(1971) 11 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 3642 of 1971

Mohinder Singh Kohli, Bottle Marchant, Chowk Arya Samaj, Bhatinda — APPELLANT

Vs

The State of Punjab and others — RESPONDENT

Date of Decision : 09-11-1971

Acts Referred:
Punjab Excise Act, 1914 — Section 3(6a)

Citation : (1971) 11 P&H CK 0035

Hon'ble Judges : R.S. Narula, J

Bench : Single Bench

Advocate : T.S. Munjral, for the Appellant; G.S. Chawla, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Narula, J.—The petitioner who is a bottle merchant of Chowk Arya Samaj, Bhatinda, has in the following circumstances prayed for the Punjab Excise Bottles Rules, 1963 (hereinafter called the Rules) being declared unconstitutional, illegal, null and void, and inoperative, and for quashing the Punjab Government notification, dated April 16, 1963 (Annexure ''A''), in which the said rules were published.

2. Section 3(6-a) of the Punjab Excise Act (1 of 1914) (hereinafter referred to as the Act) defines an "excise bottle" to mean a bottle of such type or description as may be or may have been at any time permitted for the bottling or liquor or beer by the rules made under the Act. Rule 38(11)(f) of the Punjab Liquor License Rules, 1956, gives in its clause (1) specifications of bottles in which Indian made foreign spirits are permitted to be bottled. The rule mentions the three sizes of the excise bottles according to their capacity in millilitres (750, 500 and 250 millilitres) and states in clauses (ii) and (iii) as below:-

(ii) The bottles mentioned above shall be of standard pattern and shall either bear the following specifications moulded on the glass:

(a) The words ''Punjab Excise'' and the figures and words ''750 millilitres'' 375 millilitres or 180 millilitres'' as the case may be or shall have a monogram moulded or sand blasted on them consisting of the letters ''PE'' and the figures and letters ''750 millilitres'' 375 millilitres and 180 millilitres in a triangle e.g.;

(b) the name or mark of the manufacturer of the bottles.

(iii) No licensee shall permitted to use for bottling Indian made foreign spirit any bottles bearing the name or trade mark of any other bottles.

Section 58(1) of the Act authorises the State Governments make rules for the purpose of carrying out the provisions of the Act or any other law for the time being in force relating to excise revenue. Sub-section (2)(d) of that section states that in particular and without prejudice to the generality of the provisions of sub-section (1), the State Government may any make rules regulating the import, export transport or possession of any intoxicant or excise bottle and the transfer, price or use of any type of description of such bottle. In exercise of the powers conferred on the State Government by section 58(2)(d) of the Act, Punjab Government framed the rules which were published in the Official Gazette, dated April 16, 1963, Rule 1 gives the short title of the rules as the Punjab Excise Bottles Rules, 1963. Rule 2 prohibits the use of any excise bottle for any purpose other than that of bottling spirit in accordance with the term of a license unless permitted to be used for any otter purpose by the Excise and Taxation Commissioner. Rule 3 prohibits the export of any excise bottle outside Punjab except under any general or special order of the Excise and Taxation Commissioner. Rule 4 prohibits the sale of excise botstles to anyone other than a licensed distillery or to the authorised agent of such distillery. Rule 5 prohibits, except with the written permission of the Excise and Taxation Commissioner, the possession or storage of more than twenty empty excise bottles by anyone except a licensed distillery or its authorised agent. Rule 6 defines an "authorise agent" as a person or a firm who has been authorised in writing by a licensed distillery in the State to buy and store excise bottles on its behalf. The same rule reserves to the Excise and Taxation Commissioner the right and authority to cancel any such letter of authorisation issued by a licensed distillery if the Commissioner considers that the authorised agent is an unsuitable person. Rule 7 merely states that the rules do not apply to the possession and use at any time of not more than twenty excise bottles for domestic purposes in any house.

