

(1997) 12 KAR CK 0031

In the Karnataka High Court

Case No : Writ Petition No. 9879 of 1997

K.V. Amarnath and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 09-12-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10 (1), Order 19 Rule 3, 151
Constitution of India, 1950 — Article 14, 142, 144, 19, 19 (1) (g)
Prevention of Corruption Act, 1988 — Section 12, 13 (1) (d), 13 (2), 7

Citation : (1998) ILR (Kar) 730 : (1998) 5 KarLJ 62

Hon'ble Judges : R.P. Sethi, C.J.; A.M. Farooq, J

Bench : Division Bench

Advocate : Sri M.P. Eswarappa, Sri K.G. Nayak and Sri C.V. Guruve Gowda, for Sri N. Raghubanu, for the Appellant; Sri S. Vijayashankar, General, Sri H. Kantharaj, Government Advocate, Sri B.V. Acharya, Senior Advocate, Sri D.L. Jagadish, Sri B.G. Sridharan and Sri G.V. Shantharaj, for the Respondent

Judgement

1. Alleging corruption, favouritism, nepotism and mala fides against respondents 3 and 4, the petitioner herein has prayed for the issuance of appropriate writ or direction striking down the Karnataka Excise (Sale of Indian and Foreign Liquor) (Amendment) Rules, 1997 as being illegal and unconstitutional and for a direction to the respondent-State to enforce the 1989 amendment rules. It is further prayed that a direction be issued for appointing an authority such as C.B.I., to probe in detail to find out the total loss caused to the respondent-State by way of evasion of payment of excise duties, cesses, sales tax on the sale of "seconds" in IMFL which were allegedly sold without payment of excise duty cesses and sales tax during the period from December 1985 when the Supreme Court is stated to have affirmed the 1989 Amended Rules, till date by non-implementation of the 1989 Rules. It is contended that the difference be directed to be recovered personally from respondents 3 and 4. The petitioner has also sought for the prosecution of respondents 3 and 4 and other persons found to be responsible for alleged losses of revenue by way of evasion of excise duty and

sales tax on the sale of IMFL including those of the distilleries. This petition has been initiated in public interest by a former Minister of the State of Karnataka. Respondents 3 and 4 are the former and present Chief Ministers of the State. The petitioner and respondents 3 and 4 are admittedly political rivals belonging to different political parties in the State of Karnataka.

2. The business of IMFL is stated to be conducted by distilleries in the private sector owned by allegedly influential liquor lobby. The process of manufacture, distribution and sale of IMFL is under the control of the State Government. To effectively collect excise duties, the central duty, health cess, educational cess and the sales tax, the State Government has posted the staff of Excise Department in several distilleries to ensure that each bottle of liquor manufactured in such distilleries does not go out without payment of the requisite duty and tax. Depending upon the manufacturing capacities of distilleries, the raw material in the form of rectified spirit is fixed and issued by the State Government to different distilleries. It is alleged that despite apparent control exercised by the respondent-State Government, the distilleries used to despatch lorry loads of IMFL bottles to different wholesalers of the State either by hood-winking the staff of the Excise Department or in complicity and collusion with them by illegal and corrupt means, without payment of the requisite excise duty and other cesses. The permits are also required to be issued to prevent the sale of "seconds". Having taken into consideration the nature of the trade, the way in which payment of excise duty, sales tax etc., was being evaded by the distilleries and wholesale dealers, the respondent-State is stated to have deemed fit to amend the relevant State Excise Rules in the year 1989. Respondent-State appointed respondent 2-Company, a public undertaking, as the sole distributor of IMFL with the declared object of having effective control over the whole trade in the IMFL in order to ensure that non-duty paid liquor did not enter the market. Consequently, the 2nd respondent arranged for infrastructure in the State of Karnataka and outside, adequate staff and mobilised various other resources to discharge its obligation as sole distributor. Feeling aggrieved of the 1989 Amendment Rules, several distilleries who were allegedly indulging in corrupt practices generating non-duty paid liquor challenged the validity of the said amendment rules in W.P. Nos. 16876 and 16877 of 1989, 16878 to 16882 of 1989, 16967 to 16971 of 1989, 16894 to 16988 of 1989, 17000 to 17004 of 1989, 17005 to 17009 of 1989, 17103 to 17107 of 1989 and 17632 of 1989 in this Court which were vehemently and effectively resisted by respondents 1 and 2. Copy of the statement of objections filed by respondent 1 has been annexed with this petition as Annexure-B. The aforesaid writ petitions were dismissed by this Court vide a judgment in the case of M/s. Jagadale and Sons, Bangalore and Vs. State of Karnataka and Others, etc., , by the Division Bench of this Court. Some of the writ petitioners filed special leave petitions in the Supreme Court. Special leave was granted on 20th November, 1989 and a conditional order of stay was passed by the Apex Court. The civil appeals were ultimately dismissed by the Supreme Court on 15-12-1985 vide its judgment in the case of M/s.

Khoday Distilleries Ltd. etc. Vs. State of Karnataka and others, . It is contended that after the judgment of the Apex Court, the rules of 1989 were not given effect to by the then Government headed by respondent 3. Similarly, respondent 4 also did not take any step for implementation of the rules upheld by the Hon"ble Supreme Court. It is submitted that respondents 3 and 4 allegedly colluded with the various distilleries and the liquor manufacturers by collecting huge amount from them with the result that huge losses to the State exchequer were caused. The losses are assessed at one crore of rupees per day. It is alleged that with the illegal amounts recovered from the distilleries and manufacturers of the liquor, respondent 3 fought the Election and ultimately succeeded in becoming the Prime Minister of India.

3. One Sri D. Nemirajaiah is stated to have filed a Writ Petition No. 25827 of 1996 by way of "Public Interest Litigation" praying for the issuance of a direction to the State Government and its Officers to enforce the 1989 Amended Rules. During the pendency of the said writ petition, the Excise Commissioner is stated to have issued a letter dated 9-12-1996 and a Memo of even date to all concerned to give effect to the aforesaid amended rules. However, in the Statement of Objections filed by the respondent - State, it was submitted that His Excellency the Governor of Karnataka in his address to the Joint Session of the State Legislature on 19-2-1996 announced that the State has been seriously considering the desirability of re-introducing the prohibition in the State in view of the provisions of Article 47 enshrined in Para IV of the Constitution of India dealing with the Directive Principles of the State Policy. The 1989 amended Rules were thereafter decided to be amended to restore the position prevailing prior to the amended rules. Draft rules, called "The Karnataka Excise (Sale of Indian and Foreign Liquor) (Amendment) Rules, 1996 were published inviting objections. The 2nd respondent is stated to have filed detailed objections annexed with the petition as Annexure-L. It is contended that after complying with the empty formalities, the respondent-State vide its Notification in No. FD 325 EDC 95, dated 12-2-1997 published in the Karnataka Gazette dated 13-2-1997 has enforced the Karnataka Excise (Sale of Indian and Foreign Liquor) (Amendment) Rules, 1997 (hereinafter mentioned as "impugned rules") giving effect to the same at once.

4. The Amendment Rules, 1997 are the subject-matter of controversy in this petition. As earlier noticed, the challenge is thrown to the rules on the ground of alleged corruption, favouritism, nepotism and mala fides made against respondents 3 and 4. It is submitted that the impugned rules have taken away the effect of the judgment of this Court and the Hon"ble Supreme Court of India. The action of the respondents is termed to be tainted with corrupt motives. After justifying their action of amending the rules in 1989, the respondents are stated to be estopped from changing their position by issuing the impugned rules. It is contended that the impugned rules have been promulgated with the oblique motive of facilitating evasion of excise duties by the distilleries and the manufacturers of the liquor in the State of Karnataka. The impugned rules are

termed to be a method facilitating the sale of "seconds" in IMFL. It is contended that as despite amendment in 1989, the respondent-State failed to implement the same, their acts of commission and omission are deemed to be mala fide and against public interest. Reliance is also placed upon the 26th Report of the Committee on Public Accounts constituted by the Karnataka State Legislature for the year 1986-87; copy of the report is annexed to the writ petition as Annexure-P. Respondent 4 is stated to be personally interested in the matter as his sons are allegedly involved in the trade of IMFL liquor. He is alleged to have bulldozed the earlier decision with mala fide motives, corrupt practices which are tainted with the vice of arbitrariness and unreasonableness. According to the petitioner, excise duty, cess and other taxes are evaded at least to the extent to 50 per cent of the total production of IMFL by various distilleries. By enforcing the impugned rules, the respondent-State is alleged to have been put to huge loss of revenue resulting adversely the public interests requiring interference in issuance of appropriate direction by this Court. The loss occasioned to the second respondent, a public undertaking company, is claimed to be in crores of rupees. Such a loss is stated to be the corresponding profits and benefits to the liquor manufacturers and distillers. The acts of commission and omission attributed to the respondents 3 and 4 are alleged to be amounting to the violation of the fundamental rights, being discriminatory and against the public policy.

5. Resisting the petition, the respondents 1, 2 and 5 in their reply have submitted that the petition being devoid of merits was liable to be dismissed. No provision of law in any statute or rule made thereunder is stated to have been violated by the respondents. It is admitted that sub-rule (11) of Rule 3 of the Karnataka Excise (Sale of Indian and Foreign Liquor) Rules, 1968 was substituted with effect from 13-9-1989 empowering the State to issue transport licence to such company owned or controlled by the State Government. It is not denied that pursuant to the amendment of the rules in 1989, the State Government appointed respondent 2 as the sole distributor authorising it to procure the liquor from the manufacturing units and arrange its sale. The factum of the validity of the said rule being challenged in this Court and the Hon'ble Supreme Court of India is also conceded. Despite respondent 2 becoming the sole distributor and enjoying the monopoly of liquor trade, the State Government declares to have considered the matter afresh and decided to do away with the monopoly in liquor trade. Such trade was decided to be made open in order to have competition to earn more revenue to the exchequer which is termed to be one of the main objects of the Karnataka Excise Act and the Rules made thereunder. It is declared that the object to do away with the monopoly in the liquor trade was resorted to in the scenario of economic liberalisation policy. Draft rules were issued which were published in the extraordinary Gazette on 30-12-1996. After consideration of the objections filed thereto, the Government finalised the draft rules and published the amended rules in the gazette on 13-2-1997. The allegation of the Government losing heavily on account of the impugned rules has vehemently been denied. It is contended that, "In the changed

circumstances of economic liberalisation, under the amended Rules, 1997, the Government has restored the position that prevailed earlier to the substitution to sub-rule (11) of Rule 3, with effect from 13-9-1989. The Government has always empowered to change its policy if that policy is beneficial to the Government to earn more revenue to the exchequer. Such a policy decision of the Government cannot be questioned by anybody much less the petitioner and cannot be the subject-matter of the writ petition. That the Government has changed its policy in its wisdom in order to earn more revenue and to do away with the monopoly in liquor trade". The impugned rules are stated to be not in any way contrary to the aims and objects of the Karnataka Excise Act and the rules made thereunder. No loss is stated to have been caused to the State Revenue as alleged by the petitioner. The allegations of the sons of respondent being engaged in the liquor trade or possessing a commercial unit at Kariganuru in Chennagiri taluk have also been denied. It is submitted that the impugned rules were passed after consideration of the objections of respondent 2 as well.

6. For obvious reasons the respondent 2 has chosen not to file any objections in this writ petition. The learned Counsel appearing for it however referred to and relied upon the objections filed by respondent 2 in response to the notification inviting objections before amending the impugned rules. The aforesaid objections are annexed with the petition as Annexure-L. It was stated by respondent 2 that it had a total strength of 745 Officers and employees. In addition to that, 109 employees were working on deputation in the company on account of the enormous work load. The Excise Rules are stated to have been amended in the year 1989 with a view to see that the commodities manufactured by the manufacturers were duly accounted to the State Government with a view to see that no part of the goods escaped the liability of payment of sales tax and excise duty as per law. Respondent 2 was decided to be appointed as a sole distributor with a view to check the sale of non-duty paid liquor popularly known as "seconds". It was contended that by experience it had been found that the check imposed by the Department of Excise at the distillery level was not sufficient or adequate for the purposes of preventing evasion of sales tax and excise duty. A policy decision was taken to ensure that the entire commodity manufactured by the manufacturers were sold only to the sole distributor, the respondent 2, who in turn had the authority to sell the same to intending wholesalers at the rates prescribed by the manufacturers themselves. With the laudable object as noted herein above, the State Government is stated to have issued five notifications on 13-9-1989 amending the Excise Rules. Clause (11) was introduced to Rule 3 which provided for issue of a licence by the Excise Commissioner for the whole of the State or any part thereof to deal with products of all distilleries or breweries or wineries in the State or to import liquor from outside the State. Such distributor was obliged to establish not less than one depot in each District within the State as may be specified by the Excise Commissioner in that behalf. The licence of sole distributorship was to be issued only to a company owned and controlled by the State Government or such company as the State Government

may specify. The distributor licence fee was fixed at Rs. 5 lacs and a further sum of Rs. 10,000/- per depot per annum. The rules were proposed to be brought into force on 30-9-1989. However, manufacturers and others preferred writ petitions in this Court challenging the constitutional validity of the aforesaid rules. The operation of the rules was stayed vide Court Order dated 27-9-1989. Ultimately a Division Bench of this Court vide its judgment dated 13-11-1989 upheld the constitutional validity of the amended rules. All writ petitions were dismissed with the result that the interim orders stood vacated. On the same day, the Commissioner of Excise issued necessary licence to respondent 2 as sole distributor after receiving the licence fee. Before enforcing the rules, respondent 2 was asked by the State Government to provide the necessary infrastructure to shoulder the responsibilities of sole distributorship all over the State. Accordingly the respondent 2 established 22 depots in the State of Karnataka and deputed its staff to each one of the depots so that the business of the distributor could be effectively carried out. Licence in favour of respondent 2 was issued on 13-11-1989. Not satisfied with the judgment of this Court the distillers, manufacturers and others filed various special leave petitions in the Hon'ble Supreme Court. The Apex Court vide its order dated 20-11-1989 passed a conditional interim order of stay which made it clear that the manufacturers or wholesalers and others in the trade could go through respondent 2 to sole distributor to carry on their transactions or carry on their transactions directly without going to respondent 2. It was however made clear that such manufacturers, wholesalers and others shall maintain accounts regularly in respect of the transactions carried out by them and submit the copy of the statement to respondent 2 every month besides furnishing the same to the Commissioner of Excise. Such a provision was made to ensure that in case their appeals were dismissed, they be held liable to compensate respondent 2 by way of commission which it would have got otherwise in the absence of a stay order. All such appeals were dismissed on 15-12-1995 vide the judgment of the Apex Court as already noted. While dismissing the appeals the Supreme Court directed the appellants therein to submit account to respondent 2, if not already submitted, within eight weeks from the date of the judgment and pay necessary compensation within 12 weeks from that date. The appellants submitted their accounts and paid the commission to respondent 2 amounting to Rs. 7.75 crores. Despite judgment of the Apex Court the other manufacturers have not so far paid the commission. In the objections they further submitted that "we may be permitted to state that if MSIL is given a chance to function as a sole distributor as per the amended law which was upheld by the Court, we are sure that MSIL will make a tremendous progress and make maximum achievement in the field of checking the evasion of non-duty paid liquor otherwise known as seconds in the sale of Indian made foreign liquor, beer, wine and fenny in the State of Karnataka as well as in the field of export which will have a bearing on directly augmenting the income of the State by way of sales tax on excise duty. In the process, MSIL also will be richly benefited by way of commission fixed by the State Government at 5% in respect of sales effected within the State of Karnataka and 0.5% in

respect of exports". The proposed amendment was termed to be a bolt from the blue to the employees of respondent 2 which was reported to have been received with shock and surprise. The proposed amended rules were stated to be having the effect of taking away the guarantees and the safeguards provided against the leakage of the State revenue vide earlier Rule 3(11) of the rules. It was submitted that the proposed amendment of the rules was highly objectionable, not in the interest of the State and the employees of respondent 2. The respondent 2 claims to have taken the premises on lease from the Karnataka State Warehousing Corporation and the private bodies for which they were paying Rs. 40 lacs per year as rent. They further submitted that they had paid a sum of Rs. 15 lacs as advance rent to the owners; Rs. 10 lacs for telephones and Rs. 2 lacs on installation of computers was also stated to have been spent by respondent 2. They further stated to have employed 25 personnel as security staff. Rs. 5 lacs was stated to be the expenditure incurred by respondent 2 on its transferred employees. In addition to that MSIL had to bear the establishment charges of the excise officials numbering 80 which came to around Rs. 40 lacs per year.

