. 90,000/- per year.

(d) Town Municipal Council/Town Panchayat.

Rs. 67,000/- per year.

(e) Other areas

Rs. 50,000/- per year.

(iv) for item (13), the following shall be substituted, namely. --

(13) Distributor licence.

Rs. 1,50,000/- per year".

3. It is submitted that, Rule 8 of the 1968 Rules requires payment of licence fee by the licensee for several kinds of licences and under the original Rules, as incorporated under GSR 90 published in the Mysore Gazette dated 6-3-1969 the licence fee for the wholesale liquor trade was only Rs. 5,000/- per year if it was in respect of one district and if the area of business was more than one district an additional fee of Rs. 500/- was being collected for each one of the district. Likewise, for the retail sales of liquor the prescribed licence fee was Rs. 10,000/- per year and for refreshment rooms, the licence fee was prescribed at the rate of

Rs. 10,000/-. Subsequently the said rules came to be amended by the 1990 Amendment Rules, under which the licence fee was enhanced to Rs. 50,000/- per annum in respect of CL-1 licence and an additional fee of Rs. 500/- was collected in respect of business carried on by the particular licensee in more than one district. Likewise, the licence fee for retail liquor shop as well as refreshment rooms as the case may be were also increased and prescribing the licence fee on the basis of the area such as city corporation area, city municipal area, town municipal council area and other areas. Even thereafter also the 1st respondent-State Government enhanced the licence fee by way of amendment to Rule 8 of the 1968 Rules. A chart showing the enhancement in the licence fees from 1990-91 in respect of various licences in respect of corporation limits is herewith produced and marked as Annexure-A.

It is further submitted that liquor manufactured by the distilleries will have to pass through various form of licensees to reach the customers. The distilleries will manufacture the liquor and the distributor will have the licence to distribute the liquor produced by various distilleries to the wholesalers in the entire State of Karnataka. The wholesalers will procure the liquor from the distributor and then supply the same to the retailers having Form CL-2 or to the Bars having licence in Form CL-9 or to the Clubs having licence in Form CL-7. The chart showing the flow of liquor in the State of Karnataka from manufacturer to the customer is herewith produced and marked as Annexure-B.

It is submitted that the enhancements periodically made are very arbitrary and fanciful without regard to the viability of conducting such a business with such a huge licence fee. Periodically whenever such increases were made, the licensees have protested and pointed out the unreasonableness. The Karnataka Wine Merchants Association had also represented and requested Government to desist from such increases of licence fees, but the same were not considered.

Chart showing enhancement of Licence Fees from 1990-91 (in Corporation Limits having population less than 20 lakhs)

Licence fees in Rs.

Sales Tax Deposit

Year

CL-1

CL-2

CL-9

1990-91

75,000/-

30,000/-

40,000/-

Nil

1991-92

75,000/-

30,000/-

40,000/-

Nil

1992-93

75,000/-

40,000/-

40,000/-

Nil

1993-94

75,000/-

40,000/-

40,000/-

Nil

1994-95

75,000/-

40,000/-

40,000/-

Nil

1995-96

2,00,000/-

50,000/-

50,000/-

Nil

1996-97

2,00,000/-

50,000/-

50,000/-

Nil

1997-98

2,50,000/-

60,000/-

75,000/-

Nil

1998-99

3,75,000/-

90,000/-

1,12,500/-

Equivalent to licence fees of one relevant excise year.

4. Submissions of the learned Counsel for the petitioners are based mainly on the ground that enhancement of fee is discriminatory and that provisions of Rule 8-A are also violative of Article 14 of the Constitution of India, inasmuch as no other dealer of any commodity is required to pay additional fee or the fee of this nature as is being collected under Rule 8-A.

5. Learned Counsel on both sides have relied on the judgment given in the case of Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others, , where the following observations in Doongaji and Co. Vs. State of Madhya Pradesh and others, , were reproduced as under (para 15):

"It is settled law by several decisions of this Court that there is no fundamental right to a citizen to carry on trade or business in liquor. The State under its regulatory power, has power to prohibit absolutely any form of activity in relation to an intoxicant, its manufacture, possession, import and export. No one can claim as against the State, the right to carry on trade or business in any intoxicants, nor the State be compelled to part with its exclusive right or privilege of manufacture, sale, storage of liquor. Further when the State has decided to part with such right or privilege to the others, then State can regulate consistent with the principles of equality enshrined under Article 14 and any infraction in this behalf at its pleasure is arbitrary violating Article 14. Therefore, the exclusive right or privilege of manufacture, storage, sale, import and export of the liquor through any agency other than the State would be subject to rigour of Article 14".