3. In order to be able to deal with the excise bottles, the petitioner became the authorised agent of Jagatjit Distilling and Allied Industries Limited, Jagatjit Nagar, district Kapurthala (which is a licensed distillery), on the basis of letter of authority, dated June 7, 1963 (Annexure ''B'' to the writ petition) The petitioner also entered into some agreement with the said distillery in respect of the price to be charged for the supply of various kinds of excise bottles, the percentage which various sizes of bottles should bear, the incentives for larger supplies the penalties for failure to make the supplies, etc. but we are not concerned with those inter se stipulations between the petitioner and the licensed distillery. The

above named distillery had appointed various other agents also. In letter, dated July 24 1970 (Annexure ''C'') the distillery informed the petitioner about the names and addresses of three other parties appointed by them to purchase and supply empty battles branded with the name of the distillery, and directed the petitioner to deliver the stock of empty bottles collected by him either to the distillery at Hamira, or to any of the parties named in the letter against cash payment. By letter, dated August 4, 1971 (Annexure ''D'') the distillery informed the petitioner that it had cancelled the license issued by it in favour of seven parties named therin and desired the petitioner to immediately stop supply of empty excise bottles to any of those parties. The authority of the petitioner to supply empty excise bottles was restricted in that letter to one named party of Ludhiana only. On August 24, 1971, the distillery by their letter of that date (Annexure ''E'') cancelled the license issued by it to the petitioner for the collection, storage, purchase and sale of Punjab excise bottles belonging to that distillery with immediate effect. In that letter, the petitioner was further warned that if he dealt in the purchase, collection, storage or sale of Punjab excise bottles belonging to the Jagatjit Industries Limited suitable action under the relevant Punjab Excise Rules would be taken against him for unauthorised dealing with such bottles under the Rules. Since permission to deal with the bottles could be granted by the Excise and Taxation Commissioner alone to a person who did not hold an authority from a licensed distillery, the petitioner as well as eight other persons similarly situated (all of whom claimed to be empty bottles suppliers) submitted a written representation to the Excise and Taxation Commissioner, Punjab, on August 26, 1971 (Annexure ''H''), complaining against the changed policy (of appointing one empty bottles supplier instead of three suppliers) on various grounds mentioned in that communication. A prayer was made to the Excise and Taxation Commissioner to cancel the newly adopted policy of single suppler and to keep an authority to issue licenses for dealing in empty bottles with the department. According to the petitioner some assurance was given to them on August 26, 1971 when they met the Excise and Taxation Commissioner personally, but the said assurance did not fructify. After having sent another representation by way of a reminder on September 6, 1971 (Annexure ''I'' to the petition), and having failed to obtain any relief from the department, the petitioner filed the present writ petition on September 18, 1971, impugning the validity of the rules on the various grounds to which reference will hereinafter be made. In the affidavit of the Excise and Taxation Officer, Bhatinda which has been filed as written statement on behalf of all the respondents the State of Punjab, the Excise and Taxation Commissioner, the Deputy Excise and Taxation Commissioner, and the Excise and Taxation Officer) all the relevant facts have been admitted, but the contentions relating to the invalidity or unconstitutionality of the rules have been denied.

4. The first ground on which the petition has been pressed before me by Mr. Tirath Singh Munjral, the Learned Counsel for the petitioner is that section 58(2)(d) of the Act, under which the impugned rules have been framed is beyond the

legislative competence of the State Legislature "Excise Bottle" was added to the article mentioned in section 58(2)(d) in the course of the amendment of the principal Act by the Punjab Excise (Amendment) Act (1 of 1940) (hereinafter called the amending Act). The definition of "excise bottle" was also added by the same amending Act. The only other amendment made by that Act into the principal Act was of section 78 which deals with confiscation of articles in respect of which any offence might have been committed. "Excise bottle" was added to the articles which can be confiscated under that provision. The amending Act was enacted in exercise of the legislative powers vested in the Provincial Legislature by entry 31 in List II of the seventh schedule to the 1935 Act, relevant portion of which corresponds to entry 8 in the State List under the Constitution which reads:-

Intoxicating liquors, that is to say the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.