At the time of the filing of the objections, the stocks held by the MSIL in various depots was worth Rs. 25 crores, the sale of which had yet to take place. After its appointment as distributor, the respondent 2 claims to have carried on business in liquor and despite conditional interim order of the Hon'ble Supreme Court, carried on the turnover of the business in liquor which was stated to be as under.--

Year

Turnover Rs. in lacs

Gross Income Rs. in lacs

1989-90

1427.84

78.39

1990-91

7473.22

415.34

1991-92

7762.21

404.49

1992-93

9042.70

680.85

1993-94

14159.28

997.00

1994-95

12597.98

1450.80

1995-96

14350.15

1310.60

The staff maintained by respondent 2 was given bonus of 20% per annum. 890 persons were stated to be exclusively working in liquor division specially opened by respondent 2 after the issuance of the licence of distributor in his favour on 13-11-1989. It was contended that the working of the respondent 2 has been satisfactory, there not being any complaint from any member of the public, much less from the wholesalers, importers and exporters. It was further submitted that the yearly balance-sheet maintained by MSIL duly certified by its Chartered Accountant right from the year 1989-90 up to date clearly showed as to how MSIL was able to carry on the business in liquor systematically and profitably. "It is needless to submit that the State Government is undoubtedly be refitted in the matter of increase of revenue by way of sales tax and excise duty correspondingly. If sole distributorship is conferred to MSIL with effect from 15-12-1995 the date on which the Hon"ble Supreme Court dismissed the appeals and dissolved the interim order is allowed to carry out, we have no hesitation to say that MSIL will show a mark of progress in the business and also will render great assistance to the State Government, to achieve the object of checking the evasion of sales tax and excise duty and to curb the transactions by way of accounts". The proposed amendment was termed to be highly uncalled for likely to adversely affect not only the profits of respondent 2 but the overall revenue of the State as well. The proposed amendment was termed to be irrational and totally opposed to the policy decision taken by the Government at the time of making amendment in the year 1989. After winning the battle upto the level of the Apex Court, it was not proper for the State Government to alter the rules and change the position which may amount to nullifying the judgments of the Supreme Court and the High Court. The proposed amendment was stated to be not in public interest. It was not intended to achieve the purpose of the Karnataka Excise Act and on the contrary was likely to defeat the interests of the citizens of the State of Karnataka in general and the employees of the MSIL in particular.

7. While refuting the allegations made against him, respondent 3 Sri H.D. Devegowda has alleged that the writ petition filed was not in public interest, but was politically motivated and for cheap popularity. The petitioner is stated to have made totally false and baseless allegations against the said respondent out of jealousy and on account of political rivalry. It is submitted that during the year 1985 the said respondent and the petitioner contested the election to the Karnataka Legislative Assembly from Holenarasipur Constituency wherefrom the respondent was elected and the petitioner defeated. Election Petition No. 22 of 1985 filed by the petitioner was dismissed by this Court. During the election to the Karnataka Legislative Assembly held in December 1994, the petitioner contested from the said constituency where he was opposed by the respondent's son Sri H.D. Revanna, presently a Minister in the Karnataka Government. The petitioner was again defeated. He filed an Election Petition in No. E.P. 16 of 1995 in this Court which is stated to be still pending. The petitioner is alleged to be always indulging in frivolous litigation and carrying on baseless propaganda against the respondent in press and other media in order to tarnish his image. All actions of the petitioner are attributed to his intention to wreak vengeance. The petitioner is stated to have attempted to misuse the process of this Court to settle his political scores with the opponents. The petitioner himself is stated to be facing criminal charges before a Court-of-law. It is submitted that in the course of investigation conducted by the CBI and monitored by the Supreme Court of India in the case relating to P.C. Dental College, the Investigating Agency after due investigation had filed a charge-sheet against the petitioner and others. Copy of the charge-sheet has been annexed with the reply as Annexure-R1. The respondent claims that his role with respect to the controversy raised before this Court is between December 1995 when the Supreme Court dismissed the SLP and other appeals filed by the liquor merchants and May 1996 when the said respondent resigned as Chief Minister of the State with a view to assume the Office of the Prime Minister of India. There is no act of commission or omission attributed to the said respondent for the aforesaid period requiring determination by this Court. It is admitted that the excise rules were amended in the year 1989 which were the subject-matter of challenge before this Court as well as the Supreme Court. It is also admitted that the dispute raised by the distillers and manufacturers of liquor was settled by the Apex Court on 15-12-1995 by way of dismissal of the SLPs and civil appeals filed against the judgments of this Court. The allegation that after the disposal of the cases, the State Government, headed by the respondent, did not take steps to implement the rules, has been denied. It is also denied that the respondent had colluded with various distillers and manufacturers and allowed the sale of "seconds" in IMFL by collecting huge amounts from distilleries thereby causing huge loss to the State Exchequer. The success of the Janata Dal in the Lok Sabha elections is stated to be not on account of the money power allegedly procured by the respondent by illegal means. It is denied that the respondent had given a threat to the liquor industry or that the statement was made by the respondent to blackmail the liquor industry and trade and collected the money by helping them

to allow sale of "seconds", as alleged by the petitioner. It is denied that the respondent had any interest in the distillery owned by Sri J.P. Narayanaswamy and Sri Thimmegowda. It is submitted that soon after the judgment of the Supreme Court was delivered the question of implementation of 1989 rules came up for consideration before the Government. The respondent in his capacity as Chief Minister held a meeting of all the concerned officials somewhere during February/March 1996 and specifically directed that in view of the judgment of the Supreme Court, 2nd respondent should be made the sole distributor and all sale of IMFL should be canalized only through MSIL. However, in the said meeting, the Excise Commissioner is stated to have pointed out that on account of administrative reasons, it was not possible to implement the new rules in the middle of the excise year and that the same could effectively be done only from the next excise year which was to commence from 1-7-1996. Another meeting of the officials was held on 2-5-1996 where the respondent decided that the matter be placed before Cabinet for taking a decision. However, in view of subsequent developments respondent had to lay down the office as Chief Minister on 31-5-1996 to assume the office of the Prime Minister of India. He has claimed to be not a party to the subsequent decision taken in the matter. There is no act of commission or omission attributable to the respondent which can give any cause of action to the petitioner to file the writ petition. It has been emphatically denied that there had been any loss sustained by the Government on account of the alleged lapse attributed to the respondent without any reference to the reality. The petitioner is stated to have intentionally suppressed the source of information for the details of loss allegedly caused to the State exchequer. The allegations made by the petitioner have been termed to be vague and baseless.

8. Resisting the claim of the petitioner, the respondent 4 in his reply affidavit has submitted that the petition filed was politically motivated solely with the object of maligning him. The petitioner is stated to be a Member of the Congress-I party, whereas respondents 3 and 4 belonged to Janata Dal. The petitioner is alleged to be himself under a cloud as his conduct as a minister in the Government headed by Sri S. Bangarappa is the subject of a criminal case filed against him by the CBI. The petitioner is stated to have approached the Court with unclean hands making reckless allegations without due verification with the sole object of securing political mileage. The allegations regarding favour shown to the liquor lobby or to his sons have been vehemently denied. It is submitted that the son of the respondent Sri T.J. Patel had obtained a wholesale licence sometime in the year 1988 and after incurring losses in the business he withdrew from the same in the year 1992-93, that is long prior to his becoming the Deputy Chief Minister and Chief Minister of the State. It is further submitted by respondent 4 that he had no interest in the sale of "seconds" as alleged by the petitioner. As regards the chemical unit at his native village Kariganur, it is submitted that a partnership firm in which one of his brothers and his son M.J. Patel with three other partners who were stated to be unconnected to his family established the said unit by obtaining huge sums of loans from the banks. The chemical unit

became sick with the result that his brother and son retired from partnership in the year 1989 itself, which was reconstituted by the remaining partners, having no concern with the said respondent. The allegation of the said respondent being hand-in-glove with the distilleries and liquor trade or being the recipient of funds has been termed to be absolutely false and baseless. It is contended that the allegation that on account of non-implementation of the 1989 rules, the State exchequer suffered losses to the tune of Rs. 1 crore per day was only a fanciful estimate of the petitioner without any factual foundation. The Government after considering the entire matter is stated to have taken a policy decision to revert to the system that was prevailing prior to the coming into force of the 1989 rules. It was felt that within the existing system and by stringent enforcement of the earlier rules itself leakage of the revenue could be plugged. No corrupt motivation is stated to be involved in changing the policy. The allegation regarding collecting huge amount running into several crores of rupees for his personal and political purposes causing huge loss to the State exchequer has been described by respondent 4 as baseless statement being absolutely false and incorrect. The impugned rules are stated to be not intended to scuttle the decision of the Hon"ble Supreme Court as alleged by the petitioner. The respondent claims to have not bulldozed the decision of the Cabinet to revert to the earlier rules. The decision is claimed to be a collective decision of the Cabinet. The said respondent has also denied the allegations made against him regarding his alleged criticism of the judiciary. He has asserted that, "I have the highest respect for the judiciary. By expressing my views about the prevalence of corruption in the system I have also said that even judiciary is not free from corruption. By expressing my views in the matter I have not committed contempt of judiciary. The petitioner has referred to my speech on corruption and has quoted it out of context in this petition solely with a view to prejudice the mind of this Hon"ble Court as against me". The writ petition is stated to be devoid of any force which requires to be dismissed.

9. In his rejoinder filed by the petitioner, the averments made in the statement of objections filed by respondents have been controverted besides reiterating the pleas already raised in, the writ petition. The change of the policy has been alleged to be purely guided in the motivation of making corrupt money from the distilleries by indulging in corruption, particularly by respondents 3 and 4. The petitioner has also relied upon the address of the Governor made in the State Legislature on 11-2-1997, wherein no reference is made to the aforesaid policy or prohibition policy as referred to by the Commissioner of Excise in his affidavit filed in W.P. No. 25827 of 1996. It is contended that respondent 4 has impliedly admitted his involvement and the involvement of his sons in the liquor trade which required an investigation under the provisions of Prevention of Corruption Act, 1988. Reference is also made in some news reports annexed with the rejoinder.

10. We have heard the lengthy arguments addressed for and on behalf of the parties in the case, we have also perused the records produced and shown.

11. The learned Counsel appearing for the respondents have vehemently argued that the present writ petition filed in public interest was not maintainable. It is submitted that as the petitioner has approached this Court malafidely with ulterior motives on account of personal and political enmity for the purposes of gaining publicity and not with clean hands, clean heart and clean objective, the petition should be dismissed. In support of their contentions reliance is placed on the following cases:

1. Fertilizer Corporation Kamagar Union (Regd.), Sindri and Others v Union of India and Others,
2. S.P. Gupta Vs. President of India and Others, .
3. Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, .
4. Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, .
5. Narayan Chandra Jena v State Transport Authority and Others.
6. K.R. Srinivas Vs. R.M. Premchand and Others, ,
7. Janata Dal v U.S. Chowdhary and Others.
8. Lawyers' initiative through Sh. R.S. Bains, Advocate and another Vs. State of Punjab and others, .
9. Villagers of Jajarsingh Basantinath Dutta Vs. State of Orissa and Others, .

11-A. There is no dispute that under the normal circumstances and on the basis of the traditional rule in regard to locus standi, it is only a person who has suffered a legal injury on account of the violation of his legal or constitutional rights, can alone approach the Court invoking its jurisdiction for the protection of any of the rights contemplated under Article 226 of the Constitution of India. Such a rule was described by the Supreme Court in S.P. Gupta's case, supra and held "a rule of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born". It was further held that "but narrow and rigid though this rule may be, there are few exceptions to it which have been evolved by the Courts over the years".

12. In Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others, , it was held that against an illegal action of the local authority, a rate payer could question the action of the municipality by which a cinema licence was granted to an individual.

13. In S.P. Gupta's case, supra, the Apex Court referred to various judgments of the Supreme Court of the United States of America, English Courts and of its own, to hold:

"We would, therefore, hold that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from

breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realisation of the constitutional objective "law", as pointed out by Justice Krishna Iyer in *Fertilizer Corporation Kamagar Union's case*, supra, is a social auditor and this audit function can be put into action when some one with real public interest ignites the jurisdiction. A fear is sometimes expressed that if we keep the door wide open for any member of the public to enter the portals of the Court to enforce public duty or to vindicate public interest, the Court will be flooded with litigation. But this fear is totally unfounded and the argument based upon it is answered completely by the Australian Law Reforms Commission in the following words:

"The idle and whimsical plaintiff, a dilettante who litigates for a lark, is a spectre which haunts the legal literature, not the Court room (Prof. K.E. Scott, *Standing in the Supreme Court : A Functional Analysis*" (1973) 86).

A major expressed reason for limiting standing rights is fear or a spate of actions brought by busy-bodies which will unduly extend the resources of the Courts. No argument is easier put; none more difficult to rebut. Even if the fear be justified it does not follow that present restrictions should remain. If proper claims exist it may be necessary to provide resources for their determination. However, the issue must be considered. Over recent years successive decisions of the United States Supreme Court have liberalised standing so as to afford a hearing to any person with a real interest in the relevant controversy. Surveying the result in 1973 Professor Scott Commented: (Op Cit. 673)

When the floodgates of litigation are opened to some new class of controversy by a decision it is notable how rarely one can discern the flood that the dissenters feared.

Professor Scott went on to point out that the liberalised standing rules had caused no significant increase in the number of actions brought, arguing that parties will not litigate at considerable personal cost unless they have a real interest in a matter.

