

(2011) 02 MP CK 0041
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1510 of 2011

Mohammed Iqbal

APPELLANT

Vs

The State of M.P. and Another

RESPONDENT

Date of Decision : 03-02-2011

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 21
Constitution of India, 1950 — Article 19(1)
Madhya Pradesh Distillery Rules, 1995 — Rule 3(7)(3), 4(6)
Water (Prevention and Control of Pollution) Act, 1974 — Section 25, 26

Citation : (2011) 2 JLJ 163

Hon'ble Judges : S.R. Alam, C.J.; Ravi Shankar Jha, J

Bench : Division Bench

Judgement

1. Heard on the question of admission.
2. In the instant petition filed as Public Interest Litigation, the Petitioner has challenged the excise policy/arrangement for the year 2011-12, whereby the State Government has modified the previous years arrangement and has adopted a new eligibility criterion of taking into consideration 80% production capacity mentioned in the D/1 distillery licence or two crores proof liters, whichever is lower for considering the tender for granting licence to supply spirit from bonded warehouses to retail sale contractOrs.
3. Learned Counsel for the Petitioner submitted that under the new excise policy the State Government by fixing 80% of the manufacturing capacity of any distillery of the State within the maximum limit provided therein is bound to violate the limit allowed by the M.P. Pollution Control Board in NOC/permission and thus it would violate the provisions contained in Section 25/26 of the Water (Prevention and Control of Pollution) Act, 1974, and Section 21 of the Air (Prevention and Control of Pollution) Act, 1981.
4. On the other hand, learned Additional Advocate General submitted that under Rule 3(7)(iii) of the M.P. Distilleries Rules, 1995, (for short "the 1995 Rules") a

distiller is required to submit NOC from the M.P. Pollution Control Board which is renewed every year for setting up of a distillery and only thereafter licence is issued as in form D-1 by the State subject to due observations of the Act/Rules and the conditions of licence. It is submitted that under Rule 4(6) of the 1995 Rules, every distiller has to obtain consent under the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981, after making necessary arrangement for air and water effluents treatment from the M.P. Pollution Control Board which regularly inspects the distilleries and monitors the treatment of industrial wastes and effluents.

5. Learned Additional Advocate General for the State further submitted that every manufacturer/distiller is required in law to limit his production only upto the capacity permitted by the Pollution Control Board and for which it has given its NOC irrespective of the actual installed/production capacity mentioned in the D/1 licence of a particular unit meaning thereby that even if a distiller may have a higher production capacity but he shall be allowed production only upto the limit which has been fixed or approved by the Pollution Control Board. Therefore, it is submitted that the apprehension of the Petitioner that the impugned change in the policy shall permit the distilleries to violate pollution norms and exceed the production beyond the limit mentioned in the NOC given by the pollution authorities is ill founded as the policy will not effect the environment or in any way violate the pollution norms.

6. In paragraph 10 of the preliminary objection it has been categorically stated that after filing of the writ petition the Excise Commissioner vide his letter dated 25.1.2011 has clarified that the production capacity as mentioned in D-1 licence issued by the Excise Department is and shall be subject to the production allowed by the M.P. Pollution Control Board in its NOC. A copy of the letter is also enclosed as annexure R/1.

7. Therefore, the apprehension of the Petitioner that the new policy has given a complete go-bye to the production limit approved by the M.P. Pollution Control Board in the consent letter/NOC issued to the distillers is misconceived and cannot be accepted in view of the categorical statement made on behalf of the Respondent State and also in view of the letter of the Excise Commissioner dated 25.11.2011.

8. It has further been alleged in the writ petition that for the first time in the State of M.P. the country spirit shall be bottled in PET (Plastic Empty Bottle) of 750 ml., 350 ml. and 180 ml. capacity which would not only be unhygienic but also would be hazardous to the environment. The Respondents in their preliminary objection regarding maintainability of the petition has averred that though the Petitioner has raised this technical and scientific issue but no material whatsoever has been given in support of the submissions. It has further been averred that the Excise Commissioner vide its order dated 25.1.2011, a copy whereof is enclosed as annexure R/3, has stated that the specification of bottles mentioned in the aforesaid letter of the Excise Commissioner confirms to

IS-14537 fixed by the Bureau of Indian Standards for Packaging of Alcoholic Liquors for PET bottles and it is thus contended by the learned Additional Advocate General that the specification of bottles being as per BIS specification, the Petitioner cannot question the same without there being any basis or material in support thereof.

9. The learned Additional Advocate General further submitted that the Petitioner not being engaged in the liquor business is neither a trader nor a manufacturer of liquor and therefore cannot challenge the policy on the ground that the same is violative of Article 19(1)(g) of the Constitution and thus this Public Interest Litigation being a sponsored petition at the behest of some-one deserves to be dismissed as none of his fundamental rights are infringed or violated giving cause to approach this Court.

10. Learned Counsel for the Petitioner during the course of submissions confined his submissions only in respect of the criteria fixing the manufacturing capacity of distillers and in fact has not urged other points, though raised in the writ petition, therefore, we need not to address the same. He, however, further submitted that in view of the statement of learned Additional Advocate General and the affidavit filed on behalf of the State Government, this petition may be disposed of by recording the same.

11. Besides that we are of the view that the scope of judicial review in the matter of policy decision being limited and permissible only to cases where it is found to be capricious, arbitrary or against the statutory provisions or suffers from the vice of discrimination or is unconstitutional, which is not the case here, no interference is warranted in this petition filed as Public Interest Litigation. Reference is made to the apex court decision in Delhi Development Authority, N.D. and Another Vs. Joint Action Committee, Allottee of SFS Flats and Others, .

12. In view of the above discussion and also as agreed to by the learned Counsel for the parties, this petition is disposed of in terms of the statements and affidavit given on behalf of the State Government.