It has been held in Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others, in which case the Supreme Court was concerned with (Ajmer) Excise Regulation that the said excise laws had been in exercise of the powers conferred by entries 31 and 40 of List II of the seventh schedule to the Government of India Act, 1935 (corresponding to entries 8 and 51 of the State List in the seventh schedule to the Constitution). Entry 51 in the Constitutional State List (as also entry 40 of the 1935 Act List II) relates to levy and imposition etc. of duties of excise and is not relevant for our purposes. Mr. Munjral wanted to argue that the amending Act could not have been passed in exercise of the powers of the State under entries 26 and 27 of the State List, but did not dilate on that point in view of the categorical statement made by Mr. G.S. Chawla, Learned Counsel for the State, who claimed the validity of the amending provision under entry 8 only and conceded that entries 26 and 27 are not relevant. Mr. Munjral submitted that howsoever liberally entry 8 may be construed, nothing which is not an intoxicating liquor can be brought within its ambit. "Liquor" has been defined in section 3(14) of the Act to mean intoxcating liquor, and includes all liquids consisting of or containing alcohol; also any substance which the State Government may by notification declare to be liquor for the purposes of the Act. Whether an empty bottle is or is not such substance which could be declared to be liquor for the purposes of the Act u/s 3(14) need not be considered by me in this case as it is the common case of both sides that the State Government has not issued any such notification whereunder an excise bottle might have been declared to be liquor. There is no doubt that what has been defined to be an excise bottle cannot by itself be called "intoxicating liquor" in any sense of that word. A bottle may contain liquor, but is not liquor itself. Nor can an empty bottle normally intoxicate any one. The argument of Mr. G.S. Chawla is that entries in the legislative lists must be as liberally construed as possible. He has referred in this connection to the observations of their Lordships of the Supreme Court in Sri Ram Ram Narain Medhi Vs. The State of Bombay, wherein it has been stated that the heads of legislation in the Lists should not be construed in a narrow and pedantic sense, but should be given a large and liberal interpretation. The observations of the Judicial committee of the Privy Council in British Coal Corporation v. The King LR 1935 AC 500, at page 518 to the effect that "indeed, in interpreting a constituent or organic statute such as the Act, that construction most beneficial to the widest possible amplitude of its powers must be adopted," were approved by the Supreme Court. In the United Provinces v. Atiqa Bagum 1940 FCR 110, it was held that none of the items in the Lists is to be read in a narrow or restricted sense and each general word should be held to extend "to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it." Construing entry 18 in List If in the light of the principles settled in the aforesaid cases, the Supreme Court held in Sri Ram Ram Narain Medhi''s case (supra) that the Bombay Tenancy and Agricultural Lands (Amendment) Act (13 of 1956) which provided for the transfer and alienation of agricultural land, aimed at land improvement and was, broadly stated, a legislation in regard to the rights in or over land or categories specifically referred to in entry 18 which reads:-

Land, that is to say, rights in or over land, land tenures including toe relation of landlord and tenant, and the collection of reuts; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

In Rai Ramkrishna and others etc. v. State of Bihar AIR 1953 S.C. 1667, it was held that in exercise of powers vested in a State Legislature under entry 56 of the State List to levy taxes on goods and passengers, it was competent for the State Legislature to devise machinery for recovery of the said taxes on the ground that the entry in the seventh schedule conferring legislative power on the Legislature must receive the widest denotation. Mr. Chawla contended that liquor cannot go without bottling and what has been defined as "excise bottle" is intended to be exclusively used for bottling liquor, and, therefore, there is such an intimate and direct connection between liquor and an excise bottle that an entry in the legislative list authorising legislation on the subject of intoxicating liquor must be held to include an authority to legislate in respect of exclusive marked containers in which liquor may be kept and also authorises legislation in respect of possession, transport, purchase and sale of such bottles. After carefully considering the matter, I am of the opinion that there is great force in the submission of Mr. Chawla. In the statement of objects and reasons printed at page 330, Part I of the Punjab Gazette, dated February 23, 1940, for enacting the amending Act, it was stated as below:-

In the Punjab, unlike some other Provinces of India, country liquor can be retailed only in sealed bottles. This reform was made some 20 years age and to it is attributed a marked decrease in the consumption of such liquor. Simultaneously with this reform the old-fashioned drinking booths and the practice of peg selling were abolished. In recent years some 200,000 dozen bottles have been imported annually; but the source of supply was in German territory; and is no longer available. English supply is uncertain; English prices are nearly 200 per cent higher; and the cost of freight may be expected to increase further. Accurately-sized Indian made bottles are not yet on the market. On the other hand if the sealed bottle system were abandoned, illicit consumption would increase. New bottles not being readily available, the problem will be solved in part if the existing stocks of used bottles are returned to the distileries and this Bill is intended to secure their return. Excise bottles are all marked, usually by moulding or sand-blasting, and can be readily identified.

