(1991) 04 AP CK 0031

In the Andhra Pradesh High Court

Case No : Writ Petition No. 790 of 1990

Mc Dowell and Co. Ltd. and Others APPELLANT

Vs

State of A.P. and Another RESPONDENT

Date of Decision : 26-04-1991

Acts Referred:

Andhra Pradesh (Indian Liquor and Foreign Liquor) Rules, 1970 — Rule 16(2), 17(3), 18(4), 3
Andhra Pradesh Excise Act, 1968 — Section 11, 12, 2(31)
Constitution of India, 1950 — Article 14, 226, 255, 301, 304

Citation : (1991) 2 ALT 207 : (1991) 2 APLJ 64

Hon'ble Judges : Syed Shah Mohammed Quadri, J

Bench : Single Bench

Advocate : T. Anantha Babu, A. Panduranga Rao, T. Raghunath Reddy, V. Pattabhi, K. Mangachary, R.S. Raju, P. Seetharama Raju, M. Gunneswar Rao, S. Dasaratharama Reddy, S. Ravi and P.I. Kumar, for the Appellant; A.G. and Govt. Pleader for Excise, for the Respondent

Final Decision : Dismissed

Judgement

Syed Shah Mohammed Quadri, J.—For over a decade steps taken by the Government to regulate the movement of vehicles transporting liquor, which pass through the State of Andhra Pradesh, have been the subject matter of litigation. These steps are taken on the ground that in the guise of transporting liquor through the State of Andhra Pradesh, it is being smuggled in this State, thus causing loss of revenue to the State. Initially the Commissioner of Excise issued Circular No. CR. 41124/81/EX/G2, dated 30-8-1981 requiring the transporters to obtain transport permits from the Commissioner for that purpose. That circular was assailed in a batch of writ petitions in Brindco Sales Corporation v. Commissioner of Excise,((1984)1 An. W.R. 393 : 1984(1) A.L.T. 4). Ramachandra Rao, J. (as he then was) allowed the writ petitions holding that none of the provisions of the Andhra Pradesh Excise Act or the Andhra Pradesh Foreign Liquor and Indian Liquor Rules, 1970 empowered the State Government or the Excise Commissioner to provide for obtaining a transport permit to transport liquor from one place outside the State to another place outside the State of Andhra Pradesh when the lorries have to pass through the State of Andhra Pradesh. Thereafter a scheme called "through transport permit scheme" was evolved and to give effect to that scheme, the Legislature of the State amended Sections 2(31), 11 and 12 of the Andhra Pradesh Exercise Act, hereinafter referred to as "the Act", and the Governor of Andhra Pradesh amended Rules 3(p), 16(2), 17(3) and 18(4) of the A.P. Foreign Liquor and Indian Liquor Rules, 1970 in G.O. Ms. No. 983, Rev. (Ex. III), dated 6-10-1989, hereinafter referred to as "the Rules". The abovesaid amended provisions are assailed in this batch of writ petitions as being arbitrary, impracticable and unworkable and violative of Articles 301 and 304 of the Constitution; (for short they are referred to hereunder as "the impugned provisions of the Act and the Rules."

2. Since the facts in these writ petitions are common, I will refer to the facts given in the affidavit accompanying Writ Petition No. 790 of 1990. The petitioner-company is a manufacturer of Indian made foreign liquor and beer. The manufacturing units of the petitioner-company are in Kerala, Andhra Pradesh, Goa, Bihar, Karnataka, etc. The liquor/beer manufactured in the units in the said States is transported through vehicles by road to the State of West Bengal and other northern States. In the process the transport vehicles from other States have to pass through the State of Andhra Pradesh. The Government of Andhra Pradesh introduced "through transport scheme" under which the liquor transported from one State to another State cannot pass through the State of Andhra Pradesh except under "Through Transport Permit" issued by the Commissioner of Excise. Due to implementation of this scheme, the petitioner is put to serious inconveniences and great loss. The petitioner, therefore, challenges the abovementioned impugned provisions of the Act and the Rules on various grounds which will be referred to presently.