We wholly endorse these remarks of the Australian Law Reforms Commission. We may add, with Justice Krishna Iyer: "In a society where freedoms suffer from atrophy, and activism is essential for participative public justice, some risks have to be taken and more opportunities opened for the public minded citizen to rely on the legal process and not be repelled from it by narrow pedantry now surrounding locus standi". It is also interesting to note that in India, as in other commonwealth countries, the strict rule of standing does not apply to a writ of quo warranto or a rate payer's action against a municipality, but there is no evidence that this has let loose the floodgates of litigation in these areas. The time, money and other inconveniences involved in litigating a case act as

sufficient deterrents for most of us to take recourse to legal action vide article of Dr. S.N. Jain on "Standing and Public Interest Litigation".

The Supreme Court, however, warned the Courts to be careful of such persons who approach the Court in public interest that they were acting bona fide and not for personal gains or private profit or political motivation or other oblique considerations. The Court should not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective. It was further pointed out that the distinction between locus standi and justiciability must be kept in mind and that every default on the part of a State or Public authority was not justiciable. The Court must take care to see that it does not overstep the limits of its judicial function and trespass into areas which are reserved to the Executive and the Legislature by the Constitution. The public interest litigation being a new jurisprudence evolved by the Courts demand judicial statesmanship and high creative ability. It was further observed, "the frontiers of public law are expanding far and wide and new concepts and doctrines which will change the complexion of the law and which were so far as embedded in the womb of the future, are beginning to be born".

14. In Fertilizer Corporation Kamagar Union's case, supra, it had been held:

"That the law was a social auditor and this audit function can be put into action only when someone with real public interest ignites the jurisdiction. In a society like ours activism was considered essential for participative public justice for which some risks were considered to be taken by affording more opportunities for the public minded citizens to rely on the legal process and not be repelled from it by narrow pedantry now surrounding locus standi. To sum up the Court held:

If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the Court will not be a jar for him. But he belongs to an organisation which has special interest in the subject-matter, if he has some concern deeper than that of a busy-body, he cannot be told off at the gates, although whether the issues raised by him is justiciable may still remain to be considered. I, therefore, take the view that the present petition would clearly have been permissible under Article 226".

15. In Bandhua Mukti Morcha's case, supra, the Supreme Court had held that:

"While dealing with the fundamental rights the Court's approach must be guided not by any verbal or formalistic canons of construction but by the paramount object and purpose for which the powers have been conferred for protection of the fundamental rights, the interpretation of which is required to receive illumination from the trinity of provisions which permeate and energise the entire Constitution namely, the Preamble, the Fundamental Rights and the Directive Principles of State Policy".

16. In Sachidanand Pandey's case, *supra*, it was held that the public interest litigation initiated under Article 226 of the Constitution must inspire confidence in Courts and among public. The public spirited litigants should not be permitted to file cases in profusion under the attractive name of "PIL". They must inspire confidence in Courts and among the public. They must be above suspicions. It was cautioned that if the Courts do not restrict the free flow of such cases in the name of Public Interest Litigation, the traditional litigation will suffer and the Courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions. It was further held:

"It is only when Courts are appraised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the Courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants".

17. In Janata Dal's case, *supra*, the Apex Court referred to a catena of authorities and observed:

"It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the Court for vindicating any personal grievance, deserves rejection at the threshold.

It is depressing to note that on account of such trumpery proceedings initiated before the Courts, innumerable days are wasted which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we are second to none in fostering and developing the newly invented concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from the undue delay in service matters, Government or private persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorised collection of tax amounts are locked up, detenus expecting their release from the detention orders etc., etc. are all standing in a long serpentine queue for years with the

fond hope of getting into the Courts and having their grievances redressed, the busy-bodies meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either for themselves or as proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation, and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the Court never moves which piquant situation creates a frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system.

In the words of Bhagwati, J., (as he then was) "the Courts must be careful in entertaining public interest litigations" or in the words of Sarkaria, J., "the applications of the busy-bodies should be rejected at the threshold itself" and as Krishna Iyer, J., has pointed out, "the doors of the Courts should not be ajar for such vexatious litigants".

Further, we would like to make it clear that it should not be misunderstood that by the expression of our above view, there is any question of retreating or recoiling from the earlier views expressed by this Court about the philosophy of public interest litigation in many outstanding judgments which we have already referred to; on the other hand we look back to the vantage point from which we started our journey and proceed on our onward journey in the field of PIL".

18. Similarly after referring to various pronouncements of the Apex Court, the Punjab and Haryana High Court, in Lawyers' initiative through R.S. Bains' case, *supra*, to which one of us (Sethi, C.J.) was a party summarised the law on the point and indicated the circumstances upon the existence or non-existence of which the writ jurisdiction could be exercised in public interest. The test laid down in this regard are:

(i) That the impugned action is violative of any of the rights enshrined in Part III of the Constitution of India and relief is sought for its enforcement.

(ii) That the action complained of is palpably illegal or mala fide and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance.

(iii) That the person or a group of persons were approaching the Court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the constitutional law;

(iv) That such person or group of persons is not a busy-body of meddlesome interloper and have not approached with mala fide intention of vindicating their personal vengeance or grievance;

(v) That the process of public interest litigation was not being abused by politicians or other busy-bodies for political or unrelated objectives. Every default on the part of the State or Public Authority being not justiciable in public in such

litigation;

(vi) That the litigation initiated in public interest was such that if not remedied or prevented would weaken the faith of the common man in the institution of the judiciary and the democratic set up of the country;

(vii) That the State action was being tried to be covered under the carpet and intended to be thrown out on technicalities;

(viii) Public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the Court was of such a nature which required examination;

(ix) That the person approaching the Court has come with clean hands, clean heart and clean objectives;

(x) That before taking any action in public interest the Court must be satisfied that its forum was not being misused by any unscrupulous litigant, politicians, busy-body of persons or groups with mala fide objective of either for vindication of their personal grievance or by resorting to black-mailing or considerations extraneous to public interest".

19. In *Villagers of Jajarsingh Basantinath Dutta's case*, supra, the Orissa High Court held:

"Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest any ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand name of "public interest litigation" should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. Court must be careful to see that a member of public who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. They indulge in the past time of meddling with the judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold".

On the other hand, the learned Counsel for the petitioner relied upon -- *Sheela Barse Vs. Union of India (UOI) and Others*, , *Dhronamraju Satyanarayana Vs. N.T. Rama Rao and Others*, and *Muniswamy Reddy and Ningamma Trust Vs. State of Karnataka*, .

20. In *Sheela Barse's case*, supra, the Apex Court held that a petition initiated in public interest, could not be withdrawn at the instance of the person approaching

the Court as he was not dominus litis. It held:

"... In a public interest litigation, unlike traditional dispute resolution-mechanism, there is no determination or adjudication of individual rights. While in the ordinary conventional adjudications the party structure is merely bi-polar and the controversy pertains to the determination of the legal consequences of past events and the remedy is essentially linked to and limited by the logic of the array of the parties, in a public interest action the proceedings cut across and transcend these traditional forms and inhibitions. The compulsions for the judicial innovation of the technique of a public interest action is the constitutional promise of a social and economic transformation to usher-in an egalitarian social order and a welfare-State. Effective solutions to the problems peculiar to this transformation are not available in the traditional judicial system. The proceedings in a public interest litigation are, therefore, intended to vindicate and effectuate the public interest by prevention of violation of the rights, constitutional or statutory, of sizeable segments of the society, which owing to poverty, ignorance, social and economic disadvantages cannot themselves assert - and quite often not even aware of - those rights. The technique of public interest litigation serves to provide an effective remedy to enforce these group-rights and interests. In order that these public-causes are brought before the Courts, the procedural techniques judicially innovated specially for the public interest action recognises the concomitant need to lower the locus standi thresholds so as to enable public-minded citizens or social action-groups to act as conduits between these classes of persons of inherence (sic) and the forum for the assertion and enforcement of their rights. The dispute is not comparable to one between private parties with the result there is no recognition of the status of a dominus litis for any individual or group of individuals to determine the course or destination of the proceedings, except to the extent recognised and permitted by the Court. The "rights" of those who bring the action on behalf of the others must necessarily be subordinate to the "interests" of those for whose benefit the action is brought. The grievance in a public interest action, generally speaking, is about the content and conduct of governmental action in relation to the constitutional or statutory rights of segment of society and in certain circumstances the conduct of governmental policies. Necessarily, both the party structure and the matters in controversy are sprawling and amorphous, to be defined and adjusted or readjusted as the case may be, ad hoc, according as the exigencies of the emerging situations. The proceedings do not partake of predetermined private law litigation models but are exogenously determined by variations of the theme.

Again, the relief to be granted looks to the future and is, generally, corrective rather than compensatory which, sometimes, it also is. The pattern of relief need not necessarily be derived logically from the rights asserted or found. More importantly, the Court is not merely a passive, disinterested umpire or onlooker, but has a more dynamic and positive role with the responsibility for the organisation of the proceedings, moulding of the relief and - this is important -

also supervising the implementation thereof. The Court is entitled to, and often does seek the assistance of expert-panels, Commissioners, Advisory Committees, Amici etc. This wide range of the responsibilities necessarily implies correspondingly higher measure of control over the parties, the subject-matter and the procedure. Indeed as the relief is positive and implies affirmative-action the decisions are not "one shot" determinations but have on-going implications. Remedy is both imposed, negotiated or quasi-negotiated.

Therefore, what corresponds to the stage of final disposal in an ordinary litigation is only a stage in the proceedings. There is no formal, declared termination of the proceedings. The lowering of focus standi threshold does not involve the recognition or creation of any vested rights on the part of those who initiate the proceedings, analogous to *dominus litis*".

21. In D. Satyanarayana's case, *supra*, the Full Bench of Andhra Pradesh High Court declined to dismiss the petition merely on the ground of the petitioner being a politician after being satisfied that there were large scale violation or abuse of power by the Chief Minister. Constitutional and statutory violations were writ large. In that case, the petitioner who was a public worker and also a political leader had alleged various violations of laws and constitutional provisions by the Chief Minister, in support of which, he filed an affidavit running into 193 pages. Prayer was made for issuance of a writ of quo warranto against the Chief Minister declaring him to be an usurper of the Office. He had also prayed for issuance of appropriate direction to the Central Government to appoint a Judicial Commission under the Commission of Enquiry Act, 1952 for enquiring into the misdeeds of corruption and abuse of authority by the first respondent. The Court found that there did not exist any material which could justify the petitioner being held as a busy-body or interloper. He was found to have ignited the jurisdiction of the Court for exercising its powers to uphold the constitution and the rule of law without claiming any personal relief for himself. It was also found that the petitioner therein was not making any political mileage. The Court further held:

"It will, therefore, be seen that merely because a question has a political colour, the Court cannot fold its hands in despair and declare judicial hands off". So long as a question arises whether an authority under the Constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the Court. Indeed it would be its constitutional obligation to do so. It is necessary to assert in the clearest terms, particularly in the context of recent history, that the Constitution is Supreme Lex, the paramount law of the land, and there is no department or branch of Government above or beyond it. Every organ of Government, be it the executive or the legislature or the judiciary, derives its authority from the Constitution and it has to act within the limits of its authority. No one howsoever highly placed and on authority howsoever lofty can claim that it shall be the sole judge of the extent of its power under the Constitution or whether its action is within the confines of such power laid down by the

Constitution. This Court is the ultimate interpreter of the Constitution and to this Court is assigned the delicate task of determining what is the power conferred on each branch of Government, whether it is limited, and if so, what the limits are and whether any action of that branch transgresses such limits. It is for this Court to uphold the constitutional values and to enforce the constitutional limitations. The test regarding the determination of what constitutes political question as laid down in *Baker v Carr*, was approvingly referred to by Bhagwati, J., (as he then was), the aforesaid case. The American doctrine regarding the adjudication of political questions was accepted by Venkataramaiah, J., in his separate Judgment. In *V.R. Sreerama Rao Vs. Telugudesam, a Political Party and Another*, a political party, the technicalities of locus did not stand in the way of this Court from inquiring into the plea raised by the President of a political party called "Sarvodaya Congress" opposing the grant of election symbol to Telugu Desam Party on the ground that it "preached Chauvinism, propagates cessionist tendencies". Our learned brother, P.A. Choudary, J., very realistically observed: "Considering the fact that the issues raised by the writ petitioner are of paramount public importance to the democratic functioning of our society and taking into account the recent trends of law funneled by several Court decisions freely upholding the right to sue as inhering even in those whose proprietary rights or personal interests are not directly affected, I reject the preliminary objection of Sri N.T. Rama Rao to the maintainability of this Writ Petition. The writ petitioner claims to be the President of a political party called "Sarvodaya Congress" and it undoubtedly appears to me that he is interested in a clean public life. He is not a mere interloper".

22. A Division Bench of this Court in *Muniswamy Reddy's case*, supra declined to dismiss the writ petition filed in public interest on the ground that the persons approaching the Court had their own cause to serve particularly when it was found that the proceedings were not intended to take a political vengeance against the respondents. Dishonest and illegal action cannot be shelved on the technicalities of locus standi which fact was found to be farfetched.

23. In the instant case, though violation alleged is of serious nature affecting the public at large yet the bona fides of the petitioner in approaching the Court are not free from doubt. It is not denied that the law is social auditor and any citizen can ignite the jurisdiction of this Court for creative measures, but no person having vested rights in the ultimate result be permitted to utilize the institution of the judiciary for his personal or political gains. The institution of the judiciary cannot and should not be permitted to be utilized by the politicians for the purposes of enforcement or propagation of their policies or to put in obstacles in the enforcement of the policies of their political opponents. Matter of policies simpliciter, being of political nature, can be taken to the public at large for the purposes of getting their verdict. In such matters, the constitutional Courts may decline to interfere unless it is found that the constitutional violations were of such nature which required action notwithstanding that the person igniting the Court has a vested interest. In such a case, while exercising the jurisdiction, it

can be held and declared by the Court that the action was being taken, prosecuted and concluded by the Court under the power vesting in it under Articles 226 and 227 of the Constitution and that such person initiating the jurisdiction be not given any credit which may wrongly be utilized by him for his political purposes or used against his opponents to harm them in their public and political life. Under the normal circumstances, political rivals should not be permitted to file cases in profusion under the well recognised and patent name of PIL. The petitioner in this case has been found to have initiated the proceedings by wearing the mask of the patent name of PIL for the purposes of his political interests and personal publicity. He appears to have acted as proxy for his political party which is admitted to be a rival party being effective contender to the State power presently held by respondents 3 and 4. The issue raised though important, yet the manner in which it is projected is more political than legal. The petitioner has been proved to be an interloper in the case. He is shown to have approached this Court with intentions which cannot be termed to be bona fide. The petition, at his instance, appears to be for vindicating his personal grievances and political vengeance. The petitioner is proved to have not approached this Court with clean hands, clean heart and clean objectives. Even though, it is contended that the Rules of 1989 were not given effect to by respondents 3 and 4, yet the petitioner has not assigned any reason for not projecting such an issue till the impugned rules were enforced. He himself had been the Minister in the Government which had enforced the 1989 Rules but not acted upon it despite there being no circumstances justifying for not giving effect to those Rules. We are not satisfied with the after thought argument that as there was a stay of the Hon''ble Supreme Court, the petitioner - or the Government led by his political party could not give effect to the aforesaid Rules. We have been shown various orders passed by the Hon''ble Supreme Court which clearly indicate that those were effective with respect to only such persons who were before the Court and could not be operative in favour of the persons who had not resorted to judicial proceedings. Had the petitioner been sincere to the cause now projected, he could have taken some steps or impressed upon the Government led by his political party to enforce 1989 Rules apparently made for the purposes of plugging the leakage of the excise duty resulting in consequential loss to the State exchequer. Nothing is shown to have been done by the petitioner which persuades us to agree with the submissions of the respondents that he has not approached the Court bonafidely with clean hands, clean heart and clean objectives. The rivalry of the petitioner with respondents 3 and 4 is not only political rivalry but to a certain extent has the colour of personal rivalry which appears to have motivated him to utilise the patent name of the PIL, for redressal of his grievances and taking political vengeance. It is not disputed that the petitioner and respondent 3 contested the elections to the Karnataka Legislative Assembly from Holenarsipur constituency in the year 1985 when the petitioner was defeated and the said respondent elected. Not content with political defeat, he filed Election Petition No. 22 of 1985 in this Court which was also dismissed. Again in the election held for Karnataka Legislative Assembly

in the year 1994, the petitioner contested from the same constituency where he was opposed by respondent 3's son. He was again defeated. He filed Election Petition No. 16 of 1995 which is stated to be still pending in this Court. He is alleged to have been indulging in frivolous litigation and making baseless imputations against the said respondents in the newspapers and other media with the alleged object of tarnishing his political image. Such allegations made by the 3rd respondent have not been denied by the petitioner. We see substance in the statements of the said respondent that the petitioner has attempted to misuse the process of this Court to settle his political scores with his opponents.