The above statement of objects and reasons contains the historical back-ground of the amending Act under the provisions of which the impugned rules have been promulgated. The subject on which the legislation consisting of the amending Act was undertaken was country liquor. The expressed object of continuing sealed bottle system was to avoid increase of illicit consumption of liquor. The amending Act was enacted to create the machinery for procuring the return of existing stocks of excise bottles to the distilleries. The law was made only in respect of bottles which are marked either by moulding or sand-blasting and which are readily identifiable as coming within the prescribed standard pattern. The authority permitted to legislate in respect of intoxicating liquor for the purpose of controlling and regulating it''s production, possession, transport, purchase and sale must necessarily be deemed to have been authorised by implication to legislate in respect of all matters necessary for such control and regulation. With the increase of price of licit liquor in the market, marked excise bottles are capable of being misused for passing off illicit liquor as licit. The impugned provisions aim at providing for bottling of liquor in "accurately sized" marked bottles to ensue proper control and regulation of liquor trade But for this legislation it would not be easily possible for the distilleries to get back their empties. Matters relating to the marking, use, collection and return to the distilleries of empty excise bottles are, in my opinion, ancillary and subsidiary to the use of intoxicating liquor. Mr. Munjral sought support from the judgment of the Supreme Court in the Check Post Officer and others v. K.P. Abdulla (1970) 3 S.C.C. 55 for the proposition that the subject of empty excise bottles is not fairly and reasonably connected with the subject of intoxicating liquor The Supreme Court has held that the power conferred by sub-section (3) of section 42 of the Madras General Sales Tax Act, 1959, to seize and confiscate and to levy penalty in respect of all goods which are carried in a vehicle, whether the goods are sold or not is not incidental or ancillary to the power to levy sales tax, as a person carrying his own goods even as personal luggage from one State to another or for consumption, if unable to produce the documents specified in various clauses of sub-section (3) of section 42, stands in danger of having his goods forfeited. While dealing with that question, the Supreme Court held that a legislative entry does not merely enunciate powers, but it specifies a field of legislation and the widest import and significance should be attached to it. Their Lordships observed that the power to legislate on a specified topic includes power to legislate in respect of matters which may fairly and reasonably be said to be comprehended therein. I am inclined to think that the abovementioned observations of the

Supreme Court go against the petitioner and support the case of the State. Entry 8 in the State list deals with the subject of intoxicating liquor. This is the specified topic covered by the entry. The entry has been specifically made to include the power to legislate in respect of possession and transport of intoxicating liquor. Liquor cannot travel on its own logs. It has to be transported either in bottles or drums. The only receptacle in which liquor is normally contained is the glass bottle. Similarly the combined effect of legislating in connection with the production and manufacture of liquor would include the control and regulation of bottling of liquor. In this view of the matter, it appears to me that the subject of excise bottles can fairly and reasonably be said to be comprehended in entry 8 under the head "intoxicating liquor". In the words of the Supreme Court the entry provides "a field of legislation" and not a topic of legislation. The field of legislation in respect of intoxicating liquors must necessarily include in it legislation relating to excise bottles. After all it has been authoritatively recognised by the Supreme Court that liquor is not an ordinary commodity. Mahajan, C.J. observed in Coovvrjee B. Bharucha''s case (supra) that business of liquor is attended with such danger to the community and control of this trade is necessary for public morality and public expediency. Observations of Field, J. in Crowley v. Christensen (1890) 33 Law Ed. 620 (A), about the capacity of liquor to undermine consumer''s health and morals and to create self-abasement leading to neglect of business and waste of property and general demoralisation, were approved by the Supreme Court in that case, Field, J. had observed in Crowley''s case that there is general concurrence of opinion in every civilized community that there are few sources of crime and misery to society equal to the dram shop, where liquor is indiscriminately sold. The only thing from which a lay illiterate consumer of liquor would make out whether it is of a particular distillery or not and whether it is illicit liquor manufactured under the Punjab excise laws is to see the marks on the bottles in which liquor may be contained.