6. On the basis of the above observations of the Supreme Court, the only thing which has to be examined is whether there is infraction of the provisions of Article 14 of the Constitution. The above observations were made subject to

rigour of Article 14 of the Constitution in view of the earlier decision in the case of Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, and State of M.P. and Others Vs. Nandlal Jaiswal and Others, .

7. If the principles of Article 14 are taken into consideration, then it has to be seen whether the principles of equity enshrined under the provision of the Constitution have been violated or there is infringement of such principle. The legislature is competent to make classification. The classification sought to be made under the Act may affect different categories of persons which are subjected to any tax or fee. The provisions in the excise or taxation laws are also subject to the restriction placed under Article 14 of the Constitution. The classification which has been made here is in respect of the place where business is carried on. If a person is wholesale dealer and the licence is granted in respect of the premises which is under the Corporation limit, a different fee is prescribed, when similar dealer who carries on business in the rural limit. So far as the classification in the same area is concerned, there is no discrimination as the fee remains the same in respect of the licence pertaining to rural or for that reason in respect of persons who are in Corporation limits. The distinction between the village limit or Corporation limit can be said to be a reasonable classification or based on intelligible differentia. It may be observed that it was a policy decision of the Government and may be experience or in public interest that they might have considered with the fee which has to be realised. If the licensees who are carrying on business in the Corporation limit have been kept at a different footing than the persons carrying on business in the rural limit per se it is reasonable classification and cannot be considered as violative of Article 14 of the Constitution. The classification is reasonable with the object of the legislature which is sought to be achieved by giving lesser burden of licence fee to persons who are carrying on business in rural area.

8. A contention is also raised that the enhancement of fee is arbitrary and has to be struck down on that ground. This contention has also no force. Fixation of fee is a policy decision which the declarative authority has to exercise. In respect of the enhancement, if the entire history is examined, on the face of it also cannot be said to be arbitrary. This contention has also no force. This Court in the case of Karnataka Wine Merchants Association Vs. State of Karnataka, , has held that the licence fee is in the nature of consideration for contract and not fee or tax or compulsory extraction from a party. It was the option of the petitioners to have entered into the contract or not. This contention was rejected and it was held that it does not require interference as the enhancement cannot be said to be arbitrary or mala fide.

9. It is pointed out that fixation of the fee is also arbitrary because the distributor is charged with lesser fee than the wholesale dealer. The area of the distributor is entire State and that of the wholesale dealer is only in a specified area and thus the respondents have not applied their mind while fixing the licence fee. It is the prerogative of the authority for fixing the lesser licence fee for the distributor

than that of the wholesaler. Therefore, it is not a case where this Court should interfere with the extraordinary jurisdiction under Article 226 of the Constitution.

10. Regarding the validity of the provision of Rule 8-A it is pointed out that Rule 8-A before its amendment was a subject-matter of consideration in the case of Karnataka Wine Merchants' Association, cited supra and the validity of the said rule was upheld. Additional licence fee at 15% was charged for Bangalore City and the proceeds of collections under Rule 8-A of the Karnataka Excise (Sale of Indian and Foreign Liquor) Rules, 1968 were for utilisation towards Bangalore Mass Rapid Transit System. Now this additional fee is to be collected in respect of each kind of licensees under Rule 8 for a period of two years from July 1, 1998. Additional fee takes the same character as that of fee and simply because separate provision is made, its character is not changed. Though the rule making authority in mentioning the object of collection of this additional licence fee as equity investment in the Karnataka Infrastructure Development and Finance Corporation, it was not necessary to mention even the object for which it was collected. There is no hostile discrimination so as to affect the provisions of Article 14 of the Constitution and the fee demanded cannot be said to be arbitrary or in any way mala fide. In these circumstances, no case is made out for interference under Article 226 of the Constitution.

11. Writ petitions are dismissed.