24. As we have already observed, a person intending to initiate action in public interest must be a person, who himself is not guilty of any misdeeds and involved in criminal cases. The lapses on the part of the petitioner to take action for enforcement of 1989 Rules, has earlier been noticed by us in this order. The petitioner's own involvement in criminal cases is also not in dispute. The respondents have placed on record the copy of FIR (Annexure-R1) filed by the CBI against the petitioner for offences u/s 120-B read with Sections 7, 12 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The said FIR discloses that the same was registered on the basis of an order passed by the Hon'ble Supreme Court on 4-12-1995 during the course of the proceedings in Writ Petition (Civil) No. 317 of 1993. On the basis of a preliminary enquiry held into the matter, it was revealed amongst other things that:

"However, Shri G. Puttaswamy Gowda the then Health Minister in the Government of Karnataka in utter disregard of the laid down provisions took undue interest in getting the sanction from the Government and wrote a Letter No. MHFW/N/674/91 dated 28-9-1991 falsely mentioning therein that the Government had decided to consider the applications for sanction of Dental, Nursing and Pharmacy Colleges favourably on merits. All the applications pending for clearance by Local Inquiry Committee and inspection as also affiliations in the Bangalore University may be considered on merits and be sent to the Government with comments. It was also mentioned in the letter that the application of P.C. Dental and Nursing College Trust, Bangalore was pending in the University for clearance. Please expedite the same. In fact, neither any such decision had been taken by that time nor the application of P.C. Dental College was pending with the University at that time, having been rejected already. The University sent a reply to the aforesaid letter to the Minister vide Letter No. ACA/III/AI/LIC-SNC/Med/1991-92, dated 10-10-1991 that the application of P.C. Dental College was not pending with the University for clearance and that the application had been returned to the Trust on 10-7-1991.

Meanwhile, Shri G. Puttaswamy Gowda also took undue interest and directed the Director of Medical Education to inspect the college and submit the report. The Director of Medical Education submitted his report on 6-9-1991 and mentioned therein that Sri R.D. Pennathur has been appointed as Principal of the College. As mentioned above, Sh. Pennathur was in service of the Government and as such,

could not have been appointed as Principal of the College. Without waiting for the aforesaid reply from the University, a Cabinet Note was prepared at the instance of Sh. G. Puttaswamy Gowda mentioning therein that P.C. Dental College had already admitted 19 students and that the similar proposal of the College had been rejected twice by the Cabinet Sub-committee. The said Cabinet Note was sent back from the office of the Minister for further processing and re-submission. Obviously, with design that the note should be re-prepared. Thereafter, an incorrect Cabinet Note was obtained and it was mentioned therein that the institution had deposited Rs. 25,000/- with the University for affiliation. In fact, the aforesaid amount of Rs. 25,000/- had already been returned by the University on 10-7-1991 while rejecting the application.

The said Cabinet Note giving incorrect facts was approved by the Cabinet under the leadership of Sh. S. Bangarappa, the then Chief Minister of the State although, the proposal was against the norms laid down u/s 53 of the Karnataka State University Act as it had not been recommended by the University. Ultimately, on 10-5-1991, the order was issued on behalf of the Government of Karnataka giving permission to the trust for running P.C. Dental College with intake of 40 students for the year 1992. The fact, on the other hand was that the College had started running even before receipt of the Government Order with effect from 2-9-1991.

Although, as per the sanction of the Government the College was permitted to admit only 40 students during the Session of 1991-92 but Sri Pennathur admitted as many as 48 students. This strength of 40 was subsequently raised for the session of 1992-93 to 120 and for the subsequent session to 110.

Instead of initiating any action against the college for admitting excess students beyond the sanctioned strength, the College was allowed to raise the strength for the subsequent years by Sri G. Puttaswamy Gowda. The Bangalore University did not allow the excess students to appear in the examination and warned the College to discharge the excess students".

It was further found that the petitioner herein had obtained a sum of Rs. 29 lakhs as corruption by utilising his public position of being a Minister.

25. A person with such antecedents and reputation cannot be permitted to ignite the process of law against his political rivals for the purposes of minimising the effect of criminal prosecution launched and pending against him.

26. The bona fides of the petitioner in launching the proceedings against respondents 3 and 4 alleging corruption and violation of the constitutional provisions are also not free from doubt. The allegations levelled which shall be dealt separately, apparently appear to have been recklessly made without any substantial basis, ground or material. The general allegations of corruption, when denied, have not been reiterated by the petitioner. Impleading respondents 3 and 4 without there being any sufficient material was not only unnecessary but reflects the mala fide purpose of the petitioner, he appears to have conceived in

filing the present writ petition. Taking the totality of the circumstances, the legal position and the personal basis of the petitioner, who himself is involved in criminal cases, we are of the opinion that he has no right to prosecute the remedy of public interest litigation. He cannot be permitted to hide his face in the mask and cloak of the fair name of PIL. The unscrupulous oblique motive as the petitioner has been proved to be possessing, cannot be given the credit of scoring a political mileage over his opponents. He can also not be permitted to hide his alleged sins by pressurising the respondents to give in purportedly by dropping the criminal proceedings against him. The action of the petitioner in approaching the Court being personal, political, mala fide vindictive and revengeful, has to be terminated and dashed to the ground. No relief can be granted at his instance.

27. Despite holding that the petitioner has no right to file and prosecute this petition, we are of the opinion that this petition can not be dismissed in view of the public interest involved in it, which is shown to have resulted in huge losses to the State exchequer and corresponding undue monetary benefits in favour of the distillers and distributors of IMFL. As public interest litigation cannot be permitted to be withdrawn, the same cannot be dismissed only on the ground of the fact that a wrong person has initiated the action particularly when the violation of the Constitutional and legal provisions are writ large. While protecting the public interest and being aware of the abuse of the process by the authorities this Court cannot abdicate its role as a sentinel of the fundamental rights and liberties of the citizens. The respondents cannot be permitted of refusing to submit their action to scrutiny and judicial review. Merely on the question of locus, the acts alleged being in violation of rule of law, the provisions of the constitution and statutory laws cannot be permitted to be left out without proper adjudication. If this Court had the powers to appropriately mould the relief, why cannot it grant the said relief in the absence of the petitioner, when admittedly the action initiated is in public interest. More so, when the respondents have been notified and given opportunity to know about the allegations and rebut the same. The important questions of law affecting the State exchequer and the public at large which were addressed before us for days-together cannot be shelved or buried under debris of locus standi. When the respondents have fully understood the nature of the allegations made against them and traversed the same in their reply, they cannot have the grievance of any prejudice if we decide the other pleas raised on merits.

28. In this case one K.V. Amarnath s/o K.M. Venkateshappa has also filed an application under Order 1, Rule 10(2) read with Section 151 of the CPC for being impleaded as second petitioner in the writ petition. He has claimed to be a businessman and a Tax Payer. He has stated that he is a public spirited citizen and wants to be impleaded as a party-petitioner as the matters involved in the writ petition are of far-reaching consequences apparently causing huge losses to the State Exchequer. It appears that no objections have been filed to this application of K.V. Amarnath, I.A. II is allowed. K.V. Amarnath s/o K.M.

Venkateshappa is permitted to be impleaded as petitioner 1 in place of G. Puttaswamy Gowda. Cause title shall be amended accordingly. G. Puttaswamy Gowda shall be shown as petitioner 2, but with the direction that he will have no interest in further litigation in this case. He shall not be deemed to be a necessary or proper party in case an appeal is filed against our order. His name shall be shown as petitioner 2 only for the purposes of the record of these proceedings.

29. In view of the fact that I.A. II has been allowed and in the light of our observations made herein above, this petition cannot be dismissed only on the ground that petitioner-G. Puttaswamy Gowda has no right to file this petition. The other pleas raised in the petition shall be considered, dealt with and decided hereafter.

30. Serious allegations of corruption, favouritism and nepotism have been levelled against respondents 3 and 4. Such allegations as noted herein above, have been found to be without substance and apparently made with the mala fide intention of politicising the issue for purposes which could be termed to be fair and proper. Nature of the mala fides alleged against respondents 3 and 4 are both personal and administrative. They are alleged to be the result of the acts of omission and commission attributable to the aforesaid two respondents. The charges of mala fides are very easy to be made, but difficult to be proved. We are aware that the present petition is a petition of "Public Interest" where strict proof of procedural rules may not be insisted upon. However, that does not give a licence to a litigant to level charges and make imputations without reference to facts and circumstances known to him personally or disclosing the source of information upon the basis of which such allegations are made. It is true that in a case initiated in public interest, it would be difficult for the petitioner to have personal knowledge in regard to the averments of mala fides, but when such a knowledge is wanting, it is obligatory for the petitioner to disclose his source of information so that the other side gets a fair chance to verify and make an effective answer, slipshod affidavits and defective verifications should entail the rejection of the allegation. An affidavit with respect to allegations of mala fides must be modelled on the lines of Order XIX, Rule 3 of the CPC. The failure to make requisite statutory verification should normally entail the dismissal of the petition insofar as allegations of mala fides are concerned. Exception could be made only in such cases where the Court itself is satisfied that the disclosure of the source of information may be detrimental either to the petitioner or to the society. Order XIX, Rule 3 of the CPC provides:

"Matters to which affidavits shall be confined.--Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted: provided that the grounds thereof are stated".

It has to be kept in mind that affidavits are accepted as an exception to oral evidence and without subjecting the deponent to cross-examination. Writ

petitions under Article 226 of the Constitution are entirely decided on facts stated in the affidavits which make such affidavits to be more sacred particularly when the allegations of mala fide are levelled. Defective affidavits cannot be taken note of or construed in a liberal manner. Exceptions are always in the discretion of the Court. An affidavit is admittedly a declaration as to facts made in writing and sworn to before a person having the authority to administer oath, and swearing or solemnizing such affirmation is essential to give validity and credibility to an affidavit for the purposes of looking into the facts alleged. Swearing of false affidavits is an offence u/s 191 of the IPC. The provisions of Order XIX read with Section 191 require that the persons making the averments in the affidavits should make it with responsibility and be prepared to face the consequences, if the averments made therein are proved to be wrong. The affidavit accompanying the writ petition must be restricted to facts which are within the deponent's knowledge. If such averments are based on the information received by him, he is required to refer or at least indicate the source of information. If an objection is raised with respect to the affidavit being defective, the deponent has the liberty of filing a correct affidavit in terms of Order XIX, Rule 3 of the CPC. However, such rules of procedure has to be liberally construed in case of PIL, provided the action initiated by the petitioner is shown to be bona fide and in good faith. It would be sufficient if the deponent refers to various paras which are true to his knowledge and certifies the other paras, which are believed by him, to be true on the basis of the information received. He may also specify the source of information, so far as it is practicable. In the absence of such verification, no responsibility can be fastened upon the deponent for his criminal prosecution. Without there being any responsibility for the consequences, no litigant can be permitted to make reckless, baseless and vexatious allegations against his opponent. In support of his allegations, the petitioner in this case has sworn the affidavit to this effect only.--

"I, Puttaswamy Gowda G., age major, s/o "Shanti", No. 444, 8th Cross, Dollers Colony, RMV Extension, Bangalore-94, do hereby solemnly affirm and state on oath as under:

I am the petitioner in the above writ petition and I know all the facts of the case.

I state that the statements made in paragraphs 1 to 11 of the writ petition accompanying this affidavit are true to the best of my knowledge, belief and information. .. .".

Apparently, the affidavit is not according to the form prescribed by the mandate of law. Prima facie no criminal responsibility can be fastened upon the petitioner on the basis of the aforesaid affidavit. The averments made in the memorandum of writ petition paragraphs 1 to 11 have been termed to be "true to the best of my knowledge, belief and information". Which para is true to his knowledge or information has not been specified. The petitioner's affidavit being patently defective cannot be made the basis for determining the allegations of mala fides alleged against the respondents 3 and 4.

31. In *E.P. Royappa Vs. State of Tamil Nadu and Another*, , the Supreme Court held that the burden of establishing mala fides is very heavy on the person who alleges it. It was further held that.--

"The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. Here the petitioner, who was himself once the Chief Secretary, has flung a series of charges of oblique conduct against the Chief Minister. That is in itself a rather extraordinary and unusual occurrence and if these charges are true, they are bound to shake the confidence of the people in the political custodians of power in the State, and therefore, the anxiety of the Court should be all the greater to insist on a high degree of proof. In this context it may be noted that top administrators are often required to do acts which affect others adversely but which are necessary in the execution of their duties. These facts may lend themselves to misconstruction and suspicion as to the bona fides of their author when the full facts and surrounding circumstances are not known. The Court, would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charges of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set-up - these considerations are wholly irrelevant in judicial approach - but because otherwise, functioning effectively would become difficult in a democracy. It is from this stand-point that we must assess the merits of the allegations of mala fides made by the petitioner against the second respondent".