5. The last case on which Mr. Munjral relied for showing that the State Legislature was not competent to enact section 58(2)(d) is the judgment of the Supreme Court in Ashoka Marketing Ltd. Vs. State of Bihar and Another, In that case it was held that in exercise of powers vested in the State Legislature by entry 54 of List II, the State is competent to enact-laws in respect of matters "necessarilly incidental to taxes on the sale and purchase of goods", but the provisions contained in sub-sections (3), (4) and (5) of section 20-A of the Bihar Sales Tax Act (19 of 1959) compelling a dealer who has deliberately or erroneously recovered an amount from the purchaser on a representation that he is entitled to recover it to recoup himself for the payment of tax, to pay over that amount to the State cannot be regarded as necessarily incidental to the entry. No such consideration appears to arise in the instant case. As already observed it appears that making provision for the regulation of trade of excise bottles is necessarily incidental to the regulation and control of the business of intoxicating liquor. Construing entry 8 in the State List in the light of the law laid down by the

Supreme Court in the abovementioned cases, in a manner most beneficial to the widest possible amplitude of the State''s legislative powers I hold that the expression "intoxicating liquor" in that entry is not restricted and confined to liquors which can intoxicate but extends also to all ancillary or subsidiary matters (including necessary legislation with regard to the bottles in which intoxicating liquor can be kept, acquired sold and transported) which can fairly and reasonably be comprehended in it Consequently it is held that the Punjab Legislature was competent to enact section 58(2)(d) of the Act and the said provision does not lack legislative competence.

6. The second argument of Mr. Tirath Singh Munjral was that even, if entry 8 covers the subject of excise bottles, rule 3 of the rules framed by the Government prohibiting the export of excise bottles outside the state of Punjab is unconstitutional as it hampers inter-state trade and commerce, and thereby infringes Article 301 of the Constitution and is not saved by Article 304 as (i) the restriction imposed thereby is not reasonable and is not required in the public interest; and (ii) the impugned rule amounts to delegated legislation which has been made without the previous sanction of the President of India. In support of this proposition counsel relied on the dictum of the Supreme Court in Hans Raj Bagrecha v. State of Bihar (1971) 1 SSC 59. In the courses of his jute business, Hans Raj Bagrecha used to buy jute inside as will as outside the state of Bihar and used to export and re-export it to other States. The Bihar Finance Act, 1966, amended the Central Sales Tax Act so as to provide for the imposition of purchase tax. By a notification jute was made liable to that tax. In exercise of powers vested in the State Government by section 46 of the Bihar Sales Tax Act, notification, dated December 26, 1967 was issued by that State wherein it was provided that jute exceeding 800 Kilograms could not be tendered for transport without a dispatch permit from certain notified Railway Stations. Bagrecha''s station was one of those. As Bagrecha did not produce the registration certificate, allotment of the railway wagons given to him for carrying his jute was cancelled. Bagrecha''s writ petition impugning the validity of the rule referred to above was dismissed by the Patna High Court. His appeal to the Supreme Court was partially allowed. It was held that the power of the State Legislature was restricted to legislate in respect of intra-State transactions of sale and purchase and to matters ancillary or incidental there to, but it had no power to legislate for levy of tax on sales and purchase in the course of inter-State transactions. Rule 31-B which stood to prohibit transport of goods outside the State of Bihar unless a certificate was obtained from the appropriate authority was held to restrict transport pursuant to transactions which are in the course of inter-State trade and commerce which transactions may not even be of the nature of sale or purchase inasmuch as the operation of the rule was not restricted only to transactions in the course of intra State trade and commerce. The rule was held to be unauthorised as it imposed a restriction on inter-State transactions. For the same reason the notification issued by the State Government on December 26, 1967, was regarded as unauthorised. In the course of that judgment Shah, J.