3. The respondents filed a counter-affidavit stating inter alia that Yanam Port and Maha Port are parts of the Union Territory of Pondicherry separated from its main land by 600 and 1000 K.Ms., respectively, by. inter-lying areas of the State of Andhra Pradesh. To approach Yanam or Maha, one has to necessarily pass through the State of Andhra Pradesh. The excise duty on alcoholic liquor in the Union Territory of Pondicherry including Yanam and Maha has always been far less than that prevailing in Andhra Pradesh. The difference in the Excise duty coupled with the geographical advantage resulted in clandestinely unloading of liquor in the interlying area of Andhra Pradesh causing loss to the State''s revenue. To arrest this practice and to protect the revenues of the State, the Commissioner of Excise issued orders in Cr. No. 41124/81/G2, dated 30-8-1981 requiring the transporters of liquor consignments to obtain through transport permits. On challenge, that was held to be without authority of law by the High Court. Subsequently, the Act was amended by an Ordinance with effect from 23-8-1988 introducing the requirement of "through transport permit". The

Ordinance has been replaced by Act 10 of 1989 which was published on 20-4-1989. To implement through transport permit scheme" the Rule were also amended with effect from 6-10-1989. It is further stated that the Director General of Vigilance, Government of A.P. has recently informed that at Yanam where adult population is between 6000 and 8000, about 30,000 cases of liquor and 5,700 cases of Beer were consumed during a period of 10 months from February, 1989, and that at least six truck loads of liquor destined to Yanam entered the State of Andhra Pradesh during this period, but did not pass the checkposts around Yanam leading to obvious conclusion that the stocks were sold illegally in the State of Andhra Pradesh. To counter the check-measures adopted by the State and to evade the payment of tax, these writ petitions are filed. The Rules are amended to regularise "through transport". The amendment of the Rules is in consonance with Section 11 of the A.P. Excise Act. It is stated that there is no fundamental right in the business of liquor. In any event, the impugned provisions of the Act and the Rules requiring through transport permit do not interfere in the right to trade or business of a person. A permit is made necessary when the goods are in transit in the State of A.P., which is issued without levying any charges or fees. The impugned provisions do not affect any right of the petitioner including the fundamental rights. It is stated that the spirit of Article 301 of the Constitution of India is to safeguard the economic unity of the country against Inter-state barriers. The regulatory measures do not infringe the rights Under Article 301. The formality of obtaining permit cannot be said to be a restriction in the true sense of the word and is not violative of Article 301. The business between two other States is not interfered with, restricted, questioned or prevented injuring the interests, profits or otherwise of the traders of the State. If this formality is not observed, the revenue of the State of Andhra Pradesh is put to jeopardy by unscrupulous traders. The impugned provisions of the Act and the Rules are regulatory in nature and do not hamper the free flow of trade, commerce and intercourse. The provisions do not fall within the prohibitions of Article 301 of the Constitution. It is stated that the definition of the term "transport" u/s 2 (31) of the Act and the provisions of Sections 11 and 12 govern the transport including ''through transport''. By amendment of the impugned provisions of the Act and the Rules the transport of goods from the place of origin to the place of destination is not controlled. Its movement within the State of Andhra Pradesh is brought under vigilance. The petitioners have to obtain the import permit or the export permit necessarily. Therefore, they cannot have any grievance if they are required to obtain ''through transport permit''. The inspecting officials have no right to retain the goods on the ground that the copy of the permit marked to them was not received by them and that the apprehension of delay, corruption and red-(SIC)apim is imaginary and baseless. The regulatory measure is in public interest. In the circumstances it is prayed that the writ petitions may be dismissed.

4. Sri T. Anantha Babu, the learned counsel who led the batch, contends that the Rules as amended are arbitrary as they are unworkable and impracticable and

impose an unreasonable restriction on the inter-State trade; no care is taken to notice the hardship caused to the transporters in obtaining the permits. The authority to issue the permit is the Commissioner whose seal of office is in the capital city of Hyderabad. The vehicles will have to wait at the border, submits the learned counsel, till the permit is received, thus causing lot of inconvenience and loss to the transporters. The authorities at the check-post through where the transport vehicles have to pass may even stop the vehicles on the ground that the copy of the permit marked to them is not received by them, thus causing further delay in reaching the destination and in the process (he inter-State trade is stranded.