32. There cannot be any dispute to the proposition of law that it may always be not possible to prove or show the existence of mala fides in fact with full and elaborate particulars. It is permissible in appropriate cases to draw reasonable inference of mala fides from the facts pleaded and established. However, such inference must be based on matrix and such mala fides cannot remain in the realm of speculations, surmises or conjectures. If sufficient material is placed on record, malice may be inferred by conduct taking into consideration both acts of commission and omission. The petitioner in this case has made general allegations of personal malice against respondents 3 and 4. The allegations made are serious if proved. The details of mala fides are, however, vague and ambiguous particularly against respondent 3. Serious allegations made against respondent 4 regarding the involvement of his son and brother in the business of IMFL., when controverted have not been reiterated or tried to be explained which shows that the petitioner was aware of the hollowness of his allegations which he apparently made for the purposes of political vendetta. Respondent 4 has specifically and categorically denied the allegations of the involvement of his son and brother in the business which allegedly persuaded him to frame and enforce the impugned rules. There was no basis for the petitioner to allege that the

entire action on the part of the 4th respondent is mala fide, motivated with corrupt practices and tainted with the vice of arbitrariness and unreasonableness or that his conduct in presiding over the cabinet meeting in the matter of liquor trade in which his sons were interested, smacks of undiluted money making motive for himself and his sons. We are, therefore, of the opinion that the allegations of the mala fides were not properly pleaded. Such mala fides should normally have not been investigated in the absence of a valid affidavit, as the same has not been done in this case. Even on perusal, we have found the allegations to be vague, ambiguous and without any substance. As the petitioner, a political rival of respondents 3 and 4, has tried to mislead the Court by making false imputations which also affect the political stature and personal integrity of respondents 3 and 4, he is liable to, not only pay the costs but also compensate the aforesaid respondents by the grant of symbolic compensation.

33. It has now to be seen as to whether the impugned rules as otherwise constitutionally valid and legally made or not. We do not agree with the submission of the learned Counsel for the respondents that as the impugned rules are the result of change of policy of the State Government, the same are not justiciable. Reliance of the respondents on *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, is misplaced. The Supreme Court in that case, never held that the matter of policy cannot, under any circumstances, be made the subject of judicial review. What the Court earlier had held was that while considering the applicability of Article 14, it must be borne 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, 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. Relying upon its earlier judgment in *R.K. Garg v Union of India*, the Supreme Court held that in cases of the law relating to economic activities, the Courts should exercise judicial self-restraint if not judicial deference to legislative judgment. In that context, it was held.--

". . . We must not forget that in complex economic matters every decision is necessarily 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 adjudicating 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 problem of Government" as pointed out by the Supreme Court of the United States in *Metropolis Theatre Company v State of Chicago*, 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 Basin Area Rate*, 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".

34. In a recent judgment, the Apex Court, in the case of *Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others*, , rejected such a plea and held that the so-called public policy cannot be a camouflage for abuse of the power and trust entrusted with a public authority or public servant for the performance of public duties. This Court, therefore, can investigate into the allegations to see the legality of an executive action by piercing the veil and curtain of policy sought to be raised preventing the Court to investigate the circumstances under which the impugned rules were made. Rule of law is the heart and soul of the constitutional scheme prevalent in the Country. All executive actions including the matters of policy are subject to judicial review. The rule of law excludes arbitrariness. It postulates, intelligence without passion and reason freed from desire. What is needed in a democratic set-up is a Government of laws rather than of men. The Supreme Court in *Bachan Singh, Sher Singh and Another and Ujagar Singh and Another Vs. State of Punjab and Others*, , observed that there were fundamental rights which were of prime importance and which breathed vitality in the concept of the rule of law, which were Articles 14, 19 and 21 constituting a golden triangle. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , the Apex Court held:

"That Article 14 was not to be equated with the principle of classification. It was primarily a guarantee against arbitrariness in State action and the doctrine of classification was evolved only as a subsidiary rule for testing or determining whether a particular State action was arbitrary or not".

While dealing with the rule of law, the Apex Court in *Bachan Singh's* case, *supra*, held:

"It will thus be seen that the rule of law has much greater vitality under our constitution than it was in other countries like the United Kingdom which has no constitutionally enacted fundamen- fundamental Rights. The rule of law has really three basic and fundamental assumptions one is that law making must be essentially in the hands of a democratically elected legislature, subject of course to any power in the executive in an emergent situation to promulgate ordinances effective for a short duration while the legislature is not in session as also to enact delegated legislation in accordance with the guidelines laid down by the legislature; the other is that, even in the hands of a democratically elected legislature, there should not be unfettered legislative power, for, as Jefferson

said: "Let no man be trusted with power but tie him down from making mischief by the chains of the Constitution", and lastly there must be an independent judiciary to protect the citizen against excess of executive and legislative power. Fortunately, whatever uncharitable and irresponsible critics might say when they find a decision of the Court going against the view held by them, we can confidently assert that we have in our country all these three elements essential to the rule of law. It is plain and indisputable that under our Constitution Law cannot be arbitrary or irrational and if it is, it would be clearly invalid, whether under Article 14 or Article 19 or Article 21, whichever be applicable".

35. In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , after referring to Dicey's "The Law of the Constitution", Hayek's "Road to Seridom" and "Constitution of Liberty" by Kerry Jones and to an article of Mathew, J., entitled the "Rule of Law and Welfare State" the Supreme Court held that the great purpose of the rule of law, notion is the protection of the individual against arbitrary exercise of power, wherever it is found. It was unthinkable that in a democracy governed by the rule of law the executive Government of any of its officers could be permitted to possess arbitrary powers over the interests of the individual. Every action of the executive Government must be informed with reasons and should be free from arbitrariness which was considered to be the very essence of the rule of law and bare minimal requirement. Appreciating the Judgment of the Kerala High Court in *V. Punnen Thomas Vs. State of Kerala*, , the Apex Court observed that the Government was not and should not be as free as an individual in selecting the recipients for its largess. Whatever its activity, the Government was still the Government and subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrariness and capricious standards for the choice of persons with whom it was to deal. The activities of the Government were held to be having a public element requiring to be fair, just and equal. Dealing with the complex nature of the duties of the Modern Welfare Democratic State, the Apex Court in *Ramana's case*, *supra*, held.--

"Today the Government, in a Welfare State is the regulator and dispenser of special services and provided of a large number of benefits, including jobs, contracts, licences, quotas, mineral rights, etc. The Government pours forth wealth, money, benefits, services, contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationships to Government are of many kinds. They comprise social security benefits, cash grants for political sufferers and the whole scheme of State and local welfare. Then again, thousands of people are employed in the State and the Central Government and local authorities. Licences are required before one can engage in many kinds of businesses or work. The power of giving licences means power to withhold them and this gives control to the Government or to the agents of Government on the lives of many people. Many individuals and many more businesses enjoy largess in the form of Government contracts.

These contracts often resemble subsidies. It is virtually impossible to lose money on them and many enterprises are set up primarily to do business with Government. Government owns and controls hundreds of acres of public land valuable for mining and other purposes. These resources are available for utilisation by private corporations and individuals by way of lease or licence. All these mean growth in the Government largess and with the increasing magnitude and range of governmental functions as we move closer to Welfare State, more and more of our wealth consists of these new forms. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. But on that account, can it be said that they do not enjoy any legal protection? Can they be regarded as gratuity furnished by the State so that the State may withhold, grant or revoke it at its pleasure? Is the position of the Government in this respect the same as that of a private giver? We do not think so. The law has not been slow to recognise the importance of this new kind of wealth and the need to protect individual interest in it and with that end in view, it has developed new forms of protection. Some interests in Government largess, formerly regarded as privileges, have been recognised as rights while others have been given legal protection not only by forging procedural safeguards but also by confining/structuring and checking Government discretion in the matter of grant of such largess. The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largess in its arbitrary discretion or at its sweet will. It is insisted, as pointed out by Professor Reich in an especially stimulating article on "The New Property" in 73 Yale Law Journal 733, "that Government action be based on standards that are not arbitrary or unauthorised". The Government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licences only in favour of those having grey hair or belonging to a particular political party or professing a particular religious faith. The Government is still the Government when it acts in the matter of granting largess and it cannot act arbitrarily. It does not stand in the same position as a private individual".

As held by the Supreme Court in Jaipur Development's case, it is open for this Court to consider the change of the policy sought to be relied upon by the respondents and to determine as to whether the same was to further public good or was a means to fritter away the public property for the benefit of few resulting in loss to the State exchequer. The public policy of the Government is required to further public purpose and not be the result of whims and caprice particularly when it is challenged in a Court-of-law on the grounds of unconstitutionality and arbitrariness and being against the public interests. This Court, therefore, cannot shut its eyes and close the investigation needed to determine the legality, validity and constitutionality of the so-called policy necessitating the amendment of the rules which are alleged to be adversely affecting the public interests.

36. In order to determine the constitutional validity of the impugned Rules, it is necessary to have a look at the Scheme of the Karnataka Excise Act and

recapitulate the circumstances leading to the enforcement of the impugned Rules. The Preamble to the Karnataka Excise Act, 1965 states, "Whereas it is expedient to provide for a uniform law relating to the production, manufacture, possession, import, export, transport, purchase and sale of liquor and intoxicating drugs and the levy of duties of excise thereon in the State of Karnataka, the Karnataka Excise Act has been enacted".

The Preamble has a clear reference to Entry 8, List II of the Seventh Schedule to the Constitution which empowers the States to legislate in connection with "intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors". Chapter IV of the Act deals with manufacture, possession and sale of intoxicating liquors, Section 13 which forms a part of Chapter IV prohibits manufacture, possession or sale of the excisable article in question except under a licence. It provides:

"13(1) No person shall-

(a) to (c) xxx xxx;

(d) construct or work a distillery or brewery; or

(e) bottle liquor for sale;

except under the authority and subject to the terms and conditions of a licence granted by the Deputy Commissioner in that behalf or under the provisions of Section 18".

Section 15(1) provides that no intoxicant shall be sold except under the authority and subject to the terms and conditions of a licence granted in that behalf. Both these sections, therefore, provide for issuing a licence for the manufacture, possession, purchase or sale of liquor. In fact such activity is prohibited without a licence. The terms and conditions of the licence may be such as may be prescribed. Section 17 deals with the power to grant a lease of the right to manufacture etc. Sub-section (1) of Section 17 provides as follows:

"17(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".

Section 71 provides as follows:

"71(1)i The State Government may, by notification and after previous publication, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing

provision, the State Government may make rules--

(a) xxxxxxxxx.

(b) omitted.

(c) xxxxxxxxx.

(d) regulating the import, export, transport, manufacture, cultivation, collection, possession, supply or storage of any intoxicant.

(e) regulating the periods and localities in which, and the persons or classes of persons to whom, licences for the wholesale or retail sale of any intoxicant may be granted and regulating the number of such licences which may be granted in any local area.

(f) and (g) xxxxxx.

(h) prescribing the authority by which, the form in which and the terms and conditions on and subject to which any licence or permit shall be granted, and may, by such rules, among other matters.--

(i) fix the period for which any licence or permit shall continue in force;

(ii) to (vii) xxxxxx.

(i) to (m)xxx xxx.

(n) any other matter that may be prescribed under this Act".

Sub-section (3) of Section 226 provides that every rule made under the Act shall have effect as if enacted in the Act subject to such modifications as may be made under sub-section (4). Sub-section (4) requires every rule to be laid as soon as may be before each House of the State Legislature while it is in session for a total period of 30 days or within other modes of time and in the manner prescribed therein. Section 226, therefore, clearly contemplates rules being made prescribing different kinds of licences which may regulate the activity of manufacture and sale of intoxicants and the terms and conditions subject to which such licences may be issued. It also contemplates regulation of the number of such licences. The Act does not specify the kinds of licences which may be issued. This is left to the rule making authority. Thus, different kinds of licences are specified under the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968. Rule 3 of the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 deals with licences for the vend of Indian liquor (other than arrack) or Foreign liquor or both. It deals with licences of all types. Sub-rule (1) deals with wholesale licences for vend of Indian liquor or Foreign liquor or both. Sub-rule (2) deals with retail of shop licence for vend of Indian liquor or Foreign liquor or both. Sub-rule (4) deals with licences to clubs. Sub-rule (5) deals with occasional licences. Sub-rule (6) deals with special licences. Sub-rule (7) deals with hotel and boarding house licences and so on. Sub-rule (11) which is introduced by the amendment deals with distributor licences. All kinds of

licences, therefore, specify and regulate the activity of manufacture, distribution and sale of liquor are covered by Rule 3 of the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968.

37. A distributor licence as contemplated under the rules was held to be basically no different from the licences prescribed under the Act. It is a licence to deal in liquor in the manner prescribed. Form CL-11 prescribes the conditions of a distributor licence. Relevant conditions being Nos. 2, 3 and 6, are

(2) The licensee may purchase the liquor only from distilleries/breweries/wineries located within Karnataka or import from outside the State.

(3) The licensee shall sell the liquor only to a person who is holding CL-1 licence in the State or export liquor to a person outside the State, who is holding a valid licence to deal in liquor.

(6) The Licensee shall sell only the approved brands of liquor".

38. Section 71 authorises the State Government, to make rules in the manner prescribed therein, it appears that in exercise of its powers the Government framed the Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1988. The aforesaid rules were amended in the year 1988 and thereafter in 1989. Under Rule 3(11) of the rules enforced prior to 1988, the Excise Commissioner had the power to grant a licence in Form CL-11 for a private Bonded Warehouse with the previous sanction of the State Government. The rules authorised the licensee to deposit or stock Indian liquor (other than arrack) without payment of duty. The licensee had the authority to transact the business in a Bonded Warehouse after payment of prescribed fee and was bound by all conditions of licence including the payment of establishment and supervision charges to be prescribed as per rules vide amendment made in Rule 3(11) of the aforesaid rules, a provision for distributor licence was made for the first time. Such licence was to be issued in Form CL-11 and was to be granted by the Excise Commissioner to an authorised distributor for any distillery, brewery or winery established within or outside the State for sale of liquor for the whole or part of the State. No distillery, brewery or winery was authorised, except with the prior approval of the Excise Commissioner to modify or withdraw the distributorship granted to a licensee under the said clause. The Excise Commissioner on payment of additional licence fee equivalent to 25% of CL-11 licence fee had the authority to permit a licensee under the clause to sell foreign liquor. Subject to the conditions referred to hereinabove, it was permissible for a distillery, brewery or winery to appoint one or more distributors for the sale of liquor for the whole or part of the State. The distributor's licence fee was fixed at Rs. 1 lakh per year. Vide amendment made in 1989 a provision was made for the grant of a distributor licence by the Excise Commissioner for the whole of the State or any part thereof to deal in the products of distilleries or breweries or wineries in the State or to import liquor from outside the State for the purpose of distribution or sale within the State or as the case may be part thereof or to export liquor

outside the State. The licensee was required to establish not less than one depot in each district within the State. The licensee under clause (b) of Rule 3(11) was to be issued only to such company which was owned or controlled by the State Government. The licence was to be in Form CL-11 and subject to renewal each year at the discretion of the Excise Commissioner. The Excise Commissioner had the power to permit the licensee to sell foreign liquor. The licensee was authorised to receive non duty paid Indian liquor other than arrack and stock the same under the licensed premises for the purpose of export or to supply to a person possessing wholesale licence in the State of Karnataka or to a bonded warehouse. The distributor licence fee was fixed at Rs. 5 lakh plus Rs. 10,000/- per depot per annum. Condition No. 3 of Form CL-1 under the 1968 rules was:

"The holder of this licence shall upon requisition by an Officer not below the grade of a Sub-Inspector of Excise be bound to produce to such Officer the original invoice showing the importation of all kinds of liquors for the sale of which this licence is granted for inspection and to allow the samples of the liquors in the shop to be tested".