speaking for the Court observed that a provision which is made by the Act or by the rules which seeks to prevent evasion of liability to pay intra-State sales or purchase tax would be within the competence of the Legislature or authority competent to make rules, but the State Legislature has no power to Legislate for the levy of the tax on transactions which are carried on in the course of inter-State trade or commerce or in the course of export. It was further held that the power u/s 46 of the Bihar Act could only be exercised in respect of legal collection and recovery of intra State sales and purchase tax and that power could not be utilised for the purpose of ensuring effective levy of inter-State sales or purchase tax. Article 301 guarantees freedom of inter-State trade and commerce subject to the exceptions contained in the other five Articles contained in Part XIII of the Constitution Powers to impose restrictions on inter-State trade and commerce are vested in the Legislature of a State subject to the limitations contained in Article 304. Prohibition of export of excise bottles out of Punjab except under a general or special order of the excise and taxation Commissioner does appear to interfere with the freedom of trade, commerce and inter course throughout the territory of India guaranteed by Article 301. The next question is whether the restriction imposed by rule 3 is or is not saved by Article 304(b). So far as the purview of clause (b) of Article 304 is concerned, it appears to me that the restriction imposed by rule 3 is, in the circumstances of the case, reasonable as well as in the public interest. If this restriction was not imposed most of the excise bottles in Punjab could with impunity find their way out of the State creating a double problem. Firstly, it would have defeated the object of the amending Act as it would hamper the return of empty bottles to the Punjab distilleries; secondly it would provide a handle to undesirable elements in the adjoining and other States to pass on any kind of illicit liquor as Punjab excise liquor I am strongly of the opinion that it was and is in the public interest to prevent both the mischiefs referred to by me so far as possible. The restriction relates to only excise bottles. The only purpose for which the bottle merchants have to export them is of selling them. Ready customers for all those bottles are provided by the State. It is no body''s case that such bottles could be sold at a substantially higher price when exported out of Punjab. I, therefore hold that the restriction imposed by rule 3 is reasonable and in the Public interest.

7. There is another way of looking at the matter. The rule has been framed under a pre-Constitution Act. Even the amendment to section 58(2)(d) had come into force long before the Constitution was enacted Article 305 of the Constitution has expressly provided that nothing in Article 301 shall effect the provisions of any existing law except insofar as the President may by order or otherwise direct. Admittedly the President has not by any order otherwise directed in this case. The prohibition on which the counsel for the petitioner relies is contained in Article 301. That has no application to the existing law contained in section 58(2)(d) of the Act (vide Article 305). If the provisions of section 58(2) (d) are not to be affected by Article 301, the power of the Government to make rules under that section has to remain intact and the State Government can, therefore, in

exercise of that power frame rules within the scope of that section even after the coming into force of the Constitution. For the same reason it is unnecessary to consider the argument of the Learned Counsel about rule 3 being invalid for want of previous sanction of the President. Such sanction is required to be obtained only by a Legislature before introducing a bill or moving an amendment in contravention of Article 301. I am, therefore, unable to hold that rule 3 is in any manner invalid.

8. The third argument of the Learned Counsel for the petitioner was that the impugned Rules are void under Article 13(2) of the Constitution as infringing the fundamental rights of the petitioner guaranteed to him under Articles 19(1)(f) and 19(1)(g). In my opinion there is no force in this contention as the restrictioned imposed by the Rules are saved by clauses (5) and (6) of Article 19, and do not therefore, fall within the ambit of sub-clauses (f) and (g) of clause (1) of that Article. I have already held above in connection with rule 3 that it imposes a reasonable restriction in the public interest. For the reasons already recorded by me in connection with the validity of section 58(2)(d) and the legality of rule 3, I hold that none of the impugned Rules takes away or abridges any right conferred by Part III of the Constitution. Prima facie the Rules do contain restrictions against acquiring, holding and disposing of excise bottles and also on practising the trade or business of dealing in excise bottles in any manner a person may like to do. But the rights conferred by Article 19(1)(f) and (g) are subject to clauses (5) and (6) of the Article. I think the restrictions imposed by the Rules are reasonable and are in the interest of general public. No fundamental right of the petitioner has, therefore, been infringed.