5. Sri T. Raghunatha Reddy, the learned counsel appearing for some of the writ-petitioners, submits that the State''s power is confined to its territory ; by the impugned provisions of the Act and the Rules what is regulated is inter-State trade movement, beyond the State''s territory. The learned counsel further submits that the impugned provisions of the Act and the Rules are unreasonable restrictions on inter-State trade and there: fore, violative of Articles 301 and 14 of the Constitution; even if they are reasonable restrictions on the freedom of trade they are violative of the, Proviso to Clause (b) of Article 304 of the Constitution as the Bill for amendment of the impugned provisions of the Act was introduced without the previous sanction of the President.

6. Sri A. Panduranga Rao, appearing for some of the petitioners, contends that geographical barriers of the State boundry have no place in the scheme of the Constitution for purposes of inter-State trade, commerce and intercourse which is free throughout the territory of India. The contention of the learned counsel is that Sub-rule (4) of Rule 18 read with i12 and the application form imposes an unreasonable restriction on the freedom of inter-State trade; obtaining of permit from the Commissioner of Excise causes delay because the lorry No. will have to be furnished at the time of applying for permit and because every transporter will have to rush to the capital from the border stopping the transport vehicle at the entry point, for obtaining the "through transport permit". He further submits that on the ground of non-receipt of the copy of the "through transport permit" the lorry will be liable to be stopped at every checkpost which would practically hamper the inter-State trade.

7. The learned Advocate General appearing for the respondents submits that the impugned provisions of the Act and the Rules are not violative of Articles 301, 304 and 14 and that under the Rules as amended a centralised agency, viz., the Commissioner, is the authority to issue the permit; if different authorities at the border checkpost are given power to issue the permit, the whole scheme would be frustrated; no time consuming enquiry is contemplated before issuing the permit ; what all a transporter will have to show is that he possesses import and export permits the Commissioner will have to be satisfied that the transport is not contrary to any law in force and that the goods will not be unloaded in the State. Such a permit, submits the learned Advocate General, facilitates easy

movement of the vehicle rather than hinders or hampers the smooth movement of the vehicles.

8. On the above contentions three questions arise for consideration :

(1) Whether Sections 2(31) and 11 of the Act can be said to be extra-territorial.

(2) Whether the impugned provisions of the Act and the Rules are violative of Articles 301 and 304 of the Constitution.

(3) Whether the procedure prescribed under the Rules is impracticable, unworkable and arbitrary, as such violative of Article 14 of the Constitution.

9. Before proceeding to answer these questions, it would be useful to read the impugned provisions of the Act and the Rules.

Section 2(31) : "Transport" means to move from one place to another within the State, whether or not the intervening area lies wholly within the State, and includes to move from a place outside it through the intervening area lying within the state.

Section 11: Regulation of Transport of intoxicants :--(1) The Government may, by notification, prohibit or regulate the transport of an intoxicant or any kind of intoxicants from any area into any other area within the State or from any place outside the State to any other place outside it through the intervening area lying within the State, except under a permit issued u/s 12.

(2) No intoxicant exceeding such quantity as may be prescribed either generally or for any particular area, shall be transported, except under a permit issued u/s 12.

Section 12 : Permits for transport of intoxicants :--(1) Any officer not below the rank of an Assistant Excise Superintendent authorised by the Commissioner may issue a permit for the transport of intoxicants.

(2) A permit under Sub-section (1) may be either general for definite periods and kinds of intoxicant or special, for specified occasions and particular consignments only :

Provided that a general permit, shall be issued only to persons licenced under this Act and may specify the maximum quantity of intoxicant that may be transported at any onetime.

(3) Every permit under this section shall specify.

(a) the name of the person authorised to transport intoxicants;

(b) the period for and the route through which permit shall be valid;

(c) the quantity, strength and description of intoxicants for which it is issued ; and

(d) any other particulars and conditions which may be prescribed.

Explanation :--The expression person authorised in this sub-section shall include his servants and other persons employed by him and acting on his behalf."

Rule 3 (p) : "Through transport permit" means the permit issued under Sub-rule (4) of Rule 18 for the transport from place outside the State to any other place outside it through the intervening area of the State, whether by way of consignment or otherwise.

Rule 16 (2) : The transport permit may be issued authorising through transport of Indian Liquor. Foreign Liquor and Beer.

Rule 17 (3) : (a) In case of "through transport permit", application shall be made to the Commissioner of Excise, Andhra Pradesh.

(b) the application under Clause (a) shall be in Form F.L. 7(B) and shall bear a Court fee stamp of the value of Rs. 51/- (Rupees fifty one).