Such condition under 1988 rules was:

"The licensee shall purchase his liquor only from licenced distillery/brewery/winery located within the State and/or from a licenced distributor having CL-11 licence. The licensee shall sell liquors to person holding CL-2, CL-4, CL-5, CL-6, CL-7, CL-7A, CL-7B, CL-9 and CL-10".

and under 1989 rules was:

"The licensee shall purchase his liquor only from a licenced distributor having CL-11 licence. The licensee shall sell liquors to persons holding CL-2, CL-4, CL-5, CL-6, CL-7, CL-7A, CL-7B, CL-9 and CL-10".

Similarly condition No. 2 of Form CL-11 under 1968 rules was:

"The privilege under this licence extends only to the sale of Indian liquor (other than arrack) and brands furnished by the licensee. The Deputy Commissioner is at liberty to alter the list".

Such condition under 1988 rules was:

The licensee shall sell only the products of the Distillery/Brewery/Winery for which he is an authorised Distributor".

and under 1989 rules was:

"The licensee may purchase the liquor only from distillery/breweries/wineries located within Karnataka or import from outside the State".

39. The facts stated herein above clearly show that a Distributor licence was prescribed for the first time under Rule 3(11) of the Karnataka Excise (Sale of Indian and Foreign Liquor) Rules, 1968. The aforesaid rules as earlier noted were amended in the year 1988 and then in 1989. Feeling aggrieved by the 1989

amendment made in the rules, some of the distilleries filed writ petitions in this Court which were dismissed and the matter was taken before the Hon'ble Supreme Court. It was contended therein that by compelling the appellants to sell liquor to MSIL the sole distributor appointed by the Government and prohibiting the appellants from selling liquor to anyone else, the State Government had violated their fundamental rights under Article 19(1)(g) of the Constitution to carry on trade or business. It was further submitted that the restrictions placed by the aforesaid amendment on their right to carry on trade were far from reasonable. The rules were alleged to be beyond the legislative competence of the State. It was also submitted that the amended rules of 1989 were arbitrary, unreasonable which caused undue hardship to the appellants and, therefore, violated Article 14 of the Constitution. The rules were termed to be manifestly arbitrary because the avowed purpose of formulating the amended rules was to stop evasion of excise duty. It was further contended that MSIL ought not to have been nominated for a distributor licence because it was not competent to discharge its obligations as it did not have the necessary infrastructure.

40. Justifying their action, the respondent-State, in the statement of objections filed submitted that the liquor trade was subject to the regulatory provisions under the Excise Act. Therefore by the impugned rules of 1989 no provision of the Constitution had been violated. It was submitted that the State had always the jurisdiction to impose reasonable restrictions under clause (b) of Article 304 and under the provisions of sub-section (3) of Section 71 of the Act. Every rule made under the Act was to have the effect as if enacted under the Act. The impugned rules were claimed to be forming part and parcel of the Act. It was specifically stated.--

"The impugned rules squarely fell within the rule making power u/s 71(2)(d) and they become part and parcel of the Act under the provision of sub-section (3) and therefore they attain the status of law for the purpose of Article 304. Even otherwise, the impugned rules impose reasonable restrictions and therefore protected under Article 304(b).

The Contention that the impugned rules are violative of the provisions of Article 14 of the Constitution is without any substance as the trade in liquor is the monopoly of the State and the petitioners cannot claim the fundamental right in that trade. Their right to trade is regulated by the provisions of the Act and the Rules framed thereunder. The impugned rules have been made with the sole object of preventing the leakage of excise revenue and therefore, they are reasonable restrictions within the meaning of Article 19(6) of the Constitution.

The contention that rules are ultra vires the Act as they have no relation to the object and purpose of the Act and there is no nexus between the impugned rules and the purpose of the Act, is devoid of any substance. Under the provisions of the Act, the trade in liquor is regulated by issue of licence and lease. To achieve that object, rules have been made under the provisions of Section 71(2)(d) of

the Act. The Supreme Court, in K. Ramanathan Vs. State of Tamil Nadu and Another, and while considering the scope of the word "relating" under clause (d) of sub-section (2) of Section 3 of the Essential Commodities Act, has held that there is no reason to give a restricted meaning to the word "regulating" under clause (d) so as not to take in "Prohibiting". Therefore, it is submitted that the impugned rules are for the purpose of regulating the trade in intoxicating liquors by insisting that the manufacturer of liquors shall sell liquor only to the distributor which is either a Government Company or a Company controlled by the Government. The impugned rules do not suffer from lack of competence.

It is submitted that the State Government has taken a policy decision by making the impugned rules to see that the manufacturers of intoxicating liquors shall sell only to the distributor who is holding a distributor's licence and all other wholesalers shall purchase the liquor only through the distributor as the rules are in pursuance to the policy which is mainly meant to prevent the loss of excise revenue. It is not correct to contend that this Hon'ble Court should exercise its discretionary jurisdiction under Article 226 of the Constitution of India in the matter of a policy decision of the State Government. The Supreme Court while dealing with the question pertaining to the State Policy in the matter of giving permission to start educational institutions, has held that: "so long as there is no violation of fundamental rights and if the principles of natural justice are not offended, it is not for the High Court to lay down the policy that should be adopted" -- The State of Maharashtra and Another Vs. Lok Shikshan Sansatha and Others, .

It is submitted that the Kerala High Court in the case of Moni Seman v State, while dealing with the contention regarding the validity of the rule made conferring exclusive privilege of vending foreign liquor to the State owned Corporation and requiring other licences to any foreign liquor only from the said Corporation, has held a "State may completely prohibit the trade or impose severe restrictions On the business and only those persons who are willing to abide by the stringent conditions are given a right to carry on trade "8" and merely because what was previously permitted is no longer permitted under the new rule. It cannot be said that there is a change of policy and transgress the permissible limits of delegated legislation".

It is submitted by the impugned rules, a Distributor's licence can be granted only in favour of a Government Company or a Company owned by the State Government and all other wholesale licensees are required to purchase the intoxicated liquors from such distributor. It cannot be said that such a rule creating monopoly in favour of the State to the exclusion of all others is not intended by the Act. The licensing provisions contained in Sections 13, 15 and 16 also enable the individuals to carry on business in liquor after obtaining licence. However, u/s 17 of the Act, the State Government is entitled to lease to any person the exclusive or other right of manufacture and supply by wholesale or of both and selling of wholesale by retail of manufacturing or supplying by

wholesale or of both and of selling by retail any Indian made liquor or intoxicating drug within any specified area. Section 71(2)(d) empowers the State Government to make rules for regulating import, export, transport, manufacture, collection, possession, supply or storage of any intoxicant. In exercise of their powers the State Government has framed the impugned rules and therefore, they have nexus with the object of the Act.

Even under the unamended rules, the manufacturer of intoxicating liquors can sell liquors only to a person holding wholesale licence whether in the State or outside the State. The impugned rules do not restrict any right of the manufacturer, but only requires, even such sale should be effected through a distributor. It may be seen that the petitioners are bound by the rules that may be framed from time to time, as mentioned in the conditions of the existing licences. Therefore, it submitted that the petitioners cannot challenge the validity of the impugned rules.

The contention of the petitioner that he is entitled to store his liquor with any private bonded warehouse without paying the excise duty, is not correct in as much as under the Karnataka Excise (Sale of Indian made foreign liquor) Rules, 1968, the licensee shall make arrangements to store the liquor in his own premises without payment of duty. The petitioners are not prevented to initiate effective steps to popularise the liquors produced by them.

It is submitted that the impugned rule has not imposed any oral prohibition of liquor and beer, but only contemplates restriction of the sale through Government Agency.

As submitted earlier, the provisions of Section 17 read with the section vest the Government with the power to make the impugned rules creating monopoly in favour of the Company and by the State or controlled by it. The contention that the impugned rules are imposing unreasonable restrictions on freedom of trade and commerce and in due course within and outside the State, in not to sell it. If there is demand outside the State, for the liquor produced by the petitioner, the same can be sold only through the Distributor Licensees.

The contention that the Government is meddling with the trade practice, is not correct inasmuch as it is for the consumers to choose a particular brand of liquor and if the demand persists, the Government company will have to supply the same. It is not correct to state that the Government company is at liberty to purchase or do not purchase the liquor produced by the petitioner. It is bound to purchase the liquors, if there is demand from the wholesalers. Even otherwise, it is submitted that proper evidences will be issued to the Government company in this behalf. The Government company is expected to act bona fide and with responsibility and it is not correct to contend that the Government agency will be interested only in a particular manufacturer.

It is true that the petitioners have invested amounts in establishing the distillery/ brewery. However, the impugned rules do not in any way affect their rights to

manufacture liquor. What is intended by the impugned rules is that all liquor produced by the petitioner should be sold only to a distributor which is a Government company controlled by the State and thereafter the liquor should be sold by the wholesalers. There were several complaints of evasion of tax and duty and it cannot be contended that there was no complaint at all in this behalf. The intention of the State Government is only to canalise the sale of liquor through the specified agency. As per the normal trade practice, it is already existing within the State and for the purpose of import and export. Even after the introduction of the impugned rules, the business of wholesale and retail continues with the private individuals".

(emphasis supplied)

41. Supporting the State Government the MSIL in their statement of objections submitted.--

"It may not be out of place to explain as regards the role to be played by MSIL as distributor. The manufacturers in Karnataka are selling their produce in Karnataka and also exporting it to other States. Liquor and beer from other States are imported for sale and inter-State transit through Karnataka is there. The system prevailing now has generated "non-duty paid liquor" which includes evasions of both excise duty and sales tax. The same would occur, at the manufacturing point, in the process of export outside Karnataka, in the process of import to Karnataka for sale and in the process of transit through Karnataka in inter-State trade. The amended rules impugned in these writ petitions contemplate sale of liquor manufactured in State of Karnataka and imported from outside through State agency. In that behalf MSIL with its rich experience in marketing and distribution for over 23 years can definitely carry on the entire operations with efficiency and promptitude as the State agency for sale of liquor. The State Government has chosen MSIL because of this: MSIL has:--

- (1) In house expertise in marketing and distribution.
- (2) Infrastructure in Karnataka and outside.
- (3) Ability to rule institutional finance.
- (4) The applicant to operate on commercial licence.
- (5) Capacity to adopting operations for liquor trade.
- (6) Ability to evolve suitable Management information systems.
- (7) Can arrange warehouse facilities.

The rules contemplate a State Agency as distributor for all manufacturers in Karnataka and manufacturers outside the State selling their produce in Karnataka and this has certain implications such as ensuring payment of excise duty and payment of sales tax. MSIL has the competence to make available liquor and beer as per trade requirements.

In order to effectively carry on its function as a distributor with effect from the date of licence to be issued, MSIL has made arrangements to open not less than one depot in each of the district as per the rules.

MSIL has made arrangements incurring huge costs on items detailed below:

- (1) Renting godown facilities,
- (2) Purchase of furniture and office equipment.
- (3) Training to personnel.
- (4) Deployment of staff.
- (5) Printing forms, registers and procuring stationery articles.
- (6) Raising working capital requirements.

Thus MSIL is fully equipped to function as distributor under rules from 30-9-1989.

MSIL acting as a Agency would be in a position to achieve the objects such as to have effective control on liquor trade affixing excise label on each of the bottle offered for sale, prohibiting sale of liquor without excise label and preventing generation of non-duty paid liquor which includes evasion of both excise duty and sales tax and which in turn will bring about orderly trade in liquor which will be beneficial to all concerned".

42. Rejecting the contentions of the manufacturers, distilleries, breweries, wineries and upholding the action of the respondents, the Hon'ble Supreme Court in M/s. Khoday Distilleries Limited's case, supra, held that the amended rules were not beyond the legislative competence of the State. The Act was held to be clearly within the legislative competence of the State Legislature. The amended Rules being within the scope of delegated authority under Rule 71 were legal and valid because if the main Act was within the legislative competence of the State Legislature and the rules had been framed under a validly delegated authority, the rules could not be challenged on the ground of lack of legislative competence. Dealing with the argument regarding violation of Articles 14 and 19 of the Constitution, the Court held:

"Although the protection of Article 19(1)(g) may not be available to the appellants, the rules must, undoubtedly, satisfy the test of Article 14, which is a guarantee against arbitrary action. However, one must bear in mind that what is being challenged here under Article 14 is not executive action but delegated legislation. The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected to emanate from an authority delegated with the law making power. In the case of *Indian Express Newspapers (Bombay) Private Limited v Union of India*, this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute

passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; "unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary". Drawing a comparison between the law in England and in India, the Court further observed that in England the Judges would say "Parliament never intended the authority to make such Rules; they are unreasonable and ultra vires". In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate Legislation must be so arbitrary that it would not be said to be in conformity with the statute or that it offends Article 14 of the Constitution.

In this connection, we would also like to refer to a decision of this Court in the State of Madhya Pradesh v Nandlal Jaiswal. This Court has held that though there is no fundamental right in a citizen to carry on trade or business in liquor; and the State under its regulatory power has the power to prohibit absolutely every form of activity in relation to intoxicants such as its manufacture, storage, export, import, sale and possession; nevertheless when the State decides to grant such right or privilege to others, the State cannot escape the rigour of Article 14. The Court, however, observed, "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 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".

In the present case, therefore, we must examine whether there is any manifest arbitrariness in prescribing a distributor licence which can be granted only to a company owned by the State; and in compelling the appellants to sell their product to the distributor. The appellants have pointed out that the amendments must be considered as arbitrary because they cause undue hardship to all those who are concerned with the manufacture and sale of liquor. They point out that although the manufacturers are obliged to sell their commodity to the MSIL, there is no corresponding obligation cast on the MSIL to buy the liquor manufactured by the manufacturers in the State of Karnataka. In the absence of such an obligation on the MSIL to buy the liquor, it can well happen that MSIL may act arbitrarily or capriciously and may purchase or not purchase liquor from the manufacturers at its own sweet-will. This would seriously affect the business of all those engaged in the manufacture and sale of liquor. This apprehension does not appear to be justified. In the Statement of objections on behalf of the State Excise Commissioner which were filed before the High Court of Karnataka, the respondents have explained in paragraph 16 that it is not correct to state

that the Government company is at liberty to purchase or not to purchase the liquor produced by the petitioners. It is bound to purchase the liquor if there is demand from the wholesalers. Even otherwise it has been submitted that proper guidelines will be issued to the Government company in this behalf. The Government company is expected to act bona fide and with responsibility and it is not correct to contend that the Government agency will be interested only in a particular manufacturer. This submission has considerable force. What is more important, during the period that these appeals were pending before us MSIL has not merely established several depots but has carried on distribution of liquor in the State of Karnataka on a large scale. Learned Counsel appearing for the respondents have stated before us that MSIL receives orders for supply from various purchasers. These orders specify the brand of liquor and the Company from which the supplies are required. Accordingly, MSIL places orders with the concerned companies for the brands of liquor which are demanded by their purchasers. It is on the basis of these demand requisitions received by MSIL, the MSIL places orders. There is, therefore, no question of any hardship being caused to the appellants by reason of the fact that their sales have to be channelled through an intermediary. Depending upon the orders received by the MSIL, it in turn, places orders with the suppliers or manufacturers concerned. The business activity of the appellants cannot, therefore, be said to be curtailed in any manner. Nor can there be any hardship on the appellants. Once the rules oblige the manufacturers to supply their product only to the company holding the distributor licence, a corresponding duty is cast on the distributor to place orders with the suppliers concerned whenever demand for a particular product is received by it.