9. Rule 4 was then attacked by Mr. Muniraj on the ground that it seeks to create monopoly, and, therefore, offends against Article 19 (1)(g) of the Constitution. Reliance was placed in this connection on the judgment of the Supreme Court in Rashid Ahmed Vs. The Municipal Board, Kairana, Bye-law 4 of the bye laws framed by the Kairana Municipality was struck down by the Supreme Court in that case as it provided-monopoly to a contractor to deal in wholesale transactions at the place fixed as vegetable market to the exclusion of everybody else. No such monopoly has been created by rule 4. All authorised agents (and a distillery can appoint any number of them it wants) are empowered to purchase bottles. All distilleries are entitled to purchase bottles. It is only sale to persons other than distilleries and their authorised agents which is prohibited. This does not, in my opinion, create any monopoly which may amount to an unreasonable restriction on the right of the petitioner to carry on his bottle trade. Regulation of purchase and sale of excise bottles is, as already observed, as much justified as the regulation of sale and purchase of liquor itself as the two are intimately connected with each other. Counsel also referred in this connection to the Division Bench judgment of this Court in Partap Rosin and Turpentine Factory Vs. The State of Punjab and Another, "Reasonable restriction" was construed in that case to mean such limitations as are not excessive beyond what is required in the interest of public. '''Reasonable" was held to imply a choice of a course which

reason dictates by striking a proper balance between freedom guaranteed under Article 19(1)(g) and the social control permitted by clause (6) of Article 19. It was held that an action encroaching on the fundamental right acquired under Article 19(1)(g) must be considered to be wanting in the quality of of reasonableness it the encroachment is not confined within the recognised limits of permissible social control in the interest of general public. The test of reasonableness would, in my opinion, vary from case to case. Even the Division Bench of this Court recognised in the case of Messrs Partap Rosin and Turpentine Factory (supra) that it is not possible to lay down any abstract standard or general pattern of reasonableness applicable to all cases. For pronouncing on the reasonableness or otherwise of a restriction, the Court must have regard to the nature of the fundamental right said to have been infringed, the purpose of the imposition of the restriction which is claimed to have resulted in the infringement, the extent and urgency of the mischief which the restriction is intended to remedy the prevailing conditions and the disproportion of the restriction imposed. The Division Bench observed that all these matters enter into the judicial verdict relating to the question of infringement of the fundamental right under Article 19(1)(g). Rule 4, in my opinion, satisfies all the tests laid down by the Division Bench From whatever angle the matter is viewed, the restriction imposed by rule 4 does not appear to me to be unreasonable. There is no quarrel with the proposition of law laid down by the Supreme Court in Virajlal Manilal and Co. and Others Vs. State of Madhya Pradesh and Others, and canvassed by Mr. Munjral, to the effect that once it is made out by a writ petitioner that a restriction on the right conferred by Article 19 (1) has been imposed, the burden shifts on the State to show that the case falls within the exception contained in clauses (2) to (6) of Article 19. The State has, in my opinion, successfully discharged that burden in the instant case.

10. The last Submission advanced on behalf of the petitioner was that the Rules could at best regulate the trade of excise bottles, but could not prohibit it. It was in that connection that observations of a Full Bench of the Patna High Court in Kanhai Sahu v. Emperor AIR 1940 Pat 53, were invoked by Mr. Muniral Powers of regulation and governance of a trade conferred on the Government by a statute, it was held by the Full Bench of the Patna High Court, do not give the Government a right totally to prohibit all trade unless there are express words in the statute clearly giving such a power. Distinction was drawn between the prohibition or prevention of a trade and the regulation or governance of it. In my opinion, the State has not absolutely prohibited the trade in excise bottles under any of the impugned Rules.

11. For the foregoing reasons, this petition fails and is dismissed leaving the parties to bear their own costs.