Rule 18. Issue of permit :

(4) In case through transport of Indian Liquor, Foreign Liquor and Beer the Commissioner of Excise, may after making such enquiry as he may consider necessary and on being satisfied that the movement of the Liquor/Beer is not in contravention of any law for the time being in force and it will not be unloaded within the A.P. State, issue a permit for transport of the Liquor/Beer, through the Andhra Pradesh State in Form F.L. 8(A) bearing machine number in one series for the whole State after making copies thereof. The original of such permit shall be kept in the record of the office of the Commissioner of Excise. The duplicate shall be handed over to the applicant or to the person authorised by him to transport Liquor/Bear through A.P. State. The other copies shall be sent to the Asst. Commissioner(s) of Excise (Enforcement) and Excise Superintendent(s) concerned of the District(s) through which the consignment has to pass through A.P. State."

10. By Sub-section (31) of Section (2) extracted above, "transport" is defined to mean to move from one place to another within the State, whether or not the intervening area lies wholly within the State and includes to move from a place outside the State through the intervening area lying within the State. Section 11 empowers the Government to prohibit or regulate the transport of an intoxicant from any area into any other area within the State or from any place outside the State to any other place outside it through the intervening area lying within the State, except under a permit issued u/s 12. Under the Excise Act a permit is required for import, export and transport of the intoxicants. The authorities to grant such permits are specified in Section 12 of the Act as not being below the rank of an Assistant Excise Superintendent authorised by the Commissioner. The licences and the permits are granted subject to such restrictions and conditions and in such form as may be prescribed.

11. I shall now refer to the impugned Rules. Rule 3(p) defines "through transport permit" to mean the permit issued under Sub-rule (4) of Rule 18 for the

transport from place outside the State to any other place outside it through the intervening area of the State, whether by way of consignment or otherwise. Rule 16 deals with transport permits ; Rule 16(1) empowers issuing of transport permit authorising movement of Indian liquor and Foreign liquor within the State. Clauses (a) to (f) specify the situations in which the permit can be issued. Sub-rule (2) of Rule 16 which is impugned, empowers issuing of transport permit authorising through transport of Indian Liquor, Foreign Liquor and Beer. Rule 17 specifies the authorities to whom application for permit has to be made. Sub-rule (3) of Rule 17 says that in case of through transport permit application shall be made to the Commissioner of Excise, Andhra Pradesh. Rule 18 prescribes procedure for issuing of transport permit. Sub-rule (4) of Rule 18 provides that in case of through transport of Indian Liquor, Foreign Liquor and Beer, the Commissioner after making such enquiry as he may consider necessary and on being satisfied that the movement of liquor/beer is not in contravention of any law for the time being in force and that it will not be unloaded within the State of Andhra Pradesh, issue a permit for transport in Form No. F.L. No. 8(A). The permit will have to bear machine No. in one series for the whole State after making copies thereof. The original shall be kept with the Commissioner, the duplicate will be handed over to the applicant or the person authorised to transport through Andhra Pradesh State and the other copies shall be sent to the Assistant Commissioners) of Excise (Enforcement) and the Excise Superintendent(s) concerned of the District(s) through which the consignment has to pass through the State.

12. First the first point which relates to challenge regarding extraterritorial operation of the impugned provisions. Having regard to the provisions of Article 245 of the Constitution it is clear that the legislature of a State can make laws only for the State or any part thereof. Thus it follows that laws made by State legislature having extra-territorial operation will be ultra vires the power of the legislature of the State, In deciding the question of legislative competence it must be remembered that there is a presumption that the legislature knows its limit and the law passed by it is within its powers and it is for the one who challenges to show how it is extra-territorial unless it is so manifest from the impugned legislation itself.

13. From a perusal of the provisions of Sections 2 (31) and 11 and Rule 3 (p) it is seen that what is dealt with thereunder is transport of intoxicants through the State of Andhra Pradesh. The phrases "from a place outside it through the intervening area lying within the State" contained in Sub-section (31) of Section 2, and "from any area into any other area within the State or from any place outside the State to any other place outside it through the intervening area lying within the State" occurring in Section 11, are only meant to describe different manner in which transporting vehicles may pass through the State of Andhra Pradesh. There is no element, whatsoever, of control of the transport of intoxicants outside the State. Sri Raghunatha Reddy has also not been able to show how the impugned provisions have extra-territorial operation. The

impugned provisions cannot, in my view, be said to be extra-territorial in operation. Therefore, the contention of Sri Raghunatha Reddy is without any substance and the first point is answered accordingly.