Looking to the channel zing role of MSIL, the fear of discrimination between different suppliers expressed by the appellants does not appear to be justified. In the case of Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others, , this Court has observed that it is not every fancied possibility of discrimination but the real risk of discrimination that we must take into account. The same view was reiterated in Director of Industries, Uttar Pradesh v Deep Chand Aggarwal , Also if there is discrimination in actual practice, this Court is not powerless.

The second ground of hardship which is pointed out relates to excise duty. Under the Karnataka Excise (Excise Duties and Privileges Fee) Rules, 1968 a rebate in excise duty is given in respect of liquor which is either exported outside India or is exported to another State within India. This makes the liquor sold outside the State or exported considerably cheaper since it bears less incidence of excise duty. Under the present scheme, however all these sales are converted into local sales because the sale must be made to MSIL who, in turn, will either export it, if it has received an export order, or will export it to a place within India but outside the State. In both these cases, since the first sale will be within the State to MSIL, a substantial rebate in excise will be lost and the goods manufactured by the appellants will become far more expensive and therefore, will become

much less competitive in the outside market. There is a similar provision relating to rebate in sales-tax which also the appellants will lose. There is no doubt that this will cause some hardship to the appellants. The fact, however, remains that any concession which is granted by the State for export sales or inter-State sales is a matter of policy. Granting of such concession or absence of such concession cannot make the rule itself manifestly arbitrary or unreasonable. If the appellants are aggrieved by the existing rules or would like a similar concession to be extended to sales which are to be made to MSIL in respect of export orders or orders for supply outside the State received by it, it is open to them to make a suitable representation to the State Government. The absence of availability of such a concession, however, cannot make the rules arbitrary or violative of Article 14. All manufacturers and suppliers within the State of Karnataka are governed by the same rules and will, therefore, have to pay the same taxes. All persons who are similarly situated are similarly affected by the amended rules. There is, therefore, no discrimination under Article 14 in its traditional sense.

The appellants have placed reliance upon the observations of this Court in *Doongaji and Co. Vs. State of Madhya Pradesh and others*, , to the effect that there is no fundamental right in a citizen to carry on trade or business in liquor. However, when the State has decided to part with such right or privilege to others, then the State can regulate the business consistent with the principles of equality enshrined under Article 14 and any infraction in this behalf at its pleasure is arbitrary as violating Article 14. Therefore, the exclusive right or privilege of manufacture, storage, sale, import and export of liquor through any agency other than the State would be subject to the rigours of Article 14. We respectfully agree with these observations. In the present case, however, there is no violation of Article 14.

It was also submitted before us that the rules must be considered manifestly arbitrary because the avowed purpose of formulating the amended rules is to stop evasion of excise. In the counter statement filed by the Government of Karnataka before the High Court of Karnataka it has, set out the object of the amendment. The affidavit states, "The impugned rules have been made with the sole object of preventing leakage of excise revenue and, therefore, they are reasonable restrictions within the meaning of Article 19(g)". It is submitted before us that such evasion could have been checked by other means which would have been more beneficial to or less hard on the appellants. How such evasion is to be checked, however, is a matter of policy. So long as the policy as formulated in the amended rules is not manifestly arbitrary or wholly unreasonable, it cannot be considered as violative of Article 14. There is, in the present case, no self evident disproportionality between the object to be achieved and the rules which have framed.

It was lastly submitted that MSIL ought not to have been nominated for a distributor licence because it is not competent to discharge its obligations and does not have the necessary infrastructure. This plea was raised before the

Karnataka High Court at a time when MSIL had not started functioning. It is now a fully functional authority. MSIL has stated that it has a large number of depots in various districts of the State and is already handling very substantial business. This plea, therefore, merits no further consideration. In any event, some problems with the discharge of its duties by MSIL will not render the amended rules providing for a distributor licence arbitrary or violative of Article 14".

43. Consequent upon the judgment of the Hon"ble Supreme Court in M/s. Khoday Distilleries Limited, the Excise Commissioner of Karnataka vide his letter dated 9-12-1996 (Annexure-D) directed all the distilleries, breweries and wineries to transact their liquor trade only through MSIL. The Officers incharge of distilleries, breweries and wineries were intimated to immediately give effect to the amended rules and see that all the licenced manufacturers route their goods through MSIL only. All the licence holders were directed to obtain goods only through MSIL and not directly from the manufacturers. It was further mentioned that, "keeping in view all these instructions the permit issuing authorities shall also see that the permits are issued from the distilleries, breweries and wineries to the MSIL only and not to the wholesalers". Vide another memo of the even date the said Commissioner issued the instructions to the effect:

"It has come to the notice of the undersigned that the Deputy Commissioners of Excise of the Districts and the Officers incharge of Distilleries/Breweries/Wineries who are issuing transport permits for Transport of liquor from the manufacturing point to the Distributor/Wholesaler are still issuing permits from the manufacturing point to wholesalers, despite the fact that the Supreme Court in its judgment dated 15th December, 1995 has upheld the constitutional validity of the amendment brought to Rule 3(11)(b) of Karnataka Excise (Sale of Indian and Foreign Liquor) Rules, 1968 and other allied rules making provision for sale of the manufactured goods only through Distributor Licence which is held by MSIL.

It is once again impressed on all the officials concerned to see that Transport permits are issued only to MSIL from the manufacturing point and not to wholesalers".

44. Feeling aggrieved by the inaction of the respondent authorities in implementing the 1989 rules for giving effect to the Supreme Court judgment, one Sri D. Nemirajaiah filed Writ Petition No. 25827 of 1996 in this Court praying therein for the issuance of directions to the respondent authorities to collect the excise revenue which was due as per Rule 3(11) of the Karnataka Excise (Sale of Indian and Foreign Liquor) Rules, 1968 and to implement the said rules. During the pendency of the aforesaid writ petition Sri L.V. Nagarajan, the then Commissioner of Excise in Karnataka filed an affidavit stating therein:

"I submit that it is true that the said Rule 3(11) of Karnataka Excise (Sale of Indian and Foreign Liquor) Rules, 1968, has been the subject-matter for decision on the validity of the rule in a couple of writ petitions before the Hon"ble Court as well as Civil Appeals before the Hon"ble Supreme Court of India. Both this

Hon''ble Court as well as the Hon''ble Supreme Court of India have upheld the validity of Rule 3(11) of the said rules holding that the provision for granting distributory licence to State owned company is not outside the purview of the Act nor it is outside the purview of rule-making authority of the State. The rules came into force on 13-9-1989. The Hon''ble Supreme Court of India finally upheld the validity of the said rule by confirming the orders of this Hon''ble Court in Civil Appeal Nos. 4708 to 4712 of 1989 and other connected cases (M/s. Khoday Distilleries Limited, supra). That the interim order passed by the Hon''ble Supreme Court during the pendency of the matter is as per Annexure-R1. Produced along with the affidavit already filed in this writ petition by Secretary to Government-II, Finance Department, Government of Karnataka, Bangalore.

That after the judgment of Hon''ble Supreme Court of India, there was correspondence between my office and the MSIL and in that connection a meeting was also convened to discuss about the availability of infrastructure to distribute the liquor within and outside the State. It is submitted that his Excellency the Governor of Karnataka in his address to the Joint Session of State Legislature on 19-02-1996 announced that the Government has been seriously considering the desirability of reintroducing prohibition in the State keeping in view the provisions of Article 47 enshrined in Part IV of the Constitution of India dealing with the Directive Principles of the State. Subsequently, the State Cabinet has constituted a Cabinet Sub-Committee under the Chairmanship of Hon''ble Deputy Chief Minister and Finance Minister to examine the pros and cons of reintroduction of prohibition and its impact on the State Revenue and submit report to the Cabinet. Further, the Government had made an interim arrangement for sale of arrack permitting existing contractor or any other person who agrees to pay the amount of 8% over and above the existing rental of 1995-96, by issuing Government Order for disposal of lease of right of retail vend of liquor for the excise year 1996-97 by auction as required under Rule 3 of the Karnataka Excise (Lease of Rights of Retail Vend of Arrack) Rules, 1969. This interim arrangement was continued upto 30-11-1996.

Now the said rules are amended to restore the position prevailing prior to the amendment of rules. To this effect the draft rules have been published in the Gazette and which are herewith produced at Annexures-R2 to R5 (with allied rules)?"

45. On 30-12-1996 notification (Annexure-G) was issued published the draft rules in terms of sub-section (1) to Section 71 of the Karnataka Excise Act for information of all concerned giving them liberty to file objections, if any, within two weeks. Similarly vide notification of the even date Annexure-H, proposal was made inviting objections for the amendment of the Karnataka Excise (Distillery and Warehouse) Amendment Rules, 1996 and vide Annexure-J and K proposal for amendment of the Karnataka Excise (Manufacture of Wine from Grapes) Amendment Rules and the Karnataka Excise (Brewery) Amendment Rules, 1996 was notified and circulated. As noted earlier, MSIL is reported to have filed

objections. The objections and suggestions are stated to have been considered by the State Government before making the impugned amendment rules.

46. The narration of facts and circumstances and the position of law noted herein before would show the existence of the following circumstances before the passing of the impugned amendment rules--

(a) that the Karnataka Excise Act had been enacted to provide for a well-known law relating to the production, manufacture, possession, import, export, transport, purchase and sale of liquor and intoxicating drugs and the levy of duties of excise thereon in the State of Karnataka;

(b) that the said Act provided the levy of excise duty and controlled the issuance of licences and permits;

(c) that the excise duty collected under the Act was substantial in nature being a major contribution to the State revenues;

(d) that the rules framed under the Act were changed from time to time for the purposes of giving effect to the Act and providing for collection of the excise duty and for the enhancement of the excise duty for the purposes of augmenting the financial resources of the State to give an uplift to its economy;

(e) that in the year 1989 the respondent-State had found that the rules prevalent at that time were not sufficient to give effect to the provisions of the Act insofar as it related to the collection of revenue under the Act;

(f) that the rules prevalent prior to 1989 were inadequate in preventing the leakage of excise revenue;

(g) that 1989 amendment rules were made in pursuance to the policy which was meant to prevent the loss of excise revenue to the State;

(h) that 1989 amendment was necessitated on receipt of several complaints of evasion of tax and duty;

(i) that the then prevalent rules were encouraging the sale of seconds which not only resulted in the loss of revenue to the State but also posed threat and danger to the health and safety of the people consuming liquor;

(j) that the challenge to the aforesaid rules on the ground of violation of the fundamental legal rights as projected by the manufacturers and distributors was found to be without substance and imaginery;

(k) that the constitutional validity of the 1989 rules was upheld by the Hon''ble Supreme Court of India;

(l) that the 1989 rules not only got the seal of validity of the Apex Court but in fact became a law in the State which was legally required to be given effect to under Articles 142 and 144 of the Constitution of India.

47. It has to be seen as to whether in view of the above mentioned admitted and proved facts, the respondent-State was justified in again amending the rules vide the impugned rules which in fact and in essence was intended to take away the effect of 1989 rules. It has to be noticed that the only amendment made vide the impugned rules was to reverse the position of the rules and make such rules prevalent and enforceable which were in existence prior to the year 1989. In other words, the main effect of the amendment was the abolition of MSIL as the sole distributor. Instead of issuing the licence only to a company owned and controlled by the State Government, a provision has been made for grant of licence in Form CL-11 authorising any person to be a distributor for any distillery, brewery or winery established within or outside the State for sale of liquor for the whole or part of the State. What necessitated the amendment of the rules in the year 1997 has not been properly and satisfactorily explained by the respondent-State. The justification tendered apparently appears to be afterthought and without any basis. It cannot be accepted that the amendment rules were made only for the purposes of doing away with the monopoly in liquor trade. In fact at no point of time any monopoly had been created in favour of the State for the manufacture of the liquor. What was monopolised was only the distribution with the proclaimed object of preventing the leakage of the State revenue and preventing the sale of seconds. The proclaimed object of doing away with the monopoly created in favour of the State allegedly in the scenario of economic liberalisation policy is a hoax purportedly and apparently concocted subsequently to put resistance to the present petition. The change of rules is not shown to have in any way benefited the State either in tapping the financial resources or preventing the abuses prevalent which were intended to be remedied by amending the rules in the year 1989. We are also not satisfied with the bald assertion made by the State that as the amended Rules of 1997 were the result of a changed policy of the Government, the same could not be questioned. We are of the opinion that the policy of the Government may not be made a subject of judicial review only in case where it is found that a particular political party has been put to power for the purposes of implementation of the policy declared by it before the commencement of the elections. In other words, if a particular policy was highlighted by a political party in its election manifesto the same may be entitled to protection against judicial review but not otherwise. In our view if a rule of law is made consequent upon the declared policy of a political party in its election manifesto, the same cannot be challenged except for the reason of being in violation of the fundamental rights or amounting to changing the basic structure of the Constitution. Any other policy made by the Government is required to stand the test of judicial scrutiny. If such a policy is found to be contrary to a statutory provision or is held to be not fair and proper, the constitutional Court has to react by invoking its jurisdiction under Article 226 of the Constitution. The protective umbrella from judicial scrutiny cannot be availed of by merely declaring a particular action to be the result of the change of policy of the State Government. The changed policy of the State Government cannot be justified only with the change of guards in the Secretariat. The State, being a

political entity, is of a perpetual succession having continuity and in law cannot be deemed to have come into existence or ceased to exist with the change of the persons or the political party in a State or at the Centre.

48. A recapitulation of the facts noted herein above clearly and unambiguously establish that the respondent-State had deemed and considered the 1989 rules to be legal, valid, effective and in conformity with the Scheme of the Act upto 9-12-1996 when the Excise Commissioner is proved to have issued directions and instructions for the implementation and compliance of the 1989 Rules. What change had actually taken place between 9th of December and 30th of December, 1996 when the draft rules were notified, is a mystery shrouded with doubts which has not been clarified by the respondent-State. Three weeks time necessitating the change of the policy is neither referred to nor can be explained or accepted on any reasonable hypothesis or justification as is being now projected by the respondent-State. The only change which appears to have taken place was the change of guards at the Secretariat because during the period commencing from June 1996 to December 1996 the respondent 3 had ceased to be the Chief Minister and respondent 4 occupied his seat in the Vidhana Soudha. The amended rules are therefore admittedly the result of non-application of mind and incorporated without any need or justification. The experience of the implementation of 1989 rules could have been made a basis for coming to the conclusion that the change was needed but the irony of the circumstances is that the 1989 rules which were enforced with a proclaimed public purpose were never given effect to by the State Government, whether it was headed by one or the other political party. In the absence of any experience there was no justification for amending the rules on the basis of the so-called changed policy. Economic liberalisation could not be resorted to in the matters relating to production, manufacture, possession, import, export, transport, purchase and sale of liquor and intoxicating drugs in the State. Trade and business in liquor has all along been treated by the State and the Society as a special category requiring legislative control with a view to prevent the injurious effect of its excessive and liberal production and manufacture. No citizen had any inherent right to sell liquor which could have necessitated the amendment of the rules. The trade in the liquor could not be equated with trade of other commodities needed by the citizens in their daily use. What is mandated to the State under Article 47 of the Constitution is to endeavour to bring about prohibition of the consumption except for medicinal purposes all intoxicating drugs and drugs which are injurious to health. The State has the police power to enforce public morality to prohibit trade in noxious or dangerous goods.