14. The second question is whether the requirement of obtaining through transport permit is violative of Articles 301 and 304 of the Constitution of India. We shall read these articles here :

"Article 301 : Subject to the other provisions of this part, trade, commerce and intercourse throughout the territory of India shall be free".

"Article 304 :--Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law?

(a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced : and

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be, required in the public interest :

Provided that no Bill or amendment for the purpose of Clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President".

15. Article 301 of the Constitution declares that trade, commerce and intercourse through the territory of India shall be free. It guarantees freedom of trade, commerce and intercourse within the territory of India. This freedom, it may be noticed, is not an absolute freedom. It is subject to the provisions of Part XIII including Article 304. Article 304 is an enabling provision. It empowers the Legislature of a State to impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, but the State is enjoined not to discriminate between the goods so imported and the goods manufactured or produced in the State. It also empowers the State Legislature of a State to impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within the State as may be required in the public interest ; but this is subject to the condition that no Bill or amendment for purposes of imposition of reasonable restriction shall be introduced or moved in the Legislature of a State without the previous sanction of the President. It may be noted here that in view of the provisions of Article 255 of the Constitution non-compliance of requirement of previous sanction of the President, will not invalidate the Act if the President has given his assent to the Act.

16. In Atiabari Tea Co., Ltd. Vs. The State of Assam and Others, the validity of the Assam Taxation (On Goods Carried by Roads and Inland Waterways) Act, 1954 was challenged on the ground that it imposes restriction on movement of the goods and interfered with the freedom of trade guaranteed by Article 301 of

the Constitution. It was further contended that the Act was not passed after the previous sanction of the President of India, therefore the Act was unconstitutional. Their Lordships of the Supreme Court by majority held that the impugned Act imposed restriction, so it violated Article 301 of the Constitution and since it did not comply with the provisions of Article 304(b), it was not saved. It was observed that Article 301 provided that the flow of trade should run smooth and unhampered by any restriction either at the boundaries of the States or at any other points inside the States themselves ; and if any Act imposed any direct restrictions on the movement of goods it attracted the provisions of Article 301, and its validity could be sustained only if it satisfied the requirements of Article 302 or Article 304.

17. The next important case in which these Articles fell for consideration of the Supreme Court is The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, . In that case constitutional validity of the Rajasthan Motor Vehicles Taxation Act 1951 was unsuccessfully assailed both before the High Court and the Supreme Court. The challenge was on the ground that the impugned Ad was violative of Article 301 of the Constitution as imposition of tax hampers and hinders inter-State trade and commerce. The Supreme Court added a clarification to the ratio of the judgment in Atiabari?s case (2 supra) to the effect that regulatory measures or measure imposing compensatory taxes for the use of trading facilities do not come within the purview of the restrictions contemplated by Article 301, and such measures need not comply with the requirements of the proviso to Article 304(b) of the Constitution.

18. In Mrs Meenakshi alias Rama Bai and Others Vs. State of Karnataka and Others, the constitutional validity of Karnataka Taxation and Certain Other Laws (Amendment) Act of 1979 was questioned as being violative of Article 301 of the Constitution. The Act was sought to be justified on the ground that the augmentation of revenue by taxes was for purposes of laying new roads and maintenance of existing roads in proper shape and form, setting up of terminal facility for passengers, bus-stands, other facilities which make travel more comfortable and enjoyable. It was held that the tax was compensatory in nature. As the revenue collected by such tax is to be employed for purposes which would not only restrict or impede but facilitate smooth and unhampered trade, commerce and intercourse throughout the territory of India, it would not be violative of Article 301 of the Constitution.

19. In Manik Chand v. Union of India, (AIR 1984 SC 1248) it was laid down that the provisions regulatory in nature and imposed in public interest cannot be said to be violative of Article 301 of the Constitution. The same view was reiterated in Sodhi Transport Co. v. State of U.P., (AIR 1086 SC 1999).

20. It is thus clear that reasonable restrictions can be imposed on the freedom of trade, commerce and intercourse guaranteed under Article 301 in public interest by obtaining the previous sanction of the President at the time of introducing the bill as contemplated in Clause (b) of Article 304 or by obtaining his assent to the

Act (having regard to the provisions of Article 255) and if the action of the State complained of is regulatory or compensatory in nature, it is not violative of Article 301 of the Constitution and Article 304 is not attracted.

21. The next question that arises is what is the scope and meaning of "to regulate" and "regulation". The words as used in the Essential Commodities Act, 1955, came up for consideration of the Supreme Court in K. Ramanathan Vs. State of Tamil Nadu and Another, . After noticing the dictionary meaning and elaborate discussion, the Supreme Court observed as follows :

"The word ''regulation'' cannot have any rigid or inflexible meaning as to exclude ''prohibition''. The word ''regulate'' is difficult to define as. having any precise meaning. It is a word of broad import, having a broad meaning, and is very comprehensive in scope. There is a diversity of opinion as to its meaning and its application to a particular state of facts, some Courts giving to the term a somewhat restricted, and others giving to it a liberal, construction. The different shades of meaning are brought out in Corpus Juris Secundum, Vol. 76 at p. 611 :

?Regulate" is variously defined as meaning to adjust, order, or govern by rule'' method, or established mode ; to adjust or control by rule ; method, or established mode, or governing principles or laws ; to govern ; to govern by rule, to govern by, or subject to, certain rules or restrictions ; to govern or direct according to rule ; to control, govern, or direct by rule or regulations.

"Regulate" is also defined as meaning to direct by rule or restriction ; to direct or manage according to certain standards, laws, or rules ; to rule ; to conduct ; to fix or establish ; to restrain ; to restrict".

See also : Webster''s Third New International Dictionary, Vol. II, p. 1913 and Shorter Oxford Dictionary, Vol. II, 3rd Edn. page 1784.

It has often been said that the power to regulate does not necessarily include the power to prohibit, and ordinarily the word ''regulate'' is not synonymous with the word ''prohibit''. It is true in a general sense and in the sense that mere regulation is not the same as absolute prohibition. At the same time, the power to regulate carries with it full power over the things subject to regulation and in absence of restrictive words, the power must be regarded as plenary over the entire subject. It implies the power to rule, direct and control, and involves the adoption of a rule or guiding principle to be followed, or the making of a rule with respect to the subject to be regulated. The power to regulate implies the power to check and may imply the power to prohibit under certain circumstances, as where the best or only efficacious regulation consists of suppression. It would therefore, appear that the word ''regulation'' cannot have any inflexible meaning as to exclude ''prohibition''. It has different shades of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the legislation, and the Court must necessarily keep in view the mischief which the legislature seeks to remedy.

22. In Municipal Corporation of the City of Toronto v. Virgo,((1896) Appeal Cases, 88) the Privy Council explained the power to regulate and govern a trade in the following words :--

"No doubt the regulation and governance of a trade may involve the imposition of restrictions on its exercise both as to time and to certain extent as to place where such restrictions are in the opinion of the public authority necessary to prevent a nuisance or for the maintenance of order. But their Lordships think there is marked distinction to be drawn between the prohibition or prevention of a trade and the regulation or governance of it, and indeed a power to regulate and govern seems to imply the continued existence of that which is to be regulated or governed".

In that case, under a statutory power which authorised to regulate and govern trade, the Municipal Corporation enacted Bill which virtually prohibited the trade.

23. In Commissioner of Excise v. B. Bhogeswara Rao,(1974(1) An.W.R. 27) a Division Bench of our High Court had to consider the import and scope of the word ''regulate'' used in the A.P. Excise Act. Having regard to the scheme and the provisions of the Act it was held that ''regulate'' not only empowers the authority to fix quota and determines priority, but in order to effectuate such a policy the authority can impose cuts in the supply of the commodities.

24. Thus it can be seen that the word ''regulate'' has no precise meaning: it has different shades of meaning and takes its colour from the context in which it is used. Its meaning has to be culled having regard to the purpose and the object of the legislation. In the context of freedom of trade, commerce and intercourse enshrined in Article 301, regulatory measures, in my view, mean measures taken to govern, control or adjust but not prohibit or restrict the movements of transport of goods or commodities.