49. Learned Advocate General appearing for the respondents has produced a file bearing No. FD 325 EDC 95 pertaining to the subject for our perusal. Sri C. Gopal Reddy, the Chairman of MSIL vide his letter dated 20-12-1995 is shown to have requested the Additional Chief Secretary and Principal Secretary to Government, Finance Department for implementation of 1989 rules after the dismissal of the Supreme Court order. The Commissioner for Excise in Karnataka vide his letter

dated 21-12-1995 is also shown to have made a similar request to the Additional Chief Secretary. The Secretary to Government, Finance Department vide his letter dated 3-1-1996 requested the Excise Commissioner to send a report to the Government with a detailed examination of the implications of the judgment of the Hon"ble Supreme Court. The Chairman of the MSIL vide his letter dated 3-1-1996 again though he was asked vide letter dated 3-1-1996 to give report to the Government with a detailed examination of the implications of the judgment of the Hon"ble Supreme Court in Appeal Nos. 4708 to 4712 of 1989 regarding appointment of the MSIL as the sole distributor of liquor, yet of his own he purportedly noted the alleged difficulties projected by Khoday India Limited, in their letter and without further clarification from the other concerned submitted his report. The letter of Commissioner for Excise dated 18-1-1996 addressed to Additional Chief Secretary was directed to be processed urgently as is evident from the note appended at it dated 20-1-1996. On 28-3-1996 the Managing Director of the MSIL is shown to have intimated the Additional Chief Secretary Sri B.K. Bhattacharya that M/s. Khoday Distilleries and Breweries had not properly submitted the accounts of the sales as per direction of the Hon"ble Supreme Court. The said manufacturer was alleged to have misled the MSIL regarding their liability to pay the Commission worth more than Rs. 7 crores. A note dated 2-5-1996 shows that the Hon"ble Chief Minister desired to discuss the implementation of the Supreme Court order appointing the MSIL as the sole distributor for sale, for which a meeting was proposed on 3-5-1996. The draft cabinet note No. FD 325 EDC 95 indicates that the file had been submitted to the Minister for Excise and the Chief Minister. The Chief Minister directed the matter to be brought before the Cabinet. The Additional Chief Secretary sought the approval of the Cabinet for the appointment of MSIL as the sole distributor for liquor (other than arrack) with effect from 1-7-1996. The case sheet shows that the matter pertaining to the appointment of MSIL as the sole distributor for liquor as per Hon"ble Supreme Court judgment was placed before the Cabinet on 29-5-1996 as agenda Item 44 but the decision was deferred. It may not be out of place to mention that while submitting the proposal for approval for appointment of MSIL as the sole distributor, the then Additional Chief Secretary had taken note of the letter of Khoday India Limited, and the report of the Commissioner for Excise dated 18-1-1996. In other words, the State appears to have not been influenced by the recommendations of Sri B.K. Das, the then Commissioner for Excise in Karnataka. In another meeting of the Cabinet held on 2-8-1996 the agenda item 5 pertaining to appointment of MSIL as the sole distributor was deferred. By passing the Cabinet and the Additional Chief Secretary, Sri L.V. Nagarajan, Commissioner for Excise in Karnataka vide his letter dated 26-12-1996 proposed the amendment of the rules. Along with his letter he sent the draft rules. From the record it appears that Sri Sudhir Krishna, Commissioner of Commercial Taxes in Karnataka vide his D.O. letter dated 9-1-1997 addressed to Sri B.K. Bhattacharya, A.C.S. and P.S. to Government, Finance Department, pointed out that in case the draft rules were approved, the same would not be conducive to the growth of revenue. He prayed for dropping

the proposal and appointing MSIL as sole distributor. Pointing out the defects in the rules he mentioned:

(a) it would amount to failure to implement the earlier decision of the Government to create a monopoly in MSIL for the avowed purpose of having sole distribution for itself through MSIL (which has withstood the test of law) after facing and winning the challenge thrown by a distillery of the State;

(b) all the efforts of the State Government in publishing the earlier intention through notifications; going to Court to see that the validity of its decision is upheld would go waste;

(c) it would amount to undermining the recognition made by the Apex Court regarding the increase in the network, of MSIL operations, whereby its claim for sole distributorship in trading of liquor is vindicated in respect of reaching the consumers;

(d) appointment of MSIL as wholesale distributors, it seems has been given a go-by and it seems that it has failed to take birth, even though the foetus, had all the (strength) possibilities of taking a healthy birth.

The MSIL is also shown to have filed detail objections on 13-1-1997. The objections are also shown to have been filed by Sri N.D. Nemirajaiah. The Joint Action Committee of the MSIL Officers Association and MSIL Employees Union is also shown to have submitted detailed objections to the proposed amendment. The Secretary to Government, Finance Department vide his D.O. letter dated 16-1-1997 addressed to Sri L.V. Nagarajan, Excise Commissioner is shown to have forwarded the objections and suggestions received by the Government for parawise remarks. The Excise Commissioner vide his letter dated 20-6-1997 is reported to have considered the objections. He opined that the circumstances prevalent in the year 1989 had changed by the time the amendment was proposed. The changes brought out to the notice of the Government were the increase in the number of distilleries and retail licences. It was submitted that the consumption of liquor had increased. According to him such changes were necessary not to continue the monopoly created in favour of MSIL. He opined that, the legal validity of a Government Act is different from its utility and suitability. He termed the objections of the Commissioner of Commercial Taxes as a general statement. He summed up the objections as:

(a) What has been legally held to be valid by the Apex Court should be continued;

(b) Revenue leakage can be plugged and seconds avoided if existing rules continue;

(c) MSIL as a company and its employees will suffer financial hardship.

His short reply to the above was:

(a) Legal validity of a rule is one thing, but its desirability at a point of time and in future is another. Hence, just because a rule is held legal it does not mean that

administrative expediency and changed circumstances should not propose alteration of rules;

(b) Excise duty is paid when IML leaves a bonded warehouse. Canalising liquor trade through a Government distributor does not adequately prevent sale of seconds, which malaise has its roots and solution elsewhere; and

(c) MSIL can continue to be in the liquor trade based on business competence and efficient trade practices.

Showing his keen interest apparently for the Department but impliedly for the manufacturers, the Excise Commissioner vide his letter dated 27-1-1997 addressed to the Additional Chief Secretary requested him that the Government should immediately direct the MSIL not to take any stand before the Court which had not been taken any stand before the Court which had not been cleared by the Government so that steps could be taken by the Government like draft publication of rules and further action.

50. The whole of the action for drafting the proposed impugned rules appears to have been initiated by the then Excise Commissioner vide his letter dated 26-12-1996. He has referred to Letter No. FD 325 EDC 95, dated 24-12-1996 purported to have been written by Sri B. Eshwarappa, Secretary to Government, Finance Department directing him to submit draft rules to the Excise Act and other allied rules in such a way that status quo ante was brought about and also to ensure that canalisation of liquor through MSIL was discontinued by removing the monopoly conferred on the said Government Company. The aforesaid letter dated 24-12-1996 could not be traced from the file. What necessitated the issuance of the aforesaid letter requesting the Commissioner of Excise to submit draft rules has been allowed to remain in the darkness. At whose instance and instructions the aforesaid two communications were brought into existence is again a mystery shrouded with doubts. The liquor lobby in this Country in general and such lobby in the State of Karnataka in particular has been alleged to be not only effective in asserting its position but also responsible for giving shape and directions to the political set up with their money, power and might. Apparently it appears that the whole of the action for amendment of the rules was initiated by Sri L.V. Nagarajan, Commissioner for Excise in Karnataka and Sri B. Eshwarappa, Secretary to Government, Finance Department at the instance and behest of the owners of distilleries, breweries and wineries especially Khoday India Limited. How such an action was approved by the Government is also a matter which is lying under the carpet and not brought out so far. The action of the aforesaid two officers requires a thorough probe and enquiry. As they are not party respondents before us we are refrained to comment any further about their conduct and the alleged acts of commission and omission which resulted in the issuance of the impugned rules in violation to the mandate of law and the provisions of Karnataka Excise Act and the rules made thereunder. The political executive of the State is not shown to have exercised effective control over their officers who perhaps were hands in glove with the proposed beneficiaries namely

the owners of distilleries, breweries and wineries in the State of Karnataka. The acts of omission and commission have not been satisfactorily explained by the respondent-State. The State largess appears to have been conferred upon the mighty and influential who otherwise did not deserve it. The protective umbrella of State policy as projected by the respondent-State stands shattered in the light of the actions taken by the bureaucrats of the respondent-State resulting in huge losses not only to the State Exchequer but also to a State owned company. The loss of the State and the Government Company is admittedly a corresponding gain of the distilleries, breweries and wineries. The impugned rules, therefore, cannot be held to be legal, valid or according to law under the proclaimed defence of policy as projected by the respondents.

51. The rules are also liable to be quashed in as much as they are shown to have been made purportedly for not giving effect to the judgment of the Supreme Court in *Khoday's case*, supra. We do not agree with the submissions made on behalf of the respondents that the State Executive had the right to make or amend any rule in exercise of its sovereign power or the power vested in it under the General Clause Act. It is not in dispute that the impugned rules were passed by the State in exercise of the powers vested in it on account of the delegated legislation authorised u/s 71 of the Excise Act. The delegatee of the power is subject to all such restraints and restrictions which are applicable to the principal, in this case, the State Legislature. It is true that the Legislature has the plenary power to legislate within the field of legislation entrusted to it subject to constitutional restraints as specified in Part XI of the Constitution and the restrictions imposed by various pronouncements of the Apex Court and other Constitutional Courts in the country. It is also true that while enacting a law the legislature is competent to enact the law both prospectively as well as retrospectively. The Legislative power may be open, direct and overt or disguised, indirect and covert, it shall be described as colourable legislation. The Legislature has been held to have the power to remove the basis of a decision rendered by a competent Court but it has no power to ask instrumentalities of the State to disobey or disregard the decision given by the Courts. Limits of powers of the Legislature have been considered and interpreted by the Supreme Court in *Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others*, *Mahal Chand Sethia v State of West Bengal*, *State of Madhya Pradesh Vs. Ranojirao Shinde and Another*, *Municipal Corporation of the City of Ahmedabad v The New Shrock Spinning and Weaving Company Limited*.

52. A division bench of this Court dealt with this aspect of the matter in *M.D. Narayan v State of Karnataka* and after referring to various pronouncements made on the subject concluded:

"On the basis of various pronouncements of the Apex Court it can be held that the legislature has the power to make laws under the constitutional scheme as provided under Part XI, Chapter I read with the Seventh Schedule of the Constitution. The Legislature can enact Laws both prospectively as well as

retrospectively. The Legislature can change the basis of a decision as given by the Court and thus change the Law in general. However, legislature cannot set aside an individual decision inter parts and affect their rights and liabilities. The Legislature cannot exercise the judicial power of the State and to function as an appellate Court or tribunal. The Legislature has no power to ask the instrumentalities of the State to disobey or disregard the decision given by the Courts. The binding judicial pronouncements between the parties cannot be rendered ineffective with the aid of any legislative power. It has to be noticed that the preamble of the Act and the statement of Objects and Reasons can be used only for the limited purpose of ascertaining the circumstances which led to the passing of the Act and to determine the validity of an offending Act the doctrine of pith and substance has to be applied".

In the instant case while upholding the validity of 1989 rules and the judgment of this Court, the Supreme Court rejected all the pleas of the manufacturers and distilleries of the IMFL which have been now made a basis for repealing of the 1989 rules. Upholding the validity of the impugned rules would amount to setting aside of the Apex Court judgment in Khoday Distilleries case. What the distilleries and manufacturers of liquor could not achieve in a Court of law, they have clandestinely succeeded to obtain by virtue of the impugned rules. The impugned rules if permitted to remain on the statute book would not only be contrary to the directions of the Supreme Court but would be a negation of the rule of law. The State Executive cannot be permitted to blow hot and cold in the same breath. On the one hand they were asserting their right and contesting the claim of the distilleries and manufacturers in the Supreme Court and on the other hand appear to have initiated action for reconsideration upon a representation made by the Khoday India Limited, apparently prior to the pronouncement of the judgment of the Apex Court. Even though we have held that the respondents 3 and 4 are not guilty of mala fides, yet we are of the opinion that respondent 4 appears to have been misled by the bureaucratic's mala fides and action initiated by them at the instance of influential liquor lobby in the State of Karnataka. The impugned rules have not been referred to any reasonable basis or justification; We are prima facie satisfied that the impugned rules are not only unconstitutional, illegal, mala fide, initiated at the instance of the manufacturers and distilleries of IMFL in conspiracy with some bureaucrats but also against the general public interest resulting in huge losses not only to the State. Exchequer but to MSIL, admittedly a public undertaking and a Government Company. The impugned rules are proved to have been framed for inflating the money bags of the manufacturers and distributors of the IMFL. Such rules are also against the public policy and defeat the purpose and object of the Act and the mandate of Article 47 of the Constitution of India.

53. Under the circumstances the writ petition is disposed off by setting aside and quashing the Karnataka Excise (Sale of Indian and Foreign Liquor) Rules, 1997 being illegal and unconstitutional. Other identical rules framed and enforced on the same date are also set aside. A command is issued to the first respondent to

enforce 1989 Amendment rules against all the manufacturers and distributors of IMFL. The action of the concerned officials who became instrumental in framing the amendment of 1997 rules be got investigated by an appropriate agency preferably C.B.I. The investigating agency may determine the circumstances under which the impugned rules were framed and the resultant loss which was caused to the respondent-State and respondent 2, the MSIL.

Writ petition as against respondents 3 and 4 shall stand dismissed and the writ petitioner namely G. Puttaswamy Gowda would pay costs and symbolic compensation of Rs. 1,001/- to each of respondents 3 and 4. The petitioner Sri K.V. Amarnath is held entitled to payment of costs assessed at Rs. 5,000/-.

R.P. Sethi, C.J. and A.M. Farooq, J. Writ Petition No. 9879 of 1997 9th December, 1997

ORDER

After the judgment was pronounced, the learned Advocate General made a request for staying the operation of the judgment enabling the State to file an appeal to the Supreme Court.

In view of our findings, we do not find any ground to stay the operation of the judgment.

Prayer rejected.