25. This takes us to the question whether the impugned rule requiring the ''through transport permit'' is a regulator measure or imposes restriction on the inter-State trade, commerce and intercourse. In the context of the right guaranteed under Article 301 of the Constitution, as noticed above, the regulatory power of the State cannot be interpreted or understood in wider sense to include prohibition because that destroys the very right which the Constitution guarantees It has, therefore, to be understood in a narrow sense to mean ''the making of a rule or guidelines to govern or control that which is sought to be regulated''. In the instant case it has to be seen whether the requirement of obtaining ''through transport permit'' amounts to restricting the transport of intoxicants or regulating it while passing through the territory of the State.

26. In State of Bihar v. Hurihar Prasad Debuka, (AIR 1989 SC. 119) notification issued by the State of Bihar prescribed certain forms to be carried along with the goods on the carrier. The petitioner challenged this requirement in the High Court of Patna. A Full Bench of the Patna High Court held that the impugned notification imposed unwarranted restrictions on inter-State trade and commerce

the freedom whereof stood guaranteed and that it was not regulatory in character. On appeal the Supreme Court set aside the judgment of the High Court and observed.

"We are of the view that the permits will indirectly help assessment by ascertaining whether tax would be payable or not. The permit would enable the carrier to cross the State territory by producing it if and when needed and thus would promote rather than impede inter-State trade. A declaration may also serve the public purpose by finding out unauthorised trade or business to which freedom of trade, commerce and intercourse would not apply."

The Supreme Court further held:-

"Public interest also will not allow transit regulations and allied measures to be violated, thwarted or evaded through the channel of inter-State trade, commerce and intercourse, unless of course the measures are shown to be unreasonable."

27. In the instant case the requirement of obtaining through transport permit is meant to ensure that the transport of the consignment of liquor/beer is not in contravention of any law for the time being in force and will not be unloaded within the State of Andhra Pradesh while in transit. The impugned provisions of the Act and the Rules do not in any way restrict or hamper the movement of the vehicles. Indeed the holding of the through transport permit having regard to the purpose for which it is required, facilitates the movement through the territory of the State. For these reasons, I am of the view that the impugned provisions of the Act and the Rules are only regulatory in nature and are not in the nature of restriction on the movement of the vehicles, therefore they are not violative of Articles 301 and 304 of the Constitution.

28. The last question that remains for consideration is whether the procedure of issuing through transport permit is unworkable, impracticable and arbitrary and as such violative of Article 14 of the Constitution. There cannot be any dispute that if procedure a prescribed for issuing of a permit is fanciful, unworkable and impracticable, it would be arbitrary and unsustainable. The question in the instant case is whether the procedure prescribed under sub-rule (4) of Rule 18 read with the Form of application in Form F.L. 7(B) and the form of permit F.L. 8(A) is fanciful, unworkable, impracticable and arbitrary. A person intending to obtain through transport permit has to apply in Form F.L. 7 (B) Column (9) of the said application requires that Registration No. of the vehicle should be noted. So also, against Column 9 of ''the permit'' for through transport, Registration No. of the vehicle has to be entered. The authority to whom the application has to be made is the Commissioner, Excise, who is also the authority to issue the permit.

29. The contention is that after the vehicle reaches the entry point in the State of Andhra Pradesh, the transporter will have to go to Hyderabad along with the Registration No. of the vehicle (lorry) in which liquor/beer is transported, because before the vehicle is actually loaded the transporter will not be sure of the actual No. of the vehicle which the contractors may use for transporting, and

till such time the permit is issued by the Commissioner, Excise, the vehicle will have to wait causing unnecessary hardship and loss to the transporter. It is further stated that no guidelines are provided for the enquiry which would be conducted by the Commissioner before issuing the permit and that Rule 18(4) also provides that copies of permit shall be sent to the Assistant Commissioner of Excise (Enforcement) and the Excise Superintendent concerned of the district through which the consignment has to pass through Andhra. Pradesh State and thus, it would be open to any of the officials to stop the vehicle on the ground that they have not received the copy of the permit, therefore, the whole procedure is fanciful and arbitrary.

30. So far as the procedure is concerned, it may be noted that a person no less than the Commissioner of Excise is required to conduct the enquiry. The enquiry relates to his satisfaction in respect of two matters?

(1) The movement of the liquor/beer is not in contravention of any law for the time being in force, and

(2) that the consignment of liquor/beer will not be unloaded within the State of Andhra Pradesh.

31. Both these criteria are objective. The transporter has to indicate the route through which the vehicle will pass so that it may be checked if there are any areas through which movement is not permissible having regard to the law in force, or where entry is prohibited due to any special reasons; further having regard to the place of export and import and the attendant circumstances, the Commissioner will have to be satisfied that the consignment of liquor/beer will not be unloaded within the State of A.P. These two conditions cannot be termed as either unreasonable or oppressive, so as to render the enquiry arbitrary.

32. There is no doubt that the requirement of giving the registration No. of the vehicle makes it difficult if not impossible for the transporter to apply for the through Transport permit in advance before reaching the entry point in the Stale of Andhra Pradesh; equally there is also possibility that any of the officers to whom the copy of the permit will be sent may, on the ground that the copy of the permit is not received by them, detain the vehicle for such time till they receive the copy of the permit, and this would cause undue hardship to the transporter. These aspects are not specifically covered by the Rules. But in the counter-affidavit it is specifically stated that the inspecting officials have no right to detain the goods on the ground of not receiving the copy of the permit marked to them.

33. The learned Advocate General states across the Bar that the requirement of giving vehicle/lorry No. and entering the same in the permit will be done at the entry point and that no vehicle/lorry in transit will be 6topped on the ground of not receiving copy of the through transport permit, and placed before me a copy of the letter No. CR. 5399/90/EX/ G. 2, dated 28-3-1991 addressed by the Commissioner to him, which reads as follows:-

"Apropos to your letter, dated 13-3-1991, I have to inform that necessary proposals are being sent to Government suggesting amendments to rules governing through transport of I.M.L. By virtue of these amendments, the transporters shall have to declare the Registration No. of vehicles at the lime of reporting at the entry check-post with the consignment, instead of at the time of applying for the permit. Further that, the procedure of furnishing copies to the Excise Officers of the jurisdiction enroute is also proposed to be replaced with another procedure, under which non-receipt of copies of the Through Transport Permit by the checkposts and field officers will not hinder movement of trucks through Andhra Pradesh".

From a perusal of the above letter it is clear that necessary amendments to the Rules are being made so as to enable the transporter to declare the registration No. of the vehicles at the time of reporting at the entry check-post with the consignment, instead of at the time of applying for permit; and that the procedure of furnishing copies to the Excise Superintendents of the jurisdiction enroute is also proposed to be replaced with another procedure under which non-receipt of copies of the Through Transport Permit by the check-posts and Field Officers will not hinder the movement of the trucks through the State of Andhra Pradesh.

34. Thus it is seen that the very cause which is likely to give scope for hardship is being taken care of. However, it may be noticed that in the existing procedure it is not specified as to at what stage the Registration No. of the vehicle should be given. I, therefore, record the contents of the above letter, viz., the transporters shall have to declare the Registration No. of vehicles at the time of reporting at the entry checkpost with the consignment, instead of at the time of applying for the permit, and direct the Commissioner of Excise to accept the applications of the transporters with entry against Col. 9, "The Registration No. of the vehicle will be furnished at the time of entry checkpost with the consignment"; and I further direct the Commissioner to incorporate in the permit F.L. 8 (A) instructions to the concerned officials at the place of the entry checkpost to record the Registration No. of the vehicle at the entry checkpost.

35. Further having regard to the contents of the counter-affidavit and the above letter that the procedure of furnishing copies to the Excise Officers of the jurisdiction enroute is proposed to be replaced under which non-receipt of the copies of the Through Transport Permit by the checkpost and Field Officers will not hinder movement of the trucks through Andhra Pradesh, I direct the Commissioner, pending amendment of the Rules, to issue necessary instructions incorporating that no official at the check post and no field officer shall hinder the movement of the vehicles transporting the consignments under the ''Through Transport Permit'' issued by the Commissioner on the ground only of non-receipt of copy of the ''through transport permit'' by him. In the light of the above discussion the procedure prescribed in the rules cannot be held to be impracticable, unworkable, arbitrary and violative of Article 14 of the

Constitution. The point is answered accordingly.

36. For the aforementioned reasons, the writ petitions fail and subject to the directions contained above, they are dismissed. The parties are directed to bear their own costs. Advocate''s fee Rs. 250/- in